

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-11-619857
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APPELLANTS' APPENDIX

VOLUME 10

**Appeal from Eighth Judicial District Court
Clark County, Nevada**

The Honorable William Kephart

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1 29. As a victim of fraud the plaintiff is entitled to damages, costs and attorney fees
2 under NRS 41.600(3).

3 **FORTH CLAIM FOR RELIEF**

4 **Attorney Fees**

5 30. Plaintiff alleges, realleges and incorporates by reference each and every
6 allegation contained in the preceding paragraphs.

7 31. Plaintiff has been required to retain counsel to pursue his rights in this matter-for
8 which Plaintiff has incurred special damages from Defendants' conduct in that he has to be
9 responsible for attorney fees and costs in removing the cloud upon his title caused by
10 Defendants. Defendants' conduct entitles plaintiffs to an award of general and special
11 damages in an amount in excess of \$10,000.00, to be determined by proof at time of trial

12 WHEREFORE, Plaintiffs demands judgment against defendants, jointly and severally,
13 as follows:

14 1. For special damages in attorney fees and general damages in an amount in
15 excess of ten thousand dollars to be determined at time of trial;

16 2. For exemplary damages in an amount to be determined at time of trial;

17 3. For an Order cancelling Defendants' Corrective Trustee's Deed Upon Sale/ices
18 of Default and Notice of Trustee's Sale.

19 4. For a declaration that the actions taken by a foreign corporation, in attempting
20 to collect a debt without a foreign collector's license are void *ab initio*, and that the same
21 constituted Deceptive Trade Practices within the meaning of NRS 598.0923.

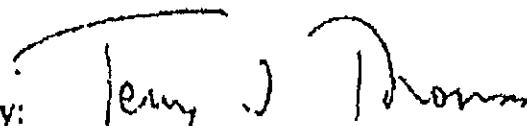
22 5. For costs of suit;

23 6. For such other, further, or different relief as the court may deem just under the
24 circumstances.

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned hereby affirms this document does not contain a social security number
pursuant to NRS

DATED: May 10, 2012

By: 
Terry J. Thomas, Esq.
Attorney for Plaintiff

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LIST OF EXHIBITS

- 1. Forbearance Agreement. 7 Pages
- 2. Forbearance Ckecks. 3 Pages

EXHIBIT I

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EXHIBIT I

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FORBEARANCE AGREEMENT

Loan No. 8945392

Foreclosure No. NV0938405-1

THIS AGREEMENT is dated this 8TH day of JULY 2009 and is made by and between BLIAN LAGHAEL (hereinafter "BORROWER") and BANK OF AMERICA HOME LOANS (hereinafter "Lender") and provides that:

RECITALS

Whereas BORROWER HAS executed that certain LOAN REPAYMENT AND SECURITY AGREEMENT dated NOVEMBER 12, 2001, in the original principal face amount of THREE HUNDRED TWENTY FIVE THOUSAND AND 00/100 (\$325,000.00) (the "Note"); and

Whereas the Note is secured by that certain deed of trust dated NOVEMBER 12, 2001, and executed by BORROWER in favor of Lender which Deed of Trust was recorded on 04/09/2002 in the Office of the County Recorder in the County of WASHOE as Instrument # 2001-55285, (the "Deed of Trust"); and

Whereas the Deed of Trust encumbers the real property as described therein (the "Property") (commonly known as 25 SNOWBERRY CIRCLE, RENO, NV 89511); and

Whereas BORROWER IS in default under the Note and Deed of Trust by having failed to make payments as required under the Note; and

Whereas BORROWER admit(s) that BORROWER defaulted under the terms of the Note and Deed of Trust by failing to make payments in the proper amounts when due in accordance with the terms of the Note and Deed of Trust; and

Whereas BORROWER acknowledge(s) that BORROWER default under the Note and Deed of Trust caused Lender to institute a mortgage foreclosure action against BORROWER; and

Whereas based on BORROWER'S default, Lender has elected to exercise its rights and remedies under the Note and Deed of Trust and has commenced foreclosure proceedings through TRUSTEE CORPS, the trustee under the Deed of Trust ("Trustee"); and

Whereas Trustee has scheduled or will schedule a trustee's sale of the Property, which has been assigned trustee sale number NV0938405-1, to take place three weeks from the date of the first publication of the notice of trustee's sale ("Trustee's Sale"); and

Whereas the BORROWER presently OWES Lender arrearages including, but not limited to, principal, interest, advances and fees and costs, in the aggregate amount of

Loan No. 8945392
Foreclosure No. NV0938405-1

1

TWENTY FOUR THOUSAND NINE HUNDRED FIFTY DOLLARS AND 20/100 (\$24,950.20) as of the date of this Agreement (the "Default Amount"); and

Whereas the BORROWER HAS requested that the Lender forbear and postpone the Trustee's Sale in exchange for

- (1) BORROWER'S payment to Lender of EIGHT THOUSAND FIVE HUNDRED DOLLARS AND 00/100 (\$8,500.00) on or before AUGUST 12, 2009, (this total amount to be applied towards the Default Amount);
- (2) BORROWER'S payment to Lender of the reduced monthly principal and interest of ONE THOUSAND THREE HUNDRED SEVENTY DOLLARS AND 85/100 (\$1,370.85) for a period of TWELVE MONTHS (12) months (which payment shall be applied towards the Default Amount); for a total monthly payment of THREE THOUSAND SEVEN HUNDRED SIXTY NINE DOLLARS AND 71/100 (\$3,769.71) commencing SEPTEMBER 1, 2009 and ending; AUGUST 01, 2010 (the above payment schedule, if adhered to, will NOT result in payment in full of the entire Default Amount at the termination of this Agreement);
- (3) BORROWER'S Agreement that the balance of the Default Amount will be RESTRUCTURED OR OTHER PAYMENT ARRANGEMENTS MADE at or prior to the termination of this agreement;

Whereas based on the covenants and conditions set forth herein, the Lender has agreed to forbear and postpone the Trustee's Sale; and

Whereas the BORROWER and the Lender have reached an agreement concerning the terms of forbearance and wish to memorialize said agreement into writing so as to avoid any future misunderstandings or disputes;

AGREEMENT

NOW, THEREFORE, the BORROWER and the Lender do hereby agree as follows:

- 1) BORROWER hereby AGREES to pay Lender EIGHT THOUSAND FIVE HUNDRED DOLLARS AND 00/100 (\$8,500.00) on or before AUGUST 12, 2009, (this total amount to be applied towards the Default Amount);
- 2) BORROWER further AGREES to pay to Lender ONE THOUSAND THREE HUNDRED SEVENTY DOLLARS AND 85/100 (\$1,370.85) for a period of TWELVE (12) months (which payment shall be applied towards the Default Amount); for a total monthly payment of THREE THOUSAND SEVEN HUNDRED SIXTY NINE DOLLARS AND 71/100 (\$3,769.71) commencing SEPTEMBER 1, 2009 and

ending AUGUST 01, 2010 (the above payment schedule, if adhered to, will **NOT** result in payment in full of the entire Default Amount at the termination of this agreement);

- 3) BORROWER further acknowledge(s) and agree(s) that the note and Deed of Trust will NOT be current at the end of this Agreement and that the balance of the Default Amount will RESTRUCTURED OR OTHER PAYMENT ARRANGEMENTS MADE at or prior to the termination of this Agreement;
- 4) BORROWER further AGREES that there shall be NO GRACE PERIOD for making the above payments; any payments not received by the end of business on the date due shall be considered late; late payments shall be considered a material breach of this Agreement allowing Lender to exercise any or all of its rights and remedies pursuant to this Agreement, the Note and/or the Deed of Trust;
- 5) BORROWER further AGREES that all payments set forth above shall be made directly to: **BANK OF AMERICA HOME LOANS
MARKOS HANNAN
400 COUNTRYWIDE WAY
MISSISSAUGA
SIMI VALLEY, CA 93065**
- 6) BORROWER further AGREES that BORROWER shall pay and keep current all property taxes and insurance premiums due on the property and that Borrower's failure to do so shall be considered a material breach of this Agreement allowing Lender to exercise any or all of its rights and remedies pursuant to this agreement, the Note and /or the Deed of Trust without the necessity of formal notice to the Borrower
- 7) BORROWER further AGREES and understand(s) that Lender will not cancel the pending foreclosure action and /or scheduled Trustee's sale but will, in accordance with accepted business practices in the foreclosure industry, either place the foreclosure on hold or postpone the Trustee Sale every 30 days for approximately 30 days, whichever is appropriate, until any and all defaults under the Note, the Deed of Trust and this Agreement are cured (at which time Lender will provide Trustee written instructions to cancel the Trustee's Sale);
- 8) BORROWER further AGREES that if any installment specified in paragraphs 1,2 OR 3 above is missed, Lender shall have the right to immediately instruct Trustee to sell the Property on the next postponement sale date or as soon thereafter as possible;
- 9) BORROWER further agree(s) and understand(s) that should Borrower convey(s) title to the subject property or move there from, then this Agreement shall be immediately

nullified, rendered void and canceled. Lender, without necessity of formal notice to BORROWER, shall be deemed to have elected to exercise its contractual rights to proceed with a foreclosure action and/or its rights under this Agreement, the Note and/or the Deed of Trust;


- 10) BORROWER further AGREES that the Lender may accept partial payment of the installment payment specified above without a written modification of this Agreement and the acceptance of such payment shall not be considered a reinstatement of the Note or Deed of Trust and shall not effect the pending foreclosure or Trustee Sale;
- 11) BORROWER further AGREES that only payment in full of the Default Amount will constitute a reinstatement under the Note and Deed of Trust so as to result in cancellation of the pending foreclosure and Trustee Sale;
- 12) BORROWER further AGREES that in the event that Borrowers fail to fulfill any requirement contained within this Agreement, the Note, or the Deed of Trust then Lender may immediately thereupon cause Trustee to sell the Property at a trustee sale;
- 13) BORROWER and Lender hereby acknowledge and agree that this Agreement is not a modification of the Note or Deed of Trust and shall not be construed as such and shall not constitute a waiver or estoppel with respect to any future breach or default;
- 14) BORROWER and Lender hereby acknowledge and agree that, notwithstanding this Agreement, the Note and Deed of Trust continue to be and shall remain unchanged and in full force and effect in accordance with their terms;
- 15) BORROWER hereby acknowledge(s) that this Agreement has been freely negotiated and that Borrowers have been represented by counsel herein or have had the opportunity to seek advice of competent counsel, and are not acting under any material disability or duress; and
- 16) Foreclosure No. # NV0938405-1 remains in full force and effect until the above default is cured and said arrearages are brought current.

MISCELLANEOUS PROVISIONS

- 1) Headings - The headings used herein are for convenience of reference only and shall not be used in the interpretation or construction hereof.
- 2) Governing Law - This Agreement shall be governed, interpreted and construed by, through and under the laws of the State of NEVADA.

- 3) **Time of the Essence** - It is expressly understood and agreed that time shall be of the essence as to each payment required to be made by BORROWER pursuant to this Agreement.
- 4) **Binding Effect** - This Agreement shall inure to the benefit of and be binding upon the parties hereto as well as their successors and assigns, heirs and personal representatives.
- 5) **Counterparts** - This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts (including by telecopy), and all of said counterparts taken together shall be deemed to constitute one and the same instrument. A set of the copies of this Agreement signed by the parties hereto shall be delivered to each Borrower and the Lender.
- 6) **Limitation of Trustee Liability** - It is expressly understood and agreed by the parties that nothing contained in this Agreement shall be construed as creating any liability on Trustee to perform any covenant either expressed or implied contained herein; all such liability, if any, being expressly waived by the parties hereto and by any person claiming by, through or under the parties hereto.
- 7) **Survivor ability** - The provisions of this Agreement shall survive any discontinuance of the pending mortgage foreclosure action.

Dated: 8/11/09


BRIAN LAOHAEL

Dated: _____

BANK OF AMERICA HOME LOANS

By: _____

Its: _____

(RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO)

Trustee Corps
2112 Business Center Drive
2nd floor
Irvine, CA 92612

DOC #3741278

03/20/2009 03:09:34 PM

Electronic Recording Requested By

TICOR TITLE - RENO

Washoe County Recorder

Kathryn L. Burke - Recorder

Fee: \$18.00 RPTT: \$0

Page 1 of 3

APN # 047-113-12

The undersigned hereby affirms that there is no
Social Security number contained in this document

(SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY)

Trustee Sale No. NV0838405-1 Loan No. 8845339 Title Order No. 090208763

090208763
IMPORTANT NOTICE
NOTICE OF DEFAULT AND ELECTION TO SELL
UNDER DEED OF TRUST

IF YOUR PROPERTY IS IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR PAYMENTS, IT MAY BE SOLD WITHOUT ANY COURT ACTION and you may have the legal right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account (which is normally up to thirty-five business days after the recording date or mailing of this Notice, whichever is later). No sale date may be set until three months from the date this notice of default may be recorded (which date of recordation appears on this notice).

While your property is in foreclosure, you still must pay other obligations (such as insurance and taxes) required by your Note and Deed of Trust or Mortgage. If you fail to make future payments on the loan, pay taxes on the property, provide insurance on the property, or pay other obligations as required in the Note and Deed of Trust or Mortgage, the Beneficiary or Mortgagee may insist that you do so in order to reinstate your account in good standing. In addition, the Beneficiary or Mortgagee may require as a condition to reinstatement that you provide reliable written evidence that you paid all senior liens, property taxes, and hazard insurance premiums.

Upon your written request, the Beneficiary or Mortgagee will give you a written itemization of the entire amount you must pay. You may not have to pay the entire unpaid portion of your account, even though full payment was demanded, but you must pay all amounts in default at the time payment is made. However, you and your Beneficiary or Mortgagee may mutually agree in writing prior to the time the Notice of Trustee's Sale is posted (which may not be earlier than the end of the three-month period stated above) to, among other things, (1) provide additional time in which to cure the default by transfer of the property or otherwise; or (2) establish a schedule of payments in order to cure your default; or both (1) and (2).

Following the expiration of the time period referred to in this paragraph of this notice, unless the obligation being foreclosed upon or a separate written agreement between you and your creditor permits a longer period, you have only the legal right to stop the sale of property by paying the entire amount demanded by your creditor.

3741278 Page 3 of 3 03/20/2009 03:09:34 PM

Trustee Sale No. NV0838405-1 Loan No. 8945388 Title Order No 090203783
ATO CONTROL # 06253AZNC2BU

DATED 3/20/09

LPS TITLE COMPANY, AS TRUSTEE FOR
TRUSTEE CORP, as Agent for COUNTRYWIDE HOME LOANS SERVICING, LP

BY:

Charles S. Silva
Charles S. Silva
Agent

State of NEVADA

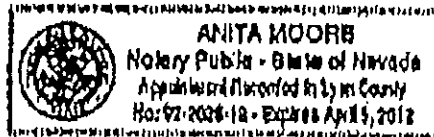
County of WASHEE

On 3-20-09 before me THE UNDERSIGNED, a notary public,
personally appeared Charles S. Silva who proved to me on the basis of satisfactory evidence
to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that
he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s)
on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the
instrument

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraphs are true and correct

WITNESS my hand and official seal.

Anita Moore
Notary Public



TRUSTEE CORP IS A DEBT
COLLECTOR. ANY INFORMATION
OBTAINED WILL BE USED FOR THAT
PURPOSE

Bank of America 

Cashier's Check

No. 003108899

Not to be Pruglary - In the area (like shark is lost, disturbed or killed, a typical weight and 30-day waiting period will be required prior to replacement). This check should be negotiated within 90 days.

Date OCTOBER 18, 1997

91-170/4321

**Dankiw
Center**

SOUTH BEND BEACH

66-62454 66-607 66-25664-95

Remittor (Purchased by)

\$ **11310.00**

28-14-57748 09-2005

Pay "ELUCAN THROUGHOUT THREE HUNDRED TEN DOLLARS AND 00 CENTS"

To
The
Order
Of

147RUBEN/18 2002.11

'1304H 1 0545293 SRIHOLY4804 22 17100000'

Bank of America, N.A.
Phoenix, AZ

VOID AFTER 90 DAYS

Authorized Signature

**Customer Copy
Retain For Your Records**

252563581

Non-Negotiable

28-14377AB 09-2005

Bank of America

Cashier's Check

No. 003408367

14-12/4B 09-2005

003408367 0122101706 252563581

THE ORIGINAL DOCUMENT IS REPRESENTATIVE OF THE ACCOUNT OF THE BANK OF AMERICA. THE BANK OF AMERICA IS NOT RESPONSIBLE FOR THE LOSS OF THE ORIGINAL DOCUMENT.

Bank of America

Cashier's Check

No. 003168367

Notice to Payee: In the event this check is lost, misplaced or stolen, a sworn statement and \$10.00 may be required to replace it. This check should be negotiated within 90 days.

Date

AUGUST 01, 2005

91-1701211

Banking
Center

GALENA BANKING CENTER

0008557 00001 003168367

VIJAY LACHARI

(Remitter/Purchased By)

\$ **200.00**

28-14-374B 09-2005

Pay **TWO HUNDRED DOLLARS AND 00 CENTS**

To

Order

or

TRUSTEE CORP

TRUST

Non-Negotiable

Bank of America, N.A.,
Phoenix, AZ

VOID AFTER 90 DAYS

Authorized Signature

Customer Copy
Retain for Your Records

252563581

EXHIBIT 2

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

Docket No. 12-17572

BIJAN LAGHAEI

Plaintiff-Appellant

vs.

FEDERAL HOME LOAN MORTGAGE CORPORATION, et al.

Defendants-Appellees

On Appeal from An Order of the
United States District Court
for the District of Nevada

APPELLANT'S REPLY BRIEF

Terry J. Thomas (NV 5523, CA 133963)
2620 Dana Kristin Lane
Reno, NV 89503
775-750-6307
t2attorney@gmail.com
Attorney for Appellants

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TABLE OF AUTHORITIES

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STATUTES:	
28 U.S.C. § 1442§ 1331, 1441(b) and 1446.	3,4,5

I. SUMMARY OF APPELLANT'S OPENING BRIEF

Respondent Federal Home Loan Mortgage Corporation (hereinafter "Freddie Mac") filed its complaint for unlawful detainer in Reno, Nevada Justice Court on March 1, 2012, seeking to evict Appellant pursuant to a Trustee's Deed of Sale of his home. (Ex. 59-61) On April 4, 2012, Appellant, in pro per, filed his Answer and Counter Claim. While inartfully drafted, the Counter Claim asked for declaratory relief for failing to follow Nevada's mandatory mediation rules pursuant to NRS § 107.080, et sec., and for a TRO prohibiting sale of Appellant's home. (Ex. 125)

On May 10, 2012, Appellant's new counsel filed Appellant's complaint in Nevada's Second Judicial District Court, Case No. CV12-01281, seeking to set aside the trustee's deed to Appellant's home, Slander of title, Unfair and deceptive trade practices; and for attorney fees. (Ex. 33)

Respondent MTC Financial, Inc., dba Trustee Corps ("MTC") was a nominally named in defendant, solely upon the basis of being the trustee having issued the trustee's deed. As a nominal defendant, MTC would be bound by the court's judgment, should Appellant prevail and be ordered to rescind its trustee's deed. As far as Appellant is aware, in none of the

THOUSANDS of wrongful foreclosure cases filed in Nevada, has a trustee ever bothered to file an opposition, because there are NO damages associated with being the trustee.

Hence, it is Appellant's position that MTC has NO interest, and lacks legal standing to oppose the instant appeal, because although named as a nominal defendant, no actual harm could fall upon a foreclosure trustee acting as an agent of a beneficiary. Basically, MTC's brief is arguing that the alleged beneficiary, Freddie Mac's legal position is or was correct. While the issue of whether or not a trustee has the legal standing to defend the beneficiary of a deed of trust, and/or trustee's deed, when that entity is well represented by its own counsel, has not been previously addressed by this Court, that issue is not before this Court in this appeal.

Appellant's complaint in Nevada District Court was immediately followed by Appellant's motion to consolidate Freddie Mac's unlawful detainer complaint with Appellant's District Court Complaint on May 14, 2012. (Ex. 53)

Appellant also filed an alternate Motion in Reno Justice Court to Transfer Respondent Freddie Mac's unlawful detainer complaint to the State

District court case, as the Reno Justice Court is jurisdictionally limited to litigate only possession, but not title issues, to real property. (Ex. 28) Neither motion was opposed by either Respondent.

While both of the above motions were pending in Justice Court, Freddie Mac filed its petition for removal to federal District Court pursuant to 28 USC §§ 1331, 1441(b) and 1446 on June 6, 2012. (Ex. 24) Respondent Freddie Mac followed removal with their counsel's standard FRCP 12(b)(6) motion to dismiss. (Ex. 12) Since the federal District Court in Nevada has never allowed a single homeowner case to get remanded; never denied a FRCP 12(b)(6) motion and Never denied an FRCP 56 motion against any homeowner filed by any Nevada attorney, hopeless oppositions that serve to simply clutter the appellate record were not filed. (Appellant did file a 1 page notice of non-jurisdiction, which the District Court struck.)

On November 2, 2012, the district court dismissed all parties and claims. (Ex. 02) Appellant filed his Notice of Appeal on November 12, 2012. (Ex. 01)

Appellant's sole issue on appeal was whether the District Court should have remanded the removed case *sua sponte*, based upon the well recognized

principal that Freddie Mac's taking an offensive action in one court (filing the Unlawful Detainer action) waived its right to remove Appellant's wrongful foreclosure complaint to federal court. (Opening Brief p. 2)

II. SUMMARY OF THE OPENING BRIEF'S SOLE ARGUMENT

Respondent Freddie Mac filed an offensive action to take advantage of the Nevada State Justice Court system when they filed their unlawful detainer action, Case No. RJC 2012 074955. (Ex. 60) This Offensive action and choice of forum waived Respondent's statutory right to remove Appellant's State District Court case, ONLY, to federal court. The federal district court should have remanded the State District court case back to the state court so that it could consolidate both actions.

III. RESPONDENTS' MULTIPLE BRIEFS

1. Freddie Mac's Brief:

Respondent Freddie Mac, BAC, et al, present this Court with a several pages exploring the prior exclusive jurisdiction argument, based upon this Court's case of *Chapman v. Deutsche Bank*, 651 F.3d 1039 (9th Cir. 2011) a topic not included within Appellant's Opening Brief. Post introduction to

“prior exclusive jurisdiction,” Freddie Mac argues that the Unlawful Detainer it filed in Reno Justice Court was an *in personum* proceeding, concluding:

“Here the Justice Court Action cannot serve as the basis for asserting prior exclusive jurisdiction because that action was not in rem or quasi in rem.”

(Freddie Mac Brief at p. 8)

Freddie Mac also argues that the federal District Court Action is also an *in prersonum* proceeding. (Freddie Mac Brief at p. 10) Appellant has no comprehension of the relevance of the above because Freddie Mac’s actions are governed by 28 U.S.C § 1451 and 1452, (“The Act”). The Act states in relevant part under § 1452 subsection (f): “Actions by and against the Corporation; jurisdiction; removal of actions; [in relevant part]:

...(1) the Corporation shall be deemed to be an agency included in sections 1349 and 1442 of such title 28; (2) all civil actions to which the Corporation is a party shall be deemed to arise under the laws of the United States, and the district courts of the United States shall have original jurisdiction of all such actions, without regard to amount or value; ...” Thus, Freddie Mac *should* have brought their unlawful detainer case in federal court in the first place. And, not just be able to remove what is the dispositive parts of the same set

of facts and parties.

2. MTC's Brief:

Nominal Respondent MTC offers this Court many pages of the history of the relationship of the parties, (Except MTC, which just became a trustee for the purpose of issuing foreclosure documents) leaving out the \$19,000.00 paid by Appellant to Respondent BAC in an attempt to modify his home loan. (Ex. 49 -50) None of this history is relevant to the ISSUE on appeal. There is no issue as to whether or not Freddie Mac authorized MTC to print standard foreclosure documents.

MTC continues to confuse the single issue in this appeal as the following illustrates: "Appellant's single argument, that by bringing a separate unlawful detainer action in Nevada State Court, Freddie mac waived its right to appeal this completely different action commenced by Plaintiff is unprecedented." (MTC Brf. At 8; Emp. added) Perhaps disinterested nominal Respondents should not participate by filing confusing and irrelevant briefs?

MTC then prepared a text book sample of the general rules regarding waiver of removal. None of the authorities cited have ever dealt with a

Freddie Mac statutory right to remove (under sections 1349 and 1442 of title 28) the defensive PART of A Case (a cross-complaint / complaint) to federal court, while pursuing their OFFENSIVE part of the case (the unlawful detainer case) in State Justice Court. Thus, while defending Freddie Mac (absent any known authority for a trustee to defend the beneficiary) may be good business, MTC has simply missed the issue.

CONCLUSION

Had Freddie Mac simply removed both actions to federal District Court, it is highly likely that Appellant would not have a viable appeal. However, that is not the facts of the instant case. This issue this Court is presented with is did Congress intend that 28 U.S.C. §§ 1349 and 1442, permit Freddie Mac to forum shop parts of cases with the same parties and completely intertwined, and dispositive issues, i.e., title to, and possession of, the same real property. It is Appellant's position that Congress did not so intend.

As to Appellant's non-filing of a pointless motion to remand, it is Appellant's position and the well settled black letter law that federal court jurisdiction is akin to a toggle switch (either On or OFF). No party can

consent to jurisdiction, nor can a party waive objections to jurisdiction.

This Court is respectfully requested to reverse the District Court and Order remand of Appellant's complaint.

Dated: May 27, 2013

By: s/ Terry J. Thomas, Attorney for Appellant

**CERTIFICATE OF COMPLIANCE PURSUANT TO FRAP 32(a)(7)(C)
AND CIRCUIT RULE 32-1 FOR CASE NUMBER 12-17572.**

Pursuant to FRAP 32(a)(7)(C) and Ninth Circuit Rule 32-1, I certify that the attached brief is not proportionally spaced and has type face of 14 points and contains 1676 words.

Dated: May 27, 2013

By: s/ Terry J. Thomas, Attorney for Appellant

STATEMENT OF RELATED CASES

There are no known related cases.

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of May, 2013, I electronically filed the Appellant's Reply Brief with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF

system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

By s/ Terry J. Thomas

EXHIBIT 3

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

JEFFREY BENKO, et al.,

Plaintiffs,

v.

QUALITY LOAN SERVICE CORP. et al.,

Defendants.

Case No. 2:12-cv-00224-MMD-GWF

ORDER

(Defendant MTC's Motion to Dismiss – dkt.
no. 10)

Defendant Quality Loan's Motion to
Dismiss – dkt. no. 13)

Defendant Meridian's Motion to Dismiss
– dkt. no. 16)

(Defendant California Reconveyance
Corporation's Motion to Dismiss
– dkt. no. 17)

(Defendant Appleton Properties' Joinder to
dkt. nos. 10, 13, 16, & 17, Partial Motion to
Dismiss, and Motion to Expunge Lis
Pendens – dkt. no. 31)

(Plaintiff's Motion to Remand – dkt. no. 34)

(Plaintiff's Motion for Leave to File a
Second Amended Complaint – dkt. no. 45)

(Defendant Appleton's *Ex Parte* Motion for
Order Shortening Time – dkt. no. 89)

I. SUMMARY

Before the Court are Defendants MTC Financial, Quality Loan, Meridian, and California Reconveyance Corporation's Motions to Dismiss. (Dkt. nos. 10, 13, 16 and 17.) Also before the Court is Defendant Appleton Properties' ("Appleton") Joinder to those Motions, Partial Motion to Dismiss, and Motion to Expunge Lis Pendens (dkt. no. 31), and *Ex Parte* Motion for an Order Shortening Time to hear its Motion (dkt. no. 89.)

1 Also before the Court are Plaintiffs' Motion to Remand (dkt. no. 34) and Motion for Leave
2 to File a Second Amended Complaint (dkt. no. 45).

3 **II. BACKGROUND**

4 Plaintiffs, the proposed class members, are mortgage loan debtors who defaulted
5 on their loan obligations. Defendant trustees filed foreclosures against Plaintiffs. In their
6 First Amended Complaint ("FAC"), Plaintiffs assert that the act of filing a non-judicial
7 foreclosure constitutes debt collection activity under NRS § 649. Plaintiffs argue that the
8 trustees must be licensed under that statute, but are not, and that the failure to be
9 licensed constitutes a deceptive trade practice under NRS § 598.023(1). Plaintiffs also
10 allege unjust enrichment, trespass, quiet title, and Plaintiffs Kuhn and Gill allege elder
11 abuse against Defendant Meridian.

12 Defendant Meridian Foreclosure Service ("Meridian") removed the action on
13 February 13, 2012, under the Class Action Fairness Act ("CAFA").

14 **III. MOTION TO REMAND**

15 **A. Legal Standard**

16 If, prior to final judgment, the district court discovers its lack of subject matter
17 jurisdiction, it must remand the case. 28 U.S.C. § 1447(c). A defendant seeking
18 removal of an action to federal court bears the burden of establishing grounds for federal
19 jurisdiction. *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992). Removal statutes are
20 construed restrictively. *Ethridge v. Harbor House Restaurant*, 861 F.2d 1389, 1393 (9th
21 Cir. 1988).

22 **B. CAFA and the Local Controversy Exception**

23 Plaintiffs seek to remand their Complaint under the "local controversy" exception
24 to CAFA.

25 "Congress passed the Class Action Fairness Act primarily to curb perceived
26 abuses of the class action device which, in the view of CAFA's proponents, had often
27 been used to litigate multi-state or even national class actions in state courts." *United*
28 *Steel, Paper & Forestry, Rubber, Mfg., Energy, Allied Indus. & Serv. Workers Int'l Union,*

1 *AFL-CIO, CLC v. Shell Oil Co.*, 602 F.3d 1087, 1090 (9th Cir. 2010) (citation and
2 quotation marks omitted). “To achieve its purposes, CAFA provides expanded original
3 diversity jurisdiction for class actions meeting the amount in controversy and minimal
4 diversity and numerosity requirements set forth in 28 U.S.C. § 1332(d)(2). *Id.* at 1090-91
5 (citation and quotation marks omitted). “CAFA also covers more than traditional class
6 actions by providing for removal of mass actions.” *Id.* at 1091 (citation and quotation
7 marks omitted).

8 “CAFA vests federal courts with ‘original’ diversity jurisdiction over class actions
9 if: (1) the aggregate amount in controversy exceeds \$5,000,000, and (2) any class
10 member is a citizen of a state different from any defendant.” *Serrano v. 180 Connect,*
11 *Inc.*, 478 F.3d 1018, 1020-21 (9th Cir. 2007) (citing 28 U.S.C. § 1332(d)(2); footnote
12 omitted). Under CAFA, complete diversity is not required; minimal diversity is sufficient.
13 *Id.* at 1021 (citing *Bush v. Cheaptickets, Inc.*, 425 F.3d 683, 684 (9th Cir. 2005)).

14 There are, however, statutory exceptions to CAFA’s jurisdictional grant, one of
15 which is known as the “local controversy” exception, 28 U.S.C. § 1332(d)(4) (A). See
16 *Serrano*, 478 F.3d at 1019. “The ‘local controversy’ exception provides that a district
17 court *shall* decline to exercise jurisdiction over a class action in which the plaintiff class
18 and at least one defendant meet certain characteristics that essentially make the case a
19 local controversy.” *Id.* at 1022 (italics in original; footnote omitted).

20 Under the local controversy exception, “a federal district court shall decline to
21 exercise [removal] jurisdiction . . . over a class action in which—”

22 (I) greater than two-thirds of the members of all proposed plaintiff classes in
23 the aggregate are citizens of the State in which the action was originally
filed;

24 (II) at least 1 defendant is a defendant—

25 (aa) from whom significant relief is sought by members of the
26 plaintiff class;

27 (bb) whose alleged conduct forms a significant basis for the claims
28 asserted by the proposed plaintiff class; and

(cc) who is a citizen of the State in which the action was originally filed; and

(III) principal injuries resulting from the alleged conduct or any related conduct of each defendant were incurred in the State in which the action was originally filed[.]

Coleman v. Estes Exp. Lines, Inc., 631 F.3d 1010, 1013 (9th Cir. 2011) (citing 28 U.S.C. § 1332(d)(4)(A)). “A plaintiff seeking remand has the burden of showing that the local controversy exception applies.” *Id.* (citing *Serrano*, 478 F.3d at 1024).

“CAFA’s language favors federal jurisdiction over class actions and CAFA’s legislative history suggests that Congress intended the local controversy exception to be a narrow one, with all doubts resolved ‘in favor of exercising jurisdiction over the case.’” *Evans v. Walter Indus., Inc.*, 449 F.3d 1159, 1163 (11th Cir. 2006) (citing S. Rep. No. 109-14 at 42, U.S. Code Cong. & Admin. News 3, 40). The Senate Report on CAFA states that the local controversy exception

is a narrow exception that was carefully drafted to ensure that it does not become a jurisdictional loophole. Thus, the Committee wishes to stress that in assessing whether each of these criteria is satisfied by a particular case, a federal court should bear in mind that the purpose of each of these criteria is to identify a truly local controversy—a controversy that uniquely affects a particular locality to the exclusion of all others.

S. Rep. 109-14, at 39, U.S. Code Cong. & Admin. News at 38.

C. Analysis¹

The Court determines that Plaintiffs fail to satisfy their burden of establishing an essential requirement of the local controversy exception –that at least one Nevada defendant is a “significant defendant.”

Plaintiff alleges that Defendants Meridian and Appleton are Nevada citizens.² The Complaint also alleges that Defendant Appleton is a Nevada resident, but Plaintiffs

¹The Court considers whether sub-sections (aa) and (bb) to the “significant local defendant” test are satisfied by looking to the FAC alone, without considering extrinsic evidence. See *Coleman v. Estes Exp. Lines, Inc.*, 631 F.3d at 1016-17. The Court may rely on extrinsic evidence in determining sub-section (cc). *Id.*

²Plaintiffs allege that Meridian is a Nevada citizen, though acknowledge that it may also be a California citizen. Plaintiffs provide an authenticated e-mail communication from defense counsel stating that he does not challenge Meridian’s
(fn. cont...)

1 do not discuss Defendant Appleton in their Motion to Remand. Because Plaintiffs bear
 2 the burden of demonstrating that Appleton is a significant citizen-defendant, see
 3 *Serrano*, 478 F.3d at 1024, and fails to meet this burden by not discussing Appleton in
 4 their Motion, the Court only considers whether Defendant Meridian is a significant local
 5 defendant.³

6 CAFA “does not expressly define what constitutes significant relief.” *Haynes v.*
 7 *EMC Mortg. Corp.*, No. C 10-00372 WHA, 2010 WL 1445650, at *4 (N.D. Cal. Apr. 12,
 8 2010). “Significant relief” and “significant basis” as used in CAFA “require a comparison
 9 between the local defendant’s significance and the significance of all the defendants.”
 10 *Id.* (citing *Kaufman v. Allstate N.J. Ins. Co.*, 561 F.3d 144, 156 (3d Cir. 2009) (“[I]f the
 11 local defendant’s alleged conduct is a significant part of the alleged conduct of all the
 12 Defendants, then the significant basis provision is satisfied.”); *Evans v. Walter Indus.,*
 13 *Inc.*, 449 F.3d 1159 (11th Cir. 2006) (analyzing comparative significance of relief sought
 14 against local defendant relative to relief sought from co-defendants)). “Thus, rather than
 15 look to whether the relief or conduct of the local defendant is significant in an absolute
 16 sense, a court must undertake a ‘substantive analysis comparing the local defendant’s
 17 alleged conduct to the alleged conduct of all the Defendants.’” *Id.* (citing *Kaufman*, 561
 18 F.3d at 156); see also *Robinson v. Cheetah Transp.*, No. 06-0005, 2006 WL 468820, at
 19 *3-4 (W.D. La. Feb. 27, 2006); *Kearns v. Ford Motor Co.*, No. 05-5644, 2005 WL
 20 3967998, at *8-10 (C.D. Cal. Nov. 21, 2005) (recognizing that the term “significant relief”
 21 is ambiguous, and determining the legislative history dictated that “significant relief”
 22 should be measured with respect to the relief sought by the entire class) (*impliedly*
 23 *reversed on other grounds by Serrano*, 478 F.3d at 1021).

24
 25

 (...fn. cont.)

26 status as a Nevada citizen. (Dkt. no. 44-3 at 2.) See *Haynes v. EMC Mortg. Corp.*, *infra*,
 No. C 10-00372 WHA, 2010 WL 1445650, at *4 (N.D. Cal. Apr. 12, 2010).

27 ³Further, because only one Plaintiff, Gill, brings only one cause of action against
 28 Appleton, Plaintiffs would not be able to establish that Appleton is a “significant
 defendant” under CAFA. See *Evans*, 449 F.3d at 1159.

1 In *Haynes v. EMC Mortg. Corp.*, C 10-00372 WHA, 2010 WL 1445650, at *4 (N.D.
2 Cal. Apr. 12, 2010), a case concerning California foreclosure proceedings, the court
3 determined that the case fell under CAFA's local controversy exception. In that case,
4 the plaintiffs alleged that the foreclosing beneficiary failed to record the transfer of
5 property in violation of California statute. The plaintiffs alleged that Defendant EMC had
6 a policy of foreclosing on properties without recording the assignment of title of the
7 property. *Id.* at *1. Local Defendant Quality Loan was one of three named defendants,
8 and the complaint alleged four claims against Quality Loan. *Id.* at *4. The central claim
9 against defendant Quality Loan was that it improperly foreclosed upon the plaintiffs'
10 residence, following directions from EMC. *Id.* The court determined that Quality Loan's
11 conduct was "deeply intertwined with that of defendant EMC," and therefore it was a
12 significant defendant. *Id.* (citing *Kaufman*, 561 F.3d at 157).

13 In contrast, the *Kearns* court declined to remand under the local controversy
14 exception. 2005 WL 3967998, *8-10. "The plaintiffs in *Kearns* brought a putative class
15 action lawsuit against Ford, a California Ford dealership, and doe defendants for
16 misrepresenting Ford certified pre-owned vehicles." *Haynes*, 2010 WL 1445650, at *5.
17 The *Kearns* court determined that the local Ford dealership was not a significant
18 defendant under Part II(aa), the significant relief element, because the local dealership
19 sold cars to only a fraction of the class. 2005 WL 3967998, at *10.

20 Plaintiffs assert that they request significant relief from Meridian because they
21 seek general, special, and punitive damages from Meridian as well as disgorgement and
22 injunctive relief.⁴ Plaintiffs also point to Meridian's Statement Regarding Removal (dkt.
23 no. 18), where Meridian states that the amount in controversy is \$5 million to
24 demonstrate that Meridian is a significant Defendant.

25
26 ⁴Plaintiffs also address whether Meridian is a "significant defendant" by
27 referencing their proposed SAC, but the Court does not consider these arguments
28 because jurisdictional facts are assessed at the time of removal. *United Steel, Paper &
Forestry, Rubber, Mfg., Energy, Allied Indus. & Serv. Workers Int'l Union, AFL-CIO, CLC
v. Shell Oil Co.*, 602 F.3d 1087, 1091 (9th Cir. 2010).

1 The \$5 million figure listed in Meridian's Statement Regarding Removal clearly
2 concerned the *total* amount in controversy, which Meridian argued met the \$5 million
3 CAFA amount-in-controversy minimum, *not* Plaintiffs' relief sought from Meridian
4 specifically.

5 Further, when compared to the other named Defendants, Meridian does not stand
6 out as a significant Defendant or one in which significant relief is sought. Quality
7 foreclosed upon four homes, Meridian foreclosed upon four homes, and MTC, National
8 Default, and CRC all foreclosed upon one home. (Dkt. no. 1-2 at ¶¶ 1-11.) All
9 Defendants except Appleton are parties to counts 1-3, Appleton alone is a party to count
10 4, and only Meridian is a party to the fifth cause of action for elder abuse, brought by a
11 purported sub-class. Given that the nature of the FAC merely alleges that several
12 different Defendants foreclosed upon several different Plaintiffs' homes without licenses,
13 it would appear as if none of the Defendants are "significant," though Meridian's actions
14 and the relief sought against Meridian for the home foreclosures is not a significant
15 portion of the whole (for example, while eleven homes were foreclosed upon, Meridian
16 was involved in five foreclosures).

17 Further, the proposed class is "[a]ll Nevada residents [thousands, mostly in Clark
18 County] who were subject to debt collection activity by defendants while defendants did
19 not hold a Nevada license to engage in debt collection activities in Nevada." (Dkt. no. 1-
20 2 at ¶¶ 21(a), 23.) Nothing in the FAC demonstrates that Defendant Meridian played a
21 role in these thousands of foreclosures. To the contrary, the Complaint makes clear that
22 several *different* Defendants were involved in the alleged debt collection practices on the
23 various Plaintiffs' homes.

24 Finally, "[w]hile assessing the quantity of claims based on the local defendant's
25 alleged conduct may be useful to the analysis, the significant basis provision does not
26 establish an absolute quantitative requirement." *Kaufman*, 561 F.3d at 155-56. "Nor is it
27 necessary to imply such a quantitative requirement to make sense of the provision, for a
28 party's conduct may form a significant basis of an entire set of claims even if some

1 claims within the set are not based on that conduct.” *Id.* To that end, the Court notes
 2 that while Meridian is not a minimal Defendant like Appleton, *see supra, n.3*, this case is
 3 unlike *Haynes*. Meridian’s conduct does not form a significant basis of an entire set of
 4 claims. Plaintiffs here do not allege a systematic policy or practice of Meridian’s that
 5 affected all, most, or many of the Plaintiffs. Rather, the FAC demonstrates that Meridian
 6 was but one player in an uncoordinated wave of foreclosures that hit Clark County. The
 7 only practice common to all Defendants is that they foreclosed upon homes without a
 8 state license to do so. And Meridian’s foreclosure practices did not uniquely affect a
 9 significant portion of the Plaintiffs.

10 Plaintiffs have not satisfied their burden of showing that the local controversy
 11 exception under CAFA applies. The Court accordingly denies Plaintiffs’ Motion to
 12 Remand.⁵

13 **IV. MOTIONS TO DISMISS⁶**

14 **A. Legal Standard**

15 On a 12(b)(6) motion, the court must determine “whether the complaint’s factual
 16 allegations, together with all reasonable inferences, state a plausible claim for relief.”
 17 *Cafasso, U.S. ex rel. v. Gen. Dynamics C4 Sys.*, 637 F.3d 1047, 1054 (9th Cir. 2011)
 18 (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009)). “A claim has facial plausibility
 19 when the plaintiff pleads factual content that allows the court to draw the reasonable
 20 inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678
 21 (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007)).

22 ⁵While the proposed sub-class concerning the elder abuse cause of action
 23 involves only Nevada citizens (Meridian, Gill, and Kuhn), the Court declines to remand
 24 that cause of action. Plaintiffs do not request remanding solely that cause of action.
 25 Further, Plaintiffs have yet to demonstrate that this is a viable sub-class under Rule
 26 23(a)’s “rigorous analysis.” *In re Taco Bell Wage & Hour Actions*, No. 1:07-CV-01314,
 27 2011 WL 4479730, at *2 (E.D. Cal. Sept. 26, 2011). The Court declines to *sua sponte*
 28 remand this cause of action.

⁶Each of Defendants’ Motions to Dismiss and Joinders to those Motions make
 essentially the same arguments. Accordingly, unless the arguments apply to only certain
 Plaintiffs or Defendants, the Court does not specifically differentiate between the parties’
 arguments.

1 When determining the sufficiency of a claim, “[w]e accept factual allegations in the
 2 complaint as true and construe the pleadings in the light most favorable to the non-
 3 moving party[; however, this tenet does not apply to] . . . legal conclusions . . . cast in the
 4 form of factual allegations.” *Fayer v. Vaughn*, 649 F.3d 1061, 1064 (9th Cir. 2011)
 5 (citation and internal quotation marks omitted). “Therefore, conclusory allegations of law
 6 and unwarranted inferences are insufficient to defeat a motion to dismiss.” *Id.* (citation
 7 and internal quotation marks omitted); see also *Iqbal*, 556 U.S. at 678 (quoting *Twombly*,
 8 550 U.S. at 555) (“A pleading that offers ‘labels and conclusions’ or ‘a formulaic
 9 recitation of the elements of a cause of action will not do.’”).

10 **B. Consumer Fraud**

11 As mentioned, Plaintiffs allege that Defendants are liable for consumer fraud
 12 because they were each acting as collection agencies as defined by NRS § 649.020 but
 13 were not licensed to do so. Plaintiffs assert that Defendants’ conduct violated NRS §
 14 649.075 and/or NRS § 649.171, and therefore constituted a deceptive trade practice
 15 under NRS chapter 598, Nevada’s Fair Debt Collection Practices Act (“FDCPA”).

16 NRS § 649.075(1) holds that “[e]xcept as otherwise provided in this section, a
 17 person shall not conduct within this State a collection agency or engage within this State
 18 in the business of collecting claims for others, . . . without having first applied for and
 19 obtained a license from the Commissioner.”⁷

20 This claim must be dismissed as a matter of law because home foreclosure is not
 21 a debt collection under the FDCPA. “[F]oreclosing on a property pursuant to a deed of
 22 trust is not the collection of a debt within the meaning of the FDCPA.” *Duran v. Aurora*
 23 *Loan Servs.*, No. A09CV0138, 2009 WL 1110643, at *2 (E.D. Cal. Apr. 24, 2009) *report*
 24 *and recommendation adopted by* No. 109CV0138, 2009 WL 1740567 (E.D. Cal. June
 25 18, 2009)(citations omitted); see also *Camacho-Villa v. Great W. Home Loans*, No. 3:10-

27 ⁷Section (2) of the statute states that “[a] person is not required to obtain a license
 28 if the person holds a certificate of registration as a foreign collection agency issued by
 the Commissioner pursuant to NRS 649.171.”

CV-210, 2011 WL 1103681, at *4 (D. Nev. Mar. 23, 2011) ("Foreclosure pursuant to a deed of trust does not constitute debt collection under the FDCPA."); *Hulse v. Ocwen Fed. Bank, FSB*, 195 F. Supp. 2d 1188, 1204 (D. Or. 2002); *Izenberg v. ETS Servs., LLC*, 589 F. Supp. 2d 1193, 1199 (C.D. Cal. 2008); *Heinemann v. Jim Walter Homes, Inc.*, 47 F. Supp. 2d 716, 722 (N.D. W. Va. 1998).

Defendants' Motions to Dismiss are accordingly granted. The FDCPA/consumer fraud causes of action are dismissed with prejudice.

C. Unjust Enrichment

"An action based on a theory of unjust enrichment is not available when there is an express, written contract, because no agreement can be implied when there is an express agreement." *Leasepartners Corp. v. Robert L. Brooks Trust Dated November 12, 1975*, 942 P.2d 182, 187 (Nev. 1997) (citing 66 Am. Jur. 2d Restitution § 6 (1973)). "The doctrine of unjust enrichment or recovery in quasi-contract applies to situations where there is no legal contract but where the person sought to be charged is in possession of money or property which in good conscience and justice he should not retain but should deliver to another [or should pay for]." *Leasepartners*, 942 P.2d at 187.

Mortgages are express written documents. *Goodwin v. Exec. Trustee Servs., LLC*, 680 F. Supp. 2d 1244, 1255 (D. Nev. 2010). Accordingly, Plaintiffs' unjust enrichment claim must be dismissed with prejudice.

D. Quiet Title—Plaintiff Gill and Defendant Appleton

Only Plaintiff Antoinette Gill sues only Defendant Appleton on this cause of action. NRS § 40.010 provides that "[a]n action may be brought by any person against another who claims an estate or interest in real property, adverse to him, for the purpose of determining such adverse claim." A quiet title action in court is the method by which to adjudicate disputed ownership of real property rights. *Howell v. Ricci*, 197 P.3d 1044, 1046 (Nev. 2008). The purpose of a quiet title action is to settle all conflicting claims to the property and to declare each interest or estate to which the parties are entitled. *Newman v. Cornelius*, 3 Cal. App. 3d 279, 284 (1970).

1 A quiet title action must include: (1) a description of the property in question; (2)
2 the basis for plaintiff's title; (3) the adverse claims to plaintiff's title; (4) the date as of
3 which the determination is sought; and (5) a prayer for determination of plaintiff's title
4 against the adverse claims. Cal. Civ. Proc. Code § 761.020(a-e). "In addition to the
5 required elements for a quiet title action, a borrower cannot quiet title to a property
6 without discharging any debt owed." *Zendejas v. GMAC Wholesale Mortg. Corp.*, 2010
7 WL 2490975, at *8 (E.D. Cal. 2010); see also *Distor v. U.S. Bank NA*, 2009 WL
8 3429700, at *6 (N.D. Cal. 2009) (a plaintiff has no basis to quiet title without first
9 discharging the debt on the property).

10 In *Wensley v. First Nat. Bank of Nevada*, No. No. 3:11-cv-00809, 2012 WL
11 1971773, at *6, 874 F. Supp. 2d 957 (D. Nev. 2012), the plaintiff failed to allege that she
12 had not defaulted on the loan, and the complaint read as a whole demonstrated that
13 there was no dispute on this point. The court noted that the plaintiff was "challenging the
14 procedure with which foreclosure was initiated against her, not that the loan was not in
15 default," and because she was in default, the court dismissed the cause of action without
16 leave to amend. *Id.*

17 Likewise, here, Gill admits the "fact" that she is a "mortgagor in default." (Dkt. no.
18 64 at 4.) Further, the FAC demonstrates that Gill, like the plaintiff in *Wensley*, is
19 challenging the foreclosure procedure, and does not assert that she has cured her
20 default. This cause of action is therefore dismissed with prejudice.

21 **E. Elder Abuse – Plaintiffs Kuhn and Gill and Defendant Meridian**

22 Only Plaintiffs Gill and Sandra Kuhn bring this cause of action against Defendant
23 Meridian. Plaintiffs allege that Defendant's debt collection activities on Kuhn and Gill,
24 who are over 60 years old, constitutes abuse against elderly persons under NRS §
25 41.1395 and § 200.5092. Plaintiffs also allege that this abuse was so willful and
26 malicious as to merit punitive damages.

27 NRS § 41.1395(1) holds that "if an older person or a vulnerable person suffers a
28 personal injury or death that is caused by abuse or neglect or suffers a loss of money or

1 property caused by exploitation, the person who caused the injury, death or loss is liable
2 to the older person or vulnerable person for two times the actual damages incurred by
3 the older person or vulnerable person.” The alleged abuse here would constitute loss of
4 property caused by exploitation. The statute defines “exploitation” as:

5 (b) any act taken by a person who has the trust and confidence of an older
6 person or a vulnerable person or any use of the power of attorney or
guardianship of an older person or a vulnerable person to:

7 (1) Obtain control, through deception, intimidation or undue
8 influence, over the money, assets or property of the older
9 person or vulnerable person with the intention of permanently
depriving the older person or vulnerable person of the
ownership, use, benefit or possession of that person’s
money, assets or property; or

10 (2) Convert money, assets or property of the older person
11 with the intention of permanently depriving the older person
12 or vulnerable person of the ownership, use, benefit or
possession of that person’s money, assets or property.

13 NRS § 41.1395(4)(b)(1)-(2).

14 The Complaint fails to allege facts sufficient to support this cause of action.
15 Plaintiffs do not allege that Meridian has the “trust and confidence of an older person or
16 a vulnerable person.” Nor could they, as Meridian—merely the entity foreclosing upon
17 Kuhn and Gill’s homes — have had a relationship of trust with them. Kuhn and Gill have
18 no viable cause of action under this statute.

19 NRS § 200.5092 is a definitional statute, and includes the definition of
20 “exploitation.” It does not create an independent cause of action. Kuhn and Gill have no
21 viable cause of action under this statute.

22 Foreclosing upon the home of an elderly person, without more, is plainly not elder
23 abuse. Kuhn and Gill cannot tack on an elder abuse cause of action to their FAC, which
24 wholly regards the foreclosures of their homes, merely because they are over 60 years
25 old. With age certainly comes many benefits — in fact many legal benefits accrue with
26 age — but the right to frivolous causes of action is not one of them. This cause of action
27 is dismissed with prejudice.

28 ///

1 **V. DEFENDANT APPLETON'S MOTION TO EXPUNGE LIS PENDENS**

2 Appleton moves for the Court to expunge the lis pendens on Plaintiff Gill's
3 Property. NRS § 14.010 allows a notice of pendency or a lis pendens to be filed for an
4 action in the United States District Court for the District of Nevada when there is "a
5 notice of an action affecting real property, which is pending," in any such court. NRS §
6 14.010(2). This Order dismisses Gill's action. Accordingly, the Motion to Expunge Lis
7 Pendens is granted.

8 **VI. MOTION FOR LEAVE TO AMEND**

9 **A. Legal Standard**

10 Rule 15(a) provides that a party may amend his pleading once as a matter of
11 course at any time before a responsive pleading is served. Fed. R. Civ. P. 15(a).
12 However, when a party can no longer amend a pleading as a matter of right under Rule
13 15(a), the party must either petition the court for leave to amend or obtain consent from
14 the adverse parties. *Id.*; *Keniston v. Roberts*, 717 F.2d 1295, 1300 (9th Cir. 1983).
15 Leave to amend under Fed. R. Civ. P. 15(a) "shall be freely given when justice so
16 requires." *Keniston*, 717 F.2d at 1300. "This policy is to be applied with extreme
17 liberality." *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th Cir. 2003);
18 *Owens v. Kaiser Found Health Plan, Inc.*, 244 F.3d 708, 712 (9th Cir. 2001).

19 However, leave to amend need not be granted where the amendment: (1)
20 prejudices the opposing party; (2) is sought in bad faith; (3) produces an undue delay in
21 litigation; or (4) is futile. *Amerisource Bergen Corp. v. Dialysist West, Inc.*, 465 F.3d 946,
22 951 (9th Cir. 2006); *Bowles v. Reade*, 198 F.3d 752, 757 (9th Cir. 1999). Prejudice to
23 the defendant is the most important factor, but amendment may be denied upon a
24 sufficiently strong showing of the other factors. See *Eminence Capital*, 316 F.3d at 1052;
25 *Keniston*, 717 F.2d at 1300. The burden of demonstrating prejudice rests on the party
26 opposing amendment. *DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 186 (9th Cir.
27 1987).

28 ///

1 **B. Analysis**

2 Plaintiffs attempt to amend their Complaint to add several Nevada citizens to the
3 class so as to ensure that two-thirds of the Plaintiffs are Nevada citizens under the “local
4 controversy” exception to CAFA. See 28 U.S.C. § 1332(d)(4)(A). Moreover, the SAC
5 alters the FAC in that (1) Plaintiffs no longer allege trespass; and (2) Plaintiffs add
6 additional parties and allegations regarding several causes of action.

7 These amendments do not alter the Complaint’s core allegations, and do not
8 render moot Defendants’ prior arguments in their Motions to Dismiss. In fact, Defendants
9 primarily oppose amendment because they argue that amendment would be futile, and
10 base their futility arguments largely on the same arguments proffered in their Motions to
11 Dismiss.

12 The Court grants the Motion as it regards Plaintiffs’ voluntary decision to no
13 longer bring the trespass claim. However, the Motion is denied in all other regards. The
14 allegations as pled in the SAC are essentially the same as those in the FAC. The
15 cosmetic alterations and additional parties do not change the fact that Plaintiffs have no
16 legal basis for their Complaint. The Motion for Leave to File the SAC is therefore futile
17 and must be denied. See *Amerisource*, 465 F.3d at 951.

18 **VII. CONCLUSION**

19 The Court notes that the parties made several arguments and cited to several
20 cases not discussed above. The Court has reviewed these arguments and cases and
21 determines that they do not warrant discussion as they do not affect the outcome of
22 these Motions.

23 IT IS ORDERED that Plaintiffs’ Motion to Remand (dkt. no. 34) is DENIED.

24 IT IS FURTHER ORDERED that Defendants’ Motions to Dismiss (dkt. nos. 10,
25 13, 16, 17, and 31) are GRANTED. Plaintiffs’ Complaint is DISMISSED WITH
26 PREJUDICE.

27 IT IS FURTHER ORDERED that Defendant Appleton’s Motion to Expunge Lis
28 Pendens (dkt. no. 31) is GRANTED.

1 IT IS FURTHER ORDERED that Plaintiffs' Motion for Leave to File a Second
2 Amended Complaint (dkt. no. 45) is GRANTED IN PART and DENIED IN PART as
3 follows:

- 4 • The Court GRANTS the Motion as it regards Plaintiffs' voluntary decision to
5 no longer bring the trespass claim;
- 6 • The Motion is DENIED in all other respects.

7 IT IS FURTHER ORDERED that Defendant Appleton's *Ex Parte* Motion for Order
8 Shortening Time (dkt. no. 89) to hear its Motion is DENIED AS MOOT.

9 The Clerk of the Court is ordered to close the case.

10
11 DATED THIS 28th day of December 2012.

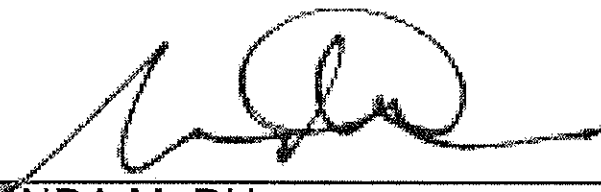
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14 _____
15 MIRANDA M. DU
16 UNITED STATES DISTRICT JUDGE
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EXHIBIT 4

IN THE JUSTICE COURT OF RENO TOWNSHIP

COUNTY OF WASHOE, STATE OF NEVADA

1 South Sierra Street - Reno, NV 89501

(775) 325-6501

FEDERAL HOME LOAN
MORTGAGE CORP.

Plaintiff,

Case No. **RJC 2012 074955**
Dept. No. 3

vs.

BIJAN LAGHAEI
and DOES 1-5 inclusive

Defendants,

SUMMONS

3/25-12

You are summoned to appear in this case by filing an answer or other pleading within 20 days after service of this summons. Do not count the day of service. There is a \$33.00 filing fee. If you don't, default may be taken against you for the relief demanded in the complaint. * This summons does not set a court date. For the first court date you will receive a separate notice. File your answer with the Court and serve it on the plaintiff or the plaintiff's attorney, if there is one.

MALCOLM + CISNEROS, A Law Corporation

Rebecca P. Kern
CINDY LEE STOCK, of Counsel
Nevada Bar No. 803
REBECCA P. KERN, of Counsel
Nevada Bar No. 9079
608 South 8th Street
Las Vegas, Nevada 89101
702-382-1399
Attorney for Plaintiff

JACK SCHROEDER

Justice of the Peace, Reno Township

By: [Signature]
Clerk of the Court

DATED: _____

STATE OF _____)
) ss.
COUNTY OF _____)

CERTIFICATE OR AFFIDAVIT OF SERVICE

The undersigned peace officer certifies**, (or if not a peace officer, the undersigned, being first duly sworn says) the undersigned was, on the day he served this Summons, an adult citizen of the U.S. and not a party to nor interested in the action; the undersigned personally served the same upon the defendant by showing the original Summons and delivering a copy of the Summons attached to a copy of the Complaint

1. To the Defendant, _____
NAME OF THE DEFENDANT
personally on _____
DATE

2. To _____, by serving _____
NAME OF THE DEFENDANT NAME OF PERSON SERVED

Whose relationship to defendant is _____
(adult co-resident, resident agent, other description showing person authorized by law to receive service)
at _____ (address where service was made)

Person served was of suitable age.

Service was made at defendant's place of residence on _____
DATE

Subscribed and Sworn to before me

on _____

Signature of Person Making Service

NOTARY PUBLIC

*When service is by publication, insert a brief statement of the object of the action. See Rule 4.

**Peace officer need not sign before a notary, others must.

1 CINDY LEE STOCK, of Counsel
Nevada Bar No. 803
2 REBECCA P. KERN, of Counsel
Nevada Bar No. 9079
3 MALCOLM ♦ CISNEROS, A Law Corporation
608 South 8th Street
4 Las Vegas, Nevada 89101
(702)382-1399
5 Attorneys for Plaintiff

FILED
2012 MAR -1 AM 8:39
STEVE TUTTLE
RENO JUSTICE COURT
CLERK

6 JUSTICE COURT, RENO TOWNSHIP
7 WASHOE COUNTY, NEVADA

8 *****
9 FEDERAL HOME LOAN MORTGAGE CORP.,
10 Plaintiff,
11 v.
12 BIJAN LAGHAEI
and DOES 1-5, inclusive,
13 Defendants.
14

CASE NO. RJC 2012 074955
DEPT. NO. 3
COMPLAINT
(Damages Not to Exceed \$1,000.00)

- 15 1. Plaintiff, FEDERAL HOME LOAN MORTGAGE is exempt from NRS §80.010 *et*
16 *seq.*, because Plaintiff's activities in the State of Nevada are excluded in NRS §80.015(1).
17 2. On or about October 12, 2001, Defendant, BIJAN LAGHAEI, purchased and took
18 possession of the property commonly known as 25 Winterberry Court, Reno, Nevada 89511, and
19 gave back a Note secured by Deed of Trust for the unpaid balance, which Deed of Trust was duly
20 recorded on April 9, 2002, as Instrument No. 2674114 of the Official Records of the Washoe
21 County, Nevada Recorder.
22 3. Subsequently, Defendant defaulted under the terms of the Note and Trust Deed and
23 foreclosure proceedings were instituted.
24 4. On or about June 14, 2011, Plaintiff purchased the property described above at a
25 Trustee's sale, as more fully appears from the copy of the Trustee's Deed Upon Sale attached to and
26 incorporated into this Complaint as Exhibit "1."
27 5. On or about October 26, 2011, Plaintiff caused to be served upon Defendant and all
28 occupants, a Notice to Vacate Premises Pursuant to Protecting Tenant at Foreclosure Act demanding

1 possession of the premises pursuant to applicable law. A true and correct copy of the Notice and
2 Affidavit of Service are attached as Exhibits "2" and "3" respectively.


3 6. Plaintiff is informed and believes and thereon alleges that the premises is occupied
4 by the Defendant and/or Does Occupant(s).

5 7. Defendants have refused and continue to refuse to surrender possession of the
6 premises.

7 WHEREFORE, Plaintiff prays for judgment against the Defendant and Does 1 through 5,
8 inclusive, jointly and severally as follows:

- 9 A. For restitution and possession of the premises;
10 B. For costs of this suit and reasonable attorney's fees;
11 C. That a Writ of Restitution issue forthwith; and
12 D. For such other relief as the Court deems proper.

13 MALCOLM ♦ CISNEROS, A Law Corporation

14 
15 REBECCA P. KERN, #9079, of Counsel
16 608 South 8th Street
17 Las Vegas, Nevada 89101
18 (702) 382-1399
Attorneys for Plaintiff

19 **VERIFICATION**

20 I, REBECCA P. KERN, declare as follows: I am an attorney duly licensed to practice law
21 in the State of Nevada and am of counsel with MALCOLM ♦ CISNEROS, A Law Corporation,
22 counsel of record for the Plaintiff in the above-captioned action. I make this verification for the
23 reason that the Plaintiff is absent from Clark County, Nevada, where our office is located. I have
24 read the above and foregoing Complaint and know the contents thereof, and I am informed and
25 believe and upon the basis of such information and belief, allege the same to be true. I declare under
the penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

26 Dated this 14th day of February, 2012.


27 
28 REBECCA P. KERN, ESQ., of Counsel

Exhibit 1

APN # 047-113-12

[RECORDING REQUESTED BY:]
Trustee Corps ~~E/O GRANTED~~
c/o LPS - Default Title and Closing
30 Corporate Park Dr., Suite 400
Irvine, CA 92608

[WHEN RECORDED MAIL TO
AND SEND TAX STATEMENTS TO:]
COUNTRYWIDE HOME LOANS SERVICING, LP
400 Countrywide Way
MS SV-35
Simi Valley, CA 93065

The undersigned hereby affirms that there is no
Social Security number contained in this document.

DOC #4069195
12/21/2011 03:44:06 PM
Electronic Recording Requested By
LSI TITLE AGENCY INC
Washoe County Recorder
Kathryn L. Burke - Recorder
Fee: \$15.00 RPTT: \$0
Page 1 of 2

(SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY)

Trustee Sale# NV0838405-1 Order# 080206783

CORRECTIVE TRUSTEE'S DEED UPON SALE

** This Document is being recording to Correct the Deed that recorded on 7/18/2011 as Instrument
#4022844, to correct the GRANTEE'S NAME

The undersigned grantor declares:

- 1) The Grantee herein WAS the foreclosing beneficiary.
- 2) The amount of the unpaid debt together with costs was: \$345,921.54
- 3) The amount paid by the Grantee at the trustee sale was: \$288,325.00
- 4) The documentary transfer tax is \$0.00
- 5) Said property is in the city of RENO
- 6) A.P.N. 047-113-12

and MTC FINANCIAL, INC. dba TRUSTEE CORPS (herein called Trustee), as the duly appointed
Substituted Trustee under the Deed of Trust hereinafter described, does hereby grant and convey, but
without covenant or warranty, express or implied, to FEDERAL HOME LOAN MORTGAGE
CORPORATION (herein called Grantee), all of its right, title and interest in and to that certain property
situated in the County of Washoe, State of Nevada, described as follows:

LOT 19 IN BLOCK B OF GALENA ESTATES UNIT 2E, PHASE 3, ACCORDING TO THE MAP
THEREOF NO. 2603, FILED IN THE OFFICE OF THE COUNTY RECORDER OF WASHOE COUNTY,
STATE OF NEVADA, ON AUGUST 15, 1988 AS DOCUMENT NO. 1343384, AND AMENDED BY A
CERTIFICATE OF AMENDMENT RECORDED DECEMBER 28, 1990, IN BOOK 3181, PAGE 686, AS
DOCUMENT NO. 1449913, BOTH OF OFFICIAL RECORDS.

RECITALS: This conveyance is made pursuant to the powers conferred upon Trustee by that certain
Deed of Trust dated 11/12/2001, and executed by BJAN LAGHAEL, AN UNMARRIED MAN as Trustor,
and Recorded on 04/09/2002 as Document No. 2874114 of Official Records of Washoe County,
Nevada, and after fulfillment of the conditions specified in said Deed of Trust authorizing this conveyance.

Trustee Sale# NV0838405-1 Loan # 8946398 Order# 090206783

Default occurred as set forth in a Notice of Default and Election to Sell which was recorded in the Office of the Recorder of said County. All requirements of law regarding the mailing, personal delivery, and publication of copies of the Notice of Default and Election to Sell Under Deed of Trust and of the Notice of Trustee's Sale and the posting of copies of said Notice of Trustee's Sale have been complied with.

Trustee, in compliance with said Notice of Trustee's Sale and in exercise of its powers under said Deed of Trust sold the herein described property at public auction on 08/14/2011. Grantee, being the highest bidder at said sale, became the purchaser of said property for the amount bid being \$288,325.00 in lawful money of the United States, or by credit bid if the Grantee was the beneficiary of said Deed of Trust at the time of said Trustee's Sale.

Dated: 12/16/2011

TRUSTEE CORPS, as Successor Trustee


By: ANTHONY TRAN, AUTHORIZED SIGNATURE

State of CALIFORNIA

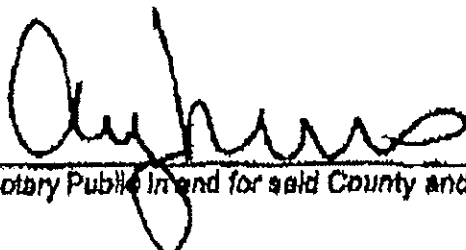
County of ORANGE

Amy Lemus

On 12/16/2011, before me, _____, a notary public, personally appeared ANTHONY TRAN who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.


Notary Public in and for said County and State

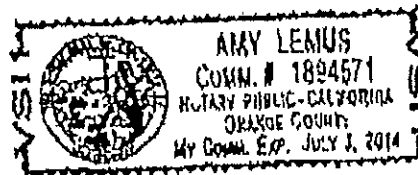


Exhibit 2

**NOTICE TO VACATE PREMISES PURSUANT TO
PROTECTING TENANT AT FORECLOSURE ACT**

TO: BIJAN LAGHAEI
25 Winterberry Court
Reno, NV 89511

TO: ALL OCCUPANTS
25 Winterberry Court
Reno, Nevada 89511

PLEASE TAKE NOTICE THAT if you are occupying the above-referenced property as a *bona fide* tenant, then you have until January 18, 2012 to vacate the property. The Protecting Tenant at Foreclosure Act defines a *bona fide* tenant as one who:

- a) entered into the lease with the landlord before June 14, 2011; and
- b) is not the former owner or the child, spouse or parent of the former owner; and
- c) entered into the lease as a result of an arms-length transaction; and
- d) whose rent is not substantially less than fair market rent for the property or your rent is reduced or subsidized due to federal, state or local subsidy.

If you are a *bona fide* tenant and your lease term ends after the above date, you may have the right to continue to occupy the property until the lease expires. Please contact us immediately at 702-382-1399 so we can make arrangements for Freddie Mac to assume your lease and for you to continue paying rent.

Even if you do not qualify as a *bona fide* tenant under the law, you may still have rights as a tenant in possession. If you pay rent by the week or another period of time that is shorter than one month, you may continue to occupy the property for not less than the number of days in that period of time. If you pay rent by the month or any other period of time that is one month or longer, you may continue to occupy the property until December 19, 2011.

If you do not contact us immediately to request that Freddie Mac assume your lease, you must vacate the property by the above applicable date. You may be required to vacate sooner if the property is re-sold to a purchaser who will occupy the property as a primary residence. You will be informed if you will need to vacate the property sooner than the above dates.

Be advised that under Nevada law, you continue to have the rights, obligations and liabilities you had pursuant to your lease or rental agreement with the previous owner or landlord, which remains in effect during the period described above. **Please remit rent due to Federal Home Loan Mortgage Corporation at 5000 Plano Parkway, Carrolltown, TX 75010.** Failure to pay rent to Freddie Mac or to comply with any other term of your rental agreement or applicable law constitutes a breach of the lease or rental agreement and may result in eviction proceedings.

If you are not a tenant, then the above provisions do not apply to you and you have three (3) days from the date of service of this Notice to vacate property or eviction proceedings will be commenced against you for reasonable rents, costs, and attorney's fees, pursuant to the provisions of Nevada Revised Statutes 40.255.

DATED this 21st day of October, 2011.

MALCOLM + CISNEROS, A Law Corporation



CINDY LEE STOCK, of counsel

Nevada Bar No. 803

608 South 8th Street

Las Vegas, Nevada 89101

(702) 382-1399

Attorneys for Federal Home Loan Mortgage Corporation

Exhibit 3

AFFIDAVIT OF SERVICE

Notice to Vacate Premises Pursuant to Protecting Tenant at Foreclosure Act

Case Number: N/A

For:
Cindy Lee Stock
Law Office of Cindy Stock
608 South 8th Street
Las Vegas, NV 89101

Received by Legal Express on the 21st day of October, 2011 at 10:55 am to be served on Bijan Laghaei And All Occupants, 25 Winterberry Court, Reno, NV 89511.

I, Nicholas DiFraia, being duly sworn, depose and say that on the 26th day of October, 2011 at 1:45 pm, I:

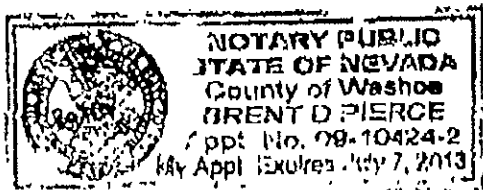
POSTED by attaching a true copy of the **Notice to Vacate Premises Pursuant to Protecting Tenant at Foreclosure Act** to a conspicuous place on the property of the within named person's **RESIDENCE** at the address of: **25 Winterberry Court, Reno, NV 89511.**

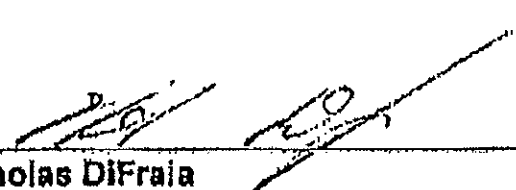
Affiant caused to be **MAILED** a true copy of the above stated documents via United States Postal Service to the above stated address.

Affiant is, and was, a citizen of the United States, over 18 years of age, and not a party to, nor interested in, the proceeding in which this affidavit is made.

SIGNED and SWORN TO before me on the 28th day of November, 2011 by the affiant who is personally known to me.


NOTARY PUBLIC




Nicholas DiFraia
Process Server

Legal Express
Nevada License 999/999a
911 South 1st Street
Las Vegas, NV 89101
(702) 877-0200
Our Job Serial Number: 2011003064
Ref: 25 Winterberry
Service Fee: \$38.50

EXHIBIT 5

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

BIJAN LAGHAEI,

Plaintiff,

v.

FEDERAL HOME LOAN MORTGAGE
CORPORATION, BAC HOME LOANS
SERVICING, LP, f/k/as COUNTRYWIDE
HOME LOANS SERVICING, LP, MTC
FINANCIAL, dba TRUSTEE CORPS., A
CALIFORNIA CORPORATION, DOES 1-
10, INCLUSIVE, AND ALL OTHER
PERSONS UNKNOWN CLAIMING ANY
RIGHT TITLE, ESTATE, LIEN OR
INTEREST IN THE REAL PROPERTY
DESCRIBED HEREIN,

Defendants.

Case No. 3:12-cv-00307-MMD-VPC

ORDER

The Ninth Circuit vacated the Court's judgment dismissing Plaintiff's claims and remanded this action for the Court to "determine if Federal Home Loan Mortgage Corporation's unlawful detainer action remains pending in Nevada state court, and if so, whether the primary exclusive jurisdiction doctrine applies." (Dkt. no. 27 at 2-3.) In their status report, the parties state that the unlawful detainer action remains pending before the Reno Justice Court. They concede that the exclusive prior jurisdiction doctrine addressed in *Chapman v. Deutsche Bank Nat'l Trust Co.*, 302 P.3d 1103 (Nev. 2013) applies to deprive this Court of jurisdiction.

1 It is therefore ordered that this action is dismissed.

2 The Clerk is directed to close this case.

3 DATED THIS 26th day of January 2016

4 

5 MIRANDA M. DU
6 UNITED STATES DISTRICT JUDGE
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27
28

EXHIBIT 6

1 Terry J. Thomas (#5523)
63 Keystone Ave. Ste 200
2 Reno, NV 89503
(775) 750-6307
3 Attorney for Plaintiff
t2attorney@gmail.com
4

5
6 **IN THE RENO JUSTICE COURT**
7 **IN AND FOR THE COUNTY OF WASHOE**

8
9 **BIJAN LAGHAEI,**

CASE NO.: RJC2012-074955

10 Plaintiff,

DEPT: NO. 3

11 vs.

12 Federal Home Loan Mortgage
Corporation. DOES 1-10, Inclusive,
13 and all other persons unknown
claiming any right title, estate, lien or
14 interest in the real property described
herein.

15 Defendants.
16

17 **CROSS-COMPLAINT**

18 Plaintiff, BIJAN LAGHAEI (i LAGHAEI) by and through counsel, Terry J. Thomas,
19 Esq., for his claims for relief and demand for judgment against defendants above named,
20 complains and alleges as follows:

21 **JURISDICTION and VENUE**

22 1. Plaintiff is a resident of Washoe County, Nevada.

23 2. The subject real property is located at 25 WinterBerry Ct., Reno, NV 89511

24 The APN is: 047-113-12.

25 The legal Description is:

26 Lot 19 in Block B of Galena Estates Unit 2E, Phase 3., According to the Map thereof
27 NO. 2603, filed in the Office of the County Recorder of Washoe County, State of Nevada, on
28

1 August 15, 1989 as Document No. 1343384, and Amended by a Certificate of Amendment
2 Recorded December 26, 1990, in Book 3181, Page 696, As Document No. 1449913, Both of
3 Official Records.

4 3. Defendant Federal Home Loan Mortgage Corporation, is, on information and
5 belief, a federally chartered corporation (i Freddie Mac) whose enabling Act states in
6 relevant part: i Notwithstanding section 1349 of Title 28 or any other provision of law:...

7 ...*(1) the Corporation shall be deemed to be an agency included in sections*
8 *1345 and 1442 of such title 28; (2) all civil actions to which the Corporation*
9 *is a party shall be deemed to arise under the laws of the United States, and the*
10 *district courts of the United States shall have original jurisdiction of all such*
11 *actions, without regard to amount or value; ...*

12
13 4. Freddie Mac is named Defendant because it's name appears on a i Trustees
14 Deed Upon Sale, dated 12/21/2011, purporting to transfer the subject property to it. It is
15 highly unlikely that Freddie Mac even knows of this litigation, except thru its counsel's
16 billing since witnesses have stated that Freddie Mac i buys bulk loans only. In January,
17 2016, MTC Financial, Inc. dba Trustee Corps issued a i Corrective Trustees Deed Upon
18 Sale. This Corrective Trustees Deed Upon Sale was allegedly based upon the purported
19 subject Deed of Trust, with the lender identified as i South Country Bank, a California
20 Corporation. The Trustee is i Northern Counties Title. There are NO recorded transfers of
21 the Deed of Trust from i South Country Bank, nor transfers of the Trustee from Northern
22 Counties Title.

23 5. Plaintiff first learned of the existence of Freddie Mac when he was personally
24 served with a summons and complaint for an unlawful detainer action, filed in the Reno
25 Justice Court, Case No. RJC 2012 074955, Dept. 3. Plaintiff was never given any notice of
26 any transfer of his mortgage from the originator, South County Bank of California, which, on
27 information and belief, was never registered with the California Secretary of State, in
28 violation of the Real Estate Settlement Procedures Act, 12 U.S.C. 2605, et sec. South

1 Country Bank was NEVER registered to do business in Nevada with the Nevada Secretary
2 State. The California Secretary of State has no record of a "South Country Bank," which is
3 listed on the subject Deed of Trust as a "California Corporation."

4 6. The true names and capacities, whether individual, corporate, associate,
5 partnership or otherwise of the defendants herein designated as Does 1 through 10, inclusive,
6 are unknown to plaintiff, who therefore sues said defendants by such fictitious names.

7 7. Plaintiff alleges that each named defendant and each defendant herein
8 designated as a Doe defendant is negligently, willfully, maliciously, contractually or
9 otherwise legally responsible for the events and happenings herein referred to and
10 proximately caused injury and damages to plaintiff, as herein alleged. Plaintiff will seek
11 leave of this Court to insert the true names and capacities of such defendants when the same
12 have been ascertained and will further ask leave to join said defendants in these proceedings
13 pursuant to NRCP 10.

14 8. Based upon information and belief plaintiff alleges that at all times mentioned
15 herein, the defendants, and each of them, were the agents, servants, employees and/or joint
16 venturers of their co-defendants, and each were as such, acting within the course, scope, and
17 authority of such agency, employment and/or venture, and that each and every defendant, as
18 aforesaid, when acting as a principal, was negligent in the selection, hiring, training and
19 appointment of each and every other defendant as an agent, employee and/or joint venturer.

20 **FACTUAL ALLEGATIONS**

21 9. Plaintiff alleges, realleges and incorporate by reference each and every
22 allegation contained in the preceding paragraphs.

23 10. MTC Financial, dba Trustee Corps, ("MTC") is a California corporation
24 registered to do business in Nevada. MTC is identified herein because it is the self described
25 "trustee or successor trustee," corporation which filed a Notice of Default and Election to
26 Sell Under Deed of Trust. Plaintiff has not been served with any notice of any assignment of
27 trustee from the original trustee. There are NO assignments of nor "changes" of trustee from
28 the original trustee to MTC recorded in the chain of title.

1 11. BAC and Plaintiff executed a Forbearance Agreement, wherein Plaintiff paid
2 \$19,810.00 to keep his home. (Ex. 1, attached to 1st complaint) On information and belief,
3 Plaintiff is informed and believes that BAC Home Loans Servicing, LP is a successor in
4 interest to Countrywide Home Loans Servicing, LP. On information and belief, BAC and its
5 former Country Wide Home Loans, LP, committed fraud on many homeowners, thus was
6 eventually disbanded. Its place was apparently subsumed under its Bank of America
7 corporate parent.

8 12. Plaintiff, sought to have his mortgage modified in order to be able to stay in
9 his home. Plaintiff paid BAC \$19,810.00 as part of a forbearance agreement with BAC.
10 Plaintiff was told that a modification would be worked out for his mortgage and not to be
11 concerned with the Notice of Default and Notice of Trustee's sale. Plaintiff reasonably
12 believed what he was told... i.e., that a mortgage modification was to be worked out.

13 13. On or about March 25, 2012, Plaintiff was personally served with Justice Court
14 Case No. RJC 2012 074955. This summons and complaint has as Exhibit 1, the i Corrective
15 Trustee's Deed Upon Sale... This was the first notice that Plaintiff has that his home had
16 been sold.

17 14. On Information and Belief Plaintiff alleges that no Defendant herein has a
18 legally cognizable interest in Plaintiff's promissory note nor deed of trust, that no legally
19 significant transfer of the trusteeship ever took place. Thus MTC lacks legal standing to issue
20 the i Corrective Trustee's Deed Upon Sale, (i TOD) on 12/21/2011. And, the Defendant
21 has no legal standing to request that MTC issue said documents. In fact, this TOD was
22 defective. On 01/07/2016, a new an i improved TOD was recorded and again on
23 01/28/2016, an improved, improved TOD was again recorded. None of the TOD are legally
24 significant.

25 15. There are NO recorded transfers, assignments nor endorsements of the subject
26 Deed of Trust, nor subject promissory note. On information and belief, this was the time of
27 robo signings and part of what has been called the greatest fraud in human history. It was
28 also expected that no judge would require that the Laws of Evidence and the Laws of Real

1 Property need be followed since Foreclosure Industry counsel would pseudo testify from
2 counsel table that everything was properly done.... no need for the courts to concern
3 themselves.

4 16. On information and belief Plaintiff alleges that the above Foreclosure Industry
5 Abuses scenario was a factor in the Nevada Legislature enacting the foreclosure mediation
6 requirements to NRS 107.080, et sec. Before some unauthorized, undocumented entity could
7 foreclose, it must allow a mediation between the alleged beneficiary and the homeowner to
8 take place. Our Nevada Supreme Court also recognized the need for document
9 authentication. In the Nevada Supreme Court's foreclosure mediation rules (FMR) the
10 court simply and effectively defines how legal certification of mortgage documents
11 eliminates hearsay objections, as defined in FMR III7d, et sec.

12 The certification requirement for non-original documents shall consists of:

13 A statement under oath signed before a notary public pursuant to the provisions of
14 NRS 240.1655(2), which includes;

- 15 1. The name, address, company, capacity, and authority of the person making
16 the certification;
- 17 2. The person making the certification on behalf of the beneficiary is in actual
18 possession of the original mortgage note, deed of trust and each assignment and
19 any endorsement of the of the mortgage note and assignment of deed of
20 trust;...

21 FIRST CLAIM FOR RELIEF

22 Lack of Standing

23 17. Plaintiff alleges, realleges and incorporates by reference each and every
24 allegation contained in the preceding paragraphs.

25 18. None of the exhibits produced by Plaintiff's counsel in the unlawful detainer
26 complaint is a certified copy of the original, by the custodian of records for a beneficiary,
27 nor servicer. It is not possible that for a mediation, the beneficiary or party thereto, must
28 authenticate its legal standing, but in actual litigation, there are no evidentiary requirements.

19. Lack of Legal Standing may be raised at any time. Standing must be established before any further litigation takes place. Failure to have Standing establishes that Defendant and its agents had no legal right to institute foreclosure proceedings.

SECOND CLAIM FOR RELIEF

Cancel Corrective Trustees' Deed Upon Sale

20. Plaintiff alleges, realleges and incorporates by reference each and every allegation contained in the preceding paragraphs.

21. Although the above referenced i Corrective Trustees Deeds Upon Sale, i appear valid on their face, it is of no force and effect regarding Plaintiff's interest in the real property described in paragraph 1 for the reasons set forth above.

22. The interest claimed by Defendant based upon the above referenced Corrective Trustee's Deeds Upon Sale documents, are a cloud upon Plaintiff's title in and to the real property, tends to depreciate the market value, restricts and hinders Plaintiff's right to unrestricted alienation of the property and if the Corrective Trustee's Deeds Upon Sale are not cancelled there is a reasonable fear that Plaintiff will suffer serious, irreparable injury, in that Defendant is attempting to evict Plaintiff from his home.

23. Plaintiff has been required to retain counsel to pursue their rights in this matter for which she is entitled to an award of attorney's fees and costs of suit.

SECOND CLAIM FOR RELIEF

Sander of Title

24. Plaintiff alleges, realleges and incorporate by reference each and every allegation contained in the preceding paragraphs.

25. Defendant Freddie Mac has placed a cloud on Plaintiff's title by illegally recording their several Corrective Trustee's Deeds Upon Sale on Plaintiff's property.

26. Defendant had no rights whatsoever to cause to be recorded their Notices of Default, Notice of Trustee's Sale and Corrective Trustee's Deeds Upon Sale upon Plaintiff's property in that Defendants have no legally cognizable interest in Plaintiff's promissory note nor deed of trust. Defendant had any rights, title nor interests in Plaintiff's property.

27. Defendant recording their Notices of Default and Notice of Trustees sale upon Plaintiff's property was malicious in that Defendant's conduct was with conscious, intentional, reckless disregard for Plaintiff's rights and in violation of Plaintiff's property rights.

28. Plaintiff has been damaged by Defendant's intentional, and/or reckless conduct, all of which demonstrates actual or implied malice toward Plaintiff. Defendant's conduct entitles Plaintiffs to an award of exemplary damages to punish and deter Defendant in an amount to be determined at time of trial.

29. Plaintiff has incurred damages in dealing with the defendantsí massively disorganized, open disregard and contempt for the laws of Nevada. Defendantís conduct entitles Plaintiff to an award of general and special damages in an amount in excess of \$10,000.00, to be determined by proof at time of trial

30. As special damages, Plaintiff has had to retain counsel to defend his rights to her real property. These damages are on-going and will be proved at trial.

THIRD CLAIM FOR RELIEF

Attorney Fees

31. Plaintiff alleges, realleges and incorporates by reference each and every allegation contained in the preceding paragraphs.

32. Plaintiff has been required to retain counsel to pursue his rights in this matter for which Plaintiff has incurred special damages from Defendants' conduct in that he has to be responsible for attorney fees and costs in removing the cloud upon his title caused by Defendants. Defendants' conduct entitles plaintiffs to an award of general and special damages in an amount in excess of \$10,000.00, to be determined by proof at time of trial

WHEREFORE, Plaintiffs demands judgment against Defendant as follows:

1. For special damages in attorney fees and general damages in an amount in excess of ten thousand dollars to be determined at time of trial;
2. For exemplary damages in an amount to be determined at time of trial;
3. For an Order cancelling all of Defendant's Corrective Trustee's Deed Upon

1 Sale and Notice of Default and Notice of Trustees' Sale.

2 4. For costs of suit;

3 5. For such other, further, or different relief as the court may deem just under the
4 circumstances.

5
6 **AFFIRMATION PURSUANT TO NRS 239B.030**

7 The undersigned hereby affirms this document does not contain a social security number
8 pursuant to NRS

9 DATED: March 24, 2016

10
11 By: 15
12 Terry J. Thomas, Esq.
13 Attorney for Plaintiff

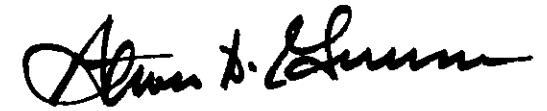
14 I hereby certify that on this 24th day of March, 2016, pursuant to NCRCP 5(b), I
15 have caused to be deposited in the United States Mail at Reno, Nevada, a true and
16 correct copy of:

17 CROSS COMPLAINT

18
19 First class mail, postage prepaid to:

20 Cindy Lee Stock, Esq.
21 Rebecca P. Kern, Esq.
22 608 South 8th St.
23 Las Vegas, NV 89101

24 By /s
Terry J. Thomas



CLERK OF THE COURT

Richard J. Reynolds, Esq.
Nevada Bar No. 11864
E-mail: rreynolds@bwslaw.com
Allan E. Ceran, Esq.
Pro Hac Vice
E-mail: aceran@bwslaw.com
BURKE, WILLIAMS & SORENSEN, LLP
1851 East First Street, Suite 1550
Santa Ana, CA 92705-4067
Tel: 949.863.3363 Fax: 949.863.3350

Michael R. Brooks, Esq.
Nevada Bar No. 7287
E-mail: mbrooks@brookshubley.com
BROOKS HUBLEY, LLP
1645 Village Center Circle, Suite 60
Las Vegas, NV 89134
Tel: 702.851.1191 Fax: 702.851.1198

Attorneys for Defendant 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,

vs.

QUALITY LOAN SERVICE

Case No. A-11-649857-C

Honorable Susan W. Scann
Dept. No.: 29
(ELECTRONIC FILING CASE)

**DECLARATION OF KEIKO J. KOJIMA
IN SUPPORT OF DEFENDANT MTC
FINANCIAL INC. dba TRUSTEE CORPS'
OPPOSITION TO PLAINTIFFS' MOTION
FOR LEAVE TO FILE THIRD AMENDED
COMPLAINT**

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.

DECLARATION OF KEIKO J. KOJIMA

Keiko J. Kojima, a resident of the state of California, declares as follows:

1. I am a licensed attorney currently in good standing to practice law in the state of California.

2. I am an attorney at the law firm of BURKE, WILLIAMS & SORENSEN, LLP ("Burke"), 444. S. Flower Street, Suite 2400, Los Angeles, CA 90071, and with respect to what is stated below I was working and continue to work under the supervision of counsel, Richard J. Reynolds of Burke, representing Defendant Trustee Corps.

3. I have personal knowledge of the matters contained in this declaration. I am competent to testify regarding them.

4. Attached hereto as Exhibit "1" is a true copy of a print out of the docket in *Federal Home Loan Mortgage Corp. v. Bijan Laghaei, et al.*, Case No. 2012-074955, Justice Court, Reno Township, County of Washoe, obtained on August 11, 2016.

5. Attached hereto as Exhibit "2" is a true copy of a print out of the docket in *Bijan Laghaei v. Federal Home Loan Mortgage Corporation, et al*, Case No. 12-01281, Second Judicial District Court of the State of Nevada, County of Washoe, obtained on January 3, 2017.

6. Attached hereto as Exhibit "3" is a true copy of a print out of the docket in *Federal Home Loan Mortgage Corporation v. Bijan Laghaei*, CV16-01393, Second Judicial District Court of the State of Nevada, Washoe County, obtained on January 3, 2017.

1 I declare under penalty of perjury under the laws of Nevada that the foregoing is true and
2 correct.

3 EXECUTED this 3rd day of January, 2017, at Los Angeles, California.

4
5 
KEIKO J. KOJIMA

6
7 **AFFIRMATION**

8 **Pursuant to NRS 239B.030**

9 * * * * *

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

12 DATED this 3rd day of January, 2017.

13 BROOKS HUBLEY, LLP
14 1645 Village Center Circle, Suite 60
15 Las Vegas, NV 89134

16
17 By: 

Michael R. Brooks, Esq.
Attorneys for Defendant
MTC FINANCIAL INC. dba TRUSTEE
CORPS

18
19
20 Richard J. Reynolds, Esq.
21 BURKE, WILLIAMS & SORENSEN, LLP
22 1851 East First Street, Suite 1550
23 Santa Ana, CA 92705-4067

24 Attorneys for Defendant
25 MTC FINANCIAL INC. dba TRUSTEE
26 CORPS
27
28

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of BROOKS HUBLEY, LLP, and that on January 3, 2017, that a true copy of the **DECLARATION OF KEIKO J. KOJIMA IN SUPPORT OF DEFENDANT MTC FINANCIAL INC. dba TRUSTEE CORPS' OPPOSITION TO PLAINTIFFS' MOTION FOR LEAVE TO FILE THIRD 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, addressed to:

- Christopher Legal Group - Shawn Christopher, Esq.
- McCarthy & Holthus - Kristin A. Schuler-Hintz, Esq., Thomas N. Beckom, Esq.
- Law Office of Nicholas A. Boylan – Nicholas A. Boylan, Esq., Marina Vaisman, Esq.
- Bryan Cave, LLP – Jessica R. Maziarz, Esq., Lawrence G. Scaborough, Esq.
- Tiffany & Bosco, P.A. - Gregory L. Wilde, Esq., Kevin S. Soderstrom, Esq.
- Smith Larsen & Wixom - Kent F. Larsen, Esq.

Antoinette Gill
4754 Deer Forest
Las Vegas, NV 89139
PRO SE

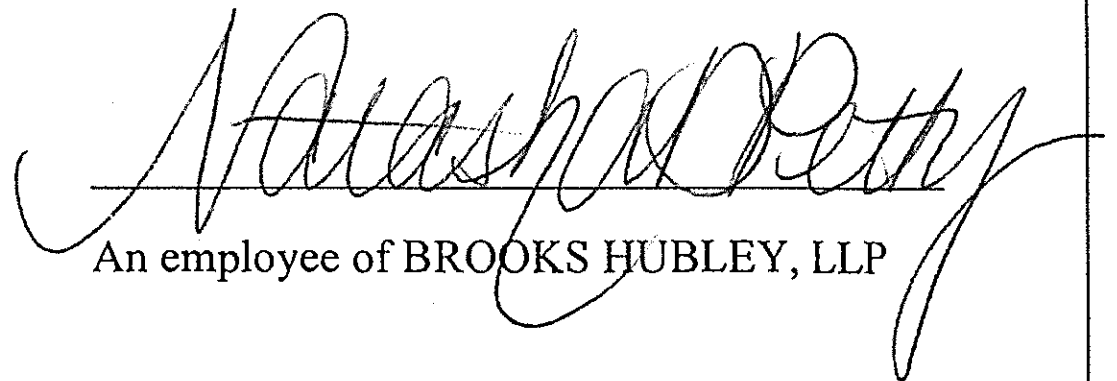

An employee of BROOKS HUBLEY, LLP

EXHIBIT 1

RENO CIVIL

CASE SUMMARY

CASE No. RJC2012-074955

Federal Home Loan Mortgage Corp.
vs.
Bijan Laghaei

§
§
§
§

Location: Reno Civil
Judicial Officer: Sferrazza, Peter
Filed on: 02/29/2012

CASE INFORMATION

Bonds

Cash Bail Without Notice
5/31/2016 Posted
Counts:

Case Type: Civil Complaint \$1,000.00 and Under

Case Status: 02/29/2012 Active

Cash Bail Without Notice
5/20/2016 Posted
Counts:

Cash Bail Without Notice
7/17/2012 Posted
Counts:

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number RJC2012-074955
Court Reno Civil
Date Assigned 02/29/2012
Judicial Officer Sferrazza, Peter

PARTY INFORMATION

Plaintiff Federal Home Loan Mortgage Corp.

Lead Attorneys

Stock, Cindy Lee
Retained
702-382-1399(W)

Defendant Laghaei, Bijan


Thomas, Terry
Retained
775-750-6307(W)

DATE

EVENTS & ORDERS OF THE COURT

INDEX


07/11/2016

 Letter Sent
Transfer to District Court

07/11/2016

 Pleading Filed
Transfer Proceedings to District Court


06/03/2016

 Order Filed
Order to Transfer Cross-Complaint to the Second Judicial District Court. (Per Judge Sferrazza, "still have the Order on Writ of Restitution don't file this until we receive")

05/31/2016

Cash Bail Posted
\$1,000.00 (\$250.00 for each month of June/July/August/Sept. by Defendant)

05/31/2016

 Order Filed
order denying motion to dismiss cross complaint.

RENO CIVIL
CASE SUMMARY
CASE No. RJC2012-074955
















37.18

05/31/2016	Order Filed <i>denying motion to dismiss comp.</i>
05/27/2016	Order Submitted <i>order denying motion to dismiss cross comp</i>
05/27/2016	Order Submitted <i>order deny motion to dismiss comp</i>
05/26/2016	Notice of Security Being Posted Filed <i>Notice of Posting Rental Bond Pursuant to Court Order</i>
05/20/2016	Cash Bail Posted <i>in the sum of \$6,000.00 on behalf of Buan Laghael</i>
05/11/2016	Request for Submission Filed <i>Request to Submit Proposed Order to Transfer Cross-complaint to District Court</i>
05/11/2016	Order Submitted <i>Proposed Order Transferring Cross-complaint to District Court</i>
05/09/2016	Motion Hearing (10:00 AM) (Judicial Officer: Sferrazza, Peter)
05/09/2016	Decision (Judicial Officer: Sferrazza, Peter) Comment (Cindy Stock, Esq. appeared on behalf of plaintiff. Terry Thomas, Esq. appeared on behalf of defendant. Cindy Stock, Esq. will draft an Order on the denial of the Motion to Dismiss Unlawful Detainer Complaint. Terry Thomas, Esq. will draft an Order denying Motion to Dismiss Cross Complaint and to Transfer the Cross-Claim to District Court pending his client posting a \$6000.00 bond with Reno Justice Court plus posting a bond of \$250.00 per month beginning June 1, 2016 until the issue is resolved. The bond shall be in the form of cash, Attorney's trust account or bank's cashier's check. Reno Justice Court reserves jurisdiction over the Unlawful Detainer Complaint pending decision from District Court on the title issue.)
04/27/2016	Reply Filed <i>Reply to Opposition to Motion to Dismiss Cross-Complaint and Opposition to Cross-Motion to Transfer Entire Case to District Court</i>
04/21/2016	Reply Filed <i>Reply / Response to "Supplemental Points and Authorities in Opposition to Motion to Dismiss Complaint."</i>
04/19/2016	Opposition to Motion Filed <i>Opposition to Motion to Dismiss Cross-complaint and Cross-Motion to Transfer Entire Case to District Court</i>
04/14/2016	Opposition to Motion to Dismiss Filed <i>Supplemental Points and Authorities in Opposition to Motion to Dismiss Complaint</i>
04/12/2016	Motion to Dismiss Filed <i>Motion to Dismiss Cross-Complaint and Request to Appear Telephonically</i>
03/29/2016	Pleading Filed <i>Chronology of the Litigation, 9th Cir. reversal, federal court jurisdiction</i>

RENO CIVIL

CASE SUMMARY

CASE No. RJC2012-074955

03/24/2016	 Cross Complaint Filed <i>Cross-complaint</i>
03/21/2016	 Motion Hearing (10:00 AM) (Judicial Officer: Sferrazza, Peter)
03/21/2016	 Exhibit's Submitted - Defendant
03/21/2016	General Case Note <i>Per Judge Sferrazza, \$9000.00 bond posted by defendant to be addressed at hearing 5/9/2016</i>
03/21/2016	Decision (Judicial Officer: Sferrazza, Peter) Comment (Cindy L. Stock, Esq. appeared telephonically. Defendant, Bijan Laghaei did not appear, but was represented by Terry Thomas, Esq. Defendant's counsel has ten days to prepare and present evidence to the Court regarding jurisdictional issues and pertinent decisions made regarding title. Plaintiff's counsel shall have ten days to respond. Defendant's counsel shall have ten days to reply. Motion Hearing continued to May 9, 2016 at 10:00 a.m.)
03/08/2016	 Reply Filed <i>Exhibit to Reply to Opposition to Motion to Dismiss</i>
03/08/2016	 Reply Filed <i>Reply to Opposition to Motion to Dismiss</i>
03/04/2016	 Opposition to Motion Filed <i>Opposition to Motion to Dismiss Complaint and Request to Appear Telephonically. Judge Sferrazza granted telephonic request. Called Cindy Lee Stock's assistant and let her know.</i>
02/23/2016	 Notice of Hearing Filed
02/22/2016	 Motion Filed <i>Motion to Extend Time to Respond to Motion to Dismiss</i>
02/16/2016	 Request for Submission Filed <i>Request to Submit Motion to Dismiss</i>
01/27/2016	 Motion to Dismiss Filed <i>Motion to Dismiss Case for lack of jurisdiction</i>
01/12/2016	 Pleading Filed <i>Notice of Change of Address of Defendant's attorney, Terry J. Thomas</i>
11/02/2015	 Mail Returned Undeliverable <i>Terry Thomas</i>
10/28/2015	 Response Filed <i>Status Report</i>
10/22/2015	 Order Filed <i>Order to Proceed filed.</i>
08/22/2012	 Order Filed
07/17/2012	Cash Bail Posted
















Sferrazza

Sferrazza

Sferrazza

RENO CIVIL

CASE SUMMARY**CASE NO. RJC2012-074955***in the sum of \$9,000.00 on behalf of Buan Laghaei*

07/05/2012	 Motion Hearing (8:30 AM) (Judicial Officer: Schroeder, Jack)
06/05/2012	 Notice of Hearing Filed
06/04/2012	 Request for Submission Filed
06/04/2012	 Opposition to Motion Filed
05/31/2012	 Request for Submission Filed
05/14/2012	 Notice of Transfer to District Court
05/07/2012	 Summons Returned and Filed <i>Served 3/25/12 to Anthony Langford (cousin)</i>
05/07/2012	 Reply Filed
05/04/2012	 Certificate of Mailing Filed
04/30/2012	 Opposition to Motion to Dismiss Filed
04/25/2012	 Motion to Dismiss Filed <i>Motion to Dismiss Counterclaim</i>
04/18/2012	 Certificate of Mailing Filed <i>R Kern served 4/5/12.</i>
04/10/2012	 Certificate of Mailing Filed
04/04/2012	 Answer Filed <i>Party: Cross Claimant Laghaei, Bijan</i> <i>Counterclaim</i>
03/06/2012	 Order Shortening Time Filed
03/01/2012	Application Filed <i>For Temporary Writ of Restitution and For Order To Show Cause filed.</i>
03/01/2012	Declaration Filed <i>Of Counsel in Support of Application for Temporary Writ of Restitution and For Order To Show Cause filed.</i>
03/01/2012	Application Filed <i>For Order Shortening Time filed.</i>
03/01/2012	Declaration Filed <i>of Counsel in Support of Application For Order Shortening Time filed.</i>
02/29/2012	Case Filed

RENO CIVIL

CASE SUMMARY
CASE NO. RJC2012-074955
FINANCIAL INFORMATION

DATE

Cross Claimant Laghaci, Bijan	
Total Charges	104.00
Total Payments and Credits	104.00
Balance Due as of 8/11/2016	0.00
Cross Defendant Federal Home Loan Mortgage Corp.	
Total Charges	49.00
Total Payments and Credits	49.00
Balance Due as of 8/11/2016	0.00
Cross Claimant Laghaci, Bijan	
Bond Balance as of 8/11/2016	9,000.00
Cross Claimant Laghaci, Bijan	
Bond Balance as of 8/11/2016	6,000.00
Cross Claimant Laghaci, Bijan	
Bond Balance as of 8/11/2016	1,000.00

EXHIBIT 2

Case Information

Case Description: CV12-01281 - BIJAN LAGHAEL VS FEDERAL HOME LOAN ET AL (D4)
Filing Date: 10-May-2012
Case Type: FC - JUDICIAL FORECLOSURE
Status: Case Disposed

Case Cross Reference

Cross Reference Number

Case Parties [\(top\)](#)

Seq	Type	Name
1	JUDG - Judge	STEINHEIMER, CONNIE J.
2	PLTF - Plaintiff	LAGHAEI, BIJAN
3	ATTY - Attorney	Thomas, Esq., Terry
4	DEFT - Defendant	FEDERAL HOME LOAN MORTGAGE CORPORATION,
5	DEFT - Defendant	BAC HOME LOANS SERVICING, F/K/AS COUNTRYWIDE HOME LOANS,
6	DEFT - Defendant	MTC FINANCIAL INC. DBA TRUSTEE CORPS,
7	ATTY - Attorney	Stern, Esq., Ariel E.
8	ATTY - Attorney	Bhirud, Esq., Christina

Event Information [\(top\)](#)

Date/Time	Hearing Judge	Event Description	Outcome
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Docket Entry

Information [\(top\)](#)

Docket Description	Date Filed	Extra Text
1. PAYRC - **Payment Received	27-Jun-2012	Extra Text: A Payment of -\$243.00 was made on receipt DCDC365730.
2. NEF - Proof of Electronic Service	07-Jun-2012	Extra Text: Transaction 3004176 - Approved By: NOREVIEW : 06-07-2012:15:39:22
3. F230 - Other Manner of Disposition	07-Jun-2012	Extra Text: REMOVAL TO FEDERAL COURT
4. \$DEFT - \$Addl Def/Answer - Prty/Appear	07-Jun-2012	Extra Text: BANK OF AMERICA, N.A.
5. 2580 - Notice Removal Federal Court	07-Jun-2012	Extra Text: NOTICE TO ADVERSE PARTIES AND TO THE SECOND JUDICIAL DISTRICT COURT OF REMOVAL TO FEDERAL COURT - Transaction 3003921 - Approved By: AZION : 06-07-2012:15:35:58
6. \$1560 - \$Def 1st Appearance - CV	07-Jun-2012	Extra Text: FEDERAL HOME LOAN MORTGAGE CORP
7. 2490 - Motion ...	14-May-2012	Extra Text: MOTION TO CONSOLIDATE JUSTICE COURT UNLAWFUL DETAINER COMPLAINT AND SITRICT COURT WRONGFUL FORECLOSURE COMPLAINT
8. COV - **Civil Cover Sheet	10-May-2012	Extra Text:
9. \$1425 - \$Complaint - Civil	10-May-2012	Extra Text:
10. PAYRC - **Payment Received	10-May-2012	Extra Text: A Payment of -\$260.00 was made on receipt DCDC359485.
11. 4090 - ** Summons Issued	10-May-2012	Extra Text:

EXHIBIT 3

Case Information

Case Description: CV16-01393 - FEDERAL HOME LOAN VS BIJAN LAGHAEI (D10)
Filing Date: 01-Jul-2016
Case Type: GC - OTHER CIVIL MATTERS
Status: Pending Active

Case Cross Reference

Cross Reference Number

Case Parties [\(top\)](#)

Seq	Type	Name
1	JUDG - Judge	SATTLER, ELLIOTT A.
2	PLTF - Plaintiff	FEDERAL HOME LOAN MORTGAGE CORPORATION,
3	DEFT - Defendant	LAGHAEI, BIJAN
4	ATTY - Attorney	Thomas, Esq., Terry
5	ATTY - Attorney	Stock, Esq., Cindy Lee

Event Information [\(top\)](#)

Date/Time	Hearing Judge	Event Description	Outcome
1. 27-Dec-2016 at 16:47	Honorable ELLIOTT SATTLER	S1 - Request for Submission	Outcome is Pending
2. 15-Nov-2016 at 09:01	Honorable ELLIOTT SATTLER	S1 - Request for Submission	Outcome is Pending

Docket Entry

Information [\(top\)](#)

Docket	Date Filed	Extra Text
Description		
1. NEF - Proof of Electronic Service	27-Dec-2016	Extra Text: Transaction 5873363 - Approved By: NOREVIEW : 12-27-2016:16:13:35
2. 3860 - Request for Submission	27-Dec-2016	Extra Text: MOTION TO DISMISS FIRST AMENDED COUNTERCLAIM (PAPER ORDER NOT PROVIDED) - Transaction 5873203 - Approved By: TBRITTON : 12-27-2016:16:12:17 PARTY SUBMITTING: CINDY L. STOCK, ESQ. DATE SUBMITTED: DECEMBER 27, 2016 SUBMITTED BY: TBRITTON DATE RECEIVED JUDGE OFFICE:
3. NEF - Proof of Electronic Service	05-Dec-2016	Extra Text: Transaction 5835024 - Approved By: NOREVIEW : 12-05-2016:08:26:17
4. 2490 - Motion ...	02-Dec-2016	Extra Text: Motion to Dismiss First Amended Counterclaim - Transaction 5834701 - Approved By: YVILORIA : 12-05-2016:08:25:15
5. NEF - Proof of Electronic Service	15-Nov-2016	Extra Text: Transaction 5805783 - Approved By: NOREVIEW : 11-15-2016:08:53:55
6. 3860 - Request for Submission	14-Nov-2016	Extra Text: MOTION TO DISMISS CROSS-COMPLAINT OR, IN THE ALTERNATIVE, FOR A MORE DEFINITE STATEMENT FILED 10/20/16 - Transaction 5805098 - Approved By: CSULEZIC : 11-15-2016:08:51:52 PARTY SUBMITTING: CINDY STOCK ESQ DATE SUBMITTED: 11/15/16 SUBMITTED BY: CS DATE RECEIVED JUDGE OFFICE:
7. 1090 - Amended Complaint	27-Oct-2016	Extra Text: First Amended Counter-claim - Transaction 5780617 - Approved By: YVILORIA : 10-27-2016:16:41:40
8. NEF - Proof of Electronic Service	27-Oct-2016	Extra Text: Transaction 5781152 - Approved By: NOREVIEW : 10-27-2016:16:42:39
9. 2490 - Motion ...	20-Oct-2016	Extra Text: MOTION TO DISMISS CROSS-COMPLAINT OR, IN THE ALTERNATIVE FOR A MORE DEFINITE STATEMENT - Transaction 5768793 - Approved By: CSULEZIC : 10-20-2016:16:56:21
10. NEF - Proof of Electronic Service	20-Oct-2016	Extra Text: Transaction 5769189 - Approved By: NOREVIEW : 10-20-2016:16:44:43
11. NEF - Proof of Electronic Service	20-Oct-2016	Extra Text: Transaction 5769289 - Approved By: NOREVIEW : 10-20-2016:16:59:26

Notice: This is NOT an Official Court Record

AA002320

12. 1817 - Initial Appear. Fee Disclosure	20-Oct-2016	Extra Text: FEDERAL HOME LOAN MORTGAGE - Transaction 5768764 - Approved By: CSULEZIC : 10-20-2016:16:43:56
13. A120 - Exemption from Arbitration	12-Aug-2016	Extra Text: Transaction 5655627 - Approved By: NOREVIEW : 08-12-2016:08:39:06
14. NEF - Proof of Electronic Service	12-Aug-2016	Extra Text: Transaction 5655631 - Approved By: NOREVIEW : 08-12-2016:08:39:54
15. 2840 - Ord Denying ...	01-Jul-2016	Extra Text: ODER DENYING MOTION TO DISMISS COMPLAINT BASED UPON FEDERAL LAW
16. 3245 - Ord Shortening Time	01-Jul-2016	Extra Text:
17. 3330 - Ord to Proceed ...	01-Jul-2016	Extra Text:
18. 3370 - Order ...	01-Jul-2016	Extra Text:
19. 4085 - Summons Filed	01-Jul-2016	Extra Text:
20. 3790 - Reply to/in Opposition	01-Jul-2016	Extra Text: REPLY TO LATE OPPOSITION TO DISMISS COMPLAINT BASED UPON FEDERAL LAW
21. 3795 - Reply...	01-Jul-2016	Extra Text: REPLY TO OPPOSITION TO MOTION TO DISMISS CROSS-COMPLAINT AND OPPOSITION TO CROSS-MOTION TO TRANSFER ENTIRE CASE TO DISTRICT COURT
22. 3795 - Reply...	01-Jul-2016	Extra Text: REPLY/RESPONSE TO SUPPLEMENTAL POINTS AND AUTHORITIES IN OPPOSITION TO MOTION TO DISMISS COMPLAINT
23. 3795 - Reply...	01-Jul-2016	Extra Text: REPLY TO OPPOSITION TO MOTION TO DISMISS COUNTERCLAIM PURSUANT TO JCRCP 12(b)(1)
24. 3860 - Request for Submission	01-Jul-2016	Extra Text: REQUEST FOR SUBMISSION OF DOCUMENT FILED AT PRIOR COURT
25. 3860 - Request for Submission	01-Jul-2016	Extra Text: REQUEST FOR SUBMISSION OF DOCUMENT FILED AT PRIOR COURT
26. 3860 - Request for Submission	01-Jul-2016	Extra Text: REQUEST FOR SUBMISSION FOR A DOCUMENT FILED AT PRIOR COURT
27. 3860 - Request for Submission	01-Jul-2016	Extra Text: REQUEST FOR SUBMISSION OF A DOCUMENT FILED AT PRIOR COURT
28. 1270 - Application ...	01-Jul-2016	Extra Text: APPLICATION FOR TEMPORARY WRIT OF RESTITUTION AND FOR ORDER TO SHOW CAUSE
29. 1270 - Application ...	01-Jul-2016	Extra Text: APPLICATION FOR ORDER SHORTENING TIME
30. 1375 - Certified Copy of Docket	01-Jul-2016	Extra Text:
31. 1425 - Complaint - Civil	01-Jul-2016	Extra Text: CROSS-COMPLAINT
32. 1425 - Complaint - Civil	01-Jul-2016	Extra Text:
33. 1520 - Declaration	01-Jul-2016	Extra Text: DECLARATION OF COUNSEL IN SUPPORT OF APPLICATION FOR TEMPORARY WRIT OF RESTITUTION AND FOR ORDER TO SHOW CAUSE
34. 1520 - Declaration	01-Jul-2016	Extra Text: DECLARATION OF COUNSEL IN SUPPORT OF APPLICATION FOR ORDER SHORTENING TIME
35. 2225 - Mtn for Transfer ...	01-Jul-2016	Extra Text: MOTION TO TRANSFER CASE TO DISTRICT COURT AND TENTATIVELY DISMISS DEFENDANT'S COUNTERCLAIM PENDING CONSOLIDATION IN DISTRICT COURT
36. 2315 - Mtn to Dismiss ...	01-Jul-2016	Extra Text: MOTION TO DISMISS CROSS-COMPLAINT AND REQUEST TO APPEAR TELEPHONICALLY
37. 2315 - Mtn to Dismiss ...	01-Jul-2016	Extra Text: MOTION TO DISMISS COMPLAINT. BASED UPON FEDERAL LAW
38. 2315 - Mtn to Dismiss ...	01-Jul-2016	Extra Text: MOTION TO DISMISS COUNTERCLAIM PURSUANT TO JCRCP 12(b)(1)
39. MIN - ***Minutes	01-Jul-2016	Extra Text:

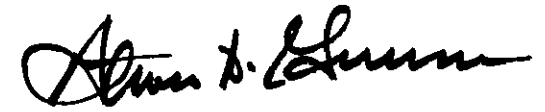
Notice: This is NOT an Official Court Record

AA002321

40. MIN - ***Minutes	01-Jul-2016	Extra Text:
41. MIN - ***Minutes	01-Jul-2016	Extra Text:
42. COV - **Civil Cover Sheet	01-Jul-2016	Extra Text:
43. NEF - Proof of Electronic Service	01-Jul-2016	Extra Text: Transaction 5591561 - Approved By: NOREVIEW : 07-01-2016:15:48:58
44. 3700 - Proceedings	01-Jul-2016	Extra Text: JUSTICE COURT CIVIL TRANSFER PROCEEDINGS
45. 3720 - Proof of Service	01-Jul-2016	Extra Text:
46. 3720 - Proof of Service	01-Jul-2016	Extra Text:
47. 3720 - Proof of Service	01-Jul-2016	Extra Text:
48. \$4195 - \$Transfer - Justice's Court	01-Jul-2016	Extra Text:
49. 2840 - Ord Denying ...	01-Jul-2016	Extra Text: ORDER DENYING MOTION TO DISMISS CROSS-COMPLAINT
50. 2645 - Opposition to Mtn	01-Jul-2016	Extra Text: OPPOSITION TO MOTION TO DISMISS COUNTERCLAIM PURSUANT TO JCRCP 12(b)(1)
...		
51. 2645 - Opposition to Mtn	01-Jul-2016	Extra Text: OPPOSITION TO MOTION TO TRANSFER TO DISTRICT COURT
...		
52. 2645 - Opposition to Mtn	01-Jul-2016	Extra Text: OPPOSITION TO MOTION TO DISMISS COMPLAINT AND REQUEST TO APPEAR TELEPHONICALLY
...		
53. 2645 - Opposition to Mtn	01-Jul-2016	Extra Text: OPPOSITION TO MOTION TO DISMISS AND CROSS-MOTION TO TRANSFER ENTIRE CASE TO DISTRICT COURT
...		
54. 2610 - Notice ...	01-Jul-2016	Extra Text: NOTICE OF POSTING RENTAL BOND PURSUANT TO COURT ORDER
55. 2550 - Notice of Hearing	01-Jul-2016	Extra Text:
56. 2550 - Notice of Hearing	01-Jul-2016	Extra Text:
57. 2525 - Notice of Change of Address	01-Jul-2016	Extra Text:
58. 2490 - Motion	01-Jul-2016	Extra Text:
...		
59. 3373 - Other ...	01-Jul-2016	Extra Text: CHRONOLOGY OF THE LITIGATION UP TO THE REVERSAL IN THE NINTH CIRCUT OF THE DISMISSAL OF THE BIJAN LAGHAEI DISTRICT COURT COMPLAINT FOR LACK OF JURISDICTION AND FEDERAL JURISDICATION ARGUMENT EXHIBIT 3 INCOMPLETE UPON ARRIVAL FROM JUSTICE COURT
60. 1312 - Case Assignment Notification	01-Jul-2016	Extra Text: CASE TRANSFERED TO DISTRICT COURT FROM RENO JUSTICE COURT - Transaction 5591555 - Approved By: NOREVIEW : 07-01-2016:15:46:09
61. PAYRC - **Payment Receipted	01-Jul-2016	Extra Text: A Payment of -\$246.00 was made on receipt DCDC545256.
62. 4105 - Supplemental ...	01-Jul-2016	Extra Text: SUPPLEMENTAL POINTS AND AUTHORITIES IN OPPOSITION TO MOTION TO DISMISS COMPLAINT
63. 1137 - Answer and Counterclaim	01-Jul-2016	Extra Text:

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20 **CLARK COUNTY, NEVADA**

21 JEFFREY BENKO, a Nevada resident;

22 CAMILO MARTINEZ, a California

23 resident;

24 ANA MARTINEZ, a California resident;

25 FRANK SCINTA, a Nevada resident;

26 JACQUELINE SCINTA, a Nevada

27 resident; SUSAN HJORTH, a Nevada

28 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

Nevada resident

Plaintiffs,

CASE NO: A-11-649857-C

Honorable William D. Kephart

Dept. 19

**PLAINTIFFS' REPLY BRIEF RE
PLAINTIFFS' MOTION TO
LEAVE TO FILE THIRD
AMENDED COMPLAINT**

Hearing Date: January 19, 2017

Hearing Time: In Chambers

1 v.

2 QUALITY LOAN SERVICE
3 CORPORATION, a California
4 Corporation; MTC FINANCIAL, INC.
5 dba TRUSTEE CORPS, a California
6 Corporation; MERIDIAN
7 FORECLOSURE SERVICE, a California
8 and Nevada Corporation dba MTDS, Inc.,
9 dba MERIDIAN TRUST DEED
10 SERVICE; NATIONAL DEFAULT
11 SERVICING CORPORATION, a Arizona
12 Corporation; CALIFORNIA
13 RECONVEYANCE COMPANY, a
14 California Corporation; and DOES 1
15 through 100, inclusive,

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17 Defendants.
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Pursuant to NRCP 15(a), Plaintiffs moved this Court for an order allowing Plaintiffs to amend their Second Amended Complaint (“SAC”) in this matter by filing a Third Amended Complaint (“TAC”). In the proposed TAC, Plaintiffs add Bijan Laghaei as an additional named Plaintiff with claims against Defendant MTC Financial, Inc dba Trustee Corps (“MTC”), remove references to two Plaintiffs who have been dismissed from this case as named Plaintiffs, remove the third cause of action, and revise various allegations to conform to evidence uncovered thus far in the course of discovery and to provide even further clarity, especially as to Plaintiffs’ class allegations and factual allegations against each Defendant.

In separately filed briefs, Defendants MTC, California Reconveyance Company (“CRC”), and Quality Loan Service Corporation (“QLS”) have either opposed, wholly or in part, Plaintiffs’ request or not opposed it, in the case of CRC, subject to certain objections. Defendant National Default Servicing Corporation (“NDSC”) has not filed and served written opposition to Plaintiffs’ motion within the time required for it to do so, and thus has effectively conceded that the motion is meritorious and consented to its being granted. *See* EDCR 2.20(e).

Rather than addressing the separately filed opposition briefs of MTC, CRC, and QLS in separate reply briefs, Plaintiffs will here address each in turn, starting with QLS before proceeding to CRC and MTC.

From its opposition papers, MTC opposes the motion essentially on the grounds that the proposed amendment of Plaintiff Laghaei as a named Plaintiff would be futile. As detailed below, MTC has failed to meet its burden to show that the requested amendment would be futile or that any other grounds exist to deny the motion. CRC in contrast does not oppose the motion so long as the current deadlines for Phase I of discovery are not changed by the TAC. QLS filed a limited opposition to Plaintiffs’ motion, but apparently only seeks to “reserve[] all rights” while “not

1 necessarily” objecting to the relief Plaintiffs’ seek. For reasons explained below, the
2 Court should grant Plaintiffs’ motion.

3 4 II. ARGUMENT AS TO QLS

5 In a bizarre two-page limited opposition to Plaintiffs’ motion, QLS first correctly
6 states that the addition of Plaintiff Laghaei as a named Plaintiff against MTC “does
7 not appear to materially affect” QLS in this litigation. QLS then, however, vaguely
8 suggests, without any support or specific reference to Plaintiffs’ moving papers, that
9 QLS “reserves all rights and further objects” to the “extent that the Plaintiffs attempt
10 to materially alter the allegations against QLS and ‘sneak in’ a material change as to
11 allegations against QLS after a 300 page motion arguing that they merely seek to add
12 a named plaintiff.” (QLS then follows with a paragraph asserting QLS’ position on
13 Plaintiffs’ first cause of action, a position which QLS concedes in the very same
14 paragraph is an “argument for a different day when QLS files it’s [sic] Motion for
15 Summary Judgment.”) Seemingly contradicting its objection in the first paragraph,
16 QLS then states that it “does not necessarily have an objection to the relief sought”
17 by Plaintiffs. It is thus difficult for Plaintiffs to determine whether QLS opposes or
18 does not oppose Plaintiffs’ motion. Either way, however, QLS has not shown that the
19 motion should be denied.

20 QLS’ suggestion that Plaintiffs have attempted to somehow sneak in allegations
21 materially altering Plaintiffs’ allegations against QLS is unworthy of QLS and
22 nonsensical. As a preliminary matter, QLS assertion that Plaintiffs’ motion is 300
23 pages is misleading and unfair: Plaintiffs’ moving brief itself is only 24 pages. The
24 bulk of the balance of Plaintiffs’ motion consists of Plaintiffs’ proposed TAC and its
25 exhibits, which, consistent with EDCR 2.30(a), Plaintiffs were required to attach as
26 an exhibit to their motion. Moreover, despite any insinuation by QLS to the contrary,
27 Plaintiffs did not argue in their moving papers that they “merely seek to add a named
28 plaintiff”: the very first paragraph of Plaintiffs’ memorandum of points and

1 authorities expressly states that in the proposed amendment Plaintiffs will “
2 add Bijan Laghaei as an additional named Plaintiff with claims against
3 Defendant MTC Financial, Inc dba Trustee Corps (“MTC”), remove references
4 to two Plaintiffs who have been dismissed from this case as named Plaintiffs,
5 remove the third cause of action, and *revise various allegations to conform to*
6 *evidence uncovered thus far in the course of discovery and to provide even*
7 *further clarity, especially as to Plaintiffs’ class allegations and factual*
8 *allegations against each Defendant.*
9 Motion, at p. 1 [emphasis added].

10 Plaintiffs went on to discuss these various proposed revisions, including the alteration
11 of allegations as to each of the Defendants, including QLS, throughout their moving
12 papers. *See, e.g.,* Motion, at pp. 4-5 [discussing revisions to allegations against each
13 Defendant in paragraphs 30 and 31 in the proposed TAC]. There thus can be no fair
14 suggestion that Plaintiffs have attempted to sneak anything past Defendants (or the
15 Court) here.

16 As to the substance—such as it is—of QLS’ reservation of rights and
17 objection, QLS presents no evidence or argument that QLS will be prejudiced—let
18 alone unduly—by Plaintiffs’ requested amendment, or that Plaintiffs’ motion should
19 otherwise be denied. QLS having failed to show that Plaintiffs’ motion should not be
20 granted, the Court should grant Plaintiffs’ motion accordingly.

21 III. ARGUMENT AS TO CRC

22 In its filed written response to Plaintiffs’ motion, CRC states that it does not
23 oppose Plaintiffs’ request so long as the deadlines for Phase I of discovery do not
24 change as a result of the amendment. CRC requests that any order from the Court
25 granting Plaintiffs’ motion should expressly “state that Phase I discovery deadlines
26 shall not be modified or extended as a result” of the TAC. CRC’s discovery delays
27 and misconduct will be addressed with the Commissioner.

28 CRC’s argument consists largely of CRC’s self-serving and at times
misleading account of the course of proceedings in this case, including especially
since discovery commenced following Judge Scann’s denial in February 2016 of

1 Defendants' NRCP 12(b)(5) motions as to Plaintiffs' first and second causes of
2 action. Plaintiffs dispute a number of CRC's assertions, especially as to its conduct in
3 discovery, but these disputes would be more properly resolved in connection with
4 Plaintiffs' motion to compel CRC and for sanctions (and similar motions to follow as
5 needed). It is sufficient to point out here that Plaintiffs do not agree that CRC has
6 "provided supplemental responses to written discovery as warranted" or that CRC
7 has adequately "identified its former pertinent employees and contacted Plaintiffs'
8 counsel to try to assist with the scheduling of depositions" or has fully and properly
9 produced CRC's internal files relating to the named Plaintiffs against CRC.¹
10 Plaintiffs must also point out that, from their perspective, the Discovery
11 Commissioner previously extended the deadline for Phase I of discovery at least in
12 part due to the discovery misconduct and obstruction Plaintiffs have faced from CRC
13 (as well as the other Defendants), which misconduct by MTC, NDSC, and QLS was
14 the subject of the Court's prior order adopting the Discovery Commissioner's rulings
15 on Plaintiffs' prior motions to compel.

16 CRC's interpretation of the current scheduling order here and the deadlines
17 found therein is both strange and illogical. CRC asserts that the scheduling order does
18 not allow motions to amend pleadings or add parties in Phase I of discovery because
19 the order states "N/A" as the deadline for such motions. Contrary to CRC's
20 misinterpretation, the reference "N/A"—or 'not applicable'—plainly means that there
21 is no deadline for such motions during Phase I of discovery, and they can therefore
22 be brought at any time during this phase. Moreover, since CRC effectively concedes
23 that motions to amend pleadings or add parties can be filed in Phase II of discovery
24 (until the current deadline to do so of March 1, 2017), CRC's reading would lead to
25

26 ¹ CRC's apparent suggestion that it was unfairly forced to "expend[] multiple thousands of dollars"
27 in responding to discovery from the Plaintiff Moores and propounding related discovery only to
28 have the Plaintiff Moores voluntarily dismiss their claims against CRC is belied by the fact that
CRC expressly stipulated to the dismissal of the Plaintiff Moores and did not seek (or otherwise
suggest CRC should receive) costs from them in order for them to be dismissed. The Court should
look askance at CRC's attempt here to effectively have its cake and eat it too.

1 illogical and inefficient results. For instance, rather than have Plaintiff Laghaei added
2 as a named Plaintiff now so that Phase I discovery as to him could occur during the
3 appropriate phase, Plaintiffs and Defendants would have to wait until Phase II to
4 proceed with Phase I discovery and any adjudication of Phase I issues, thereby
5 needlessly delaying and complicating the course of discovery! Defendants
6 themselves would thus be prejudiced by being unable to file purportedly dispositive
7 motions as to any such newly added named Plaintiffs (while Plaintiffs would likely
8 face accusations of unreasonable delay and gamesmanship from Defendants for not
9 moving to amend sooner).

10 Thus, Plaintiffs' motion does not address the interplay of NRCP 15 and NRCP
11 16(b), because the latter only comes into play as a limit on the former when a
12 scheduling order's deadline to file a motion to amend has already expired. *See, e.g.,*
13 *Nutton v. Sunset Station, Inc.* (Ct. App. 2015) 131 Nev. Adv. Op. 34, 357 P.3d 966,
14 970-71. Since, when the scheduling order is properly construed, no deadline in the
15 existing scheduling order has expired for Plaintiffs' motion, NRCP 16(b) does not
16 apply here. There has been no disregard (by Plaintiffs) of the existing scheduling
17 order or failure by Plaintiffs to comply with it and its deadlines. The liberal
18 allowance of amendments under NRCP 15(a) is thus the proper standard for the
19 Court here. *See id.* CRC fails to make any argument or present any evidence that,
20 under that standard, Plaintiffs' motion should be denied.

21 Finally, in its response to Plaintiffs' motion, CRC wholly fails to identify any
22 point in Plaintiffs' moving papers where Plaintiffs have sought to have the current
23 deadlines for Phase I of discovery further extended by the Court or the Discovery
24 Commissioner. Nor can CRC do so, as Plaintiffs have made no such request in their
25 moving papers.² It would be inappropriate for the Court at this time to rule that the
26

27 ² Plaintiffs did suggest that the existing deadlines found in the current scheduling order would need
28 to be changed in light of the Commissioner's previous extension of the deadline for Phase I of
discovery (from November 2016 to March 2017), but this was not a request for a further extension
of the deadline for completion of Phase I of discovery.

1 current deadlines for Phase I of discovery should not be further extended (whether
2 due to Plaintiffs' TAC or any other reason). That issue is not before the Court at this
3 time. Should either side subsequently seek to have the Phase I discovery deadlines
4 extended for any reason, the issue should be properly considered in the first instance
5 by the Discovery Commissioner in light of her ongoing supervision of discovery here
6 and the parties' conduct thus far. *See, e.g.*, EDCR 1.90(b)(3) [providing that the
7 "discovery commissioner shall issue a scheduling order in a civil case"]; EDCR
8 2.35(a) [providing in pertinent part that stipulations for extension of dates set in
9 scheduling order must be received by discovery commissioner].

10 IV. ARGUMENT AS TO MTC

11 In its opposition papers, MTC only addresses whether Plaintiffs' motion should be
12 granted as to the addition of Plaintiff Laghaei as a named Plaintiff against MTC.
13 MTC mistakenly contends that the motion should be denied because, according to
14 MTC, amendment would be futile. Wholly absent from MTC's brief is any
15 discussion of the various other revisions made by Plaintiffs in the TAC and identified
16 and discussed at length in Plaintiffs' moving papers. *See, e.g.*, Motion, at pp. 4-5
17 [discussing revisions to allegations against each Defendant in paragraphs 30 and 31
18 in the proposed TAC]. MTC does not offer any explanation, argument, or evidence as
19 to why amendment to make these revisions would be futile or improper. Thus, even
20 assuming *arguendo* that the addition of Plaintiff Laghaei would be futile (as MTC
21 contends), Plaintiffs' motion should still be granted, as MTC effectively concedes by
22 failing to oppose or address these proposed amendments.

23 For reasons explained in Plaintiffs' moving papers and below, however, even
24 MTC's contention that the addition of Plaintiff Laghaei would be futile is not well-
25 founded. The Court should grant Plaintiffs' motion accordingly.

26 A. The Relevant Appellate Decisions Have Rejected MTC's Position that 27 Non-Judicial Foreclosure Is Not Debt Collection

28 As Defendants have done—thus far, largely unsuccessfully—in the past in this

1 case, MTC suggests that Plaintiffs' claims are without merit because other, federal
2 trial courts in the Ninth Circuit have dismissed supposedly similar lawsuits. In
3 February 2016, Judge Scann, ruling on Defendants' motions to dismiss the Second
4 Amended Complaint under NRCP 12(b)(5), properly denied MTC's challenge that
5 Defendants, including MTC, cannot be debt collectors as a matter of law, when they
6 presented this argument to her. See Boylan Declaration, at ¶ 2.

7 The critical statutory language of NRS 649.020(1) provides the proper foundation
8 here for Plaintiffs' claims in this lawsuit. The Nevada statute defines a collection
9 agency very broadly: "all persons engaging, directly or indirectly, and as a primary or
10 secondary object, business or pursuit, in the collection of or in soliciting or obtaining
11 in any manner, the payment of a claim owed or due or asserted to be owed or due to
12 another." NRS 649.020(1) [emphasis added].

13 Here, according to Plaintiffs' evidence previously submitted, including MTC's
14 own documents, it is shown that, at an absolute minimum, debt collection was a
15 secondary object of MTC's business activities. See, e.g., Boylan Declaration, at ¶ 16
16 and Exhibits "E", "H", and "I". In fact, even the straight and simple statutory
17 foreclosure process, by itself, constitutes debt collection. In any event, MTC can do
18 and be both a non-judicial foreclosure trustee and a collection agency at the same
19 time. MTC's own documents, including those relating to Plaintiff Laghaei, show that
20 MTC admits it was soliciting and collecting payments on delinquent debt owed to the
21 client-lenders. *Id.* These documents demonstrate MTC's debt collection activities
22 with respect to Plaintiff Laghaei. Boylan Declaration, at ¶ 16 and Exhibit "I".

23 According to almost all the federal appellate courts, which issue the binding
24 decisions that set the legal precedents which must be followed by federal trial courts,
25 even under the less stringent federal law,³ trustees conducting foreclosure activities
26 of the kind at issue in this case are debt collectors. See *Wilson v. Draper & Goldberg*

27
28 ³ The Fair Debt Collection Practices Act ("FDCPA"), not specifically at issue here, but relevant in
the trial court orders previously relied upon by Defendants.

1 *PLLC* (4th Cir. 2006) 443 F.3d 373; *Piper v. Portnoff Law Assocs.* (3rd Cir. 2005)
2 396 F.3d 227; *Reese v. Ellis, Painter, Ratterree & Adams LLP* (11th Cir. 2012) 678
3 F.3d 1211, 1217-1218 [“A communication related to debt collection does not become
4 unrelated to debt collection simply because it also relates to the enforcement of a
5 security interest. A ‘debt’ is still a ‘debt’ even if it is secured.”]; *Romea v. Heiberger*
6 *& Assocs.* (2nd Cir. 1998) 163 F.3d 111, 117; *Gburek v. Litton Loan Servicing LP*
7 (7th Cir. 2010) 614 F.3d 380, 386; *Kaltenbach v. Richards* (5th Cir. 2006) 464 F.3d
8 524; *Glazer v. Chase Home Fin. LLC* (6th Cir. 2013) 704 F.3d 453, 455; *see also*
9 *Rowe v. Educ. Credit Mgmt. Corp.* (9th Cir. 2009) 559 F.3d 1028; *Alaska Trustee*
10 *LLC v. Ambridge* (Alas. 2016) 2016 Alas. LEXIS 23; *Porada v. Monroe* (Minn. App.
11 July 28, 2014) No. A-13-1615, 2014 WL 3700820 [unpublished]; *Kaymark v. Bank*
12 *of America, N.A.* (3d Cir. 2015) 783 F.3d 168, 176-178 [judicial foreclosure
13 complaint can be communication subject to FDCPA protections]; *McCray v. Federal*
14 *Home Loan Mortg. Corp.* (4th Cir. Oct. 7, 2016) 839 F.3d 354 [concluding that
15 complaint adequately alleged that foreclosure trustee was debt collector under
16 FDCPA and alleged activities were debt collection activity regulated by the FDCPA];
17 *Shapiro & Meinhold v. Zartman* (Colo. 1992) 823 P.2d 120, 122-124 [en banc].
18 Thus, the great weight of near-uniform appellate authority and the persuasive content
19 of those near-uniform decisions completely overwhelm the erroneous prior
20 unpublished federal trial court orders in Nevada that Defendants have relied on in the
21 past (and which were effectively rejected by Judge Scann).⁴

22 Thus, given the many contrary federal circuit decisions, MTC (and the other
23 Defendants) cannot properly rely on the erroneous federal trial court decisions from
24 Nevada. In any event, these federal district court decisions do not carry any binding
25 precedential effect even for other federal courts. *See, e.g., NASD Dispute Resolution,*

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27
28 ⁴ By Plaintiffs’ calculation, of the appellate judges and justices that have considered these issues in
these opinions, more than 45 of them—including then-Circuit Judge, now Justice Sotomayor—have
ruled in Plaintiffs’ favor on these issues, while only 5 of them have ruled the other way. *See id.*

1 *Inc. v. Judicial Council*, 488 F. 3d 1065, 1069 (9th Cir. 2007) (“[A] district court
2 opinion does not have binding precedential effect.”).

3 The two federal trial court decisions from Nevada cited by MTC are also
4 unpersuasive here. *See Bailin v. Select Portfolio Servicing* (D. Nev. August 7, 2015)
5 2015 U.S. Dist. LEXIS 104655; *Wensley v. First Nat’l Bank of Nev.* (D. Nev. 2012)
6 874 F.Supp. 2d 957. In the first, the federal district court concluded that the plaintiff
7 had adequately stated a claim against the defendant for violation of the federal
8 FDCPA, but the court then ruled that the Nevada Deceptive Trade Practices Act
9 (“NDTPA”) did not apply because federal trial court orders from Nevada had
10 “routinely held that the NDTPA does not apply to most real estate loan transactions.”
11 *Bailin, supra*, 2015 U.S. Dist. LEXIS 104655, at *6-8. In concluding that Plaintiffs
12 here had adequately stated claims under the NDTPA, however, Judge Scann rejected
13 the *Bailin* court’s assumption that the NDTPA does not apply to non-judicial
14 foreclosures. In the second case, the federal district court, citing another federal trial
15 court order from Nevada, dismissed a claim for violation of the FDCPA on the
16 ground—rejected by the appellate opinions referenced above and rejected by Judge
17 Scann in February 2016—that “foreclosure pursuant to a deed of trust does not
18 constitute debt collection under the FDCPA.” *Wensley, supra*, 874 F.Supp. 2d at 963.
19 The trial court also dismissed a claim for violation of the NDTPA on the ground—
20 again, rejected by Judge Scann in February 2016—that N.R.S. § 80.015(1)(a), (g),
21 and (h) “explicitly exempted [non-judicial foreclosure trustees such as MTC] from
22 the need to acquire licenses” (such as a collection agency license from the FID). *Id.*
23 For these reasons, these trial court orders, premised on misunderstandings of Nevada
24 law, were wrongly decided and are not persuasive authority here.

25 Like Nevada, many states have statutes requiring companies in the debt
26 collection business to obtain a license from the state before pursuing that business
27 within its geographical boundaries and against its citizens. It is a simple fact, and a
28 routine application of those state statutes, that if one pursues collection agency

1 activity on defaulted debts by foreclosure, lawsuit, demands, issuing notices, sending
2 letters, engaging in phone calls, requesting payments, requesting or discussing
3 reinstatement of the defaulted debt, etc., and do so without a license, then one has
4 violated the state's law and committed illegal acts. *See Finch v. LVNV Funding LLC*
5 (Md. App. 2013) 212 Md.App. 748 [class action]; *Badeen v. Par, Inc.* (Mich. 2014)
6 496 Mich. 75 [class action]; *Wade v. Regional Credit Association* (9th Cir. 1996) 87
7 F.3d 1098 [Idaho statute]; *Suttell & Assoc. v. Encore Capitol Group* (Wash. 2014)
8 181 Wash. 2d 329; *JHass Group LLC v. Arizona Dept. of Financial Institutions*
9 (Ariz. App. 2015) 238 Ariz. 377; *Simpson v. Cavalry SPV* (Ark. 2014) 440 S.W. 2d
10 335; *Commercial Service of Perry, Inc. v. Fitzgerald* (Colo. App. 1993) 856 P.2d 58;
11 *Centurion Capital Corp. v. Druce* (N.Y. Slip Op. 26521) 828 N.Y.S. 2d 851; *Smith v.*
12 *LVNV Funding LLC* (E.D. Tenn. 2012) 894 F.Supp.1045 [Tennessee statute]; *Veras*
13 *v. LVNV Funding LLC* (D. N.J. Mar. 17, 2014) 2014 WL 1050512.

14
15 **B. Evidence from MTC Shows the Proposed Amendment Is Necessary to Aid
the Court's Adjudication of MTC's Expected Summary Judgment Motion**

16 As stated in Plaintiffs' moving papers, the amendment sought by Plaintiffs will
17 aid the Court in its adjudication of any motion for summary judgment MTC may file
18 in the future, as Plaintiff Laghaei will refute a number of factual assertions that MTC
19 previously relied on in its motion in attacking the Plaintiff Sansotas' causes of action.
20 Evidence received from MTC definitively shows the ways in which Plaintiff
21 Laghaei's allegations and evidence will assist Plaintiffs. *See* Boylan Declaration, ¶ 16
22 and Exhibit "I". This evidence shows definitively that MTC communicated with
23 Plaintiff Laghaei by telephone and e-mail and negotiated, prepared, and documented
24 a loan forbearance agreement with him as part of MTC's collection agency activities
25 in the State of Nevada during the relevant period. *Id.* These documents, as well as
26 those previously provided as exhibits to the declaration of Plaintiff Laghaei
27 previously submitted as Exhibit "E" with Plaintiffs' moving papers, demonstrate the
28 specific importance of the addition of Plaintiff Laghaei as a named Plaintiff in this

1 matter, because MTC has not yet and may never produce such important evidence as
2 to the Plaintiff Sansotas (and other members of the putative class).

3 Plaintiffs are confident that discovery relating to Plaintiff Laghaei will reveal even
4 further evidence refuting MTC's positions and show that not only Plaintiff Laghaei
5 but also the existing named Plaintiff Sansotas have valid claims against MTC. In this
6 regard, Plaintiff Laghaei's addition as a class representative and his allegations would
7 not only add substance to the Plaintiff Sansotas' allegations but also be germane to
8 them.

9 Even if the Court should conclude eventually that summary judgment should be
10 granted MTC as to the Plaintiff Sansotas, the addition of Plaintiff Laghaei as a class
11 representative would aid the Court and the parties and conserve judicial resources
12 because Plaintiffs would be able to proceed with Plaintiff Laghaei as the remaining
13 class representative for the putative class against MTC. The costs and delays that
14 would be required otherwise by a search for a substitute class representative would be
15 avoided if Plaintiffs' motion to amend were granted at this time.

16 Although Plaintiffs are confident that the Plaintiff Sansotas' causes of action will
17 survive a motion for summary judgment by MTC, they ask that the Court grant their
18 motion and give them leave to amend their SAC at this time.

19 **C. Policy Favors Granting Leave to Amend Complaints**

20 The Nevada rules make clear that "leave [to amend] shall be freely given when
21 justice so requires," and this mandate should be heeded. NRCP 15 (a); *see also*
22 *Foman, supra*, 371 U.S. at 182. This policy is "to be applied with *extreme liberality*."
23 *Owens v. Kaiser Found. Health Plan, Inc.* (9th Cir. 2001) 244 F. 3d 708, 712
24 [emphasis added].

25 Despite MTC's assertion to the contrary, this "liberality in granting leave to
26 amend is not dependent on whether the amendment will add causes of action or
27 parties." *DCD Programs, Ltd. v. Leighton* (9th Cir. 1987) 833 F.2d 183, 186
28

1 [emphasis added]. The two cases cited by MTC do not assist it here. *See Union P.R.*
2 *Co. v. Nevada Power Co.* (9th Cir. 1991) 950 F.2d 1429, 1432 [stating only that
3 amendments “seeking to add claims are to be granted *more* freely than amendments
4 adding parties” but *not* that the latter type of amendments is not subject to Rule 15’s
5 liberality in allowing amendment][emphasis added]; *Bookhamer v. Sunbeam*
6 *Products, Inc.* (N.D. Cal. Dec. 20, 2012) 2012 U.S. Dist. LEXIS 180497, at *13
7 [quoting *Union P.R. Co.* for proposition that amendments to add claims were to be
8 *more* freely allowed but *not* stating that amendments to add parties were subject to a
9 heightened requirement]. In *Bookhamer*, for instance, the Court denied the motion to
10 amend on the ground that the movant acted with undue delay in bringing the motion
11 to amend only roughly two months before trial and three months after the close of
12 non-expert discovery. 2012 U.S. Dist. LEXIS 180497, at *15-16. (As explained
13 below, no such undue delay exists here.)

14 Given the liberality with which Rule 15 is to be applied under the proper
15 standard, a denial of leave to amend “constitutes an abuse of discretion unless the
16 court gives sufficient reason, such as futility of amendment, undue delay, bad faith,
17 dilatory motive, undue prejudice, or repeated failure to cure deficiencies by previous
18 amendments.” *Liberty Mut. Ins. Co., supra*, 216 F.R.D. at 16 [citing *Foman, supra*,
19 371 U.S. at 182, *Caribbean Broad Sys., Ltd. v. Cable & Wireless P.L.C.* (D.C. Cir.
20 1998) 148 F.3d 1080, 1083].

21 **D. Defendants Will Not Be Prejudiced by the Requested Amendment**

22 It is MTC’s burden as the party opposing Plaintiffs’ motion to amend to make a
23 showing of undue prejudice (or other ground to deny the motion). *See, e.g., Saes*
24 *Getters S.P.A. v. Aeronex, Inc.* (S.D. Cal. 2002) 219 F. Supp. 2d 1081, 1086 [citing
25 *Foman, supra*, 371 U.S. at 182]. For purposes of a Rule 15 motion, undue prejudice
26 “means substantial prejudice or substantial negative effect; the Ninth Circuit has
27 found such substantial prejudice where the claims sought to be added ‘would have
28

1 greatly altered the nature of the litigation and would have required defendants to have
2 undertaken, at a late hour, an entirely new course of defense.” *Id.* [quoting *Morongo*
3 *Band of Mission Indians v. Rose* (9th Cir. 1990) 893 F.2d 1074, 1079]. Thus, when a
4 “party opposes a motion for leave to amend on the basis of undue prejudice, the
5 showing of prejudice must be substantial.” *Id.* at 1094 [citing *Morongo Band of*
6 *Mission Indians, supra*, 893 F.2d at 1079].

7 Here, MTC merely asserts a bald conclusion—without argument, authority, or
8 evidence—that MTC “would be prejudiced by Laghaei’s injection into the lawsuit as
9 a named plaintiff at this stage of the lawsuit.” *Opposition*, at 16. MTC having failed
10 to meet its burden of making any showing—let alone the required substantial
11 showing—of undue prejudice, Plaintiffs’ motion should be granted.

12 Even assuming for sake of argument that MTC had attempted to make some
13 showing of undue prejudice, Plaintiffs’ motion should nonetheless be granted. As
14 stated in Plaintiffs’ moving papers, Plaintiff Laghaei will be joining the named
15 Plaintiff Sansotas in their alleged causes of action against MTC. No new claims will
16 be asserted. The allegations challenged by MTC⁵ therefore will *not* affect it unduly as
17 they will not greatly alter the nature of the litigation or require MTC to undertake an
18 entirely new course of defense. *See Saes Getters, supra*, at 1086. (Since the addition
19 of Plaintiff Laghaei would not affect the other Defendants in this action at all, there
20 can be no undue prejudice to them either and they have not asserted otherwise.)

21 This case is indeed effectively in its infancy. For example, until late December
22 2016, NDSC had failed to produce a single witness for deposition. At this early stage
23 of litigation, motion to amend cut-off dates have only recently been set and discovery
24 has effectively only just begun in light of Defendants’ ongoing discovery misconduct
25 and the Court’s recent order adopting the Discovery Commissioner’s

26
27 ⁵ As noted above, MTC has not challenged the various other revisions made in the proposed TAC,
28 including the removal of the third cause of action asserted in the SAC, the removal of two named
Plaintiffs with claims against CRC, or revisions to the allegations against each of the Defendants as
to the nature of their activities in Nevada.

1 recommendation that phasing of discovery be imposed. Plaintiffs have filed over 11
2 motions to compel so far. According to the existing scheduling order entered on
3 August 22, 2016, the current deadline for Plaintiffs to file a motion to amend
4 pleadings or add parties is as late as March 1, 2017 (as to Phase II of discovery). (In
5 light of the Commissioner's subsequent decision on October 26, 2016, to extend the
6 deadline for completion of Phase I of discovery by several months, it is likely that the
7 deadline to file a motion to amend will be similarly extended.)

8 Under these circumstances, factors such as undue delay and litigation expense for
9 the defense are not implicated by Plaintiffs' motion; to the extent such considerations
10 should be taken into account here, they support granting Plaintiffs' request for leave
11 to amend. The addition of Plaintiff Laghaei and his allegations, which are
12 undoubtedly germane to Plaintiffs' existing allegations, will add substance to the
13 other Plaintiffs' claims and further diversity to the class representatives. *See In re*
14 *Norplant Contraceptive Prods. Liab. Litig. v. Wyeth Labs., Inc.* (E.D. Tex. 1995) 163
15 F.R.D. 255, 257 ["In the case at bar, because the additional plaintiffs complain of the
16 same side effects as those listed in the original complaint, granting leave to amend in
17 order to add these plaintiffs will cause neither undue delay nor undue prejudice, and
18 the amendment is certainly germane to the original complaint. Additionally, there is
19 no evidence to suggest that Plaintiffs are acting in bad faith in seeking to add these
20 new plaintiffs. Finally, although a denial of the amendment may not result in
21 prejudice against the Plaintiffs, because this case appears to still be in its infant
22 stages, Defendants also will not be unfairly prejudiced by the addition of these three
23 new plaintiffs."]. Indeed, evidence already produced by MTC in discovery relating to
24 Plaintiff Laghaei shows definitively MTC's collection agency activities during the
25 relevant period, bearing out the allegations of the named Plaintiff Sansotas and the
26 allegations of the TAC. Boylan Declaration at ¶ 16 and Exhibit "I".

27 The "test for allowing amendment is not whether Defendants will be at all
28 disadvantaged, but whether they would be 'unfairly disadvantaged or deprived of the

1 opportunity to present facts or evidence which it would have offered had the
2 amendments been timely.” *Hartford Ins. v. Socialist People’s Libyan* (D.D.C. 2006)
3 422 F.Supp. 2d 203, 206 [quoting *In re Vitamins Antitrust Litigation* (D.D.C. 2003)
4 217 F.R.D. 34, 36][noting also that “Defendants will not be unfairly disadvantaged
5 by the addition of new plaintiffs, who could file a separate action against Defendants
6 in their own names”]. The addition of Plaintiff Laghaei now as a named Plaintiff—
7 rather than subsequently—would allow the parties to conduct discovery on the merits
8 of his claims against MTC in the proper Phase I of discovery and resolve any
9 challenges to those claims in Phase I (as opposed to trying to do so in a subsequent
10 phase of discovery). If Plaintiff Laghaei were added as a named Plaintiff in a
11 subsequent phase—for instance, because MTC successfully challenged in Phase II of
12 discovery the adequacy as class representatives of the existing named Plaintiffs with
13 claims against it, thereby requiring the substitution of class representatives—the
14 parties would be forced to re-open Phase I discovery and litigate Phase I issues anew,
15 with attendant delays and expenses for all.

16 Given the absence of prejudice, the Court should follow the existing presumption
17 under Rule 15(a) in favor of granting leave to amend. *See Eminence Capital, LLC,*
18 *supra*, 316 F.3d at 1052.

19 **E. MTC Has Not Met Its Burden of Showing Amendment Would Be Futile**

20 There can be no valid suggestion that the amendment to add Plaintiff Laghaei
21 would be futile here, as this Court (J. Scann) has already ruled (in February 2016)
22 that the two causes of action Plaintiff Laghaei would be joining the existing Plaintiffs
23 in alleging state viable claims against MTC. *See Hartford Ins., supra*, 422 F.Supp. 2d
24 at 209 [granting leave to amend and noting that “a complaint may only be dismissed
25 for failure to state a claim where it appears beyond doubt that the plaintiff can prove
26 no set of facts in support of his claim which would entitle him to relief.”]; *see also*
27 *Saes Getters, supra*, at 1088 [In considering futility of amendment, “the Court is
28

1 required to accept [the moving party's] allegations in the proposed [amended
2 pleading] as true" and apply the "standard for considering sufficiency of a pleading
3 challenged under Rule 12(b)(6)" [citing *Miller v. Rykoff-Sexton, Inc.* (9th Cir. 1988)
4 845 F.2d 209, 214]. Challenges to the legal sufficiency of a proposed amendment,
5 however, "are often more appropriately raised in a motion to dismiss rather than in an
6 opposition to a motion for leave to amend." *Saes Getters, supra*, at 1086; *see also id.*
7 at 1088 ["Such a factual question is more appropriately determined by way of a fully
8 briefed motion or a trial, rather than in the context of a motion for leave to amend."]

9 Notably, MTC does not attempt to challenge Plaintiffs' motion here by arguing
10 that Plaintiff Laghaei's allegations do not state a cause of action because they are
11 somehow legally insufficient. Given that the causes of action Plaintiff Laghaei would
12 be joining have already been unsuccessfully challenged by Defendants, including
13 MTC, in their motion to dismiss under NRCP 12(b)(5), any such challenge here
14 would also fail.⁶ Instead, MTC attempts to argue that amendment would be futile
15 because, according to MTC, (1) Plaintiff Laghaei is estopped from pursuing his
16 claims because of purported judicial admissions, (2) Plaintiff Laghaei waived his
17 claims; (3) Plaintiff Laghaei purportedly opted out of the class action, and (4)
18 Plaintiff Laghaei's claims are barred by the statute of limitations.

19 As a preliminary matter, to the extent that MTC relies heavily on "external
20 evidence" rather than the allegations in the proposed TAC, MTC's "evidence-based
21 arguments would be more appropriately raised on a motion for summary judgment"
22 rather than an opposition to a motion to amend. *Barnett v. County of Contra Costa*
23 (N.D. Cal. June 18, 2010) 2010 U.S. Dist. LEXIS 68864, at *13. (Once Plaintiffs'
24 proposed TAC is filed, MTC can try to attack Plaintiff Laghaei's claims however
25 MTC deems appropriate.) For reasons explained below, MTC's arguments fail.

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28 ⁶ After the parties submitted voluminous briefing and the Court heard lengthy oral argument on the
legal adequacy of Plaintiffs' relevant causes of action here, Judge Scann denied Defendants' NRCP
12(b)(5) motions to dismiss in February 2016. Boylan Declaration, at ¶ 2.

1 **1. MTC's Argument Regarding Purported Judicial Admissions Fails**

2 Relying on statements in a reply brief filed by Plaintiff Laghaei in a prior and
3 separate lawsuit against MTC (and other defendants), MTC argues incorrectly that
4 the addition of Plaintiff Laghaei would be futile because Plaintiff Laghaei's prior
5 statements constitute judicial admissions that MTC is a nominal defendant that
6 cannot be subject to damages. MTC's argument relies on a fundamental
7 misunderstanding or misinterpretation of the doctrine of judicial admissions.

8 First, the two cases relied on by MTC regarding judicial admissions—which
9 applied federal evidence law—make clear that whether to consider statements in
10 briefs judicial admissions is within the discretion of the Court. *See, e.g., American*
11 *Title Ins. Co. v. Lacelaw Corp.*, (9th Cir. 1988) 861 F.2d 224, 227; *Gospel Missions*
12 *of America v. City of Los Angeles* (9th Cir. 2003) 328 F.3d 548, 557. Second, the
13 doctrine, if applied, only applies to “*factual* assertions” as opposed to “*legal*”
14 assertions. *See CSC Consulting, Inc. v. Tosco Ref. Co.* (9th Cir. 2001) 19 Fed. Appx.
15 698, 701 [emphasis in original][citing *American Title Ins. Co., supra*, 861 F.2d at
16 226]; *see also Reyburn Lawn & Landscape Designers, Inc. v. Plaster Dev. Co.*
17 (2011) 127 Nev. 331, 343, 255 P.3d 268 [“Judicial admissions are defined as
18 deliberate, clear, unequivocal statements by a party about a concrete *fact* within that
19 party’s knowledge.”][emphasis added]; *American Title Ins. Co., supra*, 861 F.2d at
20 227 [“We . . . hold that statements of *fact* contained in a brief *may* be considered
21 admissions of the party in the discretion of the district court.”][second emphasis in
22 original]. For instance, the doctrine does *not* apply to “counsel’s statements of their
23 conception of the legal theory of a case, i.e., legal opinion or conclusion” or “theories
24 of law, such as contract interpretation.” *Eli Lilly & Co. v. Valeant Pharms. Int’l* (S.D.
25 Ind. Feb. 15, 2011) 2011 U.S. Dist. LEXIS 15243, at *8-9. Here, at least several of
26 the statements relied on by MTC—and MTC’s interpretation of those statements as a
27 concession that MTC is a “nominal defendant that cannot be subject to damages”
28 (*Opposition*, at p. 8 [emphasis in original])—are not assertions of fact but legal

1 assertions to which the doctrine of judicial admissions simply has no application.

2 They are thus not, despite MTC's assertions to the contrary, judicial admissions at all.

3 Third, and most damaging for MTC's argument, it is axiomatic that admissions in
4 "one court proceeding . . . are generally not considered binding in other, separate
5 litigation." *Nextdoor.com, Inc. v. Abhyanker* (N.D. Cal. July 19, 2013) 2013 U.S.
6 Dist. LEXIS 101440, at *28-29 [collecting and discussing decisions by the Seventh,
7 Fifth, First, and Eighth Circuit Courts of Appeal and district courts in the Ninth
8 Circuit so holding]; *see also Kohler v. Leslie Hindman, Inc.* (7th Cir. 1996) 80 F.3d
9 1181, 1185 ["When a party in a lawsuit makes an admission in its pleadings or in its
10 answer to a request for admissions, it makes a judicial admission that can determine
11 the outcome of that lawsuit. . . . *But a statement made in one lawsuit cannot be a*
12 *judicial admission in another.* . . . Ms. Hindman's statement in her state court suit is
13 not even competent evidence in this case because it states a legal conclusion and is
14 not the admission of a fact that could be dispositive."][emphasis added]. Thus, even
15 assuming *arguendo* that each of the statements relied upon by MTC were assertions
16 of fact, they cannot be judicial admissions in this case as they were made in a wholly
17 separate lawsuit.

18 2. The Doctrine of Judicial Estoppel Does Not Apply Here

19 MTC may be attempting, however inarticulately, to argue—without supporting
20 authority—that Plaintiff Laghaei is estopped from asserting his claims in this lawsuit
21 under the similarly named—but distinct—doctrine of judicial estoppel.⁷ "Judicial
22 estoppel is an equitable doctrine used to protect the judiciary's integrity and is
23 invoked by a court at its discretion." *Deja Vu Showgirls of Las Vegas, LLC v. Nevada*
24 *Department of Taxation* (2014) 130 Nev. Adv. Opinion 72, 9, 334 P.3d 387, 391.
25 There are important limitations on the doctrine application, however: thus, the
26

27 ⁷ Illustrating MTC's confusion, MTC in its opposition papers refers, seemingly interchangeably, to
28 the separate and distinct doctrines of judicial admissions, judicial estoppel, and waiver. *Opposition*,
at p. 10. For reasons explained throughout this brief, however, MTC's arguments, considered under
any of these doctrines, fail.

1 doctrine “should be applied only when a party’s inconsistent position [arises] from
2 intentional wrongdoing or an attempt to obtain an unfair advantage” and “does not
3 preclude a change in position that is not intended to sabotage the judicial process.”
4 *Id.* [quoting *S. Cal. Edison v. First Judicial Dist. Court* (2011) 127 Nev. 276, 255
5 P.3d 231, 235-236][alteration in original]. The doctrine “may apply when (1) the
6 same party has taken two positions; (2) the positions were taken in judicial . . .
7 proceedings; (3) the *party was successful in asserting the first position* . . .; (4) the
8 two positions are totally inconsistent; and (5) the first position was not taken as a
9 result of ignorance, fraud, or mistake.” *Id.* [second alteration in original][internal
10 quotation marks omitted]. Federal law is to similar effect in this regard: the doctrine
11 is “*restricted*” to “cases where the *court relied on*, or ‘accepted,’ the party’s *previous*
12 *inconsistent position*.” *Casa Del Caffè Vergnano S.P.A. v. Italflavors San Diego,*
13 *LLC* (9th Cir. 2016) 816 F.3d 1208, 1213 [quoting *Hamilton v. State Farm Fire &*
14 *Cas. Co.* (9th Cir. 2001) 270 F.3d 778, 783][internal quotation marks omitted].

15 Even if the proposed addition of Plaintiff Laghaei is analyzed under the doctrine
16 of judicial estoppel, however, Plaintiff Laghaei is not estopped from asserting his
17 claims against MTC in this lawsuit. In order for Plaintiff Laghaei to be estopped here,
18 it would be necessary for his prior inconsistent position to have been adopted by the
19 court in the prior proceeding. Here, however, MTC presents no evidence—and,
20 indeed, can present no evidence—that Plaintiff Laghaei was successful in asserting
21 his prior position regarding MTC in the separate litigation before the Ninth Circuit (a
22 necessary condition for the doctrine to apply). As the exhibits relied on by MTC
23 make clear, the Ninth Circuit’s decision in the separate litigation was wholly
24 independent of Plaintiff Laghaei’s counsel’s statements of legal opinion regarding
25 MTC. In its decision, the Ninth Circuit first “reject[ed] Laghaei’s contention that
26 defendants waived their right to remove this action to federal court by first filing an
27 unlawful detainer action in Nevada state court.” *Laghaei v. Fed. Home Loan Mortg.*
28 *Corp.* (9th Cir. 2015) 624 Fed. Appx. 597, 597. Then, relying on a ground not

1 advanced by Plaintiff Laghaei, the Ninth Circuit vacated the lower court's "judgment
2 dismissing [Plaintiff] Laghaei's complaint for failure to state a claim, and remand[ed]
3 to the district court to determine if" the unlawful detainer action "remains pending in
4 Nevada state court, and if so, whether the primary exclusive jurisdiction applies" to
5 the case. *Id.* at 598. Because its decision was grounded on a possible absence of
6 subject matter jurisdiction, the Ninth Circuit properly did not address—let alone rule
7 on—whether Plaintiff Laghaei was correct regarding MTC and its role in the
8 litigation. *Id.* Thus, because Plaintiff Laghaei necessarily could not have been
9 successful before in asserting the position MTC contends conflicts with his position
10 in this lawsuit, there is no ground for deeming him estopped from proceeding in this
11 matter.

12 Even if MTC had shown that Plaintiff Laghaei had been successful in asserting
13 his prior position, MTC would also have to show that the two positions were totally
14 inconsistent, the first position was not taken due to fraud, ignorance, or mistake, and
15 that the inconsistent position arose from intentional wrongdoing or an attempt to
16 obtain an unfair advantage. MTC has not even attempted to make this necessary
17 showing here. The Court should reject MTC's flawed argument accordingly.

18 3. Plaintiff Laghaei's Claims Were Not Waived

19 MTC wrongly asserts—without evidence, authority, or true argument—that
20 Plaintiff Laghaei's claims against MTC were somehow waived or abandoned. As a
21 preliminary matter, MTC's suggestion that Plaintiff Laghaei "cannot resurrect his
22 dismissed claims" against MTC (*Opposition*, p. 9) because they were dismissed by
23 the federal district court in January 2016 omits to mention the crucial fact that those
24 claims were dismissed following remand from the Ninth Circuit because the federal
25 district court properly concluded that it lacked subject matter jurisdiction under the
26 exclusive prior jurisdiction doctrine. See MTC Request for Judicial Notice, Exhibit 5
27 [noting that the parties "concede that the exclusive prior jurisdiction doctrine . . .
28

1 applies to deprive this Court of jurisdiction” and dismissing action]. It is axiomatic,
2 however, that a dismissal for lack of subject matter jurisdiction is not a dismissal on
3 the merits. FRCP 41(b) [dismissal for lack of subject matter jurisdiction is not
4 dismissal on the merits]; *see also Landers v. Quality Communs., Inc.* (2014) 2014
5 Nev. Unpub. LEXIS 1240, at *4 [“Under federal claim preclusion law, unless the
6 court in its order for dismissal otherwise specifies, a dismissal . . . *other than a*
7 *dismissal for lack of jurisdiction*, . . . operates as an adjudication upon the
8 merits.”][emphasis added; first ellipsis in original; internal quotation marks omitted];
9 *O’Campo v. Ghoman* (9th Cir. 2015) 622 Fed. Appx. 609, 609 [“However, the
10 district court erred in dismissing the complaint with prejudice, as a dismissal for lack
11 of jurisdiction is not an adjudication on the merits.”]; *Akins v. San Diego Cmty.*
12 *College Dist.* (S.D. Cal. July 26, 2013) 2013 U.S. Dist. LEXIS 105122, at *9-10
13 [citing FRCP 41(b) and *Denham v. United States* (C.D. Cal. 1992) 811 F.Supp. 497,
14 502, for proposition that dismissal for lack of subject matter jurisdiction is not an
15 adjudication on the merits]; **Exhibit “H”** at ¶ 4. Plaintiff Laghaei therefore may seek
16 relief in state court for his dismissed claims. *Mason v. Witt* (E.D. Cal. 1999) 74
17 F.Supp. 2d 955, 958 [“[A]ny dismissal based on lack of subject matter jurisdiction is
18 not a dismissal on the merits and, therefore, the plaintiff may seek relief in state
19 court, if appropriate.”][citing *Cook v. Peter Kiewit Sons Co.*, (9th Cir. 1985) 775 F.2d
20 1030, 1035]. Thus, MTC’s suggestion that the January 2016 dismissal of Plaintiff
21 Laghaei’s claims for lack of federal subject matter jurisdiction somehow prevents
22 him from bringing those claims is simply wrong.

23 MTC also vaguely asserts—without evidence or authority—that Plaintiff Laghaei
24 somehow waived or abandoned his claims against MTC because he only filed a
25 wrongful foreclosure cross-complaint against Federal Home Loan Mortgage
26 Corporation (“FHLMC”) in March 2016 in the unlawful detainer FHLMC had
27 initiated against him. *Opposition* at p. 9. Nowhere in MTC’s brief, however, does
28 MTC provide true argument or authority establishing that this supposed failure by

1 Plaintiff Laghaei constitutes a waiver of claims against MTC such that he could not
2 bring claims against MTC in this lawsuit. As waiver is an affirmative defense, it is
3 MTC's burden as the party raising it to plead and prove it. *See* NRCP 8(c) ["In
4 pleading to a preceding pleading, a party shall set forth affirmatively . . . waiver, and
5 any other matter constituting an avoidance or affirmative defense."]. Having failed to
6 do so here, MTC's waiver argument fails.

7 The facts here also do not show that Plaintiff Laghaei waived his claims against
8 MTC. "A waiver is an intentional relinquishment of a known right. A waiver may be
9 implied from conduct which evidences an intention to waive a right, or by conduct
10 which is inconsistent with any other intention than to waive the right." *Mahban v.*
11 *MGM Grand Hotels* (1984) 100 Nev. 593, 596, 691 P.2d 421, 423 [internal citation
12 omitted][reversing summary judgment on ground that material questions of fact
13 existed on waiver issues]. "Whether there has been a waiver is a question for the trier
14 of facts." *Id.* at 596, 424. "If intent is to be inferred from conduct, the conduct must
15 clearly indicate the party's intention. . . . However, delay alone is insufficient to
16 establish a waiver." *Nev. Yellow Cab Corp. v. Eighth Judicial District* (2007) 123
17 Nev. 44, 49, 152 P.3d 737, 740 [footnotes omitted].

18 Here, MTC presents no facts—and the facts available do not show—that Plaintiff
19 Laghaei intentionally relinquished his claims against MTC. *See* Exhibit "H", at ¶
20 6. The most that MTC could arguably show on the evidence it has presented with its
21 opposition papers is that Plaintiff Laghaei failed to bring claims against MTC when
22 he filed claims against FHLMC in March 2016 but now seeks to serve as a named
23 Plaintiff against MTC in this litigation, bringing claims similar or identical to those
24 he previously brought in the separate litigation. Essentially, MTC is arguing that the
25 mere delay of several months (between March 2016 and July 2016 when Plaintiffs'
26 first motion to amend was filed) is conduct clearly indicating Plaintiff Laghaei's
27
28

1 intention to relinquish any claims against MTC.⁸ Moreover, the supporting
2 declaration of Plaintiff Laghaei attests that he has never had any intention of waiving,
3 relinquishing, or abandoning any claims or damages he has against MTC, including
4 any previously asserted by him in the prior litigation involving MTC. Boylan
5 Declaration at ¶ 15 and Exhibit “H” at ¶ 6. As delay alone is not enough to establish
6 waiver and the facts here do not suggest that Plaintiff Laghaei otherwise intentionally
7 relinquished his claims against MTC, any argument that Plaintiff Laghaei waived his
8 claims must fail at this time.

9
10 **4. There Has Been No Abuse of Process Here by Plaintiff Laghaei**

11 As detailed above, the doctrines of judicial admissions, judicial estoppel, and
12 waiver do not serve as bars to Plaintiff Laghaei’s addition here as a named Plaintiff
13 against MTC. The statements that MTC seeks to rely on do not qualify as judicial
14 admissions at all (but statements of legal opinion), but would not be barred even if
15 they were judicial admissions because they were made in wholly separate litigation.
16 Moreover, Plaintiff Laghaei is not judicial estopped from asserting his claims against
17 MTC in this lawsuit, because it would be necessary for Plaintiff Laghaei to have
18 successfully asserted his prior inconsistent position by having it adopted by the court
19 in the prior proceeding. Here, however, the evidence presented by MTC shows that
20 Plaintiff Laghaei was not successful in asserting his prior position regarding MTC in
21 the separate litigation before the Ninth Circuit (a necessary condition for the doctrine
22 to apply). As shown above, there has also been no valid waiver by Plaintiff Laghaei
23 of his claims against MTC.

24 In a final attempt to shore up its unsupportable assertions, MTC asserts—again,
25 without any authority—that Plaintiff Laghaei’s revision of his position over time is

26
27 ⁸ In an instance of internal inconsistencies in MTC’s assertions, MTC first states that any claim by
28 Plaintiff Laghaei against MTC in his separate litigation would be “subject to dismissal based on his
judicial admissions”—which statements, for reasons explained above, are not judicial admissions—
but then states that Plaintiff Laghaei waived any such claim when he chose not to sue MTC in the
separate litigation initiated in March 2016 against FHLMC. *Opposition*, at p. 10.

1 somehow an abuse of process. Despite MTC's assertions to the contrary, however,
2 parties are allowed to reconsider and, as appropriate, revise their legal positions over
3 time, to reflect new information, new conclusions, or other appropriate
4 considerations. The cases discussed above in the context of judicial estoppel make
5 this clear. It is only when a change in position would arise from intentional
6 wrongdoing, or would constitute an attempt to obtain an unfair advantage, or would
7 sabotage the judicial process—none of which is implicated here—that the courts may
8 bar parties from doing so. *See, e.g., Deja Vu Showgirls of Las Vegas, LLC, supra*,
9 130 Nev. Adv. Opinion 72, 334 P.3d at 391. MTC would have it that parties must
10 stick with legal positions that they unsuccessfully asserted in separate litigation,
11 because revision or retraction of those positions in separate litigation would be abuse
12 of process. This is simply not the law, and, as explained above, for good reason. The
13 Court should reject MTC's assertions accordingly.

14 **5. The Statute of Limitations Is Tolloed for Putative Class Members upon**
15 **Filing of the Class Action; This Case Was Filed in 2011**

16 It is well-settled law in Nevada that the filing of a class action tolls any applicable
17 statute of limitations for both the class representatives as well as putative class
18 members. *See Dancer v. Golden Coin, Ltd.* (2008) 124 Nev. 28, 34, 176 P.3d 271,
19 275 ["NRCPP 23 provides an 'opt-out' class action construct, under which the original
20 filing of the complaint tolls any applicable statute of limitations. Because class
21 actions brought under NRCPP 23 toll the statute of limitations on all potential
22 unnamed plaintiffs' claims, tolling applies here and the proposed class
23 representative's claims . . . are not time-barred."][footnotes omitted]; *see also*
24 *Montag v. Venetian Casino Resort* (1st Jud. Dist. Ct. June 10, 2013) 2013 Nev. Dist.
25 LEXIS 32, at *13 ["Nevada class action procedures under NRCPP 23 involve a
26 presumption class members are participants in the case until they 'opt out' following
27 class notice. Under this formulation, both the Nevada Supreme Court and federal
28 district court have held the filing of a class action tolls any application limitation

1 period upon a member's claim until such time as he 'opts out,' or a final decision on
2 class certification has been made. "[citations omitted].

3 Here, the filing of this action occurred in October 2011. As MTC must concede,
4 the earliest date of any misconduct by MTC alleged in the proposed TAC relating to
5 Plaintiff Laghaei occurred in March 2009. Unjust enrichment claims and deceptive
6 trade practice or consumer fraud claims are subject to at least a 4-year statute of
7 limitations. See *Nanyah Vegas, LLC v. Rogich* (2016) 2016 Nev. Unpub. LEXIS 510,
8 at *2-3; NRS 11.190(2)(c) and (d). Plaintiff Laghaei's claims are therefore not barred
9 as untimely. Thus, since the filing of this lawsuit, Plaintiff Laghaei has been a
10 presumed class member because he has not opted out following class notice—since
11 no class notice has issued to date—and there has been no final decision yet on class
12 certification. See NRCP 23(c); *Dancer, supra*, 124 Nev. at 34, 176 P.3d at 275.

13 MTC attempts to argue nonetheless that Plaintiff Laghaei cannot serve as a class
14 representative because of the statute of limitations. MTC's argument fails. First,
15 MTC wholly omits to state which statute of limitations specifically MTC is relying
16 on in making its assertion. Second, the cases relied on by MTC are so factually
17 distinguishable in a variety of material ways that they do not apply here. See *Robbin*
18 *v. Fluor Corp.* (9th Cir. 1987) 835 F.2d 213; *Catholic Social Services v. INS* (9th Cir.
19 2000) 232 F.3d 1139, 1148; *Salazar-Calderon v. Presidio Valley Farmers Ass'n* (5th
20 Cir. 1985) 765 F.2d 1334, 1350; *Korwek v. Hunt* (2d Cir. 1987) 827 F.2d 874, 879;
21 *Andrews v. Orr* (6th Cir. 1988) 851 F.2d 146, 149; *Griffin v. Singletary* (11th Cir.
22 1994) 17 F.3d 356, 359. Most crucially, *Robbin Fluor*, which MTC chiefly relies on,
23 dealt with "whether the pendency of a class action tolls the applicable statute of
24 limitations for a subsequently filed class action and individual action." *Robbin Fluor*,
25 *supra*, at 213 [emphasis added]. The other authorities relied on by MTC similarly
26 deal with cases in which parties seeking to bring a class action attempt to rely for
27 tolling purposes on the pendency of a prior class action. See *Catholic Social Services*,
28 *supra*, at 1141 ["We must decide whether . . . the statute of limitations was tolled

1 during the pendency of an earlier class action, and whether plaintiffs may bring a
2 class action in this case.”]; *Griffin, supra*, at 357-358 [subsequent putative class
3 actions brought after prior class action unsuccessful]; *Andrews, supra*, at 149 [noting
4 that the “pendency of a previously filed class action does not toll the limitations
5 period for additional class actions by putative members of the *original* asserted
6 class”][emphasis added]; *Korwek, supra*, at 876 [“The specific question presented on
7 this appeal is a narrow one: whether the tolling rules established by the Supreme
8 Court in its seminal decision, *American Pipe & Construction Co. v. Utah*, . . . applies
9 to permit the filing by putative class members of a subsequent *class* action nearly
10 identical in scope to the original class action which was denied certification.”][first
11 emphasis in original]; *Salazar-Calderon v. Presidio Valley Farmers Assoc.* (5th Cir.
12 1985) 765 F.2d 1334, 1350-1351 [statute of limitations in subsequent putative class
13 action not tolled by pendency of prior putative class action].

14 In contrast to MTC’s authorities, this case does not involve the pendency of a
15 prior class action being improperly used to toll the limitations period for a subsequent
16 class action. There has only ever been one putative class action in this case—the
17 present one—and that case is still pending. There has been no ruling on the propriety
18 of class certification in this matter. For these reasons, the relevant facts and policies
19 implicated in the cases relied on by MTC do not exist here. Plaintiff Laghaei does not
20 seek to use the pendency of the present lawsuit to file a subsequent class action but
21 rather to join the present lawsuit as a named Plaintiff (instead of being merely the
22 presumed class member that he has been since this case was filed in 2011).⁹

23 Seemingly ignoring or not comprehending these points, MTC suggests that

24 ⁹ Even if it were applicable here, the rule that MTC relies on is not as strict as MTC suggests: in
25 *Catholic Social Services*, the Ninth Circuit *allowed* tolling of the statute of limitations during the
26 pendency of the first class action for the subsequently filed class action because the plaintiffs in the
27 second case were “not attempting to relitigate an earlier denial of class certification, or to correct a
28 procedural deficiency in an earlier would-be class.” *Catholic Social Services, supra*, 232 F.3d at
1149. Similarly, at least the Third Circuit has allowed tolling in a subsequent class action where
denial of class certification in the prior class action was not based on defects in the class itself but
on another ground (such as FRCP 23 deficiencies in the proposed class representative). *Yang v.*
Odom (3rd Cir. 2004) 392 F.3d 97, 104.

1 Plaintiff Laghaei seeks to “piggyback class claims upon other class claims to
2 circumvent the statute of limitations.” *Opposition*, at p. 13. Not so. As explained
3 above, there is no need to rely on tolling to preserve class claims here because the
4 class claims at issue here have never been dismissed in this proceeding and remain in
5 this lawsuit regardless of Plaintiff Laghaei’s addition! There is thus no need to
6 preserve them through tolling (or other means) at this time.¹⁰ (As to Plaintiff
7 Laghaei’s individual claims against MTC, those claims, as explained above, have
8 been tolled by the pendency of this litigation, as MTC seemingly concedes.)

9 MTC’s assertions in this context regarding Plaintiff Laghaei’s prior lawsuit are
10 mistaken for the reasons already stated above. Plaintiff Laghaei’s claims against
11 MTC in the separate litigation were dismissed—along with the lawsuit as a whole—
12 by the federal district court in Nevada in January 2016 because the court lacked
13 subject matter jurisdiction over the lawsuit. Exhibit “H” at ¶ 4. There was no
14 adjudication of Plaintiff Laghaei’s claims on their merits. *Id.* Plaintiff Laghaei has
15 not waived those claims, but, rather, seeks to pursue them diligently as a named
16 Plaintiff in this litigation.

17
18 **6. Whether Plaintiff Laghaei Can Serve as a Class Representative Should
Be Considered at the Time the Court Rules on Class Certification**

19 Relying on external evidence regarding the separate litigation between MTC and
20 Plaintiff Laghaei, MTC mistakenly suggests that amendment would be futile because
21 Plaintiff Laghaei could not serve as a class representative in this case. As a
22 preliminary matter, it is premature for the Court to consider—let alone rule on—
23 whether Plaintiff Laghaei (or any other plaintiff) could serve as an adequate class
24 representative in this matter. *Barnett, supra*, 2010 U.S. Dist. LEXIS 68864, at *13-14
25 [“Defendants have cited no authority to support the proposition that, in deciding
26

27 ¹⁰ Whether, as MTC asserts, Plaintiff Laghaei (or any other plaintiff) would be barred from
28 pursuing similar class claims in subsequent litigation if this lawsuit were dismissed in the future is
not before the Court at this time, as this lawsuit has not been dismissed here (as even MTC must
concede).

1 whether to grant leave to amend, a court should consider whether a proposed
2 amendment stating a class claim satisfies the requirements of Rule 23. To the
3 contrary, the Ninth Circuit long ago explained that ‘compliance with Rule 23 is not to
4 be tested by a motion to dismiss for failure to state a claim,’ . . . and it follows from
5 the above discussion that Rule 23 should also not be tested on a motion for leave to
6 amend.”][internal citation omitted][citing *Gillibeau v. City of Richmond* (9th Cir.
7 1969) 417 F.2d 426, 432]; see also *Dancer, supra*, 124 Nev. at 34-35, 176 P.3d at
8 275 [“With respect to a proposed representative’s qualifications to represent the
9 class, or in determining whether substitution of a class representative is appropriate,
10 the district court must generally evaluate whether, with the proposed representative,
11 the case could be certified as a class action.”]

12 Discovery relating to class certification issues—including issues such as adequacy
13 of possible representatives—has not even begun yet. Pursuant to the Scheduling
14 Order in this case, the class certification motion is not even due until July 31, 2017!
15 The appropriate time for the Court to decide whether Plaintiff Laghaei can serve as a
16 class representative is when the Court decides whether class certification itself is
17 appropriate under NRCP 23. In the meantime, the Court should allow Plaintiff
18 Laghaei to serve, along with the other existing named Plaintiffs, as named Plaintiffs
19 and proposed representatives of the putative class.

20 Reserving ruling on whether Plaintiff Laghaei can serve as a class representative
21 until the appropriate time is especially warranted here as Plaintiff Laghaei’s supposed
22 defects or conflicts as a class representative are imagined—by MTC—rather than
23 real. MTC’s failed arguments regarding prior statements made by Plaintiff Laghaei in
24 the separate litigation have already been addressed at length above. It is worth
25 pointing out again here, however, that the “legal position” (*Opposition*, at 9
26 [emphasis added]) that MTC contends was previously adopted by Plaintiff Laghaei
27 and now conflicts with the Plaintiffs here is, to the extent it may be inconsistent, a
28 position that Plaintiff Laghaei properly can and has revised in seeking to join this

1 lawsuit as a named Plaintiff. The Nevada Supreme Court has recognized that such
2 changes in positions are not improper except—unlike the case here—when they are
3 “intended to sabotage the judicial process.” *Deja Vu Showgirls of Las Vegas, LLC*,
4 *supra*, 130 Nev. Adv. Opinion at 9, 334 P.3d at 391.

5 MTC’s failed assertions regarding Plaintiff Laghaei’s prior claims against MTC
6 and whether they have been waived have also been sufficiently addressed above.
7 MTC’s argument that Plaintiff Laghaei’s prior lawsuit and claims would create a
8 conflict with the proposed class because he would be engaged in separate litigation
9 against the same defendant is also ill-founded. As MTC must concede, Plaintiff
10 Laghaei is no longer engaged in separate litigation against MTC. Exhibit “H” at ¶ 5.
11 There thus could be no possibility here—as in the cases cited by MTC—that Plaintiff
12 Laghaei would sell out absent class members in order to obtain a more favorable
13 result in separate litigation. *Compare Levias v. Pacific Maritime Ass’n* (W.D. Wash.
14 Jan. 25, 2010) 2010 U.S. Dist. LEXIS 11495, at *16-17 [concluding in determining
15 whether class should be certified that named plaintiff inadequate to represent
16 proposed class because he “has a separate *pending* lawsuit against [the defendants]
17 that could *potentially* create a conflict with the putative class”][emphasis added].
18 There thus no longer exists any greater possibility for Plaintiff Laghaei that he could
19 be bought off by MTC in a separate individual settlement than there always exists for
20 class representatives (to whom defendants can make individual settlement offers).

21 The other case relied on by MTC in fact demonstrates why MTC’s argument fails.
22 There, the court considered a challenge to the adequacy of a proposed class
23 representative on the ground that the representative’s prior litigation with a defendant
24 created a fundamental conflict of interest. *Stoneback v. ArtsQuest* (E.D. Pa. June 20,
25 2013) 2013 U.S. Dist. LEXIS 86457. The court, citing *Levias*, recognized that
26 separate *pending* litigation could create a conflict of interest. *Id.* The court concluded
27 the proposed representative was adequate because, as here, the separate litigation was
28 *no longer pending*: “Here, however, to the extent Ms. Stoneback *had* a conflict of

1 interest during the pendency of her separate lawsuit against ArtsQuest, such a conflict
2 is no longer present because her lawsuit against ArtsQuest . . . has concluded.
3 Therefore, absent class members are not at a risk of being sold out by plaintiff
4 Stoneback proceeding as a class representative.” *Id.* [citing *Levias, supra*, 2010 U.S.
5 Dist. LEXIS 11495, at *17].

6 Whether there is a risk of conflict between Plaintiff Laghaei’s remedies here and
7 the remedies sought by the proposed class is again a question for the Court to resolve
8 when determining whether class certification here is appropriate. It is worth noting,
9 however, that Plaintiff Laghaei in this lawsuit seeks only the remedies sought by the
10 other members of the proposed class. The supposed conflict MTC raises is thus again
11 illusory rather than real. MTC’s assertion—without any evidence, argument, or
12 authority—that Plaintiff Laghaei has supposedly different “vested interests . . . than
13 the rest of the putative class” (*Opposition*, at p. 10) because of his pending separate
14 litigation against non-parties relating to his home assumes without justification at
15 least two things: (1) what Plaintiff Laghaei’s vested interests are here; and (2) what
16 the vested interests of the putative class members are. These are both questions
17 that—along with the adequacy of Plaintiff Laghaei as a class representative—should
18 be considered by the Court when it decides whether class certification is appropriate
19 here, and not based on unsupported and speculative assertions by MTC as to the
20 interests of the putative class and Plaintiff Laghaei. *See, e.g., Barnett, supra*, 2010
21 U.S. Dist. LEXIS 68864, at *13-14 [“Defendants have cited no authority to support
22 the proposition that, in deciding whether to grant leave to amend, a court should
23 consider whether a proposed amendment stating a class claim satisfies the
24 requirements of Rule 23. To the contrary, the Ninth Circuit long ago explained that
25 ‘compliance with Rule 23 is not to be tested by a motion to dismiss for failure to state
26 a claim,’ . . . and it follows from the above discussion that Rule 23 should also not be
27 tested on a motion for leave to amend.”][internal citation omitted][citing *Gillibeau v.*
28 *City of Richmond* (9th Cir. 1969) 417 F.2d 426, 432]; *see also Dancer, supra*, 124

1 Nev. at 34-35, 176 P.3d at 275.

2
3 **7. Plaintiff Laghaei Has Not Opted Out of the Class Here**

4 MTC's only authority for its assertions that Plaintiff Laghaei has opted out of the
5 proposed class here is Plaintiffs' accurate statement that Plaintiff Laghaei could opt
6 out of this lawsuit and file a separate action in the future. MTC provides no
7 supporting authority, however, for its assertion that Plaintiff Laghaei opted out of this
8 lawsuit by filing a separate lawsuit against MTC in the past. Plaintiffs did not—and
9 do not—concede (as MTC suggests) that the filing of a separate lawsuit in the past—
10 before Plaintiff Laghaei received any notice of this litigation or class certification
11 was decided—constituted an effective opting out from this lawsuit. As already
12 discussed above, Plaintiff Laghaei's separate lawsuit against MTC is no longer
13 pending and his claims against MTC remain timely. *See Exhibit "H" at ¶ 5.*
14 Moreover, during Plaintiff Laghaei's separate litigation against MTC, Plaintiff
15 Laghaei was not aware of the existence of this lawsuit or that he was a member of the
16 putative class in this case. *Id.* at ¶ 3. Plaintiffs' discussion in their moving papers of
17 opting out and the cases cited therein make clear that Nevada's rules of civil
18 procedure "involve a presumption class members are participants in the case *until*
19 they 'opt out' *following class notice.*" *Montag v. Venetian Casino Resort* (1st Jud.
20 Dist. Ct. June 10, 2013) 2013 Nev. Dist. LEXIS 32, at *13 [emphasis added]; *see*
21 *also Dancer, supra*, 124 Nev. at 31 n.2, 176 P.3d at 273 n.2 ["Nevada class action
22 procedures under NRCP 23 . . . involve a presumption that class members are
23 participants in the class action *unless* they 'opt-out' *following class*
24 *notice.*"] [emphasis added]. There has been no final decision—or even tentative
25 decision—on the propriety of class certification here and no class notice has been
26 given. Thus, if Plaintiffs' motion is not granted, Plaintiff Laghaei could seek to opt
27 out (or intervene) subsequently in this case once a decision on class certification has
28 been made by the Court and class notice is given. Until then, however, Plaintiff

1 Laghaei has not opted out of the class action and remains a presumed member of the
2 putative class. *See Dancer, supra*, 124 Nev. at 31 n.2, 176 P.3d at 273 n.2.

3 Plaintiffs do not contend, as MTC asserts, that Plaintiff Laghaei is simply “not
4 technically an opt-out member because no class has been certified and no class notice
5 has been provided.” *Opposition*, at p. 11 [emphasis added]. This is not an issue of
6 mere technical points: Plaintiff Laghaei has been and remains a member of the
7 putative class because he never opted out of this lawsuit. MTC has presented no
8 authority that Plaintiff Laghaei can be deemed to have opted out of this putative class
9 action. Whether Plaintiff Laghaei (or any other member of the putative class) could
10 opt out in the future (for instance, once there has been ruling on class certification
11 and class notice provided) is not before the Court at this time. For reasons explained
12 above, whether Plaintiff Laghaei is a proper class representative—for this or any
13 other reason—is also properly not before the Court at this time, but should
14 considered when the Court rules on the propriety of class certification.

15 **F. No Other Ground Exists for Denying Plaintiffs’ Request**

16 MTC has failed to show that is any other ground here to validly deny Plaintiffs’
17 reasonable request. There has been no undue delay or bad faith on Plaintiffs’ part in
18 bringing this motion. MTC’s suggestions at various points in its opposition brief that
19 Plaintiffs’ motion is somehow untimely are unfounded. “To show undue delay, the
20 opposing party must at least show delay past the point of initiation of discovery; even
21 after that time, courts will permit amendment providing the moving party has a
22 reasonable explanation for the delay.” *Saes Getters, supra*, at 1086 [citing *Hayes v.*
23 *New England Millwork Distrib., Inc.* (1st Cir. 1979) 602 F.2d 15, 20; *DCD*
24 *Programs, Ltd. v. Leighton* (9th Cir. 1987) 833 F.2d 183, 187]. Undue delay, by
25 itself, is generally “insufficient to justify denial of leave to amend.” *DCD Programs,*
26 *Ltd., supra*, 833 F.2d at 186 [citing *United States v. Webb* (9th Cir. 1981) 655 F.2d
27 977, 980; *Hurn v. Retirement Fund Trust of Plumbing* (9th Cir. 1981) 648 F.2d 1252,
28

1 1254]. As stated in Mr. Boylan's declaration in support of Plaintiffs' motion to
2 amend, however, Plaintiffs' counsel only learned of the existence of Plaintiff
3 Laghaei, hitherto only a member of the putative class, in June 2016. Boylan
4 Declaration, at ¶ 6. Moreover, although this action was originally filed in October
5 2011, for much of the time since its filing until November 2015 it has been held up
6 through Defendants' removal to federal court and the ensuing litigation—including in
7 the Ninth Circuit—as to whether removal was proper. Plaintiffs ultimately prevailed
8 on that question when the Ninth Circuit ruled that the federal courts lacked subject
9 matter jurisdiction over this lawsuit. *See Benko v. Quality Loan Service Corporation*
10 (9th Cir. 2015) 789 F.3d 1111. Until that decision and the resulting remand to
11 Nevada state court in October 2015, Plaintiffs could not have added Plaintiff Laghaei
12 as a named Plaintiff even if they had known of his existence before June 2016 and
13 wished to add him.

14 The scheduling order for this case has just been set and no relevant deadlines have
15 expired. Indeed, according to the scheduling order, the earliest deadline to file a
16 motion to amend to amend pleadings or add parties is as late as March 1, 2017! MTC
17 provides no argument, authority, or evidence as to why any delay by Plaintiffs in
18 moving to amend constitutes undue delay here such that the motion should be denied.
19 *Compare Tsagris v. Wash. Mut. Bank, FA* (2013) 2013 Nev. Unpub. LEXIS 83, at
20 *4-5 [undue delay properly found where “district court found that the motion for
21 leave to amend was filed after the deadlines for discovery and dispositive motions
22 had passed, after being continued twice”]. MTC having failed to meet its burden here
23 as the party opposing amendment, the Court should grant the motion.

24 Although Plaintiffs have previously amended their pleadings, the amendment
25 sought here is not repetitious or sought in bad faith to cure deficiencies that should
26 have been remedied earlier. Most importantly given MTC's burden here, MTC
27 presents no evidence or argument to the contrary.

28 The requested amendment would also serve the important policies of judicial

1 economy and efficiency, as it will “avoid the possibility of a multiplicity of lawsuits
2 by precluding” Plaintiff Laghaei from “opting out of any potential class action and
3 filing separate actions” (as he could do if the motion is denied). *Tirone v. Calderone-
4 Curran Ranches, Inc.* (W.D.N.Y. June 14, 1978) 1978 U.S. Dist. LEXIS 17210, at *5
5 [noting that the “named plaintiff in a purported class action may move for joinder of
6 additional named plaintiffs who would otherwise be potential class members”].
7 Rather than have Plaintiff Laghaei take this unnecessary and duplicative course, the
8 Court should allow Plaintiffs to amend the SAC to add Plaintiff Laghaei as a named
9 Plaintiff as reflected in the proposed TAC.

10 **G. MTC’s Arguments regarding Intervention Fail**

11 MTC’s arguments regarding intervention fail here, as they are premised on the
12 unfounded assumptions that Plaintiff Laghaei seeks to intervene here under NRCP 24
13 and that the existing named Plaintiff Sansotas do not have standing in this lawsuit. As
14 stated in Plaintiffs’ moving papers, Plaintiffs, as pertinent to MTC’s opposition here,
15 move to amend the SAC to add Plaintiff Laghaei as a named Plaintiff (rather than to
16 have Plaintiff Laghaei intervene under NRCP 24) in the proposed TAC. Even if
17 Plaintiff Laghaei were seeking to intervene, however, there has been no successful
18 challenge by MTC thus far to the standing of the Plaintiff Sansotas; indeed, Judge
19 Scann denied MTC’s challenge to the Plaintiff Sansotas’ relevant causes of action in
20 February 2016 when she ruled on the Defendants’ NRCP 12(b)(5) motion to dismiss.
21 MTC’s assertions that the Plaintiff Sansotas lack standing or that Plaintiffs seek to
22 salvage their lawsuit by adding Plaintiff Laghaei as a named Plaintiff are nothing
23 more than unfounded allegations that MTC fails to support with any evidence.

24 Given that there has been to date no ruling that the existing named Plaintiff
25 Sansotas lacked standing to bring this lawsuit in the first place, the cases relied on by
26 MTC for its arguments regarding intervention are inapplicable here. *See Lidie v. State*
27 *of California* (9th Cir. 1973) 478 F.2d 552; *Lierboe v. State Farm Mut. Auto. Ins. Co.*
28

1 (9th Cir. 2003) 350 F.3d 1018. In *Lidie*, there had been a final decision on the
2 propriety of class certification and a ruling by the trial court that the named plaintiffs
3 were never qualified to represent the proposed class; under those circumstances—
4 which do not exist here—the Ninth Circuit concluded that the trial court was not
5 required to allow additional plaintiffs to intervene to continue the lawsuit as a class
6 action. *Lidie, supra*, 478 F.2d at 555. Similarly, in *Lierboe*, the Ninth Circuit
7 concluded that intervention was inappropriate because the existing named plaintiff
8 had failed to state a claim for relief. *Lierboe, supra*, 350 F.3d at 1023. In contrast to
9 these two cases, Judge Scann has already ruled that the existing named Plaintiffs
10 have stated relevant claims for relief against MTC and no decision on class
11 certification or the named Plaintiffs’ standing have been made. MTC’s cases are thus
12 materially distinguishable on their facts and provide no persuasive guidance here.¹¹
13 *See also In re Cathode Ray Tube (CRT) Antitrust Litig.* (N.D. Cal. 2015) 308 F.R.D.
14 606, 618-619 (N.D. Cal. 2015) [declining to dismiss for lack of standing at class
15 certification stage because “this case does not involve a single plaintiff who has been
16 found to lack standing, but rather a price-fixing scheme where the Court has already
17 recognized that cognizable legal theories of standing may exist for DPPs to a degree
18 sufficient to deny summary judgment. Accordingly, *Lierbioe* [*sic*] does not require
19 the Court to dismiss this motion.”].

20 MTC’s remaining assertions regarding intervention must also fail. To the extent
21 that MTC suggests that intervention would be premature, MTC contradicts itself
22

23 ¹¹ It is also worth noting that the decisions in *Lierboe* and *Lidie* were implicitly premised in part
24 on considerations of standing and federal subject matter jurisdiction that do not apply here. *See,*
25 *e.g., Hensley-Maclean v. Safeway, Inc.* (N.D. Cal. June 29, 2015) 2015 U.S. Dist. LEXIS 84131, at
26 *12-13 [granting leave to amend where “plaintiffs are correct that this is *not* a situation like *Lierboe*
27 where standing, *and therefore subject matter jurisdiction*, was absent from the outset. . . . [T]here is
28 no sound basis for denying leave to amend at this juncture, given that the jurisdiction of the Court
was properly invoked in the first instance.”][first emphasis in original]. Similarly, as the jurisdiction
of this Court was properly invoked from the start, there is no ground for denying Plaintiffs’ motion
to amend based on MTC’s speculative assertions that the named Plaintiffs lacked standing.

1 insofar as it argues that Plaintiffs' present motion to amend is untimely. Similarly,
2 the grounds for denying intervention stated in the two cases MTC relies on do not
3 apply here for reasons stated in Plaintiffs' moving papers and herein. *See Siegel v.*
4 *Lyons* (N.D. Ca. Sept. 16, 1996) 1996 U.S. Dist. LEXIS 22982, at 23-25 [only
5 ground for intervention given at class certification stage was possibility that existing
6 named plaintiff might be able to serve as class representative]; *Coburn v.*
7 *DaimlerChrysler Servs. N. Am., LLC* (N.D. Ill. 2003) 218 F.R.D. 607, 610-611
8 [denying motion to intervene in part because proposed intervention would have
9 expanded geographic scope of putative class, which was limited to Illinois and Iowa,
10 to include a class in Texas, thereby expanding the scope of discovery and
11 complicating trial, and noting that the proposed intervenors were not members of the
12 existing putative class]. Here, in contrast, as Plaintiffs have previously stated, adding
13 Plaintiff Laghaei as a named Plaintiff at this time would provide diversity and
14 substance to the existing class representatives (who are not great in number at this
15 time) and allow the parties to conduct discovery now on Plaintiff Laghaei's claims
16 (rather than having to re-open Phase I discovery in a later phase if Plaintiff Laghaei is
17 allowed to serve as a class representative at a later date). It would also avoid the
18 attendant delays and expenses that might be required if Plaintiff Laghaei is required
19 to replace one of the existing named Plaintiffs due to ill health, death, or other
20 unexpected grounds. Unlike in *Siegel*, where intervention was sought at the class
21 certification stage, adding Plaintiff Laghaei at this time would *not* unnecessarily
22 complicate or delay the litigation but would avoid delay and unnecessary
23 complications that would result if Plaintiff Laghaei needs to be added as a class
24 representative later. *See In re Norplant, supra*, 163 F.R.D. at 257; *Hartford, supra*,
25 422 F.Supp. 2d at 206 [quoting *In re Vitamins Antitrust Litigation* (D.D.C. 2003) 217
26 F.R.D. 34, 36][noting also that "Defendants will not be unfairly disadvantaged by the
27 addition of new plaintiffs, who could file a separate action against Defendants in their
28 own names"].

1 Furthermore, to the extent that MTC's arguments regarding intervention as of
2 right (under NRCP 24(a)(2)) or permissive intervention (under NRCP 24(b)) simply
3 rehash assertions made elsewhere in its opposition brief regarding the supposed
4 untimeliness of Plaintiffs' motion and prejudice to MTC, Plaintiffs have
5 demonstrated throughout their moving papers and this reply brief that those
6 assertions are without merit.

7 **H. A Partial History Related to the Sansotas**

8 In order to assist the Court in its consideration of Plaintiffs' motion, Plaintiffs
9 provide the following helpful partial history regarding the Plaintiff Sansotas.

10 In 2008, the Sansotas' interest rate for their mortgage went back up to 6%.
11 Accordingly, they decided try to do a short sale of the house. They received one bid
12 of \$95,000.00, which was presented to Wells Fargo, which rejected it, saying it was
13 too low. At this time, housing prices were falling. After about three weeks, the
14 Sansotas tried to sell it again. This time they received a bid of \$107,000. Again,
15 Wells Fargo rejected the offer. Wells Fargo again claimed it was too low, and they
16 wanted more money. Even the real estate agent was surprised that Wells Fargo did
17 not accept the offer; it seemed like a fair market price for the time in the Las Vegas
18 area.

19 The Sansotas were unsure how to proceed. At the time, their expenses were
20 piling up. In addition to that, their son Joshua was struggling with serious drug issues
21 and with the law. Their son spent time in prison in 2006, and was out in late 2008. He
22 was living with the Sansotas, at a time of financial turmoil, and their stress level was
23 high worrying about the house and about Joshua, and how to get him drug
24 rehabilitation assistance. The Sansotas were suffering mentally and physically. They
25 were distraught over their situation. On top of all of that, Mr. Sansota lost his job at
26 the Las Vegas Hilton. He couldn't function well, lost his temper and was terminated.
27 Their money situation went from bad to worse.
28

1 Mr. Sansota had to borrow some money from his father, Frank Sansota, to get
2 them through these very hard times. His father loaned them \$10,000.00. One month
3 later, Mr. Sansota found another job at Binions Horseshoe Casino. However, his
4 salary was much less than his job at the Las Vegas Hilton. His salary at the Hilton
5 was \$67,000.00, and his new salary at Binions was \$38,000.00. Mr. Sansota took a
6 drastic cut in pay, due to the pressure of his family's financial hardship.

7 The Sansotas were not sure what to do next. Although they had made valuable
8 improvement to the home, they both decided to just relinquish the house to Wells
9 Fargo and tell them that they were not able to afford the payments any longer. They
10 told the bank to just take back the house, and that they were moving. In August of
11 2010, the Sansotas moved from 1559 Ward Frontier Lane in Henderson, Nevada.
12 They packed up and moved back home to northeast Ohio. In a period of two years,
13 from 2008 to 2010, they lost \$58,000.00 in wages which resulted from Mr. Sansota
14 losing his job at the Hilton.

15 The Sansotas' down payment on the house was \$20,000.00. They loved their
16 house and did not want to leave. With much sadness, the Sansotas lost their son
17 Joshua to a heroin overdose in their home. Joshua was 31 years old at the time of his
18 death, and he was their only son.

19 V. CONCLUSION

20 For the reasons explained above, Plaintiffs respectfully request that the Court grant
21 their motion and give them leave to amend their SAC by filing their proposed TAC.

22 DATED: January 10, 2017

23 LAW OFFICE OF NICHOLAS A. BOYLAN,
24 APC

25 By: /s/ Nicholas A. Boylan
26 Nicholas A. Boylan, Esq.
27 Shawn Christopher, Esq.
28 Attorneys for Plaintiffs, except Antoinette Gill

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Law Office of Nicholas A. Boylan, APC, and that on January 10, 2017, I served a true and correct copy of the foregoing:

- **PLAINTIFFS' REPLY BRIEF RE PLAINTIFFS' MOTION TO LEAVE TO FILE THIRD AMENDED COMPLAINT**

via E-Service and/or by placing an original or true copy thereof in a sealed envelope, with sufficient postage affixed thereto, in the United States mail in San Diego, California addressed to:

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/s/ Marina Vaisman
An Employee of Nicholas A. Boylan

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

JEFFREY BENKO,

Plaintiff,

VS.

QUALITY LOAN SERVICE
CORPORATION,

Defendant.

AND OTHER PARTIES

CASE NO. A-11-649857-C
DEPT NO. XIX

TRANSCRIPT OF
PROCEEDINGS

BEFORE THE HONORABLE BONNIE BULLA, DISCOVERY COMMISSIONER

RE: NOTICE OF PLAINTIFF'S MOTION TO COMPEL AND FOR
SANCTIONS AGAINST DEFENDANTS NDSC, OLS, CRC, AND MTC

WEDNESDAY, JANUARY 11, 2017

APPEARANCES:

FOR THE PLAINTIFF:

NICHOLAS A. BOYLAN, ESQ.
SHAWN CHRISTOPHER, ESQ.

FOR QLS:

THOMAS N. BECKOM, ESQ.

(SEE ADDITIONAL APPEARANCES ON THE NEXT PAGE)

RECORDED BY: FRANCESCA HAAK, COURT RECORDER
TRANSCRIBED BY: JD REPORTING, INC.

AA002376

ADDITIONAL APPEARANCES

FOR NDSC:

GREGORY L. WILDE, ESQ.
KEVIN S. SODERSTROM, ESQ.

FOR CRC:

LAWRENCE SCARBOROUGH, ESQ.
JESSICA R. MAZIARZ, ESQ.
PRESTON MATTHEWS, ESQ.

FOR MTC:

ALLEN CERAN, ESQ.
MICHAEL R. BROOKS, ESQ.

1 **LAS VEGAS, CLARK COUNTY, NEVADA, JANUARY 11, 2017, 9:14 A.M.**

2 * * * * *

3 THE DISCOVERY COMMISSIONER: Good morning. Please be
4 seated. I'm going to call a case out of order.

5 Could I have Benko come up, please.

6 I don't know if everybody is here yet on this case.
7 I'm hoping enough of you are here to make what I say
8 meaningful. I need everyone to please state their appearances.

9 MR. BOYLAN: Good morning again, Your Honor.
10 Nicholas Boylan representing the plaintiffs in the case.

11 MR. SCARBOROUGH: You have Larry Scarborough and
12 Jessica Maziarz from Bryan Cave for CRC.

13 MR. MATTHEWS: Preston Matthews from Smith Larsen &
14 Wixom.

15 THE DISCOVERY COMMISSIONER: Good morning.

16 MR. SCARBOROUGH: So we have one defendant
17 represented of the defense group --

18 THE DISCOVERY COMMISSIONER: But not all.

19 MR. SCARBOROUGH: -- in your courtroom right now.

20 THE DISCOVERY COMMISSIONER: Okay. And I understand
21 that when I called you out of order that might be the case.
22 Here's what I want you to do. I want you to go outside and
23 have a 2.34 conference. It's a little cool out on the porch.
24 So I would recommend that you stay inside and use those comfy
25 metal seats.

1 I want a list of all the items that plaintiff thinks
2 that plaintiff has not received, and I want your response to
3 his request because I am not satisfied. We had a 2.34
4 conference before this motion was filed, but I'm also not happy
5 because I feel like I have certainly made it clear what needs
6 to be provided, and I'm not sure it has been.

7 Counsel, would you like to state your appearance,
8 please.

9 MR. CERAN: Yes, Your Honor. Allen Ceran for
10 defendant MTC Financial Inc. doing business as Trustee Corps.

11 THE DISCOVERY COMMISSIONER: Very good. Thank you.

12 MR. CERAN: Good morning, Your Honor.

13 THE DISCOVERY COMMISSIONER: Good morning.

14 MR. CERAN: I apologize for, you know --

15 THE DISCOVERY COMMISSIONER: No. I called you out of
16 order specifically to take a moment, go outside of the hearing
17 room. You can go out on the patio. It's just a little chilly.
18 I would recommend that you have your 2.34 conference. I want a
19 list of every document. I have -- we have put together -- I
20 know what's been requested. I know what the answers are, but I
21 am not satisfied that there was a 2.34 conference, a real
22 good-faith meet and confer on this.

23 And I understand that you're challenging rulings. I
24 understand that there's a motion to reconsider. I get all of
25 that, but having said that, I really need you to help me out

1 here and make a list of what's in dispute. Try to resolve what
2 you can, and then come back and see me, and I will definitely
3 hear the matters before me today, okay.

4 UNIDENTIFIED ATTORNEY: Absolutely, Your Honor.

5 ATTORNEYS: Thank you, Your Honor.

6 THE DISCOVERY COMMISSIONER: Thank you.

7 (Proceedings recessed 9:16 a.m. to 11:24 a.m.)

8 THE DISCOVERY COMMISSIONER: Good morning again.

9 ATTORNEYS: Good morning, Your Honor.

10 THE DISCOVERY COMMISSIONER: This is the Benko case.
11 Could I have everyone please state their appearances slowly and
12 who they represent.

13 MR. BOYLAN: Thank you again, Your Honor. Nicholas
14 Boylan and Shawn Christopher here representing the plaintiffs
15 in the case.

16 MR. SCARBOROUGH: Good morning, Your Honor. Larry
17 Scarborough and Jessica Maziarz from Bryan Cave for defendant
18 CRC, and also --

19 MR. MATTHEWS: Preston Matthews with Smith Larsen &
20 Wixom for CRC as well.

21 MR. CERAN: Good morning, Your Honor. Allen Ceran
22 representing MTC Financial Inc. doing business as Trustee
23 Corps.

24 MR. BROOKS: And Michael Brooks also brought from
25 Brooks Hubley appearing on behalf of MTC Financial doing

1 business as Trustee Corps.

2 MR. WILDE: Greg Wilde from Tiffany and Bosco on
3 behalf of NDSC, and I also have my associate Kevin Soderstrom
4 here.

5 MR. BECKOM: And Thomas Beckom on behalf of Quality
6 Loan Service Corporation.

7 THE DISCOVERY COMMISSIONER: Okay. So I appreciate
8 you all meeting and conferring, and I'm hopeful we have a list,
9 and I will let plaintiffs start -- plaintiffs' counsel start.

10 MR. BOYLAN: Thank you, Your Honor. As to QLS, I
11 think we have the least number of disputes, and so -- but part
12 of our resolution I think we'd like to -- I'll ask counsel --
13 but to make it a part of the record and stipulate it as your
14 order because we've solved some problems. We do have one
15 problem that I think we need your help with on QLS that also
16 carries over to many of the others.

17 THE DISCOVERY COMMISSIONER: Okay.

18 MR. BOYLAN: In terms of our resolution, QLS has
19 agreed to give us the relevant telephone records and also to
20 reassess the telephone providers and provide us their names. I
21 can give you the background on that if you want, but that is
22 the resolution with respect to telephone records and telephone
23 providers. They are going to give that to us.

24 THE DISCOVERY COMMISSIONER: Do you have a limitation
25 on the time frame?

1 MR. BOYLAN: For QLS, because they obtained their
2 license in 2012, we're looking for 2007 to 2012.

3 THE DISCOVERY COMMISSIONER: Perfect.

4 MR. BOYLAN: Now, Mr. Beckom may correct me on that,
5 but if there's some problem --

6 And maybe I'm speaking out of turn, Mr. Beckom. I
7 apologize.

8 -- but he mentioned if there were a problem that he
9 would send a letter to the commissioner, and we could defer it
10 and readdress it later. So I'm not sure frankly.

11 MR. BECKOM: I think --

12 MR. BOYLAN: And I apologize to Mr. Beckom --

13 MR. BECKOM: No.

14 MR. BOYLAN: -- if I'm not saying it correctly.

15 MR. BECKOM: It's fine. Communication's an awkward
16 gig sometimes.

17 No. I think what we said was -- but we're going to
18 go back. We're going to see what we can find. We'll set a
19 two-week status check on that because I don't want to undercut
20 Mr. Boylan's ability to come back here and say, you know,
21 there's an issue, or we haven't complied, or maybe we find an
22 issue on our end that merits further discussion, and so we keep
23 it on for two weeks, but if we come to the resolution where
24 he's happy and I'm happy, we'll send you a letter just so we
25 can save you the calendar space.

1 THE DISCOVERY COMMISSIONER: That's not a problem. I
2 suspect I'm going to need it anyway. What I'd like to do is
3 coordinate it with another hearing that you have so you're not
4 back and forth multiple times.

5 MR. BECKOM: Of course.

6 THE DISCOVERY COMMISSIONER: And that was going to be
7 my proposal is let's set another status check once we get
8 through the discovery that we need to today, and obviously if
9 you all work everything out, then we won't need to address your
10 issues.

11 MR. BECKOM: And I am optimistic that we can. I
12 don't play hide the ball. That's not what I get paid for. We
13 just give stuff along, and if he wants it, he can have it as
14 long as it's not -- his name's not Mr. Pepsi, and I'm giving
15 him the secret recipe for Coke or something.

16 THE DISCOVERY COMMISSIONER: That's a good analogy.
17 Okay. Anything further with QLS?

18 MR. BOYLAN: Yes. As to employees who made or
19 received, had telephone communications with Nevada debtors,
20 they're going to amend an interrogatory response and say that
21 the nine people -- a specific set of nine people are those that
22 they believe very likely are the ones that had those
23 communications, and they're going to amend their response to
24 say that.

25 THE DISCOVERY COMMISSIONER: Okay. Very good.

1 MR. BOYLAN: And the only area where we have
2 disagreement is if you may recall one of the things that you
3 ordered many months ago was the defendants would disclose to us
4 and provide to us all of the complaints, both informal and
5 formal against them, and the specific language is in your
6 order. It's in -- and your comments are on there in the
7 transcript. We've quoted those. Essentially for the most
8 part, all of the defendants have come back and said, We're not
9 going to do that because we don't have or we did not at the
10 time have complaint logs, and according to them, and there are
11 some slight distinctions perhaps, but it comes up with QLS.

12 QLS's position is they didn't have a complaint log,
13 and therefore they're not going to do it because they'd have to
14 look through every single file to do that. Our view on that is
15 in a number of areas, in a number of areas when you were ruling
16 on discovery you limited our questions and our document
17 requests to the named plaintiffs only in certain areas.

18 In this one, as I recall and they seem to think
19 differently, you said, No, for this one you're going to have to
20 find them. If there were complaints, you need to find them and
21 turn them over. That's my recollection. We've quoted I think
22 in our reply papers, but that's their position, Your Honor,
23 that they don't want to do that.

24 I've asked them, well, where do the hard copies go?
25 If a complaint comes in, why is it only in an electronic file?

1 Where's the actual hard copy? Where does it go? Where is the
2 file cabinet? So it may be that if they're going to continue
3 to take that position I need more deposition testimony,
4 particularly with the database people to see. There are some
5 indications from some of the depositions that there will be
6 references in searchable fields to various pieces of
7 information.

8 I have, thankfully because of your order, been able
9 to explore database capabilities with a number of witnesses,
10 and I have experience with this. So I'm trying to get deep
11 into what are the searchable fields? What are likely to be in
12 those fields, and how can you extract reports from those
13 fields? I will say that it's on the area of complaint the
14 picture is still murky to me whether it can be done easily,
15 quickly, electronically.

16 I understand that at least one of the defendants is
17 going to say that it cannot be, and, you know, typically what
18 they say in these cases is it would take hundreds of hours, and
19 it's not worth it and the like, and they say it's not relevant
20 and who cares.

21 What I have reminded them is this was your order. It
22 wasn't what we asked for. You revised it. You ordered it.
23 You made it clear. The Court signed the order, and now
24 belatedly they're saying it's too much trouble. We're not
25 going to do it, and we have to look through each and every file

1 in order to do so.

2 Now, I can tell you with certainty that for various
3 other types of information based on deposition testimony about
4 data access, there's a lot of other types of fields of
5 information that they can hit buttons and produce reports
6 within seconds or minutes, seconds or minutes, for example, as
7 to NDSC, when I deposed their president a few weeks ago.

8 As to I think it's MTC -- I sometimes get them
9 confused. I apologize -- I think one of their witnesses said
10 that certain types of reports it would take her five minutes to
11 order the computer to generate the report, but then it would
12 have to work overnight, and then she would -- by itself, the
13 computer, and then when she would arrive in the morning the
14 report would be available. I think that was CRC and not MTC.
15 I apologize. I'm not certain.

16 But my point is if they're going to take that
17 position, I think you should refresh them on what your order
18 was on that issue, and if the Court has any doubt about it,
19 then I think I'm going to have to continue to explore it with
20 the database people. For example, as to MTC, I'm taking the
21 depositions of two of their people, particularly knowledge
22 about database issues, I believe, this Friday.

23 THE DISCOVERY COMMISSIONER: Here's my recollection,
24 and I would probably have to go back and listen to the hearing,
25 but I can tell you what I do generally. If it's going to be

1 extremely difficult for a defendant to have to go through and
2 pull a thousand files, I'm probably going to protect that, but
3 if there's a way to cull, c-u-l-l, the information off of the
4 computer by a search engine, then we need to explore that
5 issue. Sometimes the costs are prohibitive, and we would need
6 to address that.

7 I think the relevancy is self-explanatory, but you're
8 looking for members of your class.

9 MR. BECKOM: No, and, like, I think the only thing
10 that I would add, and I agree with everything you just said was
11 just, you know, like -- like continue to reiterate. I mean, he
12 didn't compel us under some kind of discovery response or
13 something like that. He compelled us under 16.1, which we do
14 have an ability to supplement, and we'll continue to
15 supplement. He can have whatever he needs.

16 THE DISCOVERY COMMISSIONER: You have to read 16.1 in
17 conjunction with 26(e) though that it has to be timely. So if
18 I don't set deadlines --

19 MR. BECKOM: No, I understand.

20 THE DISCOVERY COMMISSIONER: -- chances are it won't
21 happen.

22 MR. BECKOM: It's more -- I think more of the crux of
23 what we were saying was, you know, this is what we have. Like,
24 you know, if we find other stuff, we'll give it to you, and
25 that's all I think I was trying to, I guess, impress upon both

1 Your Honor as well as Mr. Boylan.

2 THE DISCOVERY COMMISSIONER: I think you need to look
3 into your database, see how your information is organized.
4 Now, this would be different. A complaint would be different
5 than an actual lawsuit, which I'm assuming you would have a
6 list of lawsuits or at least one of you would.

7 MR. BOYLAN: They --

8 THE DISCOVERY COMMISSIONER: We're talking about QLS
9 right now.

10 MR. BOYLAN: I think QLS -- forgive me if I'm saying
11 it wrong -- and all the others have said we're not giving you
12 the lawsuits because you can find them yourself. We're not
13 doing it.

14 MR. BECKOM: Actually, we did give him a copy of all
15 the lawsuits, and my recollection of this motion was that we
16 inadvertently omitted one, and so that's why at least that
17 portion of the motion to compel came down.

18 THE DISCOVERY COMMISSIONER: Have you since
19 subsequently supplemented that one lawsuit?

20 MR. BECKOM: I don't believe. I mean, he cited it in
21 his motion to compel. I don't think we formally supplemented,
22 but we can certainly do that. He already had it to begin with
23 it appears so --

24 THE DISCOVERY COMMISSIONER: Usually on
25 identification of lawsuits I just give enough information where

1 the other party can go find it.

2 MR. BECKOM: Uh-huh.

3 THE DISCOVERY COMMISSIONER: But you've already
4 provided copies, which is certainly lovely and professional,
5 but independent of that I just really don't see anything
6 further that needs to be done, but I would double check to make
7 sure you have all of your lawsuits identified, and you
8 certainly don't have to produce a document that's already been
9 produced.

10 MR. BECKOM: No. I'm not trying to pop out of a bush
11 like Batman with a smoke bomb. I mean, like, he can have
12 whatever he wants as timely as we can find it.

13 THE DISCOVERY COMMISSIONER: You might have missed
14 your calling as an author. I haven't decided yet.

15 But having said all that, do double check your
16 database. Let's see if we have a search engine in place that
17 would allow you to identify any type of complaints, if there's
18 any documentation of it. If there isn't, there isn't, but we
19 need to determine that, and then I don't know what type of
20 burden it would be to go through and look for information like
21 this in your files. I don't know how many you have.

22 MR. BECKOM: It has to be thousands. I mean, it's a
23 lot of files.

24 THE DISCOVERY COMMISSIONER: Okay.

25 MR. SCARBOROUGH: Your Honor, may I make a comment?

1 I do not wish to interrupt, but if I --

2 THE DISCOVERY COMMISSIONER: No, that's okay. Could
3 you just -- you have to state your appearance because we have
4 so many lawyers.

5 MR. SCARBOROUGH: Sure. So this is Larry Scarborough
6 on behalf of CRC.

7 So now we've got commentary from the Court, which
8 we're all listening to and which we appreciate, and everyone
9 here -- and I think that's why we're on our feet -- has a
10 different reality that they face when dealing with their own
11 client or dealing with their own database.

12 And the one thing I might ask to the Court is before
13 ruling across all defendants that we might each have an
14 opportunity to inform the Court as to what our particular
15 situation is and what our particular position is with respect
16 to both meet and confer and what Mr. Boylan is saying about us
17 as he -- no criticism here -- mixes and matches among
18 defendants.

19 THE DISCOVERY COMMISSIONER: Well, I'm trying to keep
20 it straight myself.

21 MR. SCARBOROUGH: Exactly.

22 THE DISCOVERY COMMISSIONER: And I thought we were
23 going to take the issues by defendant.

24 MR. SCARBOROUGH: Right.

25 THE DISCOVERY COMMISSIONER: Which I thought made the

1 most sense. Then Mr. Boylan started saying let's start with
2 QLS, and I thought, perfect, that's what I would do --

3 MR. SCARBOROUGH: Yeah. That's --

4 THE DISCOVERY COMMISSIONER: -- and if other
5 information comes up as we are discussing it, I will certainly
6 give each of you the ability when we discuss your party to
7 address those issues.

8 Yes, sir.

9 MR. SCARBOROUGH: Appreciate that.

10 MR. CERAN: Thank you, Your Honor. Allen Ceran for
11 MFC (sic) Financial.

12 I think counsel may have misspoken about what the
13 Court previously said about this issue, and I have the Court's
14 language right here, and what the Court said the last time was
15 that -- this is at page 24 of the transcript, lines 9 through
16 13 -- the Court said -- and this is in the context of talking
17 about complaints -- it says, But I am not -- what I am not
18 doing at this point is asking the defendants to go into their
19 databases and pull all the names and identities of all the
20 individuals that you have had contact with in the State of
21 Nevada and all the financial information. I am not going to do
22 that right now.

23 So I think that the impression --

24 THE DISCOVERY COMMISSIONER: What did I order though?
25 I must have ordered something.

1 MR. BOYLAN: That was on a completely different
2 issue, a completely different discovery request, Your Honor.
3 You made a distinction as to complaint. I apologize, but that
4 is very misleading.

5 MR. CERAN: This is in the context.

6 THE DISCOVERY COMMISSIONER: Okay. Well --

7 MR. BOYLAN: Well --

8 MR. CERAN: That's in the context of the complaints.

9 THE DISCOVERY COMMISSIONER: Okay. But I thought --
10 my recollection was we talked about prior lawsuits and
11 complaints. I know we did. What I was concerned about was
12 having this become an overly burdensome process, but I do think
13 we had talked about some sort of disclosure. So now I'm --
14 frankly I'm confused.

15 MR. BOYLAN: Well, I think, Your Honor, what you
16 said, even if it's different than before is acceptable --

17 THE DISCOVERY COMMISSIONER: Well, I want to be
18 consistent.

19 MR. BOYLAN: -- is acceptable.

20 THE DISCOVERY COMMISSIONER: I don't want to say
21 something that's not proper. If I've already made a decision
22 one way, please honor that decision and don't confuse me by
23 something that I did not intend, but I'm concerned that I only
24 have part of the information from that transcript because I
25 know we did talk about complaints. I know we talked about

1 those issues.

2 I also recall -- and maybe this is in relation to
3 that statement -- that we have issues that the District Court
4 Judge needs to determine from the prior order from I think it
5 was February, and the scope of the discovery and what we're --
6 how we're going to address that.

7 MR. BOYLAN: Do you know, Your Honor, if there's
8 going to be a ruling on that? I hate to kind of call into
9 question all of our labor here today.

10 THE DISCOVERY COMMISSIONER: It was under advisement
11 by the Court from January 5th. I suspect you'll be in court
12 on the issue. I do not believe the Judge dealt with it in
13 chambers. I think they're going to set it for a hearing.

14 MR. BOYLAN: Okay.

15 THE DISCOVERY COMMISSIONER: But don't hold me to
16 that, but that's my understanding because I followed up on it.

17 MR. BOYLAN: Well, I appreciate that very much, and
18 if you may just for a minute educate me. We called the
19 department several times just to inquire, and we only get
20 answering machines, and we don't get calls back. We didn't
21 know. We don't know anything's going on.

22 THE DISCOVERY COMMISSIONER: Well, that's just
23 because it was only on January 5, and I know that seems like a
24 long time for you all, but we've had a lot of changes in the
25 court. We're working very diligently to get things taken care

1 of. One of my colleagues passed, and we are juggling a lot of
2 things right now. So I'm not making any -- you know, I have no
3 comment on that other than it just happened last week. Here we
4 are this week, and so I suspect they will get to it as soon as
5 possible.

6 But having said all of that, I am concerned about my
7 ruling on this. Here's the problem. From a class
8 certification perspective, this information needs to be known,
9 okay. The issue is whether or not we can know it. I know that
10 Judge Scann was very adamant that we do the plaintiffs'
11 discovery, you know, the discovery on the plaintiffs in this
12 case first, and I tried to follow her order and make sure that
13 I was consistent with it.

14 But I know we talked about complaints and lawsuits,
15 and I just unfortunately I don't recall specifically what I
16 said. I know I don't want the defendants overly burdened by
17 this obligation, and I know I didn't want anyone looking in
18 their databases yet. I wouldn't have done that, but whether I
19 want the defendants themselves to take a look and see what
20 we're dealing with, I think that would be helpful right now.

21 MR. BOYLAN: Well, I'm satisfied, Your Honor, if you
22 can just take it under submission and decide whatever you wish.
23 I think what you're saying now from my perception is less
24 favorable to the plaintiffs than before, but I'll go with
25 whatever. I mean, it's still acceptable what you're saying to

1 us. So I would just suggest, you know, take it under
2 submission and review the transcript, and we'll accept anything
3 without further argument that you want to do on this.

4 THE DISCOVERY COMMISSIONER: For now you have all of
5 the lawsuits though that arose out of this?

6 MR. BOYLAN: From QLS, they're saying --

7 THE DISCOVERY COMMISSIONER: QLS.

8 MR. BOYLAN: -- we did. My impression is that would
9 be hundreds of lawsuits, and we weren't given hundreds of
10 lawsuits. So we may have a dispute about what they did give
11 us. In terms of informal complaints -- because it was very
12 clear this wasn't just formal complaints; it was informal
13 complaints -- I'm not sure we've received any such things,
14 and --

15 THE DISCOVERY COMMISSIONER: I wonder who people
16 would've complained to in Nevada. Would they have complained
17 to the Attorney General's office? Would they have complained
18 to the Better Business Bureau?

19 MR. BOYLAN: QFID --

20 MR. BECKOM: QLS has a unique standpoint in this and
21 that we actually fully litigated the debt collector FID
22 licensing issue --

23 THE DISCOVERY COMMISSIONER: Okay.

24 MR. BECKOM: -- with the Attorney General at a
25 petition for judicial review from an administrative proceeding

1 and actually got a ruling from Judge Williams that we don't
2 have to be licensed as a debt collector, and so --

3 THE DISCOVERY COMMISSIONER: That's right.

4 MR. BECKOM: Yeah. We have a little --

5 THE DISCOVERY COMMISSIONER: It's coming back.

6 MR. BECKOM: And we have a little bit of a different
7 thing going on here.

8 THE DISCOVERY COMMISSIONER: Right.

9 MR. BECKOM: But just so that I'm clear as to what --
10 because like I said, communication is such an awkward thing,
11 and I want to make sure that I understand.

12 THE DISCOVERY COMMISSIONER: So here's what I'm
13 asking of you today.

14 MR. BECKOM: Okay.

15 THE DISCOVERY COMMISSIONER: I will go back and look
16 at my transcript on what I said about the informal complaints.
17 The lawsuits you've turned over, and you don't need to
18 supplement the one as long as the plaintiff has it, but I would
19 identify it in a supplement.

20 MR. BECKOM: Absolutely.

21 THE DISCOVERY COMMISSIONER: I wouldn't necessarily
22 produce the hard copy of it if they already have it, but
23 identify it. Double check, make sure you've turned everything
24 over.

25 MR. BECKOM: I will personally double check and make

1 sure we've identified everything.

2 THE DISCOVERY COMMISSIONER: Okay. In terms of your
3 database, I'd like you to do a little bit of homework.

4 MR. BECKOM: Of course.

5 THE DISCOVERY COMMISSIONER: Find out what we're
6 dealing with, whether there's any box on that database from any
7 type of document, telephone call that would say complaint that
8 we could do an -- we could search for. Just find out what
9 we're dealing with. I mean, can we -- you know, are there -- I
10 don't know. Do your call people put in an e-mail? Are the
11 e-mails searchable? Do they have to fill out a specific
12 document? Can we search the document for the documents? I
13 don't know the answer to those questions.

14 So I think -- and it may not -- they may do nothing
15 with an informal complaint, or they may not -- you know, now
16 some of the defendants, not every one, but some of them have
17 complaint logs, right? I don't know if you had one of those or
18 when it went into effect. I just need more information of how
19 you all keep track. QLS, how QLS keeps track of informal
20 complaints and if at all.

21 MR. BECKOM: Yeah, no. I mean, like, I can go
22 through and -- would a declaration of one of our techs
23 explaining the process about the complaints as far as searching
24 our database, would that be sufficient for your purposes?

25 THE DISCOVERY COMMISSIONER: It probably would. I'm

1 not even sure I'm asking you to do that right now.

2 MR. BECKOM: Okay.

3 THE DISCOVERY COMMISSIONER: But I am asking you to
4 be prepared in case it becomes an issue.

5 MR. BECKOM: Of course.

6 MR. BOYLAN: And from my experience, Your Honor, on
7 that it's really critical, too, that we depose those people
8 because that's -- as you get to the tech people and you get
9 them in a deposition, that's where you really find out what's
10 available on the database, and frankly, the management-level
11 people that we've deposed, they do know some about it, but the
12 detailed questions, for example, the specific --

13 THE DISCOVERY COMMISSIONER: It's not the manager.

14 MR. BOYLAN: -- it's often you have to go to the tech
15 people, and we have to depose them. Like I said, we have two
16 of them scheduled for Friday.

17 THE DISCOVERY COMMISSIONER: Okay.

18 MR. BECKOM: I don't believe that's Quality Loan.

19 MR. BOYLAN: No, it isn't. It isn't.

20 THE DISCOVERY COMMISSIONER: Yeah, okay.

21 MR. BECKOM: All right.

22 THE DISCOVERY COMMISSIONER: Well, let's just focus
23 on Quality Loan Servicing right now. Are there any other
24 issues with regard to QLS?

25 MR. BECKOM: I mean, like, our issues were very

1 limited to 16.1 disclosures. I think we only had the three
2 that we discussed.

3 THE DISCOVERY COMMISSIONER: All right. And you are
4 going to do some supplementation as you've agreed?

5 MR. BECKOM: Of course.

6 THE DISCOVERY COMMISSIONER: Okay.

7 MR. BECKOM: And I hate to be repetitive, but I just
8 want to make sure that I understand what's being asked of QLS
9 today. We are going to go back and pursuant to an agreement
10 between me and Mr. Boylan here, we will go back and figure out
11 who our telephone service provider is, and we will provide
12 those records. If there's not some -- if there's some kind of
13 issue, like they don't have records that go back that far, I
14 will meet and confer with Mr. Boylan, and we will have a
15 discussion over how to handle that, and we'll come back here on
16 whatever the status-check date is and discuss it at that time
17 if it hasn't been resolved.

18 And then I believe we stipulated that we would
19 identify that the nine people we had disclosed were just -- add
20 in the language most likely the nine people that communicated
21 with Nevada debtors, and we had the discussion about how we had
22 a lot of employees, and it's possible other people discussed
23 it, but we didn't want to witness dump on him. So.

24 THE DISCOVERY COMMISSIONER: Is the decision by Judge
25 Williams, is it a final decision?

1 MR. BECKOM: Oh, yeah, never appealed.

2 THE DISCOVERY COMMISSIONER: Okay.

3 MR. BECKOM: Never appealed up to the Supreme Court.

4 The FID is barred from requesting licensure from QLS, but
5 that'll be a discussion for, I guess, another day.

6 THE DISCOVERY COMMISSIONER: Or perhaps another
7 Judge.

8 MR. BECKOM: Yeah.

9 MR. BOYLAN: One bit of clarification on that, Your
10 Honor. QLS from our point of view completely capitulated and
11 got their license, and they've had and maintained their license
12 since 2012. So there was no need to appeal, and Judge Scann
13 expressly refused to follow that decision when she denied the
14 12B.

15 THE DISCOVERY COMMISSIONER: Right. No, I understand
16 that.

17 MR. BOYLAN: And she's right by the way.

18 MR. BECKOM: Well, we'll have a discussion at a
19 different time.

20 THE DISCOVERY COMMISSIONER: Well, I think that's not
21 a discussion we need to have today, and I'm not sure how the
22 outcome of that -- I just don't know how it's going to play
23 out. I think that's what probably ultimately is going to be
24 set for hearing maybe. I'm not sure --

25 MR. BOYLAN: And, Your Honor --

1 THE DISCOVERY COMMISSIONER: -- if that was part of
2 the January 5th reconsideration issue.

3 MR. BOYLAN: Related to that just for a moment -- and
4 I don't know if you want to address it now -- there are two
5 things that come into play with all the defendants in these
6 motions and whether -- I don't think QLS needs to address it
7 now -- I don't know when if you want to address it.

8 Our view is that we have had over a period of 10
9 months had to file 15 motions to compel. We're only getting
10 information and documents after spending thousands and
11 thousands of dollars and hundreds and hundreds of hours,
12 endless meet and confers, endless motions. We're here today,
13 and because we're in your presence, they agreed to do, you
14 know, some odds and ends more, but remember we're here as a
15 result of your order. We're trying to get compliance with an
16 order, and yet here I am again. Now we're in January.

17 They're all going to oppose any continuation of Phase
18 1 discovery. They're going to do that.

19 THE DISCOVERY COMMISSIONER: Well, that's fine. They
20 can do that. That doesn't mean they're going to win.

21 MR. BOYLAN: I just -- I just would like the Court to
22 consider at some point today whether fairness requires we
23 obtain some compensation for having to -- all these motions and
24 endless motions and appearances just to get really tidbits of
25 discovery and only when you order it, and frankly even after

1 you order it we're still not getting full compliance.

2 THE DISCOVERY COMMISSIONER: But I think some of it
3 may depend on what objections are being made to my report and
4 recommendations.

5 MR. BECKOM: I think the issue that, like, at least I
6 know from our perspective was that, like, you know, he had --
7 we're not getting enough meet and confer here. I mean --

8 THE DISCOVERY COMMISSIONER: Well, that's why I did
9 what I did.

10 MR. BECKOM: No.

11 THE DISCOVERY COMMISSIONER: And generally I do not
12 give attorneys' fees and costs when there's no meaningful meet
13 and confer.

14 MR. BECKOM: I mean, like if he --

15 THE DISCOVERY COMMISSIONER: I just don't do it.

16 MR. BECKOM: I mean, I think you've seen me appear
17 enough times in front of the -- or maybe not seen me appear
18 enough times in front of this Court to know that if somebody
19 picks up the phone and called me about trying to find something
20 then I'd try to be reasonable in order to get it to them.

21 THE DISCOVERY COMMISSIONER: Well, I understand the
22 concerns. I'm not, you know, overly thrilled about how long
23 it's taking to process the discovery in the case, but I think
24 there are a lot of very complex issues, and they're not
25 necessarily ones that are before me but the Judge has to make

1 some decisions. So why don't we just proceed today with the
2 discovery. I understand what the plaintiff is requesting, but
3 I'm not willing to do anything right at the moment.

4 MR. BOYLAN: And just for that, Your Honor, what I'd
5 like to suggest if I may, at some point -- at least our
6 perception, and I understand at the moment you may perceive
7 differently if you -- I've tried to detail in my declarations,
8 but there is a point where you have multiple defendants on
9 multiple issues constantly telling you after months of delay
10 that you're not meeting and conferring.

11 You call them. You write letters, more calls, more
12 letters, and they never stop saying that it's not enough, and
13 at some point the meet and confer becomes a part of the
14 obstruction itself, and 15 motions to compel, we're struggling
15 here.

16 THE DISCOVERY COMMISSIONER: Well, I don't know if
17 there's, you know -- again, I appreciate what you're saying.
18 I'm not discounting it. I just want to try to get through
19 today, and I think we need some direction from the District
20 Court Judge on some of the issues that may affect the scope of
21 discovery, and I think that the defendants are trying to be
22 fair, but I also think that they probably are going to object
23 to some of the things that I've done, and they are certainly, I
24 think, at the point where they're trying to figure out with the
25 District Court Judge, as well as you all are, the scope of the

1 case. So I'm not discounting what you're telling me.

2 The last time -- there have been a couple of cases
3 recently where we've had similar situations. In one case there
4 were some pretty strong Rule 37 sanctions. In one case
5 ultimately an answer was stricken, and default judgment was
6 entered. So the Court does take this extremely seriously, and
7 I want to get the parties moving forward, but it's very
8 difficult for me when I'm not convinced there has been a
9 meaningful 2.34 conference on very specific issues.

10 Now, having said that, I know what you're saying as
11 well. I mean, I can see both sides of it. I guess that's why
12 I'm sitting here, but having said that, I want the parties to
13 work together to try to come up with a list, and I think the
14 two hours you've spent clearly shows me that there was a need
15 to meet and confer.

16 So moving right along, is there anything else on QLS?

17 MR. BECKOM: Anything else that you can think of?

18 MR. BOYLAN: No, Your Honor, I think that's it.

19 THE DISCOVERY COMMISSIONER: So what defendant,
20 plaintiffs' Counsel, would you like to take next?

21 MR. BOYLAN: I'm thinking CRC if we may, Your Honor.

22 MR. BECKOM: Oh, and thank you very much for your
23 time with QLS this morning, Your Honor.

24 THE DISCOVERY COMMISSIONER: Thank you. And you are
25 welcome to stay or welcome to leave, whatever is your

1 preference.

2 MR. BECKOM: I always like to see what goes on.

3 THE DISCOVERY COMMISSIONER: Okay. CRC.

4 MR. BOYLAN: There are several issues, Your Honor,
5 some of which are probably resolved by what you've said as to
6 QLS in terms of filing formal and informal complaints. The
7 preeminent issue I think that's queued up for today that we
8 should deal with first relates to the answer to Interrogatory
9 No. 18 regarding fees and costs. This -- and we have --
10 Mr. Scarborough and I have talked about this, meet and
11 conferred about it, I don't know how many times, yesterday,
12 days ago, multiple times, again today. So we've really gone
13 round and round on this, and we have very different views.

14 My view is pretty straightforward, which is we filed
15 a couple motions to compel against CRC a long time ago after
16 extensive meet and confers. We had a further meet and confer,
17 and Mr. Scarborough and I agreed that we would take those -- I
18 would take those off calendar because all the same issues were
19 pending in front of you against the other defendants, and he
20 indicated that he would -- this is all in our papers -- that he
21 would comply with your rulings, and that included as to 18.

22 As to 18, it really in a sense is -- it's a
23 combination. The resulting interrogatory that became a part of
24 your order was really a combination of my writing and yours.
25 You edited it substantially, and you changed it from what I was

1 really seeking, but you did it very confidently. They
2 challenged it extensively at the hearing, and you nevertheless
3 ordered it. Their level of discomfort was very apparent at
4 that hearing, and you've heard lengthy argument on it, and that
5 was nevertheless your order, and of course it became the order
6 of the Court as to 18.

7 Now, as of this moment with one small caveat, all of
8 the defendants have complied with it. They did it late, but
9 they seem to have complied with it with the exception of NDSC,
10 where the number they gave was wrong according to the testimony
11 of their president, and they're going to fix that I believe.
12 Fine.

13 But CRC has basically said now that they're not going
14 to do it and that it's too burdensome, and they weren't bound
15 by the order that you made, and they're saying I think -- and
16 I'm outlining their position in part because I need to respond
17 to it -- they're saying that they've been out of business for a
18 long time, and their databases have been mothballed, and
19 there's no easy way for them to get to it, and they'd have to
20 go through every single file of the thousands of files, and we
21 absolutely do not believe that at all for a number of reasons.

22 THE DISCOVERY COMMISSIONER: Didn't you file
23 corporate income tax returns?

24 MR. SCARBOROUGH: Did we file corporate income tax --

25 THE DISCOVERY COMMISSIONER: Or did you file during

1 the time? So you were operating in the State of Nevada as I
2 understand it from 2011 to 2013, right? Is that right?

3 MR. SCARBOROUGH: No. So that's thing one. Let's
4 back up.

5 THE DISCOVERY COMMISSIONER: Okay.

6 MR. SCARBOROUGH: We operated in the State of Nevada
7 from 2007 to 2011. We withdrew from the Nevada market in 2011
8 and sold our entire trustee foreclosure business in 2013. So
9 that's an important fact for CRC that certainly informs what we
10 have done and what we are able to do.

11 And I'll jump ahead to say, as I sit here today, my
12 strong presumption is that we filed -- we complied with all
13 applicable law while we were doing business in the state of
14 Nevada. We had a Nevada state business license. I don't know
15 the answer to Your Honor's question, and I don't want to begin
16 speculating based on presumption, but keep going. Let's follow
17 the thought.

18 THE DISCOVERY COMMISSIONER: I guess I just want to
19 make sure I'm clear then. So you're -- I don't necessarily
20 care, per se, when you sold the business. If you weren't
21 operating here, then those two years between 2011 and 2013 I
22 don't think are germane, but the years that would be germane
23 then would be 2007 to 2011 when you were operating, and the
24 issue is what moneys did you receive, or what was your income
25 for those years of operation in Nevada? Now, that might be

1 difficult because I don't know how you filed your income taxes.
2 I don't know your accountant. I don't know if an accountant
3 was used. I understand -- is it FANDS, F-A-N-D-S database is
4 no longer available or working? Is that right?

5 MR. SCARBOROUGH: It's mothballed. Obviously --

6 THE DISCOVERY COMMISSIONER: What does that mean?
7 Because I have visions of what mothballed means.

8 MR. SCARBOROUGH: Well, I picked that intentionally
9 because it's not a legal term, nor is it a technical term, so
10 just to give you a view because we're out of business as an
11 operating entity.

12 THE DISCOVERY COMMISSIONER: Okay.

13 MR. SCARBOROUGH: So obviously we preserved some data
14 upon the sale because effectively when we sold the business in
15 2013 -- and Mr. Boylan has those sales documents -- to the
16 Albertelli Law Firm, what the parent of the shuttered CRC
17 retained was the liability in this case and other pending
18 cases. So obviously we have some data. The FANDS database can
19 be queried, but there's no real reason to except for what Your
20 Honor orders us to do with it.

21 We clearly, we the lawyers clearly queried that
22 database when we went forward to produce individual data for
23 the named plaintiffs consistent with Phase 1, but it's not
24 operational in any kind of meaningful sense at this point.

25 And another thing that I think that's important for

1 Your Honor to understand, and I'll raise a couple of
2 atmospheric or global considerations, FANDS, F-A-N-D-S, the
3 first two letters F and A stand for First American. So it's
4 important to note that this isn't -- this never was the
5 creation or creature of CRC or its corporate parent or its
6 lender client. This was a First American Title database that
7 was adopted and used because it facilitated communication and
8 information gathering. So it's not like something that we are
9 able to manipulate other than as it was intended by First
10 American.

11 Another thing I want to say is of all the parties we
12 are not here by virtue of any court order. We are here for the
13 first time on a motion to compel that challenges three things
14 out of the multitude of discovery requests we've had to put it
15 in perspective. To Mr. Boylan's point that there were motions
16 to compel filed and withdrawn, one thing I can say with
17 absolute certainty is one of the reasons they were withdrawn is
18 there was never a meet and confer of any type or kind that led
19 up to those two motions. So they were withdrawn.

20 Mr. Boylan's point that we agreed to be bound by the
21 orders of this Court, of course we're bound by the orders of
22 this Court. Of course I try, and Ms. Maziarz tries doubly hard
23 to be attentive to what this Court says about its directional
24 feel for discovery. That said, where there are differences
25 because we are out of business -- and this is why I stood up a

1 few moments ago -- I'd like to at least make them known to the
2 Court before the Court rules in whatever way vis-à-vis us.

3 And while I'm standing, let me just say that there
4 were three items, and I'm going to tick them all off now
5 instead of waiting for Mr. Boylan to anticipate and either
6 state correctly or not my arguments.

7 One of the items there was no meet and confer on, it
8 had to do with the 16.1 disclosure of witnesses who received
9 telephone calls, and the related challenge to the sufficiency.
10 That one we've now dealt with, and I'm going to explain to the
11 Court how, and I will say -- again I'll take another nonlegal
12 term of mine for the day -- kudos to the Court for insisting
13 that there be a meet and confer on those items.

14 And just speaking from CRC, if the Court told all the
15 parties to have a face-to-face before a motion were filed, we'd
16 be all for that because I think it'll cut down on the
17 multiplication of proceedings because without getting too
18 evocative about this, Mr. Boylan says he's had to file all
19 these motions. Speaking for myself, I think a lot of the
20 motions weren't all that necessary, and if we had really worked
21 together as you would expect us to in a meet and confer process
22 there wouldn't be so much paper for this Court to review.

23 But in any event, while I'm on the individuals,
24 here's what we're doing. Again, we don't have any operational
25 employees. What we have done is we went and found the

1 president of CRC who was president at the time during the 2007
2 to 2011, Debra Brignac [phonetic]. We designated her as our
3 30(b)(6). We made her the witness, and we worked with her
4 closely to prepare because, as the Court knows, we had
5 affirmative obligations on those topics.

6 So a lot of the information that have then made its
7 way into our seven -- count them -- seven disclosure statements
8 have come in our working in preparation of Ms. Brignac. She
9 identified nine people who are represented by other counsel who
10 were part of the departments most likely to have contact with
11 Nevada borrowers. So what did we say because we haven't spoken
12 to them because they're represented by other lawyers? We said,
13 They may have knowledge. Mr. Boylan's motion attacks the
14 equivocation on the word may.

15 So with the statement that I've just made to the
16 Court, we're relying on Ms. Brignac, we, the lawyers, think
17 it's really likely that those nine people had telephone
18 communication, but I wouldn't want to aver to this Court or
19 sign something in blood or oath that said Person No. 8
20 absolutely talked to Nevada borrowers.

21 With those kind of constraints, Mr. Boylan and I have
22 agreed that if we'll just change it to based on our
23 investigation they're the most likely people who talked to
24 Nevada borrowers that he'll accept that for 16-1 purposes, and
25 then he is going to go off.

1 And this is the bigger news, and I don't want to get
2 far afield from this, but you have in front of you a motion for
3 protective order on a 30(b)(6), the second 30(b)(6) notice that
4 has been served on us and a request for an expedited hearing.
5 You don't need to adjudicate that, Mr. Boylan and I have
6 agreed, until we get through the facilitation process on four
7 witnesses, all former CRC employees represented by other
8 counsel. If we can get those up and down, then Mr. Boylan will
9 assess his position without prejudice, and we may come back,
10 and we may need to renew our objection that you don't get
11 second 30(b)(6) depositions without coming back to Your Honor
12 and asking for permission.

13 THE DISCOVERY COMMISSIONER: He is correct on that.
14 So legally he's correct.

15 MR. SCARBOROUGH: You're pointing at me?

16 THE DISCOVERY COMMISSIONER: Yes. You're correct.
17 Yeah, you're correct on that.

18 MR. SCARBOROUGH: So we've deferred that.

19 MR. BOYLAN: The answer would be -- (unintelligible)
20 now -- but what we're asking for, the witness he presented, she
21 didn't have the information.

22 THE DISCOVERY COMMISSIONER: Yeah. Okay. But let me
23 tell you Commissioner Bulla's position. You have to move the
24 Court for a second 30(b)(6) deposition even if your argument is
25 the first one was insufficient. You can compel what you don't

1 think you received during the first 30(b)(6) deposition, or if
2 you feel that you need to take a second one, you'll need to
3 move the Court for a second 30(b)(6) deposition, and any relief
4 that you ask when you compel to have a second 30(b)(6)
5 deposition you need to ask for that relief.

6 MR. SCARBOROUGH: Thank you, Your Honor.

7 THE DISCOVERY COMMISSIONER: Procedurally you are
8 correct.

9 MR. SCARBOROUGH: Much appreciated. So that brings
10 us to our two live issues, but this FANDS database relates to
11 that. Let's take the first one on complaints. If Your
12 Honor --

13 MR. BOYLAN: May I interject for a moment? As the
14 moving party, Your Honor, I was starting to state my argument.
15 Would you like to hear from Mr. Scarborough first because
16 he's -- he's --

17 THE DISCOVERY COMMISSIONER: Well, actually --

18 MR. BOYLAN: -- it's 12:12, and he's gone on about 10
19 minutes.

20 THE DISCOVERY COMMISSIONER: Mr. Boylan, I'm happy to
21 take a break if that would help everyone, and you can come back
22 this afternoon, but I feel like it's important. I know what
23 your position is, and I know what I've ordered for you. So in
24 terms of where we're at today, actually it helps me to hear
25 from defense counsel, and then I'll let you reply.

1 MR. BOYLAN: Very good. Thank you, Your Honor.

2 THE DISCOVERY COMMISSIONER: In support.

3 Go ahead.

4 MR. SCARBOROUGH: So there are two issues out there.
5 One is complaints, and one is Interrogatory 18. On complaints,
6 when Your Honor goes back to look at what Your Honor said,
7 you'll see that you were talking about complaints and not
8 lawsuits. We've not discussed lawsuits previously, and what
9 Your Honor said -- and I don't want to overly paraphrase -- is,
10 If you've got a log or a file or something of complaints you
11 better produce that. So we've gone back --

12 THE DISCOVERY COMMISSIONER: Okay. So I did want the
13 complaints produced in some fashion. What I didn't want you to
14 have to do was to undergo an extreme burdensome process, but I
15 will go back and look.

16 MR. SCARBOROUGH: And those complaints dealt with
17 whether there were complaints that we, CRC, were not a licensed
18 collection agency and should have been. It wasn't just all
19 complaints. Your person was rude, and I'm taking an extreme
20 example. It was the very basis of the lawsuit here which is
21 the collection agency complaint piece. So we have told
22 Mr. Boylan that on that basis or any other basis, frankly, we
23 don't -- CRC did not compile a complaint log, okay. So that's
24 been the answer. It's always been the answer.

25 And obviously if in our review we come up with

1 information on that from a 16.1 perspective or an answer to
2 interrogatory perspective, we'll supply it, but we do not
3 believe one was compiled, and the source, which was our former
4 president, believes that such a log was not compiled and
5 maintained. So that flips us -- and the only way you could
6 check that would be to do the file by file search which Your
7 Honor has said is not for Phase 1. So that brings us to
8 lawsuits.

9 Our position on lawsuits is that this is the first
10 time we're really talking about that. Mr. Boylan has made
11 clear he wants them all along.

12 MR. BOYLAN: Thank you very much.

13 MR. SCARBOROUGH: We don't keep a list of the
14 lawsuits either. So it devolved very quickly, Your Honor, into
15 is the Court going to order us to go effectively to the clerk's
16 office to find how many times CRC was sued, whether the
17 complaint alleged this collection agency issue and then make
18 that available to Mr. Boylan, and my position without going on
19 and on is Mr. Boylan hasn't cited you any authority that says
20 the fact that we should go do that when he could go do that
21 equally well because that's the way we're going to get access
22 to it.

23 The other way I can think of to do it is to figure
24 out who all the lawyers were who have ever represented CRC in
25 any lawsuits in this community. I can't answer that question

1 today. I do know that our local counsel was one of those
2 firms. I absolutely state that, but, Your Honor, that is --
3 and there's been no ruling against us on this type of issue
4 before.

5 We question the advisability of that, one, because
6 there's no authority that sends us out at cost and expense to
7 check courthouse records. And secondly, what was the basis
8 that was offered for what's in the lawsuits? The basis that
9 was offered was this sheds light on the policies and procedures
10 and operations in Nevada of CRC.

11 We question that premise seriously, Your Honor,
12 because it's -- Mr. Boylan says on one hand, go find all of the
13 lawsuits, and on the other he's told you repeatedly, but don't
14 look at the result because the results 99 out of a hundred
15 with -- and the hundred is only motions to dismiss denied and
16 then cases resolved -- the 99 out of a hundred is the motions
17 to dismiss on 12(b)(5) grounds or others were granted.

18 So let's step back and ask what's the merit to
19 ordering CRC to spend money and expense to collect lawsuits
20 looking for an allegation when Mr. Boylan and the plaintiffs
21 are going to stand up and vehemently say, but Your Honor can't
22 and Judge Kephart can't consider that the outcomes in all those
23 cases were dismissals under 12(b)(5) that said that folks like
24 CRC didn't need a collection license. So that's my argument on
25 that. I know you're going to give Mr. Boylan a chance.

1 Let me just deal with Interrogatory 18 if that's okay
2 with you, and then I'll sit down.

3 THE DISCOVERY COMMISSIONER: Well, I thought we had
4 resolved Interrogatory 18 with your supplement that says they
5 are the most likely.

6 MR. SCARBOROUGH: No. No. Interrogatory 18 is --
7 and I'll rephrase this for Your Honor -- the best estimate --
8 your words --

9 THE DISCOVERY COMMISSIONER: I apologize.

10 MR. SCARBOROUGH: -- of the aggregate amount of fees
11 and costs.

12 THE DISCOVERY COMMISSIONER: The 16.1 issue you've
13 resolved.

14 MR. SCARBOROUGH: Yes.

15 THE DISCOVERY COMMISSIONER: Okay. The aggregate
16 fees and costs on No. 18 --

17 MR. SCARBOROUGH: Best --

18 THE DISCOVERY COMMISSIONER: -- best estimate.

19 MR. SCARBOROUGH: Best estimate, okay.

20 THE DISCOVERY COMMISSIONER: All right.

21 MR. SCARBOROUGH: Okay. So that brings me back to
22 the FANDS database and the fact that it was filed last night,
23 and I will explain why it was, but Your Honor said very clearly
24 to us way back, and I'm talking more than two months ago, if it
25 is burdensome, if it is burdensome and you can't hit a

1 button -- the computer search engine phrase that Your Honor
2 used -- then you're going to have to move for a protective
3 order and talk about the burden.

4 So for the last two months -- Mr. Boylan doesn't
5 believe me I don't think, and I don't know. I've been deposed
6 before. I hope this won't be one of those times -- we have
7 been looking diligently to find somebody with any knowledge at
8 the corporate parent of the former CRC business who can confirm
9 what the lawyers know from our own experience with the FANDS
10 database, and that is, to use Your Honor's phrase, it's not
11 search engine capable of going through the database and
12 aggregating fees and costs.

13 So you sent us downstairs to further meet and confer,
14 and Mr. Boylan is absolutely right. We've been around this
15 without an ability to find an effective way to do this because
16 the only way we can do it with any -- with any way where
17 someone could verify it, if you will, would be to do the
18 file-by-file search.

19 So falling back on best estimate, which is what some
20 of the other defendants have done, what I said was, Okay, we
21 have an individual plaintiff. Her name is Kallen, and we know
22 that the fees and costs in her file because we made that
23 available to plaintiffs were \$1799 and a penny. Ms. Maziarz,
24 who's right here, has done some searching in the Clark County
25 records -- and another legal term, my euphemisms for the day --

1 to spitball what's going on. It's clear we have between 5,000
2 and 10,000 foreclosure proceedings in this county -- it's a big
3 number -- over the course of that, the four-year relevant
4 period.

5 If you did the math on something like that, then you
6 would get something between almost \$9 million and \$17 million
7 in fees and costs. Every fee and cost item is likely to be
8 different. We know that because there were two other
9 plaintiffs who used to be in the case. They've now been
10 stipulated dismissed with prejudice. Their fees and costs were
11 higher. Those were the Moores [phonetic].

12 But you can come up with a number. I don't know who
13 would verify that, and I don't know what utility it has because
14 again Mr. Boylan's rationale -- and this is the first time I've
15 been able to make this argument to Your Honor -- is the
16 aggregate amount of fees and costs generated from Nevada
17 borrowers reflects on whether CRC operated as a debt collector
18 or not.

19 I will just surface the question and not be overly
20 evocative on this. To us, a number isn't a policy, and a
21 policy isn't expressed as a number, but if Mr. Boylan wants to
22 add that the \$9 million or \$18 million to the \$200 million
23 you're now reading in the papers as he begins to say how much
24 this case is worth as if our billings to our lender parent
25 would somehow be transferred in whole even if we were

1 improperly unlicensed over to the plaintiff class and plaintiff
2 counsel, but that, Your Honor, is a big piece of our motion for
3 summary judgment.

4 But to our view, that's what that number -- that's
5 the only way we've seen the number used so far, and so I say to
6 Your Honor, if we want to make a best estimate in this manner
7 that I've just described or some other manner, that's fine.
8 I'm not sure of the utility, and I don't know what we're
9 verifying except I just said it in court on the record, and
10 this Court would have expectations about the veracity of what
11 I'm saying, but we're happy with that number.

12 I offered a stipulation to Mr. Boylan downstairs and
13 if we want to go on the record and say CRC billed its lender
14 parent millions of dollars in fees and costs over the course of
15 four years, I'm happy to do that. Mr. Boylan did not -- did
16 not agree that that was acceptable.

17 But the next fall back where you get into something
18 that somebody would verify -- and this is the subject of now a
19 pending motion for protective order, which is going to be
20 heard, I believe, on the 10th of February -- is that would
21 require us to go file by file, to look at the actual fees and
22 costs of each borrower, grab a calculator and do that, and
23 that's going to take someone, somebodies an awful lot of time.
24 And with that, that's all I have to submit on the two
25 outstanding items subject to responding to anything the Court

1 has or Mr. Boylan has.

2 THE DISCOVERY COMMISSIONER: Thank you.

3 Mr. Boylan.

4 MR. BOYLAN: Thank you, Your Honor. Starting if I
5 may with the number -- I'm sorry. I'm getting sick, and I need
6 a little rest.

7 THE DISCOVERY COMMISSIONER: Does anyone need water?
8 We can provide you with additional -- I'm sorry. I should've
9 offered. I know it's a long hearing.

10 MR. BOYLAN: Okay. Starting with No. 18, as I
11 mentioned, we withdrew our motions to compel because
12 Mr. Scarborough agreed to be bound by your rulings on the same
13 motions in front of the others, and that included as to No. 18,
14 and No. 18 was designed by you. The exact question was not our
15 origination. You determined it over fierce objection, and you
16 issued the order.

17 Thereafter, rather than filing a protective order
18 when they responded, CRC simply filed objections and refused.
19 Mr. Scarborough sent me a letter saying that he was not going
20 to do it. He was not going to answer No. 18 even though he had
21 previously promised to comply with the Court's rulings.

22 Instead of making a motion for protective order, they
23 waited around for months, made us spend all the time and money
24 to make this motion, and only yesterday I think at, what,
25 7 p.m., 8 p.m., or maybe it was the day before they finally

1 filed their motion to protective order so that they could
2 appear before you and say that a motion is pending.

3 But there are multiple problems here. First of all,
4 every other defendant has been able to do this from their
5 databases. The president of NDSC said she was able to do it in
6 a matter of minutes. It's a very -- we have a lot of red
7 herrings here. The FANDS system is not their only database.

8 And you very intuitively picked up on one of the
9 major weaknesses here that they won't address, which is this is
10 money. This is millions of dollars that's coming in. They are
11 a subsidiary of a federally chartered bank, J.P. Morgan Chase
12 Bank. They have to have accounting systems which keep track of
13 all of the fees and costs coming in. They have to do reporting
14 to their client. They have contractual obligations to J.P.
15 Morgan Chase in order to account for all of their fees.

16 We also know that J.P. Morgan Chase actually
17 controlled all their databases, and they're somewhere today
18 still in Florida. So he hasn't talked about the accounting
19 database. He hasn't talked about the accounting systems. He
20 hasn't talked about Generally Accepted Accounting Principles.
21 This was a subsidiary of a federal bank. They have reporting
22 requirements, audit requirements. It isn't -- in our view it's
23 just a sham to say they can't get this information.

24 Now, will we have to spend another hundred thousand
25 dollars in attorneys' fees to get the depositions, get the

1 documents, fly to Florida and get the true evidence of what
2 they can do? God, I hope not. I really hope not, but --

3 THE DISCOVERY COMMISSIONER: And let me just
4 interrupt just briefly. You have not deposed the president
5 yet?

6 MR. SCARBOROUGH: He has deposed the former
7 president --

8 THE DISCOVERY COMMISSIONER: He has.

9 MR. SCARBOROUGH: -- of the company, yes.

10 THE DISCOVERY COMMISSIONER: Okay. Did you ask those
11 questions about --

12 MR. BOYLAN: This is where -- this is the problem
13 with the 30(b)(6). Category No. 5 related to this, and she
14 just didn't have the information, and she could not -- I don't
15 recall I asked her this specifically. I may have. As I sit
16 here, I'm sorry. I can't give you a confident answer if I
17 asked her this question. What I do know is something else, and
18 I know you've written about this recently. We have to develop
19 the potential of a spoliation claim here because this lawsuit
20 was filed in 2011.

21 And you mean to tell me they have not preserved both
22 the data and the access to the data? First of all, they
23 sold -- they sold part of their business, some Nevada business
24 in 2011. Well, the lawsuit was filed in 2011. They haven't
25 actually said -- and Mr. Scarborough I don't think will

1 swear -- that they gave all the data to NDSC when they
2 transferred the files, that they didn't keep copies, that they
3 didn't keep access. He's not said that. That would be absurd.
4 From what I know from Ms. Brignac's deposition is they retain
5 all that on computer systems that are maintained by J.P. Morgan
6 Chase. So they have all the data.

7 Mothballed, let's go further on your comment on
8 mothballed. We've got aircraft carriers that are mothballed.
9 What that means is they're held into estate so if they have to
10 be reactivated they can be reactivated and accessed.

11 Now, what about the other databases? All these
12 companies weren't just using a title company database. So
13 nothing's been said about their other databases that may have
14 this information, but ultimately we're going to have to depose
15 the accounting people.

16 If Mr. Scarborough is going to continue with this
17 representation to the Court, and if you're going to allow it,
18 which I don't know your decision, I think you should simply
19 order him to comply by whatever means necessary, but if the
20 Court is unwilling to do that, then we're going to have to
21 depose these people, probably go to Florida, get all the
22 database people, find out what were their accounting systems,
23 where are the accounting systems, what did they tell their
24 auditors. What did they tell -- name one of the big six
25 auditing firms when they had to audit their -- what about their

1 financial reports? How many millions in fees and costs? So
2 that's a lot of work and expense.

3 THE DISCOVERY COMMISSIONER: We're going to try to do
4 something less difficult. Let me ask this question of
5 Mr. Scarborough.

6 Is CRC a subsidiary of J.P. Morgan?

7 MR. SCARBOROUGH: It was a wholly-owned subsidiary of
8 J.P. Morgan. What I would say to Your Honor of course is J.P.
9 Morgan is not here before the Court. CRC is. There's been no
10 attempt to pierce the corporate veil to show that any of the
11 corporate formalities were not absolutely appropriately --

12 THE DISCOVERY COMMISSIONER: I was just --

13 MR. SCARBOROUGH: -- respected.

14 THE DISCOVERY COMMISSIONER: Right.

15 MR. SCARBOROUGH: And consequently, our obligation is
16 to make everything available from CRC, and I won't right now go
17 back at Mr. Boylan. We disagree with almost -- with everything
18 he said about the current state of affairs.

19 THE DISCOVERY COMMISSIONER: I understand that. My
20 question is, would J.P. Morgan have the information? I
21 understand they're not a party, but, you know, you can subpoena
22 nonparties --

23 MR. SCARBOROUGH: Well, and --

24 THE DISCOVERY COMMISSIONER: -- but having said
25 that --

1 MR. SCARBOROUGH: Yes.

2 THE DISCOVERY COMMISSIONER: -- if CRC was a
3 wholly-owned subsidiary and they were providing the information
4 to J.P. Morgan, it seems to me, Mr. Scarborough, that I would
5 get on the phone with counsel for J.P. Morgan and see if they
6 can locate your information.

7 MR. BOYLAN: And on that, Your Honor, if I may
8 continue, what they've done here, and I mentioned this to you
9 before -- for example, the former employees of CRC, J.P. Morgan
10 has hired Kirkland and Ellis and this other firm, and those
11 lawyers charge a thousand dollars an hour. These are global
12 firms, Fortune 500 representation. They've hired those lawyers
13 to represent all of the former employees.

14 Mr. Scarborough is telling you and he told me down in
15 the conference room that they're represented by other people,
16 and he hasn't talked to them, and he doesn't know what they
17 know.

18 And that's frankly -- I apologize -- but it's just
19 silly. J.P. Morgan is controlling all of this litigation,
20 paying all of the lawyers. J.P. Morgan is also continuing to
21 use its employees to serve as the officers and directors of
22 CRC. We've looked at recent filings in California, and they've
23 got all these people named. So --

24 THE DISCOVERY COMMISSIONER: Let's focus on Nevada,
25 and I understand there is the dispute here.

1 Here's my concern. I think the Court is going to
2 want to know how many Nevada citizens were contacted by CRC,
3 and if you -- during this process what were the fees that you
4 earned from your work, and I don't mean to be simplistic about
5 it, but that's what we need to find out, and there's arguably
6 several reasons why this becomes relevant, but I think that the
7 class certification issue, it's probably relevant to that, to
8 who would've been affected by this.

9 MR. SCARBOROUGH: That's Phase 2.

10 THE DISCOVERY COMMISSIONER: I understand that. I
11 understand it, but having said that, I think that my initial
12 plan was, you know, we need to turn that information over.
13 Now, if you're telling me you just simply cannot obtain it,
14 then I need to really understand why, and that's where I'm
15 having a little bit of a disconnect.

16 MR. SCARBOROUGH: The access to the FANDS database,
17 there are other databases. We've looked at those, too.
18 Mr. Boylan well knows there's an LPS database, but that was
19 used for something different. We produced documents from that.
20 The FANDS database is not being used, as I understand it, by
21 J.P. Morgan in any other sense. It's out of the -- that CRC,
22 which was its wholly-owned subsidiary for purposes of trustee
23 issues is out of business. They still own the shell. They
24 hold the liability.

25 But in terms of Ms. Brignac, she described what was

1 searchable and what was not, and there's an awful lot that
2 wasn't searchable. What she didn't know is the current state
3 of the FANDS database, which has not been maintained as an
4 operational device as I very clearly explained to the Court
5 when I first stood up.

6 So the only way to do it we are told, and the people
7 with whom we were working, and I accept that we're working with
8 people who are responsible for that corporate shell, and they
9 happen to be lawyers, and others within J.P. Morgan Chase have
10 looked at it, and what we are told, and the reason we filed the
11 protective-order motion -- and it did take us a long time -- is
12 that there's no other way to aggregate those fees and costs
13 than going file by file, line by line in that database with a
14 calculator to generate a number, and those would be -- to be
15 really crystal clear on this record -- the amounts billed to
16 the lender, not the amounts that were paid back to CRC by the
17 lender because of course there is no direct payment by any
18 Nevada borrower of any of these fees and costs. That's not the
19 way the system worked.

20 THE DISCOVERY COMMISSIONER: All right. So the
21 motion --

22 MR. SCARBOROUGH: And that's the --

23 THE DISCOVERY COMMISSIONER: -- for protective order
24 is set in front of me when?

25 MR. SCARBOROUGH: The 10th.

1 THE DISCOVERY COMMISSIONER: The 10th of November --

2 MR. SCARBOROUGH: February.

3 THE DISCOVERY COMMISSIONER: -- or not November. All
4 right. The 10th of February.

5 All right. So this is what I would like to do. Can
6 someone please provide me with a copy of the deposition of the
7 president of CRC?

8 MR. SCARBOROUGH: We will do that.

9 THE DISCOVERY COMMISSIONER: All right.

10 MR. BOYLAN: And I offer -- I want it consistent with
11 something you said a few hearings ago. I asked if counsel
12 would agree we could also submit the videotape to you, and they
13 said no.

14 MR. SCARBOROUGH: No, we didn't.

15 THE DISCOVERY COMMISSIONER: Well --

16 MR. SCARBOROUGH: Will do was my answer to that.

17 THE DISCOVERY COMMISSIONER: Okay. Listen, I would
18 love to see the videotape. That is perfectly fine. I'm not
19 sure my computer will be able to read it, but I'm happy to have
20 you submit it. Submit the hard copy, too.

21 MR. SCARBOROUGH: Oh, of course we will.

22 THE DISCOVERY COMMISSIONER: And then let me defer
23 the Interrogatory No. 18 as it pertains to CRC only to the
24 February 10th hearing.

25 MR. SCARBOROUGH: Very well, Your Honor.

1 THE DISCOVERY COMMISSIONER: In the interim,
2 Mr. Scarborough, you have a little homework. I need to know
3 from J.P. Morgan what type of time-consuming activity they
4 think this would involve in terms of looking at each and every
5 file from Nevada. I also need to know who the accountant was
6 for CRC or the bookkeeper or the manager.

7 MR. SCARBOROUGH: Well, yeah, that's Santos and
8 consistent with the Rule 16.1 agreement that we've reached,
9 that's one of the four people on Mr. Boylan's list.

10 MR. BOYLAN: Well, but now we need it before our
11 opposition is due if the Court's going to decide this on this
12 motion.

13 MR. SCARBOROUGH: Well, I don't --

14 THE DISCOVERY COMMISSIONER: Wait a minute.

15 MR. SCARBOROUGH: -- control him.

16 THE DISCOVERY COMMISSIONER: I'm going to take one
17 step at a time. The reason I asked is because I'm trying to
18 think of ways in which I might direct my order. You don't need
19 to take Santos --

20 Is it mister or just a company?

21 MR. SCARBOROUGH: Mister.

22 THE DISCOVERY COMMISSIONER: -- Mr. Santos's
23 deposition before February 10th, but I also need to know --

24 But I think, Mr. Scarborough, you need to know what
25 he can offer to address this problem. So I would call him.

1 It's your witness, right?

2 MR. SCARBOROUGH: No, he's a --

3 THE DISCOVERY COMMISSIONER: Is he represented by
4 counsel?

5 MR. SCARBOROUGH: He is a former employee represented
6 by a witness, but, Your Honor, we will do what --

7 THE DISCOVERY COMMISSIONER: Represented by counsel.
8 Then call his attorney.

9 MR. SCARBOROUGH: Yes. We will do whatever we can.

10 THE DISCOVERY COMMISSIONER: I want an update.

11 MR. SCARBOROUGH: I'm hearing the Court loud and
12 clear.

13 THE DISCOVERY COMMISSIONER: Yeah.

14 MR. SCARBOROUGH: Uh-huh.

15 THE DISCOVERY COMMISSIONER: I want an update.

16 MR. BOYLAN: And --

17 THE DISCOVERY COMMISSIONER: And it won't work just
18 to stipulate to a number. Even if it's 5 million or
19 10 million, that's not going to work because I don't think that
20 would stand on appeal.

21 Okay. So --

22 MR. BOYLAN: A thought on that, Your Honor.

23 THE DISCOVERY COMMISSIONER: Yes.

24 MR. BOYLAN: And I've told you this before, and I
25 know you have a more optimistic view of the world than I do,

1 but in my experience --

2 THE DISCOVERY COMMISSIONER: I don't know. Today
3 might not be the day to ask me that.

4 MR. BOYLAN: In my experience, when you get these
5 declarations from these people that tell you how long it's
6 going to take to find something on a computer, they're not
7 reliable.

8 THE DISCOVERY COMMISSIONER: I don't need a
9 declaration. I need a statement from the officer of the court
10 who is appearing in front of me where there are ethical
11 obligations to give me an idea. I know it's not going to be a
12 perfect number. I just need a reasonable idea how many people
13 it's going to take, what type of cost is going to be involved
14 to look at every single one of those files. I don't even know
15 how many files we're talking about. So I would like a number.

16 MR. SCARBOROUGH: And, Your Honor, we'll give it to
17 you. I'll say one thing right now. I saw the hearing date
18 last night for February 10th. It is very possible that I
19 won't be the one here. It'll be Ms. Maziarz, but I wanted the
20 Court to know it's not because I'm ducking the issue. We will
21 have a -- I'm supposed to be elsewhere on the 10th.

22 THE DISCOVERY COMMISSIONER: I understand that.

23 MR. SCARBOROUGH: But we will have a full report for
24 the Court.

25 THE DISCOVERY COMMISSIONER: If it --

1 MR. BOYLAN: You know --

2 THE DISCOVERY COMMISSIONER: Yes, sir.

3 MR. BOYLAN: -- my cocounsel had an interesting idea.

4 THE DISCOVERY COMMISSIONER: Let's hear it.

5 MR. BOYLAN: Yeah, I think it's -- I mean, if they
6 can -- you know, 10,000 files, the files average about 12 pages
7 each. You know, if they can put it on a disc drive, we'll go
8 through it. We'll do the work. I can hire some people to do
9 that.

10 THE DISCOVERY COMMISSIONER: Are we going to have any
11 violations of any type of protective -- oh, I don't even want
12 to delve into all the banking regulations. Are we going to
13 have any violations if we disclose that information?

14 MS. MAZIARZ: Yes.

15 MR. SCARBOROUGH: I'm concerned about that.

16 MR. BOYLAN: It's not a bank.

17 MR. SCARBOROUGH: Ms. Maziarz tells me I should be
18 concerned. I don't have a definitive answer.

19 THE DISCOVERY COMMISSIONER: She may be correct on
20 this. There may be a way around it.

21 MR. SCARBOROUGH: Right.

22 THE DISCOVERY COMMISSIONER: Okay. I'm not saying
23 there's not a way around it. It just may take a little bit of
24 work, i.e., we redact the names and identifying information of
25 the individuals. We have a -- well, it's not that complex, but

1 you have a key that you make. You label them 1 through a
2 thousand, and you have each one's name by the number, and you
3 keep the key, and you just turn over the documents. Now, at
4 some point, though, we may have to disclose those names for
5 Phase 2, but --

6 MR. SCARBOROUGH: And we're making no Phase
7 2 argument here today, Your Honor.

8 THE DISCOVERY COMMISSIONER: Yeah. This is -- right.
9 So, but I understand. Then the issue becomes are we -- do we
10 have an artificial distinction between the phases, and that's
11 something that has been troubling me, but that is not for us to
12 discuss today.

13 So my question though is I need a little bit of
14 information. I also need to know what it would cost --

15 Brilliant idea.

16 -- I need to know what it would cost to download or
17 to put all of that information on a disc so that the burden can
18 be on the plaintiff to search it. I would also want to know
19 what type of time we would look at to try to protect the
20 information on their financial information that might run afoul
21 of some banking regulation that I'm not aware of at the moment
22 but I'm concerned about. So those are the options we have.

23 MR. SCARBOROUGH: Understood.

24 MR. BOYLAN: If you could just append one little
25 thing on to that, Your Honor, if you could -- and maybe you've

1 already done it -- if we could have -- in his report
2 Mr. Scarborough also confirmed that he's spoken to the
3 crackerjack accounting people who are required to report on how
4 many millions of dollars in fees and costs.

5 THE DISCOVERY COMMISSIONER: Can we not use that
6 term. Can we just say the accounting people.

7 MR. SCARBOROUGH: Whose accounting people is my
8 question?

9 THE DISCOVERY COMMISSIONER: Well, okay. Let's
10 define them, not by crackerjack.

11 MR. BOYLAN: Well, what I meant is the people who
12 really know their stuff, and that may be -- in this case it may
13 be the people at J.P. Morgan Chase who received and/or did the
14 work themselves.

15 THE DISCOVERY COMMISSIONER: I don't know if you care
16 as much about that as you care about getting the information.
17 So let's see what it's going to take to get the information
18 first. I'm not saying at the end of the day you're not going
19 to have to take some additional depositions in this area,
20 including Mr.-- including Mr. Santos's deposition, but let's
21 have a purpose to our discovery.

22 You weren't here. You were busy doing your 2.34
23 conference, but I told counsel we have not adopted the federal
24 court rule on proportionality yet, but I think it may be coming
25 one day soon, but I think we need to keep that in mind when we

1 look at the discovery we need for this case. It needs to be
2 efficient, and right now I'm concerned about that.

3 So let's leave Interrogatory No. 18 as it applies to
4 CRC for the hearing on the motion for protective order, which
5 is currently set for February 10th.

6 In the interim, I do want the deposition of the
7 president, a copy of that deposition as soon as possible. I
8 know Monday's a holiday, but if you can either get it to me by
9 the end of this week or Tuesday of next week that would be much
10 appreciated.

11 Then with respect to the 16.1 issue as it relates to
12 CRC, we have worked that issue out based on stipulation of
13 counsel. I don't disagree with your use of may. I have no
14 problem with you adding most likely.

15 And then finally, the complaint log. Our rule is a
16 little bit different than some of the State court rules because
17 we have Rule 34(d), which means you can charge for the expense
18 in compiling the information to the plaintiff. I would suggest
19 because of that and what I usually do in other cases more
20 mundane, like, you know, product liability cases where there
21 might be other lawsuits is I just say give a list of those
22 suits. I think Ms. Maziarz can probably do an Odyssey search
23 without too much difficulty and provide the case numbers and
24 the names for the lawsuits that involve CRC.

25 Now, Washoe might be a little bit different, and what

1 we affectionately call the cow counties may be different, but I
2 think we should start with Clark County, Nevada. I don't know
3 how much business CRC did in the rest of the State. I'm not
4 sure.

5 MR. SCARBOROUGH: Well, it's all predominantly Clark
6 County by order.

7 THE DISCOVERY COMMISSIONER: Okay. Would there be
8 any work up in Washoe at all?

9 MR. SCARBOROUGH: I don't know.

10 MS. MAZIARZ: I'm not sure. It's possible.

11 THE DISCOVERY COMMISSIONER: And I don't know if
12 they're computerized. I'm not sure they were. Somebody
13 brought that to my attention the other day.

14 MR. SCARBOROUGH: So I take it --

15 THE DISCOVERY COMMISSIONER: Has anybody been up in
16 Washoe County, Reno area lately doing anything of note?

17 MR. BECKOM: You can search by defendant and
18 plaintiffs' names in Washoe. Everywhere else, no.

19 THE DISCOVERY COMMISSIONER: Okay. Well, I wasn't as
20 concerned about the outlying counties. We'd have to deal with
21 that separately. We don't need to deal with that today, but in
22 Washoe you can search by party name?

23 MR. BECKOM: Yeah, on their court site. It's on
24 their website.

25 THE DISCOVERY COMMISSIONER: Perfect.

1 See what you can come up with.

2 MR. SCARBOROUGH: In Clark and Washoe --

3 THE DISCOVERY COMMISSIONER: And Washoe County.

4 MR. SCARBOROUGH: Can I ask the Court, and
5 Ms. Maziarz can do a much better job on all issues than I could
6 ever do.

7 THE DISCOVERY COMMISSIONER: I am confident of it.

8 MR. SCARBOROUGH: But I'm a little concerned though
9 because of the importance of the February 10 hearing.

10 THE DISCOVERY COMMISSIONER: Right.

11 MR. SCARBOROUGH: About whether the Court may want to
12 hear from me on certain --

13 THE DISCOVERY COMMISSIONER: Let me read the
14 deposition first.

15 MR. SCARBOROUGH: Okay.

16 THE DISCOVERY COMMISSIONER: And then if I'm
17 concerned about it, I'll -- I don't know what else you have set
18 before the Judge. I'd prefer to bring you back when you're all
19 down here on an issue where I don't have to have you keep
20 coming back and forth because it's expensive, and I appreciate
21 that.

22 MR. SCARBOROUGH: And all I was going to say
23 without -- I have no idea what Mr. Boylan would say -- is just
24 if we could flip it into any day the next week, I can tell the
25 Court I can attend if the Court would like to hear from me

1 because it's got any concerns. I just want to be sure --

2 THE DISCOVERY COMMISSIONER: Next week is too soon.

3 MR. SCARBOROUGH: The week after the 10th.

4 THE DISCOVERY COMMISSIONER: Oh, the week after the
5 10th of February.

6 MR. SCARBOROUGH: Yeah, starting the -- which would
7 be Monday the 13th, et cetera.

8 THE DISCOVERY COMMISSIONER: 13, yeah.

9 MR. SCARBOROUGH: So let me just throw that out there
10 on the record.

11 THE DISCOVERY COMMISSIONER: Let me just take a
12 minute.

13 (Colloquy off the record.)

14 MR. SCARBOROUGH: Nothing the week of the 13th.

15 THE DISCOVERY COMMISSIONER: Let's do this. Let me
16 leave it on the 10th for now.

17 MR. SCARBOROUGH: That's fine.

18 THE DISCOVERY COMMISSIONER: What I would suggest
19 because I do believe whatever was in chambers I think is going
20 to be set for hearing. My only concern is that the Judge's
21 next hearing date with you is March 8th, and that's a little
22 too far out for me. I'm not comfortable with that.

23 THE CLERK: Actually they're coming back for status
24 check before you March 8th.

25 MR. SCARBOROUGH: We are.

1 THE DISCOVERY COMMISSIONER: Oh, March 8th is my
2 status check. Anything else before Judge Kephart?

3 THE CLERK: January 19th.

4 THE DISCOVERY COMMISSIONER: Yeah, January 19th is
5 too soon.

6 THE CLERK: And actually that's the chamber calendar.

7 THE DISCOVERY COMMISSIONER: Okay. So I think what
8 we need to do, let's see when Judge Kephart sets another
9 hearing, and then we'll coordinate with that hearing if
10 necessary.

11 MR. SCARBOROUGH: Thank you, Your Honor.

12 THE DISCOVERY COMMISSIONER: Even if I don't put it
13 on the same day, I might put it up the day before or the day
14 after so you spend one night or fly back and forth. I'm trying
15 to avoid that for you all.

16 MR. BOYLAN: I appreciate it. And can my opposition
17 be due a week before, Your Honor?

18 THE DISCOVERY COMMISSIONER: Yes, I mean, opposition
19 to the motion for protective order, absolutely.

20 Okay. So we've got the complaints covered. We're
21 going to limit it to Washoe and Clark County. We're going to
22 search counsel -- cocounsel for CRC is going to do the work on
23 that, a little more computer savvy probably.

24 MR. SCARBOROUGH: Without question.

25 THE DISCOVERY COMMISSIONER: And then just give them

1 the case names and numbers so that they too can pull it up.

2 I'm not going to require you to print anything out, but let's
3 provide that information.

4 So I think I've dealt with the three issues with the
5 understanding that I'm continuing Interrogatory 18.

6 MR. SCARBOROUGH: You have, Your Honor. Thank you
7 very much.

8 THE DISCOVERY COMMISSIONER: Thank you.

9 MR. SCARBOROUGH: We'll take a backseat.

10 THE DISCOVERY COMMISSIONER: Next.

11 MR. BOYLAN: Well, I'm thinking maybe, Your Honor, if
12 we could take a short break. I'm going to have to push my
13 flight back, and how much longer would you -- are you going to
14 take a lunch? I just need to plan the remainder of my day.

15 THE DISCOVERY COMMISSIONER: I probably will take a
16 break for my staff and myself.

17 MR. BOYLAN: What time should we plan to take a
18 break?

19 THE DISCOVERY COMMISSIONER: Well, we can break now
20 and return at 1:30.

21 Would that work for everyone?

22 MR. BOYLAN: Yes, that would be great.

23 THE DISCOVERY COMMISSIONER: All right. I'll see you
24 all back here at 1:30.

25 MR. BOYLAN: Thank you.

1 (Proceedings recessed to 12:44 p.m. to 1:38 p.m.)

2 THE DISCOVERY COMMISSIONER: Please be seated. I
3 have a couple of quick housekeeping matters. I went on
4 Odyssey, and it shows that one of the motions filed by CRC was
5 filed under seal.

6 MS. MAZIARZ: It's an exhibit to one of the motions.

7 THE COURT RECORDER: I'm sorry. Could you come
8 forward, please.

9 MS. MAZIARZ: Sure.

10 THE DISCOVERY COMMISSIONER: And state your name,
11 please.

12 MS. MAZIARZ: Jessica Maziarz for CRC. Yes, it's an
13 exhibit to the motion.

14 THE DISCOVERY COMMISSIONER: Okay. How did you get
15 them to file it under seal?

16 MS. MAZIARZ: I would need to contact our local
17 counsel's office. They filed it.

18 THE DISCOVERY COMMISSIONER: I'm sorry. What now?

19 MS. MAZIARZ: Our local counsel filed it.

20 THE DISCOVERY COMMISSIONER: Because I don't see a
21 court order to file anything under seal.

22 MS. MAZIARZ: Oh, there would be a confidentiality
23 order entered for this.

24 THE DISCOVERY COMMISSIONER: Okay. And that was what
25 was used to file that exhibit --

1 MS. MAZIARZ: Yes.

2 THE DISCOVERY COMMISSIONER: -- under seal?

3 MS. MAZIARZ: Yes.

4 THE DISCOVERY COMMISSIONER: Okay. So there are
5 actually two motions. The one motion is set for -- I keep
6 saying November -- February 10th.

7 MR. SCARBOROUGH: That's the Interrogatory 18 motion.

8 THE DISCOVERY COMMISSIONER: That's the interrogatory
9 18 which we're keeping on that date tentatively at least for
10 now.

11 MR. SCARBOROUGH: Right.

12 THE DISCOVERY COMMISSIONER: But I did get another
13 motion submitted on OST which is the 30(b)(6) motion, and we
14 were actually going to set it Friday, but I think we need to
15 rethink that. So what would you prefer us to do? Do you want
16 us just to not set it now and return it to you, or do you want
17 us to set it for the February 10th date on OST?

18 MR. BOYLAN: Well, I think the answer is based on
19 what you said earlier, Your Honor, which we, you know, didn't
20 understand. We probably haven't approached it right because
21 when we sent out that 30(b)(6) we thought it was proper because
22 the first witness didn't address that issue, but you've said
23 otherwise. So we'll just -- we'll just withdraw that notice.

24 THE DISCOVERY COMMISSIONER: Okay.

25 MR. BOYLAN: So that motion will go away.

1 THE DISCOVERY COMMISSIONER: All right. So if you
2 could withdraw your notice of that 30(b)(6) deposition for now,
3 I'm not saying I wouldn't give you another one, but for now
4 until it's properly before me by motion.

5 And then I will just return, Mr. Scarborough, this
6 motion to you all.

7 MR. SCARBOROUGH: Okay.

8 THE DISCOVERY COMMISSIONER: Let me check it out on
9 our end though. We'll return it to your local counsel.

10 MR. SCARBOROUGH: That's absolutely fine, good
11 resolution. Thank you, Your Honor.

12 THE DISCOVERY COMMISSIONER: Okay. All right. Okay.
13 Moving right along. What defendant would you like to talk
14 about next?

15 MR. BOYLAN: We were thinking NDSC, Your Honor.

16 THE DISCOVERY COMMISSIONER: Okay.

17 MR. BOYLAN: I guess as a preamble to this kind of as
18 I've suggested before, we've really struggled to get documents,
19 information and witnesses from NDSC since last June, and -- not
20 June -- February and March, whenever it was, June perhaps.

21 THE DISCOVERY COMMISSIONER: Last year early
22 sometime.

23 MR. BOYLAN: And it's going to have a big effect on
24 what more we need to do because we are now starting to get bits
25 and pieces of information, and that will require follow-up. So

1 again pretty soon you may be wondering about the Phase 1
2 deadline but that said.

3 The other issue is -- and I'll get into the specifics
4 in a moment -- but we have had to do a lot of meet and confer
5 and file a lot of motions, and only as a result of all that
6 work and expense are we starting to get some information. I
7 feel like we've been meeting and conferring. You know, I feel
8 like it's my second job, that we've done a lot of it, and I
9 know the defendants disagree. Of course they're doing it
10 one-on-one --

11 THE DISCOVERY COMMISSIONER: We really don't --

12 MR. BOYLAN: -- but Mr. Wilde and I --

13 THE DISCOVERY COMMISSIONER: I don't mean to
14 interrupt you. I really don't want to address that particular
15 issue. I've taken note of it. I'm concerned about it. I'm
16 not going to provide any attorney's fees today. So I think
17 what we need to do is focus on what we need to talk about with
18 regard to NDSC.

19 MR. BOYLAN: Well, Mr. Wilde and I did that, and
20 because of this motion, and because we're in your presence I
21 think we've made some progress. Mr. Wilde called his client,
22 and I think he's about to report on that in a moment, but we
23 have made some progress on several items, and we're going to
24 resolve them by agreement, and then there's a few others that I
25 think we need your help on, Your Honor.

1 THE DISCOVERY COMMISSIONER: Okay.

2 MR. BOYLAN: As to the interrogatory or the 16.1
3 issue actually regarding disclosing the people who participated
4 in phone calls, outbound or inbound, he's going to amend and
5 specifically identify the people who are very likely to have
6 participated in those phone calls. So that is similar to
7 essentially the same as the resolution with the others. So
8 we're satisfied with that. I assume that's a stipulation and
9 will become a part of the Court's resolution.

10 As to complaints and the complaint log, formal and
11 informal, I think we'd just like to agree both of us to follow
12 what you've already determined on the same issue and the same
13 request and the same disclosure as to the other defendants.

14 Oh, going backward in time if I may for a moment.
15 With respect to those who engaged in phone communications, in
16 addition to identifying them in the way I described, he's also
17 agreed to provide to me the names and addresses of the temp
18 agencies which supplied some of these people, and the reason
19 for that is because it may be that only they have their last
20 known contact information. So he's agreed to give me those
21 names, and that way I can issue a subpoena to try to track
22 these people down if the names are insufficient to do so. So
23 that is appreciated.

24 As to Request for Production No. 2, as you know from
25 our papers, we had a number of complaints with their responses

1 that, you know, were not code compliant, didn't tell us really
2 whether they had documents, didn't have documents or the like.
3 In many cases, they simply referred us to the Bates numbers of
4 a handful, and in one case two pages of previous documents, and
5 we challenged that in a variety of ways.

6 We also challenged, for example, if we could focus on
7 Request for Production No. 2, it takes us back to all the
8 disputes we've had regarding the word generic, and Mr. Wilde
9 and I don't really agree on what that means. I don't think
10 I've found agreement with any of the defendants, but we're
11 talking about documentation, and we've seen a variety of types
12 of it from other defendants. In fact, QLS probably more than
13 others has given us some good examples of this.

14 But there are templates, and I had Mr. Ceran tell me
15 he doesn't even agree with what a template means in this
16 context, but for my purposes there are documents. There are
17 forms. There are forms, and those forms can be modified or
18 not. There are forms and templates related to reinstatement.
19 There are forms and templates related to pay off. There are
20 forms and templates and procedures, generic procedures that
21 relate to how do you account for reinstatement.

22 In some cases there are, for example, I think it
23 was -- ND -- no, I think it was MTC who gave us a generic
24 policy on what you tell homeowners -- excuse me -- what you
25 tell debtors when they call and communicate and what you're --

1 how you conduct phone communications with them. So to us all
2 of this stuff is generic.

3 Where Mr. Wilde and I part ways is instead of
4 requiring his client to identify all these things he wants me
5 to do it and say, well, what exactly are you looking for? What
6 do you want? And my answer is I want everything the Court
7 ordered that's generic, and please don't rely on me to tell you
8 what your client has because I'm sorry I don't know what your
9 client has, but I've given him examples. If he has seen the
10 document productions from the other defendants, he's seen a
11 whole variety of examples of this type of generic
12 documentation.

13 Some of it is really important stuff, like they
14 denied they were a collection agency, but they've got
15 templates, forms and procedures for how they handle the money
16 collected, and we know now -- again thankfully only because of
17 your orders -- we know that they collected millions of dollars
18 from Nevadans for reinstatement and pay off. They had entire
19 divisions, groups of people that did reinstatement and payoffs
20 as part of their contractual work with the numerous lenders
21 that they represented as the collection agent. So there are
22 all kinds of forms related to reinstatement, payoffs,
23 collection.

24 There are forms related and policies related to what
25 do you do with the money. They have trust accounts, Your

1 Honor. What they do is when they get these millions of dollars
2 in for reinstatement and pay off from Nevada is they put them
3 into trust accounts if it's made payable to them, and in most
4 cases it has been for most defendants at least part of the
5 time, and then they pass that on, that money on to their lender
6 clients. Well, there's forms for all of that.

7 There's also communication databases. I think
8 Mr. Scarborough mentioned one earlier. They have specialized
9 databases that they use to communicate with their lender
10 clients, and certain types of information would be communicated
11 directly with the lender clients. There are forms for that.
12 Some of it's electronic, and they need to access the forms
13 online, take screen shots, print the screens or whatever it is
14 to show this generic type of documentation, which is used in
15 connection with the collection, deposit and passing on to their
16 lender clients the money.

17 So I have as part of the meet and confer complained
18 respectfully to Mr. Wilde that I shouldn't have to tell him
19 what his client's looking for, but I have given him examples,
20 and I gave him many of the examples that I just gave to you.
21 He has now said that he's going to go back to the client and do
22 a sweep for generic documentation. I'm grateful for that, but
23 this time it has to work, and I'm disappointed at how many
24 months and how many thousands of dollars I had to expend in
25 order to get him to do that, but he's agreed to do that.

1 As to Request for Production No. 3, again we -- the
2 documents that -- the response they gave us was not code
3 compliant. It didn't say whether they have documents, whether
4 they don't have documents or whether they're going to produce
5 documents. It merely referred to some base numbers of a
6 handful of generic -- of orders rather from unrelated matters,
7 and that was not what the request was about.

8 No. 3 is a broad request. Mr. Wilde and I
9 acknowledge that it's a broad request, but it's the one you
10 ordered. There was a meet and confer. They objected to it,
11 and you ordered it, and they didn't comply with it, and it is
12 indeed very broad, but that's what you intended, and frankly
13 that's what we need to get the evidence to prove our case. So
14 as to No. 3, I don't know that we have any particular
15 resolution. We just need your order enforced in an unambiguous
16 way for Mr. Wilde's purposes.

17 And then with respect to Request for Production No.
18 8, again a non-code-compliant response, they simply referred to
19 two documents by Bates number, didn't tell us whether they had
20 other documents, whether anything's withheld, whether
21 anything's going to be produced, and we know from discovery
22 that there are other documents that are responsive that they
23 have not produced, and at least one and perhaps two other
24 defendants have agreed to do so, and they're very important.

25 And I just want to give you an example not intended

1 to be comprehensive about the defect in their failure to
2 produce documents in response to Production No. 8. The
3 contracts, their contractual agreements with their clients,
4 we've asked for those, and we've explained in our papers to you
5 why those are exceedingly important. Again, this request, you
6 ordered a response. So from our position it's too late for
7 them to argue relevance or interpretation that's not credible.

8 But speaking about the contracts, just one example,
9 just one please, Your Honor, what they do is they have
10 agreements with the lenders. Sometimes those are very
11 elaborate, and sometimes they're done in part, file by file,
12 and we've seen examples of these. And the contracts spell out
13 what they're to do or not required to do on exactly the Phase
14 1 issue that you have articulated, which is were they engaging
15 in collection agency activities? Were they going beyond what
16 they say, which is they only filed a notice of default and
17 proceeded with a notice of sale?

18 What these contracts do is they show they were doing
19 reinstatements. They were doing reinstatements of the
20 defaulted loans. They're doing payoffs of the defaulted loans.
21 They're doing REO services related to the defaulted loans.
22 They are in some occasions providing representation related to
23 mediation to try to work out a loan modification. In some
24 cases they've done loan modification agreements.

25 The contracts with their lender spell out what those

1 services are that they're being engaged to perform, and in many
2 cases they also deal with the big issue here about whether
3 they're debt collectors and whether they're required by their
4 clients who recognize that in fact they are debt collectors.

5 In most cases these contracts are requiring them to
6 acknowledge to the borrowers the reality of the situation,
7 which is they're debt collectors. So they have to say that.
8 In some cases and some clients, the contracts require them to
9 acknowledge that they're debt collectors on behalf of the
10 lender. So, you know, I think Chase gave us most of -- Chase
11 Bank with CRC, I think we have most of that contract. That was
12 their primary client. They only did a smattering of work for
13 other lenders is my understanding from what they've told me,
14 but they haven't given us the other contracts.

15 But we're talking about NDSC. NDSC has not given us
16 any other contracts with their clients.

17 THE DISCOVERY COMMISSIONER: So, counsel for the
18 defendant, who did your client primarily work for?

19 MR. WILDE: Your Honor, they had -- I don't know if
20 they had written agreements, but they did foreclosures for most
21 of the major banks in Nevada.

22 THE DISCOVERY COMMISSIONER: Why would they not have
23 a written agreement?

24 MR. WILDE: Some of the written agreements are with
25 the law firm of Tiffany and Bosco, the firm that I'm with, and

1 Tiffany and Bosco simply has NDSC as their agent conduct the
2 foreclosure.

3 But, Commissioner, if I could, and again I've sat in
4 the back, and I've listened to a lot of people speak today, and
5 I just need one minute of your time. I know you commented on
6 some of the documents you're going to go back and look at. If
7 you'll look at Exhibit A to our response, it was an e-mail that
8 I sent to Mr. Boylan in November of 2016, just a few months
9 ago, and it was because he took the position that he didn't
10 need to have a meet and confer, and I said right in my e-mail I
11 don't know of any authority where you can forgo a meet and
12 confer. Let me know what your objections are. Give them to me
13 in writing or a list, and I'll quickly answer you.

14 So for him to continually say over and over that it's
15 been a hundred motions and thousands of dollars in attorney's
16 fees -- as I age and I get older, I look for milestones. I
17 look for street signs. I look for ways to identify a space in
18 time when I can forget everything from before that, and that's
19 what I do with this e-mail. I send him that e-mail, and he
20 didn't respond. He didn't schedule a meet and confer. So for
21 him to say that he's had several meet and confers, he hasn't
22 with me. He hasn't with my office. So today we did get a lot
23 of ground covered.

24 And I'm willing to supplement these responses
25 including I'm going to go back to my client, ask him about

1 contracts that NDSC had, and then make a determination on
2 whether or not they should be provided, and as always I will
3 follow the Court's order if I don't object.

4 THE DISCOVERY COMMISSIONER: Can we at least if there
5 are such contracts look at the language, and if there is any
6 language in there that would suggest debt collecting or any of
7 those activities within the scope of debt collecting, calling,
8 trying to work out a debt collecting plan. You know, you all
9 know this area much better than I do.

10 MR. WILDE: Right.

11 THE DISCOVERY COMMISSIONER: But having said that,
12 because even if you think that some of the contract is arguably
13 protected, there may be portions of that contract that at the
14 end of the day you need to disclose.

15 MR. WILDE: I understand.

16 THE DISCOVERY COMMISSIONER: And I think you would
17 know which ones those are.

18 MR. WILDE: I know exactly what he's looking for and
19 what the --

20 THE DISCOVERY COMMISSIONER: Okay. So even if you
21 think that much of the information may be privileged or, you
22 know, not relevant, you need to disclose even if you redact and
23 you provide a privilege log explaining what you did so
24 Mr. Boylan, you know, takes a deep breath before he looks at
25 the documents, you need to do that.

1 MR. WILDE: I understand completely.

2 THE DISCOVERY COMMISSIONER: Okay.

3 MR. BOYLAN: On that, Your Honor, a couple things.
4 We have a protective order in place. So there really shouldn't
5 be any major concerns about a basic commercial contract, but if
6 there is, we'd like to be able to make the determinations about
7 what is relevant for collection agency activity. All these
8 defendants have said that they do nothing. They have sworn --
9 their representatives have sworn, yeah, we do reinstatement,
10 but that's not collection. They've looked me right in the face
11 and said that.

12 THE DISCOVERY COMMISSIONER: If anybody needs to
13 review them, I will impanel. I am trusting that the defendant
14 knows what the defendant needs to produce. I understand you
15 have a protective order. I don't know if there are other
16 concerns in that contract, such as financial arrangements that
17 might should remain privileged or could remain privileged. I
18 don't know what everyone else has produced. I'm not concerned
19 about that right now.

20 MR. BOYLAN: On the meet and confer issue, here's
21 what I've tried to explain, and I've told Mr. Wilde this in
22 writing. My understanding -- and we have quoted and argued
23 this in our papers, and we have quoted the code sections -- my
24 understanding -- and if you correct me right now, then it's
25 corrected forever in this case and in this courtroom -- what

1 we've said is we did a meet and confer. We had a motion. You
2 issued an order.

3 Now, when people don't comply with orders I don't
4 think I'm required to call them up and beg them to do so or to
5 help them.

6 THE DISCOVERY COMMISSIONER: Well, I'm going to tell
7 you I disagree with you. The rule under 2.34 says any time
8 before a discovery motion is filed, whether it be a lack of
9 sufficiency or lack of compliance with the order you have to
10 have a 2.34, and sometimes there are legitimate reasons why you
11 have not received a response. I cannot tell you how many times
12 for whatever reason counsel thought something was sent or
13 e-mailed, and it wasn't, or there was a miscommunication
14 between counsel. So I do require the 2.34 on just about
15 everything. There might be a couple of exceptions, but they
16 would not apply here.

17 MR. BOYLAN: Well, I appreciate that clarification
18 because we thought it was a Rule 37 sanctions motion and that
19 that didn't apply. Also, we told these folks that was our
20 position, and, you know, so, but going forward --

21 THE DISCOVERY COMMISSIONER: Well, it's your
22 responsibility to have the 2.34 conference before you filed a
23 motion, which is why I did what I did earlier today and since
24 you -- to have that conference because I felt that there was
25 not a meaningful exchange or a meaningful discussion. So it

1 says basically discovery motions may not be filed.

2 And what you were really concerned about, and I know
3 you think there was lack of compliance with the order, and
4 certainly in some respects, you know, there may have been but
5 in other respects it was for sufficiency of responses, and that
6 definitely requires a 2.34. Plus, I think it's professional to
7 make sure that you're on the same page. Now, if you keep
8 trying to call and schedule a 2.34 and nobody's responsive to
9 you, then I waive it, but I have to see a really good-faith
10 effort being made.

11 MR. BOYLAN: Well, I appreciate that. We'll do that
12 going forward. I would again later -- we're not there yet
13 perhaps -- but at some point it would be nice to the extent our
14 motions are granted in whole or in part if all that time were
15 accounted for. It takes a lot of time to meet and confer with
16 all these defendants on every issue, but we'll do it.

17 THE DISCOVERY COMMISSIONER: Welcome to litigation.

18 MR. BOYLAN: But we'll do it.

19 THE DISCOVERY COMMISSIONER: You know, I don't know
20 what else to tell you. It's the nature of what you are
21 required to do. I understand that maybe certain parties have
22 not been as responsive as they should've been, and I will deal
23 with that accordingly when it's appropriate. For now I want to
24 try to get everyone back on track.

25 So I think we've talked about Request to Produce No.

1 8. I think defense counsel understands what is being
2 requested, and I hope that he will provide the contracts. I
3 certainly don't mind redacting private type of confidential
4 financial information arrangement because I don't think that's
5 relevant.

6 If there's any other portion of that contract that
7 you're very concerned about, then just make sure you prepare a
8 privilege log, and you do have a protective order in place. So
9 that would certainly provide some protection.

10 Request to Produce No. 3, I think that that
11 information should definitely be produced, and it was -- I
12 don't know how broad it was because it is going to be limited
13 to Nevada. So that's what the issue is, and each state has
14 their own laws I'm presuming on this, but I do expect some
15 compliance with Request to Produce No. 3. So I'm not sure what
16 the issue is there.

17 MR. WILDE: And that would be, for example, if my
18 client had any internal documentation where it discussed
19 whether or not it needed to have a collection license, but
20 like --

21 THE DISCOVERY COMMISSIONER: And if you're going to
22 rely on advice of counsel, then you're going to have to produce
23 the advice given. You can't claim privilege on that.

24 MR. WILDE: Okay. I'm just thinking that my client's
25 not required to go through every file to see if that document

1 is in those files.

2 THE DISCOVERY COMMISSIONER: I am confident that
3 there was -- I would look at or near the time you started
4 business -- your client started business in Nevada because I
5 suspect that there were some discussions on that. There may
6 not have been.

7 MR. BOYLAN: Well, we know from --

8 THE DISCOVERY COMMISSIONER: And I don't know what
9 you mean by going back and looking through every file. I mean,
10 this isn't file-by-file discovery issue.

11 MR. WILDE: Well, for example, Your Honor, we
12 provided them with the orders where we prevailed, or when I say
13 we, my client prevailed on this allegation whether or not it
14 had a collection agent -- or needed to have a collection --

15 THE DISCOVERY COMMISSIONER: Well, that's not really
16 the issue.

17 MR. WILDE: Well --

18 THE DISCOVERY COMMISSIONER: The issue -- well, I
19 understand what your legal position is, and you can talk with
20 Judge Kephart about that, and you should talk to him about
21 that, but the discovery is requesting from you any internal
22 discussions or information about whether or not your company
23 needed to be licensed as a debt collecting agency.

24 MR. BOYLAN: And that reflects our frustration, Your
25 Honor. We asked for internal documents, and they give us court

1 orders where they won. I mean, that's what I'm up against. Do
2 I need to meet and confer about that?

3 THE DISCOVERY COMMISSIONER: Yes, you do.

4 MR. BOYLAN: I'm sorry. I guess I will.

5 THE DISCOVERY COMMISSIONER: You do have to meet and
6 confer about it because then when you come to me I'll sanction
7 them, but I'm not going to do it without a meet and confer.

8 So, Defense Counsel.

9 MR. WILDE: Yes, I will meet with my client.

10 THE DISCOVERY COMMISSIONER: You need to go take a
11 look at this, and these are for the most part, I would presume,
12 are documents that were prepared in the ordinary course of
13 business or to determine whether or not you could engage in
14 business without a license. If there are documents that
15 involve attorney-client advice or privilege and you're going to
16 rely on that advice, then you're going to need to produce that
17 documentation, maybe not everything, but then you'll have to do
18 a privilege log and make sure that you produce the information
19 that you are going to rely on.

20 And since you have several orders that support your
21 position, I'm assuming that your reliance may not have been
22 misplaced, but you're going to have to produce the information.

23 MR. WILDE: And, Your Honor, picking up where I left
24 off, and that's where I was going to offer to start is in those
25 cases I will pull those files that aren't necessarily with

1 NDSC, but their agents, their attorneys at the time, and see if
2 there's memos in there and other discussions in internal
3 documents, but we'll --

4 THE DISCOVERY COMMISSIONER: And in addition on the
5 plaintiffs in this case you need to check their files.

6 MR. WILDE: Oh, we did. We've already provided them
7 with every shred of document from their files.

8 THE DISCOVERY COMMISSIONER: And then you need to
9 take a look at -- I don't know. Do you have a compliance
10 officer in your company? Did you have one?

11 MR. WILDE: I will -- I will check.

12 THE DISCOVERY COMMISSIONER: Look at their e-mails
13 out or near the time that --

14 MR. BOYLAN: We have found that they have considered
15 this issue periodically over the years of operating these
16 businesses. In fact, it's kind of an industry issue. One of
17 the witnesses for a different defendant said, yeah, this is an
18 industry argument. It's an industry argument that we are not a
19 debt collector. So this is an ongoing thing.

20 THE DISCOVERY COMMISSIONER: Maybe it'll go all the
21 way up to the Supreme Court. Who knows?

22 But for the interim, I need the defendant to double
23 check and see what you have in your possession. Look at your
24 compliance officer's e-mails. Look at the lawyer's e-mails.
25 Talk to the lawyer for the company. If that would be you, talk

1 to yourself.

2 MR. WILDE: I'll do so. I'll do so.

3 THE DISCOVERY COMMISSIONER: And find out where the
4 information is.

5 MR. WILDE: Okay.

6 THE DISCOVERY COMMISSIONER: With respect to -- well,
7 we're going to -- I guess we're going to come back to
8 Interrogatory 18.

9 Or is that not an issue for this defendant?

10 MR. BOYLAN: Well, I think --

11 MR. WILDE: Let me if I could address this. My
12 client disclosed that -- and that's where I was, and why I was
13 late. I apologize. I was on the phone with the attorney that
14 defended the deposition of our PMK. I tried to get a hold of
15 our PMK today, and she is out of town. I cannot reach her.

16 THE DISCOVERY COMMISSIONER: Okay.

17 MR. WILDE: So I spoke with Kevin Nelson of our
18 Phoenix office, and he said that that -- and he read to me from
19 the transcript, from Olivia Todd's transcript that that
20 \$40 million figure provided was simply trustee fees. It did
21 not include the costs. Again, we're not trying to hide the
22 ball, but she obtained that information because it's on an old
23 accounting system from a Peachtree accounting where it tracked
24 only the trustee fees.

25 THE DISCOVERY COMMISSIONER: Okay.

1 MR. WILDE: Now, the Court has to recognize that
2 revenue -- I shouldn't say revenues. I should say moneys that
3 come into a trustee come in from escrow companies, debtors,
4 short sales, different places. Many times moneys don't come
5 through the trustee. They go directly to the lender. So my
6 client is having a difficult time under this old accounting
7 system to look exactly for those costs, and again because
8 trustees charge a wide range of fees to clients and government
9 entities that are managing mortgage companies, there's no way
10 for us to even estimate what those costs might be.

11 THE DISCOVERY COMMISSIONER: So are you in the same
12 position as your other counsel or other counsel, other defense
13 counsel that you'd have to go and look at each file?

14 MR. WILDE: That's correct. We'd have to pull each
15 file and see what those particular costs are. Again, we're not
16 trying to hide the ball. It's title costs, recording costs.

17 THE DISCOVERY COMMISSIONER: Right. You don't have a
18 system in place that you can search for that information?

19 MR. WILDE: That's correct.

20 THE DISCOVERY COMMISSIONER: So do you know how many
21 files we're talking about in Nevada?

22 MR. WILDE: Well, NDSC is a large player in this
23 game. There was a time during the heyday, so to speak, when
24 they were doing 4 to 5,000 foreclosures a month. It was just
25 crazy. So, yeah, it's thousands of files. I mean, you're

1 talking 2007 to 2011. You know, that could be tens of
2 thousands of files.

3 MR. BOYLAN: There's an error there that's important,
4 Your Honor. NDSC, unlike a couple of the other defendants,
5 they never got their license. They're still operating
6 illegally.

7 MR. WILDE: Objection, Your Honor --

8 THE DISCOVERY COMMISSIONER: Well, wait a minute --

9 MR. WILDE: You know, I've sat here through all this.

10 THE DISCOVERY COMMISSIONER: -- that has not been
11 determined yet.

12 MR. BOYLAN: In our view, in our allegation --

13 THE DISCOVERY COMMISSIONER: Wait, gentlemen. It's
14 not been determined yet. That's why you're here. That's in
15 part what you are going to have to litigate. So let's just --

16 MR. BOYLAN: Well, my point is --

17 THE DISCOVERY COMMISSIONER: -- acknowledge that.

18 MR. BOYLAN: Of course. It's an allegation. My
19 point is that I'm not sure why he's talking about an old
20 accounting system. They're still doing it today, and
21 furthermore, the costs, these are costs that according to their
22 position they incur the costs, and they bill them to their
23 clients, and they have a whole separate accounting system for
24 how they bill their clients. So it's just every other
25 defendant has been able to do it. It's just not credible.

1 And she didn't testify that to me. I deposed her.
2 What she did say is that she just didn't even look for the cost
3 information, and what she provided was only the fees.

4 THE DISCOVERY COMMISSIONER: Okay. So why don't I
5 ask defense counsel to try to provide me some additional
6 information. How many files are we looking at that only deal
7 with Nevada? And again, is there any way to search those
8 files? I mean, you've indicated no, but is there a system in
9 place that would allow us to do some sort of search even if we
10 had to download a different program to enable that search?

11 And in addition to which I am also somewhat curious
12 as to how these files exist. Are they all hard copy? Are they
13 all on a computer, and if they're on a computer, counsel for
14 the plaintiff suggested that perhaps you could download them on
15 a disc or flash drive, and then let the plaintiffs go through
16 the process.

17 Now, we've discussed the same issues before about
18 confidentiality and issues regarding bank regulations because
19 we certainly don't want to run afoul of those, but I think that
20 that is something that I'm going to need you to do a little
21 investigating on, and then I will address that issue on
22 February 10th when you all come back to see me on the
23 protective order, and then I'll have a little more information.

24 And of course, Plaintiffs' Counsel, five days before
25 you can file your opposition, which won't be a problem.

1 MR. WILDE: And, Your Honor, what is the time frame
2 of that again? I don't want to sound stupid. I just want to
3 make sure I have the right information for my client. 2007 --

4 THE DISCOVERY COMMISSIONER: Well, when did you --
5 when were you active in Nevada?

6 MR. WILDE: I think it was -- oh, it's been long
7 before 2007. So is it 2007?

8 THE DISCOVERY COMMISSIONER: Okay. Well, we can go
9 beyond 2007.

10 MR. WILDE: Okay.

11 THE DISCOVERY COMMISSIONER: I think that there is
12 some recent case law that came down from the Supreme Court.
13 It's not necessarily analogous -- well, it's arguably analogous
14 to your case. It's not directly on point but on statute of
15 limitations issues. It was related to a different issue but
16 what are we talking about, six years?

17 MR. BOYLAN: For this defendant, we've said 2007 to
18 the present.

19 THE DISCOVERY COMMISSIONER: Okay. Are you still
20 doing business in Nevada?

21 MR. WILDE: Oh, yes.

22 THE DISCOVERY COMMISSIONER: Still busy I'm assuming?

23 MR. WILDE: Well, again I don't -- does the present
24 mean today? I mean, I thought this was 2007 through 12, but --

25 THE DISCOVERY COMMISSIONER: Okay.

1 MR. BOYLAN: It was for those who got their license
2 in 2012.

3 THE DISCOVERY COMMISSIONER: So that was your cutoff
4 time?

5 MR. BOYLAN: But this defendant never got its
6 license.

7 THE DISCOVERY COMMISSIONER: Okay. I understand that
8 distinction.

9 MR. WILDE: All right, Your Honor.

10 THE DISCOVERY COMMISSIONER: So once you have your
11 license it's moot with respect to going forward on any damages.

12 So, sir, your time frame will be 2007 to the present,
13 but I need to have an idea of how involved it is, and I'm not
14 sure without more information I'm going to be able to determine
15 that.

16 The next issue I have is 16.

17 MR. BOYLAN: This one I'm going to have to ask
18 Mr. Wilde if we came to a consensus on this. My notes are
19 unclear. I thought that we did have an agreement that if they
20 have the phone records they're going to give them to us. They
21 have not given them to us yet.

22 That's where I think we are, but please correct me if
23 I'm wrong.

24 MR. WILDE: Again, it's just communication between
25 the two of us. The phone records have been subpoenaed by

1 Mr. Boylan. We did provide the phone numbers and the servicer,
2 and I believe it was only one servicer, XO, and Mr. Boylan
3 informed me that they have not responded to his subpoena yet.
4 I'm willing to cooperate and contact XO and, you know, press
5 for them to do so.

6 Again, I couldn't speak with the deponent, but I did
7 speak with the counsel that defended it, and his recollection
8 as he was reading me from the transcript is that Ms. Todd's
9 recollection of the phone bills is it was just a lump sum. It
10 didn't break down phone numbers in the bill. Perhaps it was
11 per phone line. I'm not sure, but certainly the phone company
12 would have all those phone records and the phone numbers going
13 in and out. Again, I want to cooperate all that I can to
14 provide those.

15 If my client does have the phone records with the
16 numbers, and they are easily accessible, certainly we will turn
17 those over, but again we're hoping that the phone company will
18 just provide those. It'll be much more detailed and beneficial
19 to Mr. Boylan. Can we report back to the Court on that issue
20 as well?

21 MR. BOYLAN: We have a bit of a disagreement on that.

22 THE DISCOVERY COMMISSIONER: Okay.

23 MR. BOYLAN: First of all, I think the witness
24 testified that she doesn't throw away anything. So they do
25 have the records. Exactly what those records say she was

1 unsure, but they need to produce to us all the phone records,
2 and we'll look at them and see what they show. We don't want
3 them to determine what's relevant unilaterally. Just give us
4 the phone records which she still has.

5 Now, as to the subpoena --

6 THE DISCOVERY COMMISSIONER: Who still has them?

7 MR. BOYLAN: His client. She testified she doesn't
8 throw away anything. So and she's the president. She makes
9 all those decisions. She was very clear about that. Now, with
10 respect --

11 THE DISCOVERY COMMISSIONER: Why would she have all
12 the phone records going in and out of Nevada? Is that what she
13 said?

14 MR. WILDE: Again, I didn't take the deposition or
15 defend the deposition, Your Honor.

16 THE DISCOVERY COMMISSIONER: I really don't care how
17 you get the records, whether you have to send an authorization
18 to your own telephone company. It doesn't matter to me. I
19 understand that Rule 34 talks about what's in your control, and
20 there are some very interesting cases on what control means,
21 but we're to the point now, where I want results. So if you
22 have an ability to send an authorization to your phone company
23 and say we need these records, get them, and provide them to
24 Mr. Boylan.

25 MR. BOYLAN: And it --

1 THE DISCOVERY COMMISSIONER: If your client has them
2 because she saves everything, then you need to ask her where
3 they are, and you need to make copies and provide them to
4 Mr. Boylan. You are welcome to give me an update on this, but
5 if it is in the same vein as what we have just discussed, I
6 will not be happy. I want those records turned over.

7 Next. Are we on 22?

8 MR. BOYLAN: 22.

9 THE DISCOVERY COMMISSIONER: It talks about business
10 activities.

11 MR. BOYLAN: I think our main point of departure
12 here, Your Honor, was NDSC has taken the position that as
13 ordered by you and the language that was in there as directed
14 by you was limited to the named plaintiffs only, and that's not
15 our understanding, and so they didn't give us any documents.
16 We already had the named plaintiffs, but I believe -- and I'm
17 sorry. It's getting late. I'm looking at this as I'm
18 speaking -- but we didn't get a code-compliant response, and we
19 didn't get documents, and we were told that they believed you
20 ordered it limited to the named plaintiffs.

21 THE DISCOVERY COMMISSIONER: I think I also ordered
22 what we have been calling generic documents.

23 MR. WILDE: That's correct, Your Honor.

24 THE DISCOVERY COMMISSIONER: So I think perhaps this
25 request has already been dealt with earlier when defense

1 counsel indicated that they would produce any type of generic
2 documents to you that related to collection -- I hate to use
3 that phrase -- related to the business that the defendant was
4 doing in Nevada.

5 So if there were standard letters that were sent out,
6 if there was a script that was followed in relation to the
7 telephone calls, if there was a memorandum reflecting what
8 types of services you would provide in Nevada, if you sent out
9 postcards to your 10,000 closest friends talking about your
10 services in Nevada, all of that information needs to be
11 disclosed because --

12 MR. WILDE: Your Honor --

13 THE DISCOVERY COMMISSIONER: -- well, I didn't intend
14 for you to have to go look through any other individual's file,
15 any other person's file that you're trying to, you know, deal
16 with in this particular situation. What I did intend you to do
17 was to provide any type of standardized forms or documents that
18 would've been used in Nevada. I do not know how else to say
19 that.

20 MR. WILDE: No, I understand. It's that vague term
21 generic, and we did provide the licenses.

22 THE DISCOVERY COMMISSIONER: Do you take generic
23 medicine?

24 MR. WILDE: Yeah.

25 THE DISCOVERY COMMISSIONER: I take generic medicine.

1 MR. WILDE: I do, too.

2 THE DISCOVERY COMMISSIONER: Do you know what it
3 means? I know what it means.

4 MR. WILDE: Okay.

5 THE DISCOVERY COMMISSIONER: If I know what the term
6 generic means, I expect my counsel to know what it means as
7 well.

8 MR. WILDE: Okay.

9 THE DISCOVERY COMMISSIONER: There's always Webster's
10 dictionary if you're confused.

11 MR. WILDE: I will look it up again, Your Honor.

12 THE DISCOVERY COMMISSIONER: I think you know what
13 generic means. It means standard. It means uniform. It means
14 something that you would use in any case that you might modify
15 a little bit to address that particular person, but some
16 standardized form document. I might have used a different word
17 than generic, but right now I think that hopefully we're on the
18 same page on that.

19 MR. WILDE: Yes, we will supplement 22. I will do
20 another sweep with the client and supplement 22.

21 THE DISCOVERY COMMISSIONER: And it may be that the
22 documents that you've already produced in relation to the
23 individual plaintiffs, you can look at their files and then go
24 back to your form file and see where those documents are and
25 then pull them up. Pull them up and print them and provide

1 them.

2 MR. BOYLAN: And the documents changed over time.
3 Those particular plaintiffs existed in a very narrow window.
4 There are different forms and stuff that were issued throughout
5 the relevant period. So that would be helpful, but we have
6 found with the other defendants that it's much broader than
7 that.

8 THE DISCOVERY COMMISSIONER: If you asked Discovery
9 Commissioner Bulla, where is your -- do you have a generic form
10 or a standard form for report and recommendations, I could tell
11 you where to go on the Clark County website to pull that form
12 up.

13 MR. WILDE: Right. And as those forms are updated
14 you throw out the old ones, and that's my point. It gets to a
15 point where he talks about different versions over a ten-year
16 period.

17 THE DISCOVERY COMMISSIONER: I have many different
18 versions for the last -- this month will be my tenth year doing
19 this.

20 MR. WILDE: Right. But they're hard copies.

21 THE DISCOVERY COMMISSIONER: I have plenty of old
22 forms, but we always keep them. They're always available on
23 our computer. They don't go away. So I don't know what it
24 takes for your company to double check, but I think that you
25 need to do that. Clearly we have some old forms because

1 they're with the individual files.

2 MR. BOYLAN: And --

3 THE DISCOVERY COMMISSIONER: And we could, you know,
4 go down that road if we have to, but I would hope that maybe
5 your client would have maintained some of their forms. Do your
6 best. See what you're looking at. We're talking a little bit
7 in a vacuum right now because you really haven't had the -- I
8 don't think you've investigated this enough.

9 MR. WILDE: We'll do so, Your Honor.

10 THE DISCOVERY COMMISSIONER: So why don't you go take
11 the time to do that, and then we can talk about it further.

12 Anything else as it relates to this particular
13 defendant NDSC?

14 MR. BOYLAN: I can't think of anything else.

15 MR. WILDE: I don't think so, Your Honor. I'm done
16 with my notes. So.

17 THE DISCOVERY COMMISSIONER: Okay. Very good. Thank
18 you.

19 MR. WILDE: Thank you.

20 THE DISCOVERY COMMISSIONER: And then where are we?
21 Are we done?

22 MR. BOYLAN: There's MTC.

23 THE DISCOVERY COMMISSIONER: I knew there was one
24 more.

25 MR. WILDE: And don't let us leave without a time on

1 that February 10th hearing.

2 THE DISCOVERY COMMISSIONER: The February 10th
3 hearing currently is 9:30.

4 I was going to say this. Plaintiffs' counsel is
5 going to prepare the report and recommendations from today's
6 hearing, but all of you who are supplementing, that I've asked
7 to do some supplementing today, I would like if at all possible
8 that you could complete your supplementation by February 1st
9 of 2017.

10 The hearing right now is February 10th. So
11 obviously I want the supplementation done in advance of the
12 hearing so that if Mr. Boylan has to do another 2.34
13 conference, he can conduct that prior to the next hearing which
14 is currently February 10th. So that gives everyone a good
15 three weeks really from today to ensure that you can
16 supplement. If you need more time, call Mr. Boylan and tell
17 him, you know what, we need a little more time, and then be
18 prepared to give me an update on your efforts on February
19 10th, okay.

20 MR. WILDE: All right. Thank you.

21 THE DISCOVERY COMMISSIONER: All right. And I'm
22 going to just say this. It is very possible we'll have to
23 continue that February 10th hearing. I do not know that for
24 certain. I want to review the deposition transcripts that will
25 be provided to me hopefully in the near future, this week

1 maybe, but I do want to have the opportunity to review those.

2 MR. BOYLAN: Ms. Brignac.

3 THE DISCOVERY COMMISSIONER: Right.

4 MR. BOYLAN: Is there another one? I'm sorry.

5 THE DISCOVERY COMMISSIONER: No, just -- I'm sorry --
6 one.

7 MR. BOYLAN: Brignac, okay.

8 THE DISCOVERY COMMISSIONER: One deposition
9 transcript. I'm thinking of the other matter. Sorry about
10 that, just the one.

11 Okay. So --

12 MR. BOYLAN: Wait. There is a good segue there, Your
13 Honor, in terms of starting with the MTC issues. Mr. Ceran and
14 I have some disagreements. We've talked many, many times, and
15 I think we're able to talk freely and readily, but we even have
16 a disagreement now about what we said when we talked and what
17 happened. You've probably seen that in the papers.

18 But our perspective is pretty clear. The Court
19 ordered -- we struggled for months to get depositions. They
20 were scheduled and canceled, and then finally we were told
21 these people wouldn't be produced. We made a motion after
22 meeting, conferring. You issued an order requiring them to
23 produce these three witnesses, and then you can see the
24 back-and-forth that went around between us. He blames me; I
25 blame him. The bottom line is they didn't produce the

1 witnesses in 2016.

2 At some point late in the game, Mr. Ceran said, you
3 know what, we can't do it in December. I said, well, some of
4 these people might only be four hours. You can't find one
5 window, and so he basically said you cannot have any of these
6 court ordered witnesses until January or the middle of January
7 or the 3rd week of January. I don't remember the exact dates,
8 but that's essentially what he said.

9 My response was, you know, I just -- delay is
10 unending in this case. Right now we've got a March cut off for
11 Phase 1. Surely these witnesses are going to say some things
12 that's going to require some additional discovery, either
13 written or deposition. I don't think I should have to wait for
14 court ordered depositions.

15 Now here we are in January. I'm sure Mr. Ceran is
16 going to say, well, he could be taking their depositions next
17 week, and he was just being difficult, but the reality is these
18 were court ordered, and they should've occurred at least a
19 month ago, and I didn't want to be in a position where the
20 deposition is, say, at the end of January. I don't get the
21 transcript until, say, the 1st week of February, and then I
22 don't even have time to issue written discovery that comes out
23 of the content of the testimony.

24 So I figured I've got to come to the Commissioner,
25 lay it out, get enforcement of her order and at least give the

1 Commissioner the perspective that these delays are intended to
2 prejudice us because as I said earlier they are going to argue
3 that we should not extend Phase 1. So Mr. Ceran, I'm sure, is
4 going to tell the Court sure, you know, we'll produce them.
5 We're ready. Well, it's late in the game. We do want to
6 proceed with these depositions. But there's also other issues
7 with respect to document production which is part of the
8 historical problem.

9 These witnesses are critical witnesses. For example,
10 the accounting manager Ms. Juarez [phonetic] has been really at
11 the top of my list, and apparently she had not a single period
12 of four or five hours during the month of December where she
13 could be deposed. We know, we know from other MTC witnesses
14 that she's going to have really important information regarding
15 collecting millions of dollars from Nevadans for, for example,
16 reinstatement and pay off as well as third-party collections,
17 all of which were passed on to the lender. So we're anxious to
18 get there.

19 THE DISCOVERY COMMISSIONER: Well, I understand. We
20 have a very long road ahead of us to get this case prepared
21 depending on what happens along the way, and I do understand I
22 think probably the frustration on everybody's part, but having
23 said that, the holiday season is just difficult. There's no
24 question about it. January is difficult, and although to me
25 right now it feels like we're in July, it's the 2nd week of

1 January.

2 So I think that we have to kind of just step back a
3 little bit and decide, you know, how do we move forward? And
4 it's not that I'm unwilling to listen to what happened. I do
5 understand your position far better than you think I do, but we
6 have to move forward.

7 So what is the situation with the depositions,
8 Defense Counsel?

9 MR. CERAN: Moving forward or -- just moving forward?

10 THE DISCOVERY COMMISSIONER: Moving forward. I mean,
11 what are the depositions that we need to get scheduled? I
12 don't have the names of them.

13 MR. CERAN: We did make someone available in
14 December, but we have Gloria Juarez, Rand Johnson and Terry
15 Johnson, and the dates that I provided to counsel back at the
16 time -- at least before I filed this opposition on December
17 27th were January 9th to January 13th and January 18th
18 to February 2nd for Gloria Juarez; January 17th to
19 January 20th, and January 23rd for Rand Johnson. I know I
20 have a deposition now in another case on January 20th. So
21 that's no longer available. I could get additional days.

22 I mean, we're not trying to hide these people, Your
23 Honor. It was scheduling difficulties, and --

24 THE DISCOVERY COMMISSIONER: So just understand --

25 MR. CERAN: Yeah.

1 THE DISCOVERY COMMISSIONER: -- I'm sympathetic to
2 scheduling difficulties, but if at the end of the day this
3 affects the time frame for the Phase 1 discovery, don't be
4 unhappy about it.

5 All right. So can we get these depositions scheduled
6 before the end of February? Will you work together and make
7 that happen?

8 MR. BOYLAN: Yes.

9 MR. CERAN: I'll definitely do my best, Your Honor.

10 THE DISCOVERY COMMISSIONER: I expect a little bit of
11 an update when you come back on February 10th. It would make
12 the Commissioner very happy if at least was one of those
13 depositions had been completed, if not two.

14 MR. CERAN: We have two more of our witnesses
15 scheduled for Friday.

16 THE DISCOVERY COMMISSIONER: That's good.

17 MR. CERAN: So we're moving forward, Your Honor.

18 THE DISCOVERY COMMISSIONER: All right. So I also
19 have discovery issues.

20 Mr. Boylan, do you want to start with the issues? I
21 know we've covered most of them, but I think we need to just
22 address them as it relates to MTC.

23 MR. BOYLAN: If I could start with one of the most
24 important ones, it relates to RFP No. 8.

25 THE DISCOVERY COMMISSIONER: Okay.

1 MR. BOYLAN: We know from the testimony of
2 Ms. Shubern [phonetic] -- which we've provided in here that
3 they have contracts. We talked about this with one of the
4 other defendants. They have contractual agreements, and these
5 agreements will be incredibly important we think to showing the
6 types of services, i.e., collection that they were performing
7 before they capitulated and obtained their license in 2012.
8 They haven't given us any of those agreements.

9 I believe they've taken the position that they're not
10 relevant in Phase 1 notwithstanding that they detail all the
11 specific collection agency activities, and they also, according
12 to Shubern Kohl's sworn testimony, they have in many cases
13 specifics about being a debt collector and being required to
14 disclose that they are a debt collector. So those are -- you
15 know, if you had to -- if we were making an opening statement
16 at the trial today, very likely those contracts are going to be
17 among the 10 or 15 exhibits that I would outline in my opening
18 statement, but they are refusing to give us those.

19 Another group of documents that would undoubtedly be
20 in my opening statement in this case because it'd be so
21 important and they'd be up on the screen, assuming we have
22 audiovisual capability at trial, and that is, as I mentioned to
23 you in the papers, they were collecting so many checks, so much
24 money from debtor's that some of their people spent eight hours
25 a day just putting the amounts into deposit slips.

1 Now that's a dead-bang answer to the question we
2 framed for Phase 1: Were they collecting money on behalf of
3 their lender clients, or were they a collection agent? Were
4 they collecting claims? Were they acting as an agent? Yeah,
5 well, the checks were coming in payable to them in most cases,
6 and Ms. Diaz testified that sometimes she would do as many as
7 800 a day.

8 Now, they were also collecting money on these
9 defaulted loans and passing on to the lenders and third
10 parties. Sometimes there would be a deal whether in connection
11 with some sale of the property, either before or after the
12 formal sale. So they had all kinds of money coming in,
13 millions and millions of dollars, and they won't give us the
14 checks or copies of the checks that we now know exist, and
15 those are incredibly important. So those are examples of what
16 they've not given us in response to No. 8.

17 Mr. Ceran and I have gone round and round on it.
18 Neither of us has convinced the other --

19 THE DISCOVERY COMMISSIONER: Well, I'm not inclined
20 to give you copies of checks. I mean, if you want the checks
21 on the named plaintiffs we have right now, if they've turned
22 over the file, that's fine, but if it's 800 checks a day, I'm
23 not going to do that. We've got to figure out a better way to
24 handle that volume.

25 MR. BOYLAN: I know how to do that, but I'm happy to

1 try to discuss that, but as you know there are accounting
2 systems, and there's accounting software, and all those checks
3 have to be entered in as a deposit. So that would be actually
4 a more efficient way if they could just produce the accounting
5 reports through the accounting software that would give us
6 that. Again I haven't deposed Ms. Juarez, the accounting
7 manager, to get into these details.

8 THE DISCOVERY COMMISSIONER: Okay.

9 MR. BOYLAN: Of what's available.

10 THE DISCOVERY COMMISSIONER: Who is your primary
11 client?

12 MR. CERAN: My primary client is MFC.

13 THE DISCOVERY COMMISSIONER: I mean, did they work
14 with a lender? Is that --

15 MR. CERAN: Oh, they work with --

16 THE DISCOVERY COMMISSIONER: -- or a --

17 MR. CERAN: Oh, they work with all sorts of different
18 lenders.

19 THE DISCOVERY COMMISSIONER: All sorts of lenders.

20 MR. CERAN: A hundred, you know, big, small, which is
21 why I want to come back to what I thought were the parameters
22 that the Court set for us last time, and that's that we're in
23 Phase 1, and that we're talking about documents that relate to
24 viability of these plaintiffs' claims and generic documents,
25 and when we talk about checks, and when we talk about

1 individually negotiated contracts, they're the opposite of
2 generic.

3 THE DISCOVERY COMMISSIONER: Let's back up for a
4 moment because the contract issue may be different, and I want
5 to tread carefully here because it has been a while since I've
6 read or looked at my prior rulings, but one of the issues in
7 Phase 1, one of the critical issues is whether any of the
8 defendants are in fact debt collectors. That's the whole
9 issue. So if there are contracts that set forth what your
10 company was supposed to be doing, then those contracts are
11 relevant.

12 As I've discussed previously, if there's information
13 in there that is really of a proprietary privilege nature then
14 redact it. Produce your privilege log. You do have a
15 confidentiality order in place.

16 Now, I do tend to agree with you regarding the
17 checks. I need to think about that because that is a different
18 issue. As long as the complete files have been turned over for
19 the named plaintiffs, that's what I wanted you to do. Any type
20 of generic documentation also needs to be disclosed as it
21 relates to the services your company provided, and you, like
22 the majority of the defendants, are in the relevant time period
23 of 2007, I believe, to 2012; is that right?

24 MR. CERAN: Correct.

25 THE DISCOVERY COMMISSIONER: Okay. So we have a

1 relatively limited period of time relatively, and you have to
2 focus on the named plaintiffs in this case as well as the
3 generic documentation, but any type of documents that would
4 reflect the business that your client was engaged in in the
5 state of Nevada I would expect to be turned over.

6 If you are dealing with lenders, for lack of a better
7 term or phrase, there are a hundred of them, then that could be
8 an issue for you, but I would expect you to know what your
9 contracts set forth, and at a minimum at this point, the
10 lenders that are involved with the named plaintiffs and those
11 contracts should be produced with any appropriate redactions
12 because what they are -- what I hope they show is what the
13 scope of your responsibilities were, you know, what was your
14 business in Nevada? What did you do?

15 MR. BOYLAN: Those two contracts alone --

16 MR. CERAN: Well, this is --

17 MR. BOYLAN: -- well, one, they'll only give us one,
18 I think. That won't give us the proof we need because as
19 Ms. Shubern Kohl explained in her deposition, there were
20 different rules and stipulations and different services in
21 Nevada for different clients which goes to that issue of were
22 they --

23 THE DISCOVERY COMMISSIONER: I understand that, and
24 so we are walking a somewhat difficult tightrope here because
25 what I do want to see happen is that the information regarding

1 the services that this defendant provided MTC in Nevada are
2 fully disclosed, whether they be related to these individual
3 plaintiffs in the contract or not.

4 MR. BOYLAN: Thank you, Your Honor.

5 MR. CERAN: Well, it seems, Your Honor, that I -- I
6 understand where the Court's coming from, and it just seems so
7 inconsistent with the idea that we have a Phase 1. On the one
8 hand we can't --

9 THE DISCOVERY COMMISSIONER: But what are you --
10 excuse me. I don't mean to interrupt you, but let me just ask
11 you this question. What is it that you are going to be asking
12 the Court to do after Phase 1?

13 MR. CERAN: Grant summary judgment.

14 THE DISCOVERY COMMISSIONER: On what grounds?

15 MR. CERAN: On the grounds that we are not debt
16 collectors --

17 THE DISCOVERY COMMISSIONER: Right.

18 MR. CERAN: -- in Nevada --

19 THE DISCOVERY COMMISSIONER: That's right.

20 MR. CERAN: -- on the grounds that there are no
21 damages --

22 THE DISCOVERY COMMISSIONER: Well, that is a
23 different -- we are not dealing --

24 MR. CERAN: On the grounds that --

25 THE DISCOVERY COMMISSIONER: Okay. Stop. You've

1 answered my question.

2 MR. CERAN: There are more grounds, Your Honor.

3 THE DISCOVERY COMMISSIONER: Well, I'm sure Judge
4 Kephart will enjoy listening to all of that, but from my
5 perspective the first ground, the primary ground is what's
6 important, which is determining whether or not you're debt
7 collectors. If you're not, then you don't have to be licensed,
8 case over, as I understand it.

9 MR. CERAN: Right.

10 THE DISCOVERY COMMISSIONER: So --

11 MR. CERAN: So let me ask this.

12 THE DISCOVERY COMMISSIONER: -- so what you do in
13 Nevada --

14 MR. CERAN: Right.

15 THE DISCOVERY COMMISSIONER: -- becomes relevant even
16 if it may not be in relation to one of these particular
17 plaintiffs because what you do becomes relevant because I
18 suspect that there may be some plaintiffs if you expanded your
19 services for other lenders that may ultimately be identified.

20 MR. CERAN: So I hear the Court. I'm not arguing
21 with the Court. I just wanted to get some clarification on
22 what the Court means by redaction because my sense of -- I
23 mean, what we're talking about is Request No. 8, which talks
24 about price list. It doesn't talk about everything else that
25 Mr. Boylan has, you know, regaled us, you know, with, right? I

1 mean, Exhibit 8 --

2 THE DISCOVERY COMMISSIONER: No, I think we're beyond
3 8. Let me see which one this relates to.

4 MR. CERAN: Exhibit 8 is --

5 THE DISCOVERY COMMISSIONER: Well, we just talked
6 about No. 8.

7 MR. CERAN: That's what the argument was about, and
8 that's what I was trying to respond to.

9 MR. BOYLAN: The language was the language approved,
10 edited, and ordered by the Commissioner. It wasn't limited
11 that way, and frankly these documents are within the scope of
12 No. 8, within the scope of No. 22, and as just articulated,
13 they're at the heart of the case.

14 MR. CERAN: 8 is Notices, policies or practices with
15 respect to cost and/or fees charged by trustee corp for
16 services. So that's what I thought we were talking about,
17 but --

18 THE DISCOVERY COMMISSIONER: I guess I was looking at
19 the one, and maybe it's 22 that's been throughout the other
20 defendants throughout our discussions today.

21 MR. CERAN: 22 has to do with the business
22 activities.

23 THE DISCOVERY COMMISSIONER: Right. We were talking
24 about the contracts.

25 MR. CERAN: Right.

1 MR. BOYLAN: Right.

2 THE DISCOVERY COMMISSIONER: So which one is that?

3 MR. BOYLAN: It's 22, but it's also 8 because the
4 contracts spell out the fees for particular services.

5 MR. CERAN: But again, these aren't -- these aren't
6 fees that are charged to everybody. They're specifically
7 negotiated fees.

8 THE DISCOVERY COMMISSIONER: Okay. Hang on just a
9 moment, please.

10 THE COURT RECORDER: Something happened.

11 THE DISCOVERY COMMISSIONER: To Odyssey?

12 THE COURT RECORDER: No, it's like it wasn't
13 connected.

14 THE DISCOVERY COMMISSIONER: Oh, it probably didn't
15 want to listen anymore.

16 THE COURT RECORDER: For a few seconds there was
17 nothing.

18 THE DISCOVERY COMMISSIONER: All right. So I'll keep
19 my day job. I won't become a comedian.

20 Is it reconnected?

21 THE COURT RECORDER: Yes, it's turning now. It's
22 recording.

23 THE DISCOVERY COMMISSIONER: There might have been a
24 power surge or something. Who knows?

25 UNIDENTIFIED ATTORNEY: (Unintelligible)