9	MTC's fees and costs for its various services in the State of Nevada are governed by MTC's written contracts with its creditor-clients.	**Exhibit "B"** (Cathe Cole-Sherburn deposition), at 33-34.
10	MTC currently has approximately 150 clients, each with its own particular written contract governing MTC's services for it.	**Exhibit "B"** (Cathe Cole-Sherburn Deposition), at 33-34.
11	If MTC's creditor-clients direct MTC to accept checks (i.e., collect money) from Nevada debtors or third-parties as payment on defaulted debts, MTC itself processes the checks and forwards the funds directly to the creditor-clients and then invoices the client for MTC's services.	**Exhibit "B"** (Cathe Cole-Sherburn Deposition), at 44.
12	According to MTC's current Senior Vice-President of Operations, MTC currently provides both full service default services and foreclosure services to its clients. The two categories are distinct: full service default services include collection services such as handling deed-in-lieu of foreclosure transactions, senior lien monitoring, negotiating loan forbearance agreements, post-foreclosure sale conveyances, and other services.	**Exhibit "B"** (Cathe Cole-Sherburn Deposition), at 140:10-147:12.
13	From at least 2011 to the present, MTC solicits creditor-clients for the services, including full default services and foreclosure services, it provides on defaulted loans in the State of Nevada.	**Exhibit "B"** (Cathe Cole-Sherburn Deposition), at 150:23-151:16.
14	From the contracts for the relevant period produced by MTC thus far, MTC expressly contracted with its creditor-clients to, among other services in the State of Nevada, comply with applicable federal, state, and local laws, including those relating to foreclosures, debt collection, and privacy; represented that it had and would maintain all regulatory approvals, authorizations, licenses, permits, or other permissions, consents, and authorities needed to perform its obligations to its clients; residential foreclosure, collection, recovery,	Boylan Moving Declaration, at ¶15; Exhibits thereto (MTC000485-522, MTC000896-918, MTC001035-1082).

	and all other legal services related to foreclosure of delinquent mortgagors; return telephone calls to defaulted debtors; promptly forward reinstatement or pay-off proceeds received from Nevada debtors on defaulted loans to MTC's creditor-clients; deliver good and marketable title following MTC conducting non-judicial foreclosure sales; attempt to solicit loss mitigation workout options when a Nevada borrower calls MTC; create loss mitigation workouts and send them to borrowers; forward all down payments received from defaulted debtors as part of loss mitigation or forbearance agreements; upon request from Nevada debtors, provide reinstatement and pay-off quotes to Nevada debtors, which would include all amounts owed to MTC's creditor-clients and MTC's fees and costs; handle eviction proceedings on behalf of MTC's creditor-clients; and initiate and carry out non-judicial foreclosure proceedings in the Nevada relating to defaulted loans.	
	15	According to MTC's current Senior Vice-President of Operations, it is one of MTC's duties as a non-judicial foreclosure trustee to collect money from Nevada borrowers and pass it on to MTC's creditor-clients.	**Exhibit "B"** (Cathe Cole-Sherburn Deposition), at 154-158.
	16	In collecting money from Nevada debtors to reinstate or pay-off defaulted debts, and passing the money received on to MTC's creditor-clients, MTC acts as the "middle person" (i.e., agent) in the transaction.	**Exhibit "B"** (Cathe Cole-Sherburn Deposition), at 159:15-25.
	17	MTC's creditor-clients generally require as part of their contracts with MTC that MTC provide a debt-collector, "mini-Miranda warning," to debtors or otherwise inform borrowers to the effect that MTC is a debt collector.	*See* **Exhibit "B"** (Cathe Cole-Sherburn Deposition), at 79-80, 89-90, 124-129.
	18	From at least 2007 to the present, MTC has had an entire department dedicated to handling	*See* **Exhibit "B"** (Cathe Cole-Sherburn

	pay-off and reinstatement of defaulted loans, in response to requests from Nevada borrowers and third-parties.	Deposition), at 42-44.
19	MTC's reinstatement and pay-off process includes receiving (i.e., collecting) money from Nevada debtors, depositing the funds in MTC's trust account, and then passing the money on to MTC's creditor-clients.	**Exhibit "B"** (Cathe Cole-Sherburn Deposition), at 45.
20	As part of MTC's pay-off and reinstatement activities, MTC regularly receives checks, and thus collects money, from Nevada borrowers and third-parties to pay-off or reinstate defaulted mortgage loans in the State of Nevada.	**Exhibit "B"** (Cathe Cole-Sherburn Deposition), at 42-44.
21	As part of MTC's defaulted loan pay-off and reinstatement activities, MTC employees communicate—whether by phone or in writing or both—pay-off and reinstatement quotes to Nevada borrowers and third-parties.	**Exhibit "B"** (Cathe Cole-Sherburn Deposition), at 42-44.
22	MTC currently has approximately 40 employees located in Red Rock, Nevada, alone.	**Exhibit "B"** (Cathe Cole-Sherburn Deposition), at 34.
23	MTC has approximately 15 employees in the State of Nevada who handle calls from Nevada debtors; MTC currently receives approximately 40 such calls a month. In 2011, MTC had approximately triple the number of calls from Nevada debtors, for approximately 100 to 120 such calls per month.	**Exhibit "B"** (Cathe Cole-Sherburn Deposition), at 36-38.
24	It is and was, including between 2007 to 2012, MTC's policy and practice when it receives checks from Nevada borrowers and third-parties for payment on defaulted debts, to confirm with MTC's creditor clients whether the checks should be accepted by MTC on the clients' behalf.	**Exhibit "B"** (Cathe Cole-Sherburn Deposition), at 44.
25	If MTC receives checks from Nevada debtors or third-parties that are made out to MTC's creditor-clients, MTC generally forwards the checks directly to the creditor-clients for processing.	**Exhibit "B"** (Cathe Cole-Sherburn Deposition), at 55-56.

26	All incoming calls to MTC are greeted by an automated recording containing a statement (i.e., admission) to the effect that MTC is a debt collector and all information obtained may be used for that purpose.	**Exhibit "B"** (Cathe Cole-Sherburn Deposition), at 79-80; **Exhibit "I"** (Cathe Cole-Sherburn Deposition), at MTC000314. Authenticated by **Exhibit "B"**, at 73-74, 87-88, 93.
27	It is MTC's practice and procedure that all outgoing communications—including written communications and communications by phone—from MTC to borrowers and their representatives contain a "verbal mini-Miranda warning," admitting that MTC is a debt collector and seeking to collect on debt.	**Exhibit "I"**, at MTC000314. Authenticated by **Exhibit "B"** (Cathe Cole-Sherburn Deposition), at 73-74, 87-88, 93.
28	MTC's so-called "warning" generally consists of a statement disclosing that MTC is a "debt collector" and that the "purpose" of the communication—including calls—is to "collect a debt" and that "any information . . . obtain[ed] will be used for that purpose."	**Exhibit "I"**, at MTC000314. [italics omitted]. Authenticated by **Exhibit "B"** (Cathe Cole-Sherburn Deposition), at 73-74, 87-88, 93.
29	It generally has been MTC's policy, procedure, and practice since at least 2011 for MTC to give Nevada debtors MTC's direct contact information in communications so that Nevada debtors can communicate directly with MTC (rather than its creditor-clients) regarding pay-off or reinstatement of defaulted debts.	**Exhibit "B"** (Cathe Cole-Sherburn Deposition), at 94-95.
30	MTC received no less than $1889.41 from its creditor-client, Wells Fargo Bank, N.A., as payment for MTC's services relating to the named Plaintiffs Raymond and Francine Sansota	**Exhibit "J"**, at TC000072. Authenticated by **Exhibit "B"** (Cathe Cole-Sherburn Deposition), at 107.
31	As to the named Plaintiff Sansotas' property in the State of Nevada, MTC sold the property on or about March 9, 2011, to a third-party buyer at a trustee sale for $51,000.00. MTC itself collected and then remitted these funds to its creditor-client, Wells Fargo Bank, N.A., on or about March 14, 2011, to apply them to the	*See* **Exhibit "J"**, at TC000069-TC000070. Authenticated at **Exhibit "B"** (Cathe Cole-Sherburn Deposition), at 105-107. *See also* **Exhibit "B"** (Cathe Cole-Sherburn

	named Plaintiff Sansotas' defaulted loan.	Deposition), at 105-108.
32	MTC's own internal records demonstrate that MTC deemed itself "Freddie Mac designated counsel (*sic*) . . . authorized on behalf of Freddie Mac to delegate forbearance plans for all Freddie Mac loans."	**Exhibit "J"**, at MTC000113. Authenticated by **Exhibit "B"** (Cathe Cole-Sherburn Deposition), at 105-108.
33	MTC's Senior Vice-President of Operations indicated that MTC was authorized by its client Federal Home Loan Mortgage Corporation ("FHLMC") to enter into loan forbearance plans on FHLMC's behalf with Nevada debtors relating to their defaulted debt from approximately 2007 through 2010.	*See* **Exhibit "B"**, at 136:8-137:5; *see also* **Exhibit "J"**, at MTC000113. Authenticated by **Exhibit "B"** (Cathe Cole-Sherburn Deposition), at 105-108.
34	In the case of Bijan Laghaei, MTC's own documents show that MTC negotiated a forbearance agreement with him in 2009 on behalf of its creditor-client (in its own words, MTC "placed borrower [i.e., Mr. Laghaei] in a forbearance agreement"), FHLMC, relating to Mr. Laghaei's defaulted debt, and received (i.e., collected) funds from Mr. Laghaei to reinstate his defaulted loan, which funds MTC sent to its creditor-client as payment on the loan. MTC collected thousands of dollars from Mr. Laghaei on behalf of its creditor-client.	**Exhibit "J"**, at MTC000113-MTC000157, especially MTC000113 and MTC000117. Authenticated by **Exhibit "B"** (Cathe Cole-Sherburn Deposition), at 105-108.
35	MTC charged Mr. Laghaei a fee of no less than $150.00 for its services negotiating a forbearance agreement with him relating to his defaulted debt on behalf of its creditor-client, FHLMC, in 2009.	**Exhibit "J"**, at MTC000113-MTC000157. Authenticated by **Exhibit "B"** (Cathe Cole-Sherburn Deposition), at 105-108.
36	Maria Diaz was employed by MTC from 2009 to 2011.	**Exhibit "C"**, at 11, 42-43. Authenticated by Boylan Moving Declaration, at ¶6.
37	Ms. Diaz worked for MTC in its Reinstatements Department for approximately 3 months. She admitted that she informed Mr. Boylan when they spoke on the phone that her work in this capacity included handling files in the State of Nevada.	**Exhibit "C"** (Maria Diaz Deposition), at 14-15.
38	According to Ms. Diaz, MTC's reinstatement work involved homeowners who had not paid	**Exhibit "C"** (Maria Diaz Deposition), at 17-18.

	their payments on their loans. The reinstatement amounts provided by Ms. Diaz on behalf of MTC to such homeowners were the amount of money that the homeowners were behind on their loans.	
39	As part of her reinstatement work for MTC, Ms. Diaz would communicate with debtors through inbound calls from them to MTC. Ms. Diaz estimated that she received approximately 3 inbound calls regarding reinstatements per day, and that each call was approximately 5 minutes. During these calls, she would speak with debtors about reinstatement amounts so that the debtors would know the amounts they needed to pay to reinstate their defaulted loans. The bulk of the rest of her working time was spent preparing and processing reinstatement quotes.	**Exhibit "C"** (Maria Diaz Deposition), at 20-22.
40	Ms. Diaz' reinstatement work while employed by MTC also involved accounting, as she was involved in collecting money from debtors. Ms. Diaz would receive checks from debtors and put them on a deposit slip. This work could take a full 8 hours on her busiest days, and at least around 5 hours on other days.	**Exhibit "C"** (Maria Diaz Deposition), at 22-23.
41	According to Ms. Diaz, approximately 840 checks is a fair estimate of the number of checks that she collected each day and wrote deposit slips for while employed by MTC in its Reinstatements Department.	**Exhibit "C"** (Maria Diaz Deposition), at 24-25.
42	As far as Ms. Diaz recalled, the checks that she received came from different debtors located in all the states that MTC serviced (including Nevada).	**Exhibit "C"** (Maria Diaz Deposition), at 26-28.
43	Ms. Diaz had a basic understanding that her employer, MTC, was collecting money on behalf of a bank (or banks) with respect to loans that were not paid.	**Exhibit "C"** (Maria Diaz Deposition), at 29.
44	While employed by MTC in its Reinstatements Department, Ms. Diaz would give the names and phone numbers of debtors that called her	**Exhibit "C"** (Maria Diaz Deposition), at 31-32.

	regarding reinstatement to her supervisor so that she could return their calls.	
45	The information Ms. Diaz provided when preparing reinstatement documents to give debtors included a "breakdown" of how much money a particular debtor owed to the lender or bank. It would also include the name and address of the particular debtors. Ms. Diaz would use MTC's computer system or database to prepare reinstatement documents, print them out, and then mail the documents to the debtors (or give the documents to someone else at MTC to mail).	**Exhibit "C"** (Maria Diaz Deposition), at 37-39.
46	Ms. Diaz estimated that she may have prepared as many as around 80 reinstatement documents (or quotes) on average per day. The reinstatement template that she used in preparing these documents had a phone number on it for the recipient debtors to call MTC. Those who called the number usually wanted to know what the amount was to reinstate their defaulted loans.	**Exhibit "C"** (Maria Diaz Deposition), at 40-41.
47	As part of her reinstatement work for MTC, Ms. Diaz would also prepare separate pay-off documentation every working day. Some of the checks that she received from debtors were to pay off the entire defaulted debt; some were simply to reinstate the defaulted loan. Ms. Diaz estimated that she typically received perhaps 5 reinstatement checks and 2 pay-off checks per working day.	**Exhibit "C"** (Maria Diaz Deposition), at 45-47.
48	The reinstatement work Ms. Diaz performed for MTC also involved processing checks for third-party foreclosures or funds. Her understanding of "third-party deposits" is that they were "checks from someone other than the homeowner who is in default on the loan." In her experience, such checks typically were from foreclosures conducted by MTC. She would collect these checks and fill out deposit slips to deposit the money into MTC's	**Exhibit "C"** (Maria Diaz Deposition), at 47-50.

	account.	
49	Ms. Diaz was involved while employed by MTC in sending to Wells Fargo, N.A., the funds ($51,000.00) reflected in Exhibits 2 and 5 at her deposition. According to Ms. Diaz, these documents reflect that MTC collected money from a third party, and the money that was collected on that loan was then wire transferred by her on behalf of MTC to the lender or creditor (Wells Fargo, N.A.).	**Exhibit "C"** (Maria Diaz Deposition), at 73-75; *see also* **Exhibits "G"** and **"J"** hereto. Authenticated by **Exhibit "D"** (Terry Johnsen Deposition), at 42, 51-53, and **Exhibit "B"** (Cathe Cole-Sherburn Deposition, at 105-107.
50	Terry Johnsen is a co-owner and Vice-President of MTC and has held that position for over twenty years. She holds 50% of MTC's shares.	**Exhibit "D"** (Terry Johnsen Deposition), at 5-7.[3]
51	Ms. Johnsen has her own office at MTC and typically works at least four hours per day, five days per week.	**Exhibit "D"** (Terry Johnsen Deposition), at 8.
52	Ms. Johnsen testified that she has oversight responsibility at MTC for its banking, human resources, and payroll activities.	**Exhibit "D"** (Terry Johnsen Deposition), at 8-9.[4]
53	MTC's various management teams report to Ms. Johnsen and her husband and co-owner, Rande Johnsen.	**Exhibit "D"** (Terry Johnsen Deposition), at 9:1-5, 10:24-11:1.
54	According to Ms. Johnsen, Gloria Juarez is in charge of legal compliance and human resources at MTC, and has held that position for over 14 years.	**Exhibit "D"** (Terry Johnsen Deposition), at 9:14-19.[5]
55	As co-owners of MTC, Mr. and Mrs. Johnsen share the power to hire and fire MTC's management team.	**Exhibit "D"** (Terry Johnsen Deposition), at 11:4-12.
56	Ms. Johnsen testified at her deposition that she	**Exhibit "D"** (Terry

[3] After her deposition, Ms. Johnsen changed her testimony that she held a "Majority" share in MTC to "Equal 50/50" share. *See* **Exhibit "E"** at 1.

[4] After her deposition, Ms. Johnsen changed her testimony "To just oversee and make sure that we are keeping up with the integrity of what we're required to do as far as human resources concerns" to "I oversee payroll" for MTC. *See* **Exhibit "E"** at 1.

[5] After her deposition, Ms. Johnsen added "is in charge of HR legal compliance" to the end of her sentence at 9:17. *See* **Exhibit "E"** at 1.

	and her husband, Mr. Johnsen, have the ultimate authority at MTC over its legal compliance in the State of Nevada, and have since at least 2007.	Johnsen Deposition), at 16:16-21.[6]
57	At her deposition, Ms. Johnsen testified that MTC obtained its collection agency license from the FID in Nevada "[j]ust to have" it and for no other reason. She later stated that MTC applied to obtain its collection agency license in 2011 because MTC was "[j]ust expanding our business" in Nevada.	**Exhibit "D"** (Terry Johnsen Deposition), at 16:22-17:3; 18:11-21; 19:11-13.[7]
58	At her deposition, Ms. Johnsen testified that she attended at least one meeting of MTC's management team in 2011 or before at which there was discussion of whether MTC should obtain a collection agency license from the FID.	**Exhibit "D"** (Terry Johnsen Deposition), at 25:9-27:12.[8]
59	MTC counsel represented to the Discovery Commissioner that MTC obtained its collection agency license because MTC "was considering doing foreclosures for homeowners associations, and they [i.e., MTC] thought they would need a loan collector's license for that." MTC counsel represented that MTC "determined that there would be a conflict of interest with their lender clients. So they just threw up their hands and said we're not going to do that [i.e., foreclosures for HOAs]. In the meantime, they [i.e., MTC] got	**Exhibit "F"** (Terry Johnsen Deposition), at 122:19-123:5. Authenticated by Boylan Moving Declaration, at ¶9.

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[6] After her deposition, Ms. Johnsen changed her testimony at 16:19 and 16:21 from "Yes" and "Yes" to "No, my husband and management team does" and "Yes, as to my husband." *See* **Exhibit "E"** at 1.

[7] After her deposition, Ms. Johnsen changed her testimony in a number of significant respects. *See* **Exhibit "E"** at 1-2. Her testimony that MTC obtained its collection agency license "[j]ust to have" it was changed to "I don't know"; her testimony at 17:3 and 17:6 was changed from "No" and "No" to "I don't know" and "I don't know." *Id.* She also changed her testimony at 19:13 to "I had no involvement in the decision" by MTC to obtain its collection agency license. *Id.*

[8] After her deposition, Ms. Johnsen changed her testimony in significant ways. *See* **Exhibit "E"** at 2-3. For instance, her testimony at 25:14 was changed from "Just came up in a conversation, management" was changed to "No one" while her testimony at 25:16 was changed from "All of our management team" to "No one." *Id.* She also changed her testimony regarding a meeting she attended to the effect that she was never at such a meeting. *See id.* [changes to 25:14 through 27:12].

	their license [from the FID], and they kept it."	
60	MTC counsel represented to the Discovery Commissioner that discussions within MTC regarding obtaining a collection agency license from the FID "may have happened as early as 2009, 2010."	**Exhibit "F"** (Terry Johnsen Deposition), at 123:12-13.
61	Ms. Johnsen described MTC's business activities in the State of Nevada as "[f]oreclosure trustee work."	**Exhibit "D"** (Terry Johnsen Deposition), at 17:7-22.[9]
62	According to Ms. Johnsen at her deposition, MTC's "management team" has authority over MTC employees who are involved in loan modifications or loan workouts. In July 2016, Cathe Cole-Sherburn, MTC's manager over operations, was the particular member of MTC's management team who was in charge of MTC employees involved in loan modifications or loan workouts.	**Exhibit "D"** (Terry Johnsen Deposition), at 24:5-20.[10]
63	According to Ms. Johnsen, MTC's current management team in July 2016 was comprised of Cathe Cole-Sherburn, Gloria Juarez, Victor Hutchins, and Robert Ruelas. Each of these is a vice-president of MTC.	**Exhibit "D"** (Terry Johnsen Deposition), at 29:6-24.[11]
64	According to Ms. Johnsen, Ms. Cole-Sherburn is in charge of MTC's operations. Ms. Johnsen testified that she does not know of any limit on Ms. Cole-Sherburn's authority over MTC's operations.	**Exhibit "D"** (Terry Johnsen Deposition), at 30:14-25.
65	As reflected in Exhibit 1 at her deposition, Ms. Johnsen testified that she as a co-owner of MTC is involved at least approximately once per working day in receiving or transferring funds on behalf of MTC, including funds	**Exhibit "D"** (Terry Johnsen Deposition), at 45:1-46:15, 47:16-25;[12] *see also* **Exhibit "G"**, Authenticated by **Exhibit**

[9] After her deposition, Ms. Johnsen changed her testimony to add "I don't know about applying for a license, but we did" to her testimony at 17:22. *See* **Exhibit "E"** at 1.

[10] After her deposition, Ms. Johnsen changed "Cathy Cole Sherborn" at 24:20 to "Cathe Cole-Sherburn." *See* **Exhibit "E"** at 2.

[11] After her deposition, Ms. Johnsen changed "Cathy Cole Sherborn" at 29:10 to "Cathe Cole-Sherburn." *See* **Exhibit "E"** at 3.

[12] After her deposition, Ms. Johnsen changed "If I know, maybe twice" at 47:21 to "I don't know." *See* **Exhibit "E"** at 4. She also changed "Depends on the day of the week" at 47:25 to "We don't sign checks or wires together." *Id.*

	received from defaulted debtors.	**"D"** (Terry Johnsen Deposition), at 42, 51-53.
66	Ms. Johnsen testified that only she and her husband, Rande Johnsen, as co-owners of MTC have signature authority over MTC's bank accounts.	**Exhibit "D"** (Terry Johnsen Deposition), at 47:4-13.
67	At her deposition, Ms. Johnsen testified that her best estimate of the amount of money MTC collected each year between 2007 and 2012 on behalf of its lender clients and related to defaulted debtors is at least more than $7 million.	**Exhibit "D"** (Terry Johnsen Deposition), at 64:17-66:18.[13]
68	At her deposition, Ms. Johnsen testified that MTC has a phone bank (i.e., a location where MTC employees operate MTC's phones) in each of MTC's four offices, including one in the State of Nevada. Ms. Johnsen estimated that MTC's Nevada office had more than 10 employees working its phone bank in July 2016. She estimated that MTC's employees handling its phones in the State of Nevada made more than 100 phone calls on behalf of MTC per month. She confirmed that these calls include communications with debtors who are in default on their loans.	**Exhibit "D"** (Terry Johnsen Deposition), at 77:6-78:14, 84:2-18.
69	Ms. Johnsen testified at her deposition that, as reflected in Exhibit 4 at TC000069, MTC would remit or send funds collected by MTC to its lender clients (whether the money was collected for reinstatement or pay-off of the loans or through sale of property at non-judicial foreclosure).	**Exhibit "D"** (Terry Johnsen Deposition), at 124:3-125:14; *see also* **Exhibit "H"**, at TC000069. Authenticated by **Exhibit "B"** (Cathe Cole-Sherburn Deposition), at 105-107.
70	Ms. Johnsen testified that the cashier's check reflected in Exhibit 4 at TC000071 is the money MTC collected, put in its trust account in March 2011, and then transferred to its	**Exhibit "D"**, at 127:5-19; *see also* **Exhibit "H"**, at TC000071. Authenticated by **Exhibit "D"** (Terry

[13] After her deposition, Ms. Johnsen changed her testimony in this portion in several significant ways. *See* **Exhibit "E"** at 5. For instance, her testimony at 66:15 ("Yes") was changed to "No. I don't know specific numbers as to Nevada." *Id.* Her testimony at 66:18 was changed in the same way. *Id.* Her testimony at 66:18 was also changed from "Yes" to "No." *Id.*

	lender client, Wells Fargo, N.A., on March 14, 2011, relating to the Plaintiff Sansotas.	Johnsen Deposition), at 114, 127.
71	Ms. Cole-Sherburn testified at her deposition that MTC may have applied for its collection agency license from the FID as early as 2009.	**Exhibit "B"** (Cathe Cole-Sherburn Deposition), at 23-24.
72	Ms. Juarez testified at her deposition that she would match the check to the loan number of the defaulted Nevada debt, and advise the banking client that the funds were remitted on the defaulted loan.	**Exhibit "1"** (Gloria Juarez Deposition), at pp. 30-31. Authenticated by Boylan Reply Declaration, at ¶ 2.
73	Ms. Juarez testified at her deposition that the same applies to the millions of dollars MTC collected as agent for its clients on Nevada as this was admitted in her testimony, as MTC's Senior Vice-President of accounting, and employee of MTC since 2002.	**Exhibit "1"** (Gloria Juarez Deposition), at pp 11-12, 38.
74	According to Ms. Juarez, for one period of a limited example, 2008 to 2011, the number of incoming checks to MTC with respect to Nevada defaulted loans was at least 300 checks per month, or about 50-65 checks per week. About 30% of the checks, or least 75 to 100 checks were directly from Nevada borrowers. In 2008-2011, MTC collected more than $100,000.00 dollars each month with respect to defaulted Nevada debts. All of these checks were with respect to MTC's clients' defaulted loans.	**Exhibit "1"**, (Gloria Juarez Deposition), at pp. 35, 36, 37, 38 and 39.
75	Ms. Juarez would endorse the checks payable to MTC with a stamp.	**Exhibit "1"**, (Gloria Juarez Deposition), at pp. 33-34.
76	At his deposition, Mr. Rande Johnsen stated clearly that foreclosure is a means and method of collecting on defaulted debts (which is the business MTC performs as the agent of and on behalf of its lender clients).	**Exhibit "2"** (Rande Johnsen Deposition), at pp. 42-45. Authenticated by Boylan Reply Declaration, at ¶ 3.
77	Rande Johnsen, MTC's owner and Chief Executive, recently admitted that he began studying for the Nevada test to be MTC's collection agency manager for Nevada in about 2009, and actually took the test in about	**Exhibit "2"** (Rande Johnsen Deposition), at pp.73-74.

	2009 to 2010.	
78	Although he attempted evasion and qualification, Rande Johnsen essentially admitted in his testimony that MTC's fees and costs are added to the debtors obligation to the lender.	**Exhibit "2"** (Rande Johnsen Deposition), at p.88.
79	Plaintiff Raymond Sansota testified at his deposition that MTC was conducting business as an unlicensed claim collection agency by telephoning the Sansotas and asking for payments on the defaulted mortgage loan held by MTC's client, Wells Fargo Bank.	**Exhibit "3"** (Raymond Sansota Deposition), at pp. 28,34,35,37,40,43, and 44. Authenticated by Boylan Reply Declaration, at ¶ 5.
80	MTC omitted the testimony of Raymond Sansota indicating that he became aware in 2020 of the beginning of MTC's claim collection /foreclosure activity against him based on a collection phone call from MTC in 2010. And, before he relocated to Ohio in 2010, he was aware based on that telephone communication that the MTC process to take his home was going forward.	**Exhibit "3"**, (Raymond Sansota Deposition), at pp.28-29, 34-38, 47-78.
81	MTC Admissions regarding collection activities, in the voice of CEO, Rande Johnsen.	**Exhibit "4"** is a flash-drive which contains live video and audio recording from a seminar presented by Rande Johnsen entitled "To Foreclose or not to Forclose?" Authenticated by Boylan Reply Declaration, at ¶ 7.
83	MTC admissions regarding activities of collections in foreclosure, the tools of foreclosure reflecting the element of coercion as a means of collection and stating that foreclosure gets the homeowners attention, forces a limited timeframe and that most people give up. Admits that those conducting foreclosure must be familiar with debt collection laws, such as the FDCPA. Identifies various collection methodologies and alternatives and strategies such as	**Exhibit "6"** contains true and accurate copies of the Power Point pages from a seminar presented by Rande Johnsen, MTC's Chief Executive, controlling person and owner of MTC, entitled "Insider Secrets From A Foreclosure Trustee Investing In Junior Liens".

	reinstatement, payoff and short payoff, forbearance or repayment plan, modification, dead in lieu of foreclosure and workouts.	Authenticated by Boylan Reply Declaration, at ¶12; **Exhibit "2"**, (Rande Johnsen Deposition) at pp. 125, 126, 127,131, 132, 133, 144, 149, 150, 151
84	At his deposition, Rande Johnsen admitted that MTC receives money from Nevada debtors on defaulted loans for purposes of reinstating the loans that are in default with MTC's clients.	**Exhibit "2"**, (Rande Johnsen Deposition) at p. 79.
85	The Sansotas never entered into any type of contract with Defendant MTC Financial Inc. dba Trustee Corps.	Raymond Sansota Declaration, at ¶ 2.

Respectfully submitted,

Dated: March 7, 2017

LAW OFFICE OF NICHOLAS A. BOYLAN
A Professional Corporation

By: _____
Nicholas A. Boylan, Esq.
Attorney for Plaintiffs, except for Plaintiff 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 March 7, 2017, I served a true and correct copy of the foregoing:

- **PLAINTIFF' REPLY MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT AGAINST DEFENDANT MTC**

- **DECLARATION OF NICHOLAS A. BOYLAN IN SUPPORT OF 1)PLAINTIFFS' PRELIMINARY OPPOSITION MEMORANDUM OF POINTS AND AUTHORITIES TO DEFENDANT MTC FINANCIAL INC.'S CROSS-MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, PARTIAL SUMMARY JUDGMENT AGAINST PLAINTIFFS RAYMOND SANSOTA AND FRANCINE SANSOTA; AND 2) PLAINTIFFS' REPLY MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT AGAINST DEFENDANT MTC; EXHIBITS "1" – "6"**

- **DECLARATION OF RAYMOND SANSOTA IN SUPPORT OF PLAINTIFFS' PRELIMINARY OPPOSITION MEMORANDUM OF POINTS AND AUTHORITIES TO DEFENDANT MTC FINANCIAL INC.'S CROSS-MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, PARTIAL SUMMARY JUDGMENT AGAINST PLAINTIFFS RAYMOND SANSOTA AND FRANCINE SANSOTA**

- **PLAINTIFFS' SEPARATE STATEMENT IN SUPPORT OF 1) PLAINTIFFS' PRELIMINARY OPPOSITION MEMORANDUM OF POINTS AND AUTHORITIES TO DEFENDANT MTC FINANCIAL INC.'S CROSS-MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, PARTIAL SUMMARY JUDGMENT AGAINST PLAINTIFFS RAYMOND SANSOTA AND FRANCINE SANSOTA; AND 2) PLAINTIFFS' REPLY MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT AGAINST DEFENDANT MTC**

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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DISTRICT COURT

CLARK COUNTY, NEVADA

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

CASE NO: A-11-649857-C

Dept. 19

PLAINTIFFS' OBJECTION AND RESPONSE TO QUALITY LOAN SERVICE CORPORATION'S OPPOSITION TO THE MOTION FOR PARTIAL SUMMARY JUDGMENT

Date: March 14, 2017
Time: 9:00 a.m.

Plaintiffs,

v.

QUALITY LOAN SERVICE CORPORATION, a California Corporation; 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.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

As a preliminary matter, the Court should disregard QLS' opposition to Plaintiffs' Motion, as QLS—as QLS recognizes—"does not have a 'dog in the hunt' regarding the partial summary judgment" against MTC. QLS Opposition, at p. 2. QLS concedes that it "takes no position as to many of the facts as alleged"—in fact, proven by Plaintiffs—against MTC. Id. QLS thus fails to present any evidence or otherwise demonstrate that summary judgment would be improper because there is a genuine dispute of material fact.

Even to the extent that QLS purports to be merely challenging Plaintiffs' legal contentions or analysis, the Court should disregard QLS' arguments and assertions. As detailed below, many of those assertions are flawed by QLS' repeatedly ignoring or mischaracterizing the powerful evidence presented by Plaintiffs in support of their Motion. Thus, as discussed below, QLS repeatedly ignores or tries to mischaracterize

the evidence presented by Plaintiffs showing that MTC negotiated, documented, and executed loan forbearance or modification agreements on behalf of its creditor-clients with Nevada debtors toward whom MTC—by Nevada law—was required to be impartial. That QLS "takes objection" to Plaintiffs' proof is meaningless, especially as QLS, as it concedes, does not dispute or challenge Plaintiffs' evidence, and QLS wholly fails to show that there is a genuine dispute of material fact on any issue raised in Plaintiffs' Motion. To muddy things further for the Court, QLS occasionally makes improper assertions of fact, without any properly submitted evidence, that are not germane to the issues actually raised by Plaintiffs' Motion (such as by opining as to whether the Plaintiffs with claims against MTC have suffered any damages or discussing whether QLS could be found to have violated NRS 598.0923(1)). Finally, QLS repeatedly misunderstands or misstates Plaintiffs' actual arguments. Rather than respond to Plaintiffs' actual arguments, evidence, and authorities, QLS instead creates a series of straw men for QLS to try to defeat.

As Defendants CRC and NDSC have seemingly recognized by refraining from opposing Plaintiffs' Motion, the appropriate course for QLS to have taken here is to have waited until the arguments, evidence, and authorities as to QLS were properly before the Court, rather than prejudice Plaintiffs—and burden the Court—in their efforts to respond to the arguments raised by MTC in opposition to Plaintiffs' Motion (and in MTC's own motion for summary judgment). For reasons explained below, the Court should disregard QLS' opposition brief in its entirety, and grant Plaintiffs' Motion accordingly.

II. ARGUMENT

A. Proper Interpretation of Secondary Collection Agency Language

In a rather bizarre passage, QLS accuses Plaintiffs of misinterpreting or ignoring the language of applicable Nevada law and administrative regulations. It is

in fact, however, QLS that is incorrect in its interpretation of these provisions and their application here.

To avoid any confusion, the Nevada legislature has defined "collection agency" as meaning "all persons engaging, directly or indirectly, and as a primary or a secondary object, business, or pursuit, in the collection of or in soliciting or obtaining in any manner the payment of a claim owed or due or asserted to be owed or due to another." NRS 649.020(1) [emphasis added]. The Nevada legislature has also authorized the Commissioner of the FID to "adopt such regulations as may be necessary to carry out the provisions of this chapter [i.e., NRS 649]." NRS 649.053.

Consistent with this authority, the Commissioner of the FID has adopted a number of definitions of terms used in particular provisions of Nevada's administrative regulations, including those provisions specifically relied on by QLS in its opposition papers. See NAC 649.010 ["As used in NAC 649.010 to 649.050, inclusive, unless the context otherwise requires, the words and terms defined in NAC 649.020 to 649.040, inclusive, have the meanings ascribed to them in those sections."][emphasis added]. Thus, the Commissioner of the FID has defined "collection agency"—when used in NAC 649.010 to 649.050—as meaning a "person or entity which is licensed pursuant to NRS 649.075 to 649.167" by the FID. NAC 649.013. By its plain language, this definition is not equivalent to that adopted by the Nevada legislature in NRS 649.020(1), which defines what businesses are deemed to be collection agencies in Nevada: the legislature's definition makes clear what persons and entities qualify as collection agencies in Nevada (and thus need to obtain a license if not exempt from doing so). The FID's definition in contrast deals with those persons or entities who already have obtained a collection agency license from the FID.

Nevada's administrative regulations further distinguish among licensed collection agencies—for purposes of the regulations—specifically, between what are

termed a "[p]rimary collection agency" and a "[s]econdary collection agency." NAC 649.030, NAC 649.040. When used in Nevada's administrative regulations, a primary collection agency "means any collection agency which is not a secondary collection agency." NAC 649.030. A secondary collection agency is defined in turn as meaning "a collection agency which engages directly or indirectly in the solicitation or encouragement of debtors to pay delinquent debts directly to the debtors' creditors through the use of machine derived form letters." NAC 649.040. Notably, neither of these definitions applies to collection agencies as defined by NRS 649.020(1) who have failed or refused to be licensed by the FID, since primary and secondary collection agencies, as defined by Nevada's administrative regulations, are only those collection agencies that the FID has licensed. See NAC 649.013.

QLS' mistaken reliance on the provisions of Nevada's administrative regulations discussed above is especially inappropriate because the distinction between primary and secondary collection agencies as defined in these regulations does not hinge on whether collection activities are a primary or secondary object, business, or pursuit of a collection agency business. Indeed, it is perfectly consistent with the definition of a secondary collection agency, as found in NAC 649.040, for collection activities to be a primary object of a secondary collection agency because what makes the agency a secondary collection agency is not that collection is its secondary object, business, or pursuit. Instead, secondary collection agencies, by definition, are simply a specific category of licensed collection agencies that use machine derived form letters to engage, directly or indirectly, in the solicitation or encouragement of debtors to pay delinquent debts directly to their creditors (as opposed to directly to the secondary collection agency). See NAC 649.040.

QLS seemingly suggests that Plaintiffs accuse MTC of being a secondary collection agency because Plaintiffs correctly point out that MTC would be a collection agency under NRS 649.020(1) even if MTC's collection agency activities

were only a secondary object, business, or pursuit of MTC. To dispel any confusion created by QLS, Plaintiffs in pointing this out do not concede, as QLS seemingly believes, that MTC's unlicensed collection activities in Nevada during the relevant period were no more than a secondary object for MTC. As is clear from Plaintiffs' motion and the powerful evidence submitted with it, the proof demonstrates that MTC's collection agency activities were a primary object, business, or pursuit of MTC, (and, at a minimum, its collection agency activities were a secondary object, business, or pursuit). Thus, QLS' assertion that MTC is not a secondary collection agency under NAC 649.053 (and discussion of machine derived form letters) is simply QLS' confused attempt to dispose of a straw man that is not grounded in Plaintiffs' actual arguments and the powerful evidence presented in support of their motion.

B. QLS Fundamentally Misunderstands or Misstates Plaintiffs' Argument

1. Plaintiffs Do Not Contend that Only Collection Agencies Licensed under NRS 649 (and Attorneys) Can Be Foreclosure Trustees

In one of several instances of QLS mischaracterizing or ignoring Plaintiffs' actual arguments and proof in order to defeat straw men created by itself, QLS inaccurately accuses Plaintiffs of interpreting NRS 107.028(1) as meaning that all entities that act as a foreclosure trustee in Nevada must be licensed as a collection agency by the FID pursuant to NRS 649. That is simply not Plaintiffs' argument. Rather, Plaintiffs argue—correctly—that entities such as MTC which engage in a variety of activities in the State of Nevada that constitute claim collection agency activity are not exempt from licensure by the FID as collection agencies, or otherwise insulated from liability for failing to be so licensed, simply because they carry out their illicit collection agency activities under the guise of being foreclosure trustees.

Beyond any doubt, the Nevada legislature knows how to exempt specific entities from statutory mandates, controls, and prohibitions. Notably, QLS does not and cannot argue that a "trustee" is expressly exempted under the statutory dictates of

NRS 649 or NRS 107 from being licensed as a collection agency because it is foreclosure trustee. Because QLS' assertions and muddled analysis confuse what should be two distinct but related questions, Plaintiffs must make plain what QLS seemingly wishes to obscure. The two questions are: (1) do MTC's activities, as established by Plaintiffs' proof, qualify MTC as a collection agency under NRS 649 that must be licensed by the FID?; and, if the answer to the first question is yes, then (2) is MTC exempt from licensure as a collection agency because it purports to act as a foreclosure trustee under NRS 107? The answer to the first question is yes; the answer to the second is no.

a. THE PLAIN LANGUAGE OF NRS 649 SUPPORTS PLAINTIFFS HERE

Proper review of the statutory scheme found in the plain language of NRS 649, supports Plaintiffs here. In pertinent part, NRS 649 broadly defines "collection agency" as meaning "all persons engaging, directly or indirectly, and as a primary or a secondary object, business or pursuit, in the collection of or in soliciting or obtaining in any manner the payment of a claim owed or due or asserted to be owed or due to another." NRS 649.020(1).

The statute then expressly provides for several limited exceptions to this broad definition: for instance, banks, nonprofit cooperative associations, and "[a]ttorneys and counselors at law licensed to practice in this State, so long as they are retained by their clients to collect or to solicit or obtain payment of such clients' claims in the usual course of the practice of their profession" are not deemed to be collection agencies for purposes of NRS 649 unless "they are conducting collection agencies." NRS 649.020(2). Thus, the Nevada legislature in crafting NRS 649.020 sought to broadly define "collection agency," while expressly carving out several specifically identified and limited exceptions i.e. "exemptions," to that definition. Notably, neither MTC nor QLS have sought to avail themselves of any of these exceptions. Indeed, QLS even seeks to read out of existence the important limitation on these

exceptions when a person or entity falling within one of the categories listed in NRS 649.020(2) is also conducting collection agencies (and therefore must be licensed). Compare QLS Opposition at 8, with NRS 649.020(2).

It is a maxim of statutory construction that generally the expression of one thing in a statute is the exclusion of another. See *Cramer v. State Dep't of Motor* Vehicles, 126 Nev. Adv. Rep. 38, 240 P.3d 8, 12 (2010); *O'Callaghan v. Eighth* Judicial Dist. Court of the State of Nevada, 89 Nev. 33, 35, 505 P.2d 1215, 1216 (1973); State v. Boerlin, 38 Nev. 39, 45, 144 P. 738 740 (1914). The expression by the Nevada legislature in NRS 649.020(2) of certain enumerated exceptions to the definition of collection agency necessarily excludes any other enumerated exceptions—such as the very exception Defendants seek to carve out for businesses carrying out non-judicial foreclosures in order to and as part of their efforts to collect claims.

The Nevada legislature would not have expressly stated that a trustee's enforcement of a security interest through non-judicial foreclosure constitutes collection agency business because doing so would undermine the broadly inclusive statutory scheme; rather, the Nevada legislature would have expressly excepted such activity from the definition of collection agency by listing it in NRS 649.020(2) only if the Nevada legislature did not intend for such conduct to fall within the ambit of NRS 649.020(1). The Nevada legislature, however, did no such thing. Indeed, NRS 649.020's treatment of community managers supports Plaintiffs' reading of the statute: the limited exception for certain types of community managers, found in NRS 649.020 makes clear that a community manager who does not "perform[] or offer[] to perform any act associated with the foreclosure of a lien" is not deemed to be a collection agency under Nevada law, while a community manager who does lien foreclosure is held to be a collection agency (and must therefore be licensed as such). See NRS 649.020(3)(a)-(b).

b. THE PLAIN LANGUAGE OF NRS 107.028 FAVORS PLAINTIFFS HERE

The plain language of NRS 107.028 also supports Plaintiffs here. The Nevada legislature, by expressly identifying the ten persons (including entities) that may serve as trustees under a deed of trust, clarified its pre-existing intent and made clear that persons acting as licensed collection agencies under NRS 649 could be such trustees. NRS 107.028(1)(i). Under NRS 107.028, licensed collection agencies as defined by NRS 649 can serve as trustees of deeds of trust. Thus, while not all trustees under deeds of trust are licensed collection agencies, some of them—such as MTC and QLS now—will be. There is absolutely nothing, however, to suggest that the Nevada legislature intended thereby to insulate claim collection agencies from the licensing requirements found in NRS 649 (as QLS seemingly would have it).

Simply, no provision in NRS 107 states that unlicensed claim collection by a trustee is exempt from NRS 649.

c. THE LEGISLATIVE HISTORY OF NRS 107.028 IS CONSISTENT WITH PLAINTIFFS' INTERPRETATION HERE

Although QLS has not identified any ambiguity in the plain language of NRS 107.028, it has referred in passing to its legislative history. It is thus worth noting that NRS 107.028 was originally enacted in May 2011 as part of Assembly Bill No. 284, which, in pertinent part, stated that the "trustee under a deed of trust must be:"

> (a) An attorney licensed to practice law in this State;
> (b) A title insurer or title agent authorized to do business in this State pursuant to chapter 692A of NRS; or
> (c) A person licensed pursuant to chapter 669 of NRS [governing trust companies] or a person exempt from the provisions of chapter 669 of NRS pursuant to paragraph (a) or (h) of subsection 1 of NRS 669.080. [emphasis added].

Thus, as originally drafted, NRS 107.028 would have limited those who could serve as trustees under deeds of trust to (1) Nevada attorneys, (2) title insurers or title agents, or (3) trust companies licensed by Nevada or otherwise exempt from licensing by Nevada law. In June 2011, the Nevada legislature amended NRS

107.028 through Assembly Bill No. 273, which, in pertinent part, added seven other categories, including licensed collection agencies under NRS 649, to NRS 107.028(1)'s list of those who could serve as trustees under deeds of trust in Nevada. (Assembly Bill No. 273 also made NRS 107.028 effective October 1, 2011, rather than July 1, 2011 as originally drafted. It thus was not in effect for the bulk of the relevant period in this case.)

On May 30, 2011, Senator Wiener explained that the pertinent portions of A.B. No. 273 "revises Section 6 of Assembly Bill No. 284 that requires the trustee under a deed of trust to be an attorney licensed in Nevada, a title insurer or title agent authorized to do business in Nevada, or person licensed as a trust company or otherwise exempt from the requirements to be a licensed trust company in this State." Nevada State Legislature, Journal of the Senate (5/30/11) at 4284. Thus, in Senator Wiener's view:

> Amendment No. 824 [of Assembly Bill No. 273] expands those provisions in Assembly Bill No. 284 so that a trustee under a deed of trust may be a domestic or foreign entity which holds a current state business license or certain persons who are exempt from having to obtain a license as a trust company but are authorized to be a trustee under a deed of trust. They include a person who does business relating to banks, savings and loan associations, or thrift companies, a person appointed as a fiduciary, a trustee of a trust that is holding real property for the purpose of facilitation real estate transaction [sic] or a registered agent, collection agency or escrow agency.
>
> Id. [emphasis added]

Senator Roberson then clarified that "the purpose of this amendment is to clean up some things that were missed on Assembly Bill No. 284" by "clarify[ing] who can act as a trustee under a deed of trust for a residential property." Id. He went on:

> There was a concern that there were certain small, family owned businesses in this State that would have been put out of business by Assembly Bill No. 284. We want to make certain this does not happen. This clarifies Assembly Bill No. 284 so we do not put businesses out of business.
>
> Id.

Taken in their proper context and in light of the full legislative history of NRS 107.028, Senators Wiener and Roberson's remarks make clear that the Nevada legislature was concerned that certain local companies might be put out of business because they were not licensed as attorneys, title insurers or title agents, or licensed as trust companies or otherwise exempt from licensing in Nevada as trust companies. The Nevada legislature therefore expressly exempted several additional categories, including licensed collection agencies. Senators Wiener and Roberson's remarks make clear that they were concerned about the requirement that certain local, Nevada businesses might be harmed by too strict a requirement that they be licensed as trust companies in order to serve as foreclosure trustees. There is nothing to suggest, however, that the Nevada legislature meant to exempt these categories of persons or entities from complying with their other licensing obligations under Nevada law: specifically, as it relates to collection agencies, from the requirement that they be licensed or certified by the FID as collection agencies pursuant to NRS 649. Thus, nothing in NRS 107.028's language or legislative history suggests that it repeals or displaces or excludes NRS 649.020(1) et seq., when the business involved meets the statutory definition of a collection agency found therein.

d. PLAINTIFFS' INTERPRETATION IS CONSISTENT WITH NRS 107 AND 649

QLS suggests that Plaintiffs' interpretation of NRS 107.028 and NRS 649.020(1) would render portions of NRS 107.028 nugatory or non-existent. Not so. As a preliminary matter, it is worth pointing out that collection agencies under NRS 649.020(1) are defined in part by whether they carry out their collection agency activities as part of their primary or secondary object, business, or pursuit. Thus, a person or entity who only engages in only isolated or occasional collection activity that did not rise to a primary or secondary object, business, or pursuit would not need to be licensed as a collection agency as defined by NRS 649.020. By its terms, NRS 107.028 does not address how often a person or entity serves as a trustee of a deed of

trust. Thus, a trustee of a deed of trust—such as a title insurer—who only served as a trustee on limited occasions would only need to obtain a license as a collection agency if non-judicial foreclosure collections were a primary or secondary object, business, or pursuit for it. Similarly, banks which were not serving regularly as foreclosure trustees would not need to be licensed (because they would satisfy the exemption under NRS 649.020(2) for banks that are not "conducting collection agencies").

QLS seeks to make much of NRS 107.028(1)(d)'s provision allowing entities holding state business registrations issued by the Nevada Secretary of State to serve as foreclosure trustees. However, this provision does not exempt entities with such registrations from obtaining any licenses otherwise applicable to them under law, simply because they purport to act as non-judicial foreclosure trustees: if it did, the reference to licensed collection agencies in NRS 107.028(1)(i) would be unnecessary, because acquisition of a registration would suffice to allow collection agencies to serve as trustees. Other categories listed in NRS 107.028(1) would also be rendered unnecessary, because the entities referenced would only need registrations to be trustees. See, e.g., NRS 107.028(1)(b), (e), or (j).

C. QLS Effectively Concedes that Plaintiffs Have Demonstrated that MTC (and, seemingly, QLS) Regularly Collected Money from Nevada Debtors during the Relevant Period under the Guise of Being Foreclosure Trustees

1. QLS Cannot Decide Whether Foreclosure Trustees Are Agents of Debtors and Deed of Trust Beneficiaries (or Both) Or Are Forbidden from Being Agents

As further illustration of the muddled arguments found throughout its opposition papers, QLS seemingly cannot decide whether foreclosure trustees such as MTC (and QLS) are barred by Nevada law from acting on behalf of mortgage

beneficiaries and deed of trust debtors or are expressly permitted (perhaps, indeed, required) to act on behalf of mortgage beneficiaries in collecting debts from Nevada debtors. For instance, relying on NRS 107.028(6), QLS on the one hand contends that non-judicial foreclosure trustees such as QLS and MTC are "actually not allowed to act for the mortgage beneficiary by operation of statute" (QLS Opposition Brief, at p. 10), while asserting on the other hand that foreclosure trustees "act[] as agent both for the borrower as well as for the lender in the foreclosure" (Id. at 20 ["The California Foreclosure trustee acts as agent both for the borrower as well as for the lender in the foreclosure, in the exact same manner as Nevada."][italics in original; emphasis added]). Compare also id. at 9-10 ["In fact a foreclosure trustee is statutorily mandated to act for neither the benefit of the homeowner nor the mortgage beneficiary."], with id. at 11 ["Foreclosure Trustees are required to collect this money [for reinstatement of defaulted debt] and apply it as appropriate and/or foreclose on the property. In fact it would make little sense for an entity acting for the benefit of the laws of [sic] State of Nevada, the beneficiary, and the trustor, to ensure a foreclosure was only completed on an unpaid debt."][emphasis added].

Despite QLS' confusion or infelicitous choice of words to describe foreclosure trustees' duties, Nevada foreclosure trustees do indeed owe a duty of impartiality and good faith toward the deed of trust and the parties to it (i.e., the beneficiary and the Nevada debtor), and are required to "act in accordance with the laws" of Nevada. NRS 107.028(6). Although this is not a fiduciary obligation, foreclosure trustees are effectively required to act akin to agents of both the beneficiary and the debtor-grantor of the deed of trust. NRS 107.028(6); see also Klem v. Washington Mutual Bank (Wash. 2013) 176 Wn.2d 771, 788-798, 295 P.3d 1179, 1187-1190 [holding that QLS violated its duty of impartiality as a non-judicial foreclosure trustee under Washington law by deferring to its lender-client on whether to postpone a foreclosure sale, thereby impermissibly becoming a "mere agent" of the beneficiary only];

Yvanova v. New Century Mort. Corp. (Cal. 2016) 62 Cal.4th 919, 927, 365 P.3d 845, 850 [Under California law, the "trustee of a deed of trust is not a true trustee with fiduciary obligations, but acts merely as an agent for the borrower-trustor and lender-beneficiary."]. Although, as reflected in Klem, Washington law differs from that of Nevada and California in considering foreclosure trustees to owe fiduciary obligations to both beneficiaries and debtors under deeds of trust, these States agree that at a minimum, foreclosure trustees must act impartially and in good faith as effectively the agents for both sides of the deed of trust. See Klem, supra, 176 Wn.2d at 788-798, 295 P.3d at 1187-1190; Yvanova, supra, 62 Cal.4th at 927, 365 P.3d at 850; NRS 107.028(6). As illustrated by Klem, it is in fact a violation of that duty for a foreclosure trustee to act in ways that effectively make it the agent only of the deed of trust beneficiary (such as a trustee abdicating its independence by deferring to the beneficiary on matters that entrusted to the trustee, or, even more clearly, acting on behalf of the beneficiary in ways that are necessarily adverse to the debtor-grantor of the deed of trust).

QLS' confusion on this issue is especially remarkable, because the Washington Supreme Court in Klem concluded that QLS breached its duty of impartiality as a foreclosure trustee in Washington by deferring entirely to the beneficiary as to whether a foreclosure sale should be postponed, thereby improperly acting as the agent of the beneficiary only. Klem, supra, 176 Wn.2d at 788-798, 295 P.3d at 1187-1190. In doing so, QLS "abdicated its duty to act impartially toward both sides" and instead "merely honored an agency relationship with one" side (its creditor-beneficiary client). Id. at 791-792, 1188-1189. The Washington Supreme Court went on to hold that the "practice of a trustee in a nonjudicial foreclosure deferring to the lender on whether to postpone a foreclosure sale and thereby failing to exercise its independent discretion as an impartial third party with duties to both sides is an unfair or deceptive act or practice and satisfies the first element" of Washington's

Consumer Protection Act, which deals unfair or deceptive acts or practices. Id. Thus, of all the parties here, QLS should be especially cognizant by now of the nature of its duties as a foreclosure trustee and its obligation of impartiality and good faith to both sides of the deed of trust.

The proof presented by Plaintiffs in support of their motion demonstrates that MTC contracted with its lender-clients to act as their agents as part of MTC's activities in the State of Nevada, thereby violating MTC's duty of impartiality under NRS 107.028(6). For instance, by contract, MTC agreed that it would act on behalf of its lender-clients in carrying out evictions of foreclosed homeowners, which would necessarily entail MTC taking an adverse position to these Nevada debtors that MTC was seeking to evict. (SS#5, 14.) As QLS is correct that foreclosure trustees are required by Nevada law to be impartial and act in good faith toward debtors and beneficiaries under deeds of trust—as NRS 107.028(6) demonstrates—then the undisputed material facts show that MTC violated Nevada law in this respect as well by breaching its duty of impartiality and good faith toward Nevada debtors. Such misconduct belies QLS' repeated assertions that MTC's activities were consistent with—and, indeed, in some respects even required by—Nevada law on foreclosure trustees.

2. Negotiating Loan Modification Agreements and Attending Mediation on Behalf of Lender-Clients with Debtors Conflicts with Foreclosure Trustees' Purported Obligation to Be Neutral

Similarly, MTC agreed to and in fact did act on behalf of its lender-clients in preparing loan modification or forbearance agreements or loan workouts with Nevada debtors, thereby violating its duty to be impartial under NRS 107.028(6). (SS#12-14, 32-35, 62.) In the case of Plaintiff Laghaei, for instance, MTC, acting on behalf of its lender-client, negotiated and executed a loan forbearance agreement with Plaintiff Laghaei, and received (i.e., collected) funds from him to reinstate his defaulted loan. (SS#32-35.) MTC then sent these funds to its creditor-client as

payment on the defaulted loan. (Id.) Plaintiff Laghaei's experience was hardly unique, as MTC's Senior Vice-President of Operations indicated that MTC was authorized by its client to enter into loan forbearance plans on the client's behalf with Nevada debtors relating to their defaulted debt from approximately 2007 through 2010. (SS#33.) QLS does not even attempt to present any evidence disputing these facts.

Given that, as QLS seemingly recognizes in at least part of its brief, foreclosure trustees are required by Nevada law to act impartially and in good faith with respect to the deed of trust (and the trustor-debtors and creditor-beneficiaries of deeds of trust), then it should be self-evident that MTC engaging in these activities as agent only of its lender-clients (i.e., deed of trust beneficiaries) necessarily meant that MTC violated its statutory duty of neutrality, since it would be acting adversely to the trustor-debtors in such transactions. See, e.g., Klem, supra, 176 Wn.2d at 788-798, 295 P.3d at 1187-1190 [holding that QLS violated its duty of impartiality as a non-judicial foreclosure trustee under Washington law by deferring to its lender-client on whether to postpone a foreclosure sale, thereby impermissibly becoming a "mere agent" of the beneficiary only]. After all, negotiating a loan forbearance deal with one side as the agent only of the opposing side is hardly an action taken by one neutral or impartial in the transaction!

The Court need not decide whether MTC violated its duties as a trustee in order to rule that the undisputed material facts show that MTC was an unlicensed collection agency during the relevant period in Nevada. However, because QLS repeatedly asserts that MTC's conduct was consistent with or even required by the duties imposed on foreclosure trustees by Nevada law, Plaintiffs must point out that the evidence presented by Plaintiffs in fact shows that MTC seemingly violated those duties as part of its collection agency activities at issue here.

3. MTC Was Engaged in Claim Collection Activities against the Named Plaintiffs, Laghaei and the Sansotas

Plaintiffs have discussed at length the evidence showing that MTC engaged in claim collection activities against the named Plaintiffs Laghaei and the Sansotas here in their concurrently filed opposition papers to the motion for summary judgment filed by MTC (and in Plaintiffs' Motion itself). To avoid burdening the Court, Plaintiffs hereby incorporate by reference the arguments and authorities presented by them in that briefing.

4. MTC's Relevant Conduct Went Far Beyond the Requirements Imposed by Nevada Law on Foreclosure Trustees

As part of its efforts to insulate MTC (and other foreclosure trustees such as QLS) from liability for its unlicensed collection agency activities in the State of Nevada, QLS repeatedly asserts that MTC's activities in the State of Nevada during the relevant period were within the "confines of normal trustee duties" required by Nevada law. See, e.g., QLS Opposition, at 10. As detailed above, QLS frequently mischaracterizes or outright ignores the powerful evidence presented by Plaintiffs in support of their motion that demonstrates the true nature and scope of MTC's collection agency activities in the State of Nevada. Notably, QLS does not effectively dispute the material facts presented by Plaintiffs. Simply as a threshold matter, QLS' unsupported claims as to the lawfulness of MTC's conduct therefore should be treated with considerable skepticism. Moreover, Plaintiffs discuss at length in their Motion as well as in their reply briefing to MTC's motion for summary judgment (and herein below) the ways in which MTC's activities went far beyond the requirements imposed by Nevada law on foreclosures trustees.

5. QLS Effectively Concedes that Plaintiffs Have Demonstrated that MTC (and, seemingly, QLS) Regularly Collected Money from Nevada Debtors during the Relevant Period under the Guise of Being Foreclosure Trustees

A further ground for rejecting QLS' assertions is that its interpretations of Nevada law and related rules are often misleading, if not simply wrong. For instance, while conceding that foreclosure trustees such as MTC (and, seemingly, QLS and the

other Defendants) regularly collect money from Nevada debtors as part of their business activities in Nevada for payment on these debtors' defaulted debts, QLS claims that Nevada law allows or even requires trustees to do so. Nothing in the statutes cited by QLS, however, authorizes or requires Nevada foreclosure trustees to actively and regularly solicit or demand that Nevada debtors make payments on their defaulted debts to QLS so that QLS can collect and remit those payments to its creditor-clients. The statutes certainly do not authorize—let alone require—that foreclosure trustees demand that the payments be sent directly to the foreclosure trustees so that they can collect and remit the funds to their creditor-clients.

Defendants, including QLS, have made much in the past of what they contend is a "common-sense distinction" between foreclosure trustees and collection agencies. Defendants' NRCP 12(b)(5) Motion to Dismiss Plaintiffs' Second Amended Complaint, at 14 n. 3. While trustees must "act impartially when engaging in non-judicial foreclosure activities" pursuant to NRS 107.028(6), "[c]ollection agencies engaging in collection of a claim must be partial to the person owed the debt and engage in dogged pursuit to collect the claim; as a result, foreclosure activities are not part of the claim collection process." Id. Defendants are correct at least in part: it would necessarily be a violation of a foreclosure trustee's duty of impartiality for the trustee to act for the beneficiary under the deed of trust alone by seeking to collect on the claim (i.e., debt) that is tied to the deed of trust. As even Defendants seemingly concede, the claim collection process is necessarily supposed to be separate from the foreclosure activities of a trustee, because it would be a violation of the duty of impartiality for trustees to act as collection agencies toward their debtor-trustors. What has gotten trustees such as MTC and QLS repeatedly in trouble—whether here in Nevada, Washington, or California—at least in part is their practice of engaging in collection agency activities on behalf of deed of trust beneficiaries while purporting to serve as foreclosure trustees for those very same deeds of trust.

As the proof presented by Plaintiffs in support of their motion shows, MTC's collection agency activities in Nevada have included doggedly pursuing Nevada trustor-debtors to collect on claims and acting adversely to debtors—to whom MTC owes a duty of impartiality and good faith—by, among other things, seeking to evict them from their homes following foreclosure, negotiating loan forbearance and modification agreements with debtors on behalf of MTC's creditor-clients, and collecting payments from Nevada debtors on defaulted debts so that MTC can remit those funds to its creditor-clients.

6. Nevada Foreclosure Trustees Are Not Obligated to Actively Solicit Reinstatement or Payment in Full of Debts as the Agent of the Lender Alone: They Are in Fact Barred from Doing So

QLS' reliance on NRS 107.080(2)(c)(3) for the proposition that Nevada foreclosure trustees may "involve themselves in the reinstatement process" (QLS Opposition, at 10) is misplaced and misleading. The current version of NRS 107.080(2)(c)(3) mandates that a Nevada debtor under a deed of trust be sent a written statement with several categories of information, including "the amount in default" on the debt, "the principal amount of the obligation or debt secured by the deed of trust," the amount of payment required to reinstate the loan and avoid foreclosure, and the "principal amount of accrued interest and late charges." The statute makes clear, however, that this written statement need not come from the foreclosure trustee: instead, it can come from the "beneficiary or its successor in interest, the servicer of the obligation or debt secured by the deed of trust or the trustee, or an attorney representing any of those persons." NRS 107.080(2)(c)(3). There is similarly nothing in NRS 107.080 that requires that any payments on the defaulted debt be sent to the foreclosure trustee, so it can collect and remit these amounts to the creditor-client. Similarly, there is nothing in NRS 107.080(2), despite QLS' assertions to the contrary, that "state that the trustee has an affirmative duty to monitor the reinstatement process prior to exercising the power of sale" as part of a

duty to be impartial and act in good faith with respect to the deed of trust and the beneficiary and debtor. Despite QLS' express reliance on these provisions, NRS 107.080(2)(b) and NRS 107.080(2) more generally simply do not require trustees to "monitor the reinstatement process" as QLS suggests. Instead, they put limits on the time before which trustees may exercise the power of sale and require that certain notices be given—not necessarily by the trustee—at specified times prior to foreclosure. See NRS 107.080(2). Put plainly, QLS' assertions regarding the duties of trustees simply are not supported by the statutory provisions cited by QLS (or other provisions of Nevada law).

Nothing in NRS 107.080(c), properly construed, authorizes or requires foreclosure trustees to engage in the variety of activities that Plaintiffs' proof in support of their motion demonstrates MTC regularly engaged in for years as part of its collection agency activity in the State of Nevada. Thus, according to MTC's current Senior Vice-President of Operations, MTC currently provides both full service default services and foreclosure services to its clients. (SS#12.) MTC's activities in Nevada have not materially changed between the relevant period here to the present. (SS#4.) The two categories of services provided by MTC are distinct: full service default services include collection services such as handling deed-in-lieu of foreclosure transactions, senior lien monitoring, negotiating loan forbearance agreements, post-foreclosure sale conveyances, and other services. (SS#12.) During the relevant period, MTC expressly contracted with its creditor-clients to, among other services in the State of Nevada, comply with applicable federal, state, and local laws, including those relating to foreclosures, debt collection, and privacy; represented that it had and would maintain all regulatory approvals, authorizations, licenses, permits, or other permissions, consents, and authorities needed to perform its obligations to its clients; residential foreclosure, collection, recovery, and all other legal services related to foreclosure of delinquent mortgagors; return telephone calls

to defaulted debtors; promptly forward reinstatement or pay-off proceeds received from Nevada debtors on defaulted loans to MTC's creditor-clients; deliver good and marketable title following MTC conducting non-judicial foreclosure sales; attempt to solicit loss mitigation workout options when a Nevada borrower calls MTC; create loss mitigation workouts and send them to borrowers; forward all down payments received from defaulted debtors as part of loss mitigation or forbearance agreements; upon request from Nevada debtors, provide reinstatement and pay-off quotes to Nevada debtors, which would include all amounts owed to MTC's creditor-clients and MTC's fees and costs; handle eviction proceedings on behalf of MTC's creditor-clients; and initiate and carry out non-judicial foreclosure proceedings in the Nevada relating to defaulted loans. (SS#14.) These are certainly not activities required by Nevada law, and, to the extent that they necessarily conflict with MTC's duty to be impartial—such as MTC evicting Nevada debtors following foreclosure or negotiating loan workouts with Nevada debtors on behalf of MTC's creditor-clients—are in fact not authorized by Nevada law. See NRS 107.028(6); see also Klem, supra, 176 Wn.2d at 788-798, 295 P.3d at 1187-1190.

Similarly, it is QLS and not Plaintiffs who have ignored or mischaracterized the requirements of the foreclosure mediation program in Nevada and its rules. Nevada Foreclosure Mediation Rule ("NFMR") 5, for instance, does not authorize or require trustees such as MTC to actively solicit or demand that payments by Nevada debtors on defaulted loans be sent to MTC directly so it can collect and remit those payments to its creditor-clients. It merely instructs trustees how to handle payments sent as fees to participate in Nevada's foreclosure mediation program. Similarly, NFMR 11 does not, despite QLS' suggestion to the contrary, authorize MTC or other trustees to involve themselves in negotiating deed in lieu transactions with Nevada debtors on behalf of MTC's creditor-clients: NFMR 11 instead in pertinent part merely confirms that borrowers may "surrender or deliver[] . . . the keys to the [real]

property to the trustee" (or others such as the deed of trust beneficiary) as part of borrowers opting to pursue a deed in lieu transaction (i.e., surrender the real property) to avoid foreclosure on the property.

7. Nevada Foreclosure Trustees Are Not Obligated to Negotiate, Document, and Execute Loan Modification Agreements with Debtors on Behalf of Lender-Clients: The Trustee Duty of Impartiality Bars Them from Doing So

QLS' reliance on NFMR 8 for the proposition that the rule "specifically provides that foreclosure trustees are involved in loan workouts" (QLS Opposition, at 10) is especially inaccurate and misleading. From QLS' description, one would believe that NFMR 8 provides for foreclosure trustees to be involved in the negotiation, documentation, and execution of loan modification or forbearance agreements. Not so. NFMR 8 only provides for limited and neutral involvement by foreclosure trustees in Nevada's Foreclosure Mediation Program. See NFMR 8(3). Thus, foreclosure trustees are required to provide eligible Nevada debtors under deeds of trust with certain notices of the Foreclosure Mediation Program so that the debtors can decide whether to seek to participate in mediation through the program. Id. at (3)(a). Should eligible Nevada debtors decide to pursue mediation by completing the required forms and sending them to trustee and the program administrator (or designee), then the trustee will be so notified by the administrator and be required shortly thereafter to deposit certain documents with the administrator and any fees required by NFMR 5 for participation (including any such fees received by the trustee from the applicable Nevada debtor). Id. at (b). Thus, the only involvement in "loan workouts" required (or expected) of foreclosure trustees by NFMR 8 is a limited and neutral role in facilitating mediation should eligible Nevada debtors seek to enroll in the program. This is a far cry from MTC's actual role in negotiating, documenting, and executing—on behalf of its creditor-clients—loan forbearance agreements with Nevada debtors, which role Plaintiffs' proof

conclusively demonstrates MTC regularly played in Nevada during the relevant period. (SS#12, 14, 32-35.)

8. QLS' Assertions regarding Senior Lien Monitoring Are Unsupported by Authority

QLS asserts at some length that the senior lien monitoring services that QLS does not dispute that MTC (and, apparently, other trustees such as QLS) regularly provided their creditor-clients are required of Nevada foreclosure trustees as part of their statutory duties. Without any evidence or authority, QLS claims, among other things, that lien monitoring by trustees is a necessary part of the foreclosure process, and that trustees must protect all interests of record. Notably, the first authority that QLS cites for any of its assertions regarding lien monitoring does not support the specific proposition QLS cites it for, as explained above in some detail. Despite QLS' assertions to the contrary, NRS 107.080(2) does not require or provide for foreclosure trustees to monitor reinstatements. The second authority relied on by QLS does not require, despite its claims, that trustees monitor senior liens: NRS 107.090 in pertinent part requires trustees (or others authorized to record notices of default or of sale) to give certain notices to those who have requested notice pursuant to NRS 107.090 and to junior lien holders. NRS 107.090(2)-(4),(7). QLS' failure to support its various assertions with authority is especially curious, because QLS contends that the duty it describes is "delineated" by NRS 107. If so, QLS should be able to support its claims with specific and accurate references to the statute.

The consequences of QLS' failure to support its arguments and assertions with authorities are clear: QLS thereby effectively admits that the points are without merit or waives them. See EDCR 2.20(c) ["A party filing a motion must also serve and file with it a memorandum of points and authorities in support of each ground thereof. The absence of such memorandum may be construed as an admission that the motion is not meritorious, as cause for its denial or as a waiver of all grounds not so supported."].

9. QLS' Assertions regarding Post-Foreclosure Sale Conveyances Are Inaccurate and Misleading

In another instance of misunderstanding or mischaracterizing Plaintiffs' actual arguments and proof, QLS accuses Plaintiffs of incorrectly contending that foreclosure trustees such as MTC (and QLS) are agents of deed of trust beneficiaries because they file deeds and deliver title to property following foreclosure. See QLS Opposition, at 12. As a preliminary matter, QLS is again trying to have it both ways in its brief: while suggesting that trustees are not agents of the beneficiary here, QLS contends elsewhere that trustees are actually required to act for the benefit of beneficiaries, grantor-debtors, and the laws of Nevada. Compare id. with id. at 9-11.

Turning to Plaintiffs' actual arguments and proof in their moving papers, Plaintiffs demonstrate that MTC did more than merely file and deliver title and deeds following a foreclosure sale. Instead, Plaintiffs' proof shows that MTC would ensure that title to the foreclosed property was good and marketable following a foreclosure sale, by, for instance, monitoring for senior liens, evicting the foreclosed debtors of the property, and removing encumbrances if needed. (See SS#5, 12-14.) Despite QLS' suggestions to the contrary, these activities go beyond the requirement that trustees either record the trustee's deed of sale or deliver the deed to the successful bidder at the foreclosure sale within a required period of time (and, if the trustee opts to record the deed, to post on the property a copy of the recorded deed within a required period of time). See NRS 107.080(10)-(11). QLS' claim that trustees would be subject to substantial penalties under NRS 107.080(12)&(13) if they did not convey title is especially strange, because neither provision has anything to do with penalties that trustees can be subjected to. NRS 107.080(12) deals with penalties that bidders at foreclosure sales—not trustees—can be subject to if they fail to record the deed of trust (if it is delivered to them by the trustee pursuant to NRS 107.080(10)(b)). NRS 107.080(13) has nothing to do with penalties at all—whether for bidders, trustees, or anyone—but simply delineates certain fees that must be paid

to the county recorder when a notice of default is recorded. Plaintiffs' proof of these post-foreclosure activities, standing alone, does not establish that trustees such as MTC are collection agencies, but it does demonstrate that, contrary to what QLS would have the Court believe, MTC's activities in Nevada went far beyond what Nevada law requires of foreclosure trustees. Indeed, as explained above, to the extent that MTC was the agent only of its creditor-client beneficiaries by acting adversely to Nevada debtors (by, for instance, seeking to evict them or negotiate loan forbearance deals with them on behalf of beneficiaries), Plaintiffs' proof shows that MTC in fact violated its duty under NRS 107.028(6) to be impartial and act in good faith to both beneficiaries and Nevada debtors. See also Klem, supra, 176 Wn.2d at 788-798, 295 P.3d at 1187-1190.

D. QLS' "Knowingly" Defense Fails

1. QLS Misinterprets the Language and Requirements of NRS 598.0923(1)

QLS, as it has in the past, mistakenly tries to mischaracterize Plaintiffs' burden by claiming that Plaintiffs must show that MTC (or QLS) conducted business knowing that doing so amounted to a violation of Nevada law. This is not what NRS 598.0923 states. Instead, NRS 598.0923(1) states in pertinent part that a "person engages in a 'deceptive trade practice' when in the course of his or her business or occupation he or she knowingly . . . [c]onducts the business or occupation without all required state, county or city licenses." [emphasis added]. The plain language of this statute makes clear that "knowingly" modifies "conducts" the business, such that Plaintiffs must only show that MTC knowingly conducted the business itself (but not that MTC knew it was doing so in violation of Nevada law). This is not, as QLS misleadingly suggests, Plaintiffs' attempt to read the intent requirement reflected in "knowingly" out of the statute altogether, but simply the interpretation required by the statute's words and grammatical structure.

Under this proper interpretation of the statute, it is absurd for QLS to contend that Plaintiffs have not met their burden. After all, QLS cannot expect the Court to conclude that MTC conducted its business in Nevada "inadvertently" or without awareness that it was carrying on a business or occupation for more than a decade and "unknowingly" received about $50,000,000 in fees and costs from 2007 to 2012! (SS#1-2, 4-5, 7-8, 12, 14-16, 18-35, 37-49, 57-61, 65-70.) Unlike a person who might engage in desultory or isolated activities without realizing that he was in fact carrying on a business or occupation (and thus might not be liable for knowingly conducting a business), MTC's business activities in Nevada were extended and systematic and clearly carried out in full knowledge that it was engaged in a business.

2. The Cases Relied on by QLS Are Not to the Contrary

Instead of addressing Plaintiffs' actual arguments, QLS engages with a series of straw men, premised on the inaccurate accusation that Plaintiffs have wholly ignored the language "knowingly" used in NRS 598.0923(1). In defiance of the actual language of NRS 598.0923(1), QLS seeks to import a heightened intent requirement by relying on language from different provisions of NRS 598.0923, and language from other jurisdictions entirely, for the propositions that Plaintiffs must show that MTC knew both that it was conducting a business and that it lacked the required licenses to do so.

In an attempt to define "knowingly" as used in NRS 598.0923 (or Nevada's Deceptive Trade Practices Act more generally), QLS relies on a general definition of the term from the 1990 edition of Black's Law Dictionary and references to deceptive trade practices laws from other jurisdiction. The latter are unpersuasive, especially as QLS does not even attempt to show that Nevada statutory scheme for its Deceptive Trade Practices Act ("DTPA") is similar to those in Texas, Alabama, or Colorado that are discussed in the cases QLS cites. QLS does not demonstrate, for instance, that Nevada's DTPA provides an "'absolute defense' to actions which result from negligence or an honest mistake'" (even if Colorado's Consumer Protection Act

perhaps does). See QLS Opposition, at 14 [quoting Crowe v. Tull (Colo. 2006) 126 P.3d 196]. These references are thus not much assistance in determining how Nevada defines "knowingly" as used in NRS 598.0923.

In order to construe the proper definition of the word "knowingly," as used in NRS 598.0923, it would be better to look to the definition assigned to that term by the Nevada legislature in NRS 281A.115 and NRS 624.024 instead of looking further afield. In these provisions, the Nevada legislature gave the following definition: "'Knowingly'" imports a knowledge that the facts exist which constitute the act or omission, and does not require knowledge of the prohibition against the act or omission. Knowledge of any particular fact may be inferred from the knowledge of such other facts as should put an ordinary prudent person upon inquiry." NRS 281A.115, NRS 624.024 [emphasis added]. QLS' interpretation of NRS 598.0923(1) would not be consistent with this definition because QLS would have NRS 598.0923(1) require proof of knowledge both of the facts which constitute the act or omission as well as of the prohibition against the act or omission. Had the Nevada legislature wished this to be the law, it could have revised the language of NRS 598.0923(1) so that it prohibited knowingly violating Nevada law by conducting the business or occupation while lacking the required licenses to do so.

The two trial court orders from federal district courts in Nevada also do not assist QLS here. In the first order, the federal district court dealt with a different provision of NRS 598.0923, which states that a "person engages in a 'deceptive trade practice' when in the course of his business or occupation he knowingly: . . . [v]iolates a state or federal statute or regulation relating to the sale or lease of good or services.'" Sobel v. Hertz Corp. (D. Nev. 2010) 698 F.Supp.2d 1218, 1230 [quoting NRS 598.0923(3)][alterations in original], affirmed in part, reversed in part, and vacated in part by Sobel v. Hertz Corp. (9th Cir. Jan. 5, 2017) 2017 U.S. App. LEXIS 217. Although the trial court in Sobel did not address the definition of "knowingly"

as used in NRS 598.0923(3), it concluded that it required the plaintiff to establish that the defendant "intentional circumvented the requirements" of a statute or "knowingly violated" a law. Id. Given the pertinent language of NRS 598.0923(3)—i.e., the knowingly violated requirement—it was not unreasonable for the trial court to reach that conclusion, although the better reasoned approach would have been for the trial court to require only that the acts or omissions constituting the violation of law be knowingly done or omitted (and not that the defendant also know that it was thereby violating a law). See NRS 281A.115, NRS 624.024. In contrast, as explained above, "knowingly" as used in NRS 598.0923(1) modifies "conducts the business or occupation," which does not require knowledge that all required licenses were not obtained. The second order cited by QLS is even more unhelpful because the trial court there only noted in passing several provisions from Nevada's DTPA which have the word "knowingly" used in them. See Phillips v. Dignified Transition Solutions (D. Nev. 2014) 2014 U.S. Dist. LEXIS 120221, at *8-9 n. 2. The trial court did not otherwise discuss or consider how "knowingly" should be interpreted. Id. Since, as reflected in Plaintiffs' moving papers and herein, Plaintiffs do not dispute that "knowingly" is used in NRS 598.0923(1), but simply reject QLS' unreasonable interpretation of the statute, Phillips does not provide much persuasive guidance on the point QLS cites it for.

3. The Hypotheticals Offered by QLS Do Not Assist It

The colorful hypotheticals offered by QLS in discussing several other provisions of Nevada's DTPA are not of much assistance to QLS here because its misreading of these statutes are not consistent with Plaintiffs' actual interpretation of NRS 598.0923(1) and its language. Thus, for instance, NRS 598.092(12) would not lead to the result that QLS suggests in its hypothetical, because, given the facts stated therein, there is nothing suggesting that someone is knowingly taking advantage of another person, as is required by NRS 598.092(12) for there to be liability. Since the dementia described by QLS is not readily apparent, one doing business with the

consumer apparently is not knowingly taking advantage of the woman suffering from it. Similarly, QLS' discussion of merchants presenting false information by in applications for credit is not of much use, because the provision relied on by QLS has nothing to do with such conduct at all: NRS 598.0913 merely defines the term "Commissioner" when used in NRS 598.

4. Plaintiffs' Proof Demonstrates that MTC Knowingly Conducted Its Business without All Required Licenses

QLS' "knowingly" argument is also fatally weak for multiple other reasons, including that the proof presented by Plaintiffs in support of their motion—which proof QLS does not even attempt to dispute—show that MTC in fact knew that it was conducting business as a collection agency, as it had service contracts with its lender-clients specifically for that purpose.[1] (SS#10, 12-17.) If MTC claims that such items were not done knowingly, then it must be that it claims that it unknowingly sent an untold number of notices of default and notices of trustee's sale to Nevadans, and accidentally foreclosed on thousands of Nevada homeowners, including the Plaintiff Sansotas. (SS#1-2, 4-5, 7-8, 11-16, 18-21, 23-25, 30-35, 38-49, 61, 67-70.) Moreover, MTC expressly considered obtaining its Nevada license on multiple occasions and in multiple high-level management meetings, but decided not to do so until 2012, after this lawsuit was filed in 2011. (SS#1-4, 50-64, 71.) This is "knowing" conduct, as a matter of law.

Nor can MTC claim that it was ignorant of the Nevada law which required that it hold a license, or that the law applied to MTC. Although such ignorance of the law would not be a defense—see NRS 281A.115, and NRS 624.024—the undisputed material facts show that MTC was fully aware of the applicable law here, and made a conscious decision not to obtain the Nevada collection agency license, until 2012. (See, e.g., SS#1-4, 15-17, 50-53, 56-61.) Both Ms. Johnsen and Ms. Cole-Sherburn

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[1] To date, despite repeated requests, MTC has refused to produce all these contracts. Boylan Declaration in Support of Plaintiffs' Motion, at ¶15.

testified at their depositions that, well before the filing of this lawsuit, MTC expressly considered whether to obtain a collection agency license from the FID, and, ultimately, did obtain such a license in early 2012. (SS#1-6, 14-16, 50-53, 56-61.) To date, MTC continues to maintain that license. (SS#3.) Thus, even assuming that Plaintiffs were required to show that MTC knew or should have known that it was conducting its business without all required licenses, Plaintiffs through their proof have met that burden.

5. Judge Scann Properly Rejected QLS' Previous Reliance on Judge Williams' Decision

a. THE REASONING OF COMMISSIONER BURNS, ON BEHALF OF THE NEVADA DEPARTMENT OF BUSINESS AND INDUSTRY, FINANCIAL INSTITUTIONS DIVISION, IS COMPELLING

With respect to the substantive issues of Nevada law presented here, including proper interpretation and application of most of the Nevada statutes at issue, the legal reasoning and analysis stated in the decision of Commissioner Burns of the FID is truly compelling. Commissioner Burns is the highest authority at the FID, and the single most experienced and knowledgeable Nevadan on the issues at hand. Commissioner Burns' fourteen-page decision in the Quality Loan Service Corporation proceedings before the FID persuasively dismantles most every argument asserted here by QLS. Defendants' only response of note thus far has been that Commissioner Burns' decision was overturned by a trial court, and not appealed.

In contrast, the Department 16 order, ostensibly signed by Judge Williams and previously and properly rejected as authority in this case by Judge Scann, appears to be an advocacy piece, every word of which was crafted by QLS's attorneys at the firm of Lionel, Sawyer & Collins. The order contains no indication of any independent review, analysis, or contribution by the Judge. In fact, the order is not signed by the Judge, but says instead, "Jessie Walsh for Timothy C. Williams." Below that signature, the order indicates that it was "prepared and submitted" by Attorney Paul Larson, of the firm Lionel, Sawyer & Collins representing QLS. In

paragraph 9 of the order, there is a significant mischaracterization of Commissioner Burns' fact-finding and his determinations, which mischaracterization and various related omissions illustrate the inaccuracies spread throughout the entire order. Specifically, the order misstated that Commissioner Burns determined that merely exercising the power of sale in a deed of trust constitutes the action of a collection agency. The trial court order omits any reference to the pervasive evidence discussed and the critical findings of Commissioner Burns' decision, which show a variety of debt collection activities (including demanding and collecting payments on past due amounts), different from and well beyond the mere recordation of a default notice or the mere statutory exercise of the power of sale. See, e.g., Reese v. Ellis, Painter, Ratterree & Adams LLP (11th Cir. 2012) 678 F.3d 1211. As Judge Scann previously concluded in rejecting it when Defendants sought to have her give it preclusive effect in this case, the order is without persuasive force.

Pursuant to NRS Chapter 649, the FID has the authority to interpret the statute and is the most knowledgeable about the statutory scheme. See NRS 649.051 ("The Commissioner shall administer and enforce the provisions of this chapter"); NRS 649.053 ("The Commissioner shall adopt such regulations as may be necessary to carry out the provisions of this chapter."); NRS 649.440 ("Commissioner may impose an administrative fine of not more than $10,000 upon a person who . . .[w]ithout a license or certificate, conducts any business or activity for which a license or certificate is required pursuant to the provisions of this chapter; or . . . [v]iolates any provision of this chapter or any regulation adopted pursuant thereto."); NRS 649.135 ("Commissioner shall enter an order approving the application for a license, . . . if the Commissioner finds that the applicant has met all the other requirements of this chapter pertaining to the applicant's qualifications and application."). In the prior case against QLS, the FID's then Commissioner personally acted as the hearing officer, and determined exactly the opposite of what

Defendants contend. That is, conducting various foreclosure activities in the manner performed here, by demanding and collecting money on past due amounts, constitutes debt collection in Nevada. Accordingly, the Commissioner correctly determined that QLS was not exempt from the licensing requirement under NRS 649.020. Id.

This Court should defer to the FID, as the applicable Nevada administrative agency. See, e.g., Holiday Ret. Corp. v. State Div. of Indus. Rels., 128 Nev. Adv. Rep. 13, 274 P.3d 759, 761 (2012); Ford Motor Credit Co. v. Milhollin, 444 U.S. 555, 566 (1980). Nothing in Judge Williams' order reflects any consideration whatsoever of the law indicating that it is the Court's duty to give primary deference to the administrative agency in charge.

b. THE PRIOR QLS DECISION IN DEPARTMENT 16 IS NOT CONTROLLING OR PERSUASIVE HERE

Defendants have previously claimed that Department 16 "scrutinized the legislative history of the various Nevada statutes implicated" in its determination. Although drafted by the QLS lawyers at Lionel Sawyer, the text of the order does not expressly show or recite any scrutiny, analysis, review, or consideration of any legislative history. There is no citation to legislative history in the order. Nor is there any quotation of the legislative record in the order. Moreover, the text of the order reflects no consideration of the 2011 amendment of NRS Chapter 107 and its express inclusion of NRS 649 licensed collection agencies. NRS 107.028. This is classic legislative clarification of prior intent.

i. The Prior QLS Order Is Distinguishable on the Critical Facts

According to the text of the order from Dept. 16 in the QLS matter, the Court limited its determination to what it saw as the simple fact that QLS did nothing other than record a notice of default (and possibly conduct the sale). The evidence here shows a very different scenario, with a variety of debt collection activities by MTC,

including demanding payments, receiving payments, forwarding payments, soliciting from the banks the opportunity to act on their behalf to collect the debts, seeking payment by cashier's checks and/or wire transfers made payable to MTC, all as collection agents for the lenders, etc.

ii. The Prior QLS Order Is Incorrect on Its Face

The prior QLS order is also incorrect on its face, both as to facts and law. For example, it seems that there is a glaring legal error on the face of the QLS order from Department 16 that is relied upon by QLS here. In the "Conclusions of Law," paragraph numbers 2 and 3 thereof, it appears that Judge Williams based his order in substantial part on a determination that the California company, QLS, was not doing business in the State of Nevada pursuant to NRS 80.015. It is inexplicable that the order did not cite or discuss the contrary, dispositive portion of that same statute, with respect to the issue. Specifically, NRS 80.015(4)(b) provides that: "The fact that a person is not doing business in this state within the meaning of this section . . . [d]oes not affect the applicability of any other provision of law with respect to the person and may not be offered as a defense or introduced in evidence in any civil action, . . . involving an alleged violation of chapter 597, 598,[2] or 598A of NRS." As detailed below and in Plaintiffs' reply and opposition papers to the briefs filed by MTC, NRS 80.015(4)(b) demonstrates that Judge Williams' conclusion of law on this point was simply wrong. Thus, issue of whether QLS or MTC was doing business in Nevada for purposes of NRS 80.015 is not even allowed to be an issue on this matter, yet it was the basis of Judge Williams' order.

6. Plaintiffs' Powerful <u>Appellate</u> Cases Demonstrate that QLS' Reliance on Federal Trial Court Orders Is Misplaced

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[2] NRS 598.0923(1) defines a deceptive trade practice in the course of a person's business or occupation when he or she knowingly conducts the business or occupation without all required state, county, or city licenses.

As QLS and the other Defendants in this case have done in the past, QLS relies on a number of unpublished orders from the federal district court in Nevada to suggest that MTC and other Defendants such as QLS could not have known that they were required to obtain collection agency licenses from the FID.

As a preliminary matter, QLS presents no evidence that MTC, which is the subject of Plaintiffs' motion here, knew of or otherwise relied on the cases cited by QLS as justification for not obtaining a collection agency license from the FID. Even if MTC made such a claim, however, it would not assist it (or others such as QLS) because such reliance on unpublished federal trial court orders would not have been reasonable in light of the powerful appellate decisions in Plaintiffs' favor. MTC and QLS also could not have reasonably relied on these orders, because they do not carry any binding precedential effect, let alone on Nevada state courts and their interpretation of Nevada law. See, e.g., NASD Dispute Resolution, Inc. v. Judicial Council (9th Cir. 2007) 488 F. 3d 1065, 1069 ("[A] district court opinion does not have binding precedential effect.").

As Plaintiffs explained in their moving papers, according to almost all the federal appellate courts, which issue the binding decisions that set the legal precedents which must be followed by federal trial courts, even under the less stringent federal law,[3] trustees conducting foreclosure activities of the kind at issue in this case are debt collectors. See Wilson v. Draper & Goldberg PLLC (4th Cir. 2006) 443 F.3d 373; Piper v. Portnoff Law Assocs. (3rd Cir. 2005) 396 F.3d 227; Reese v. Ellis, Painter, Ratterree & Adams LLP (11th Cir. 2012) 678 F.3d 1211, 1217-1218 ["A communication related to debt collection does not become unrelated to debt collection simply because it also relates to the enforcement of a security interest. A 'debt' is still a 'debt' even if it is secured."]; Romea v. Heiberger & Assocs. (2nd Cir. 1998) 163 F.3d 111, 117; Gburek v. Litton Loan Servicing LP (7th Cir. 2010) 614

[3] The FDCPA, not specifically at issue here, but relevant in the trial court orders previously relied upon by Defendants.

F.3d 380, 386; Kaltenbach v. Richards (5th Cir. 2006) 464 F.3d 524; Glazer v. Chase Home Fin. LLC (6th Cir. 2013) 704 F.3d 453, 455; see also Rowe v. Educ. Credit Mgmt. Corp. (9th Cir. 2009) 559 F.3d 1028; Alaska Trustee LLC v. Ambridge (Alas. 2016) 2016 Alas. LEXIS 23; Porada v. Monroe (Minn. App. July 28, 2014) No. A-13-1615, 2014 WL 3700820 [unpublished]; Kaymark v. Bank of America, N.A. (3d Cir. 2015) 783 F.3d 168, 176-178 [judicial foreclosure complaint can be communication subject to FDCPA protections]; McCray v. Federal Home Loan Mortg. Corp. (4th Cir. Oct. 7, 2016) 839 F.3d 354 [concluding that complaint adequately alleged that foreclosure trustee was debt collector under FDCPA and alleged activities were debt collection activity regulated by the FDCPA]; Shapiro & Meinhold v. Zartman (Colo. 1992) 823 P.2d 120, 122-124 [en banc]; Mashiri v. Epsten Grinnell & Howell (9th Cir. Jan. 13, 2017) 2017 U.S. App. LEXIS 665, at *3, 8-13.[4] Thus, the great weight of near-uniform appellate authority and the persuasive content of those near-uniform decisions completely overwhelm the erroneous prior unpublished federal trial court orders in Nevada that Defendants have relied on in the past.

QLS also seemingly ignores the fact that Judge Scann previously rejected Defendants' attempt to rely on such federal trial court orders, including several of those relied on by QLS now, when Defendants cited them in seeking to have Plaintiffs' Second Amended Complaint dismissed pursuant to NRCP 12(b)(5). Judge Scann's refusal to be guided by these cases as authority was well-founded, as there is little in the ones relied on by QLS here suggesting that the courts had not given adequate attention to the nuances of Nevada collection agency and non-judicial foreclosure law.

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[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.

Plaintiffs must point out that in a number of the federal trial court orders in Nevada that QLS relies on,[5] the plaintiffs contending that QLS or other foreclosure trustees were collection agencies or debt collectors were acting pro se, and therefore likely were unable to fully and adequately respond to the misleading or inaccurate arguments presented by the foreclosure trustee defendants. See Charov v. Perry (D. Nev. June 30, 2010) 2010 U.S. Dist. LEXIS 65798; March v. Pinnacle Mortg. of Nev. (D. Nev. Oct. 7, 2011) 2011 U.S. Dist. LEXIS 117185.

It is also worth noting that many of these cases were decided at the motion to dismiss stage, which almost necessarily means that the plaintiffs had not had an opportunity to marshal and present the powerful proof of collection agency activity that Plaintiffs provide in support of their motion for summary judgment here. See, e.g., Charov, supra; Maves v. First Horizon Home Loans (D. Nev. Sept. 15, 2010) 2010 U.S. Dist. LEXIS 97387; Barlow v. BNC Mortg., Inc. (D. Nev. Aug. 25, 2011) 2011 U.S. Dist. LEXIS 96327; Gillespie v. Countrywide Bank FSB (D. Nev. Aug. 19, 2011) 2011 U.S. Dist. LEXIS 93118; Martinez v. Bank of Am. Nat'l Ass'n (D. Nev. Oct. 20, 2010) 2010 U.S. Dist. LEXIS 113378; Regas v. Freemont Invs. & Loan (D. Nev. Dec. 14, 2010) 2010 U.S. Dist. LEXIS 132925; and Erickson v. PNC Mortg. (D. Nev. April 27, 2011) 2011 U.S. Dist. LEXIS 46387.

In their concurrently-filed briefing in reply to MTC's opposition to Plaintiffs' Motion, Plaintiffs provide in detail other compelling reasons why the unpublished federal trial orders relied on by QLS (and MTC) are not persuasive, including the clear errors in interpretation of Nevada law reflected in them. See Plaintiffs' Reply [discussing, among others, Maves, supra; Rinehold v. Indymac Bank, FSB (D. Nev. Jan. 4, 2011) 2011 U.S. Dist. LEXIS 896; Kenneweg v. Indymac Bank (D. Nev. Jan. 4, 2011) 2011 U.S. Dist. LEXIS 661 [Hicks, J.]; Regas, supra; and March v.

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[5] Hulse v. Ocwen Federal Bank (D. Or. 2002) 195 F.Supp.2d 1188, which QLS relies on, is of little assistance to it, as it in pertinent part deals only with liability under the FDCPA and Oregon's unfair debt collection practices act. Id. at 1202-1206. It did not consider whether a license was required from the FID under NRS 649.075. Id.

Pinnacle Mortg. of Nev. (D. Nev. Oct. 7, 2011) 2011 U.S. Dist. LEXIS 117185]. To ease the burden on the Court, Plaintiffs hereby incorporate the arguments and authorities discussed in their concurrently-filed briefing on these points.

7. QLS Knew by the Time of the FID's Cease-and-Desist Order that It Needed a Collection Agency License from the FID

Over and above the reasons that QLS' reliance on such federal trial court orders from Nevada is misplaced, QLS knew at least as early as the date it received the cease-and-desist order from the FID that it needed a collection agency license from the FID to continue its collection agency activities in the State of Nevada (even if carried out under the guise of being a foreclosure trustee). It is indisputable that QLS received this order prior to the hearing before the Commissioner of the FID on December 13, 2010. See Quality Loan Service Corp., supra, at *1-2. QLS was thus on notice—i.e., knew—that the FID contended it needed a collection agency license from the FID to conduct its business activities in Nevada at least as early as before December 2010. QLS failed to obtain such a license, however, until after the relevant period here. As explained above, Judge Williams' erroneous—and non-binding—opinion in Quality Loan Service Corporation was not issued until well after the relevant period here (in January 2013), so it cannot serve as a basis for QLS to claim that it did not know it was required to be licensed as a collection agency (even if QLS' mistaken interpretation of "knowingly" in NRS 598.0923(1) were adopted by the Court).

8. QLS' Attempt to Distinguish Some of the Powerful Appellate Cases in Plaintiffs' Favor Fails

In their moving papers, Plaintiffs cited many appellate cases—from the federal circuit courts to the highest courts of a number of States—in support of their argument that foreclosure trustees conducting foreclosure activities of the kind at

issue in this case are debt collectors, whether under the FDCPA, collection agency statutes of other jurisdictions, or both. Although QLS only attempts to distinguish a handful of these powerful cases, it accuses Plaintiffs of misstating the holdings in nearly all of these cases.

As a preliminary matter, citation signals—such as the "See" signal used by Plaintiffs when citing the cases QLS takes issue with—are useful tools when readers pay attention to them. For instance, by using the citation signal ("See"), Plaintiffs made clear that the cases cited did not directly state the proposition they were cited for, but supported it. QLS fails to show that any of the few cases it discusses do not in fact support Plaintiffs' proposition here. Plaintiffs' reliance on Piper v. Portnoff Law Assocs. (3rd Cir. 2005) 396 F.3d 227, or Reese v. Ellis, Painter, Ratterree & Adams LLP (11th Cir. 2012) 678 F.3d 1211, 1217-1218, is well-founded. Although the cases do not involve non-judicial foreclosure trustees—and, despite QLS' quibbling, Plaintiffs did not suggest they do—they demonstrate that debt collectors are not insulated from liability simply because they characterize their debt collection activities as enforcement of a security interest (as QLS and MTC seek to do here). See Piper, supra, 396 F.3d at 236-237; Reese, supra, 678 F.3d at 1217-1218 ["A communication related to debt collection does not become unrelated to debt collection simply because it also relates to the enforcement of a security interest. A 'debt' is still a 'debt' even if it is secured."][emphasis added].

QLS' carping attempts to distinguish several of Plaintiffs' other cases by complaining only that they do not involve foreclosure trustees is similarly misleading and misguided.[6] First, Plaintiffs did not claim that each of these cases involved foreclosure trustees. Second, and perhaps more importantly to Plaintiffs' actual

[6] It is particularly ironic that QLS accuses Plaintiffs of misstating holdings, rulings, facts, and law, when, as detailed throughout Plaintiffs' papers herein, QLS in its brief repeatedly ignores or mischaracterizes Plaintiffs' actual arguments, makes assertions without any authority or relies on authority that does not support QLS (and, indeed, in some instances, has no connection at all to QLS' assertions), and indulges in inconsistent allegations of law and fact.

arguments, QLS does not otherwise attempt to argue that the cases do not support the contention for which Plaintiffs actually cited them. See QLS Opposition, at 21. QLS simply ignores entirely those cases cited in Plaintiffs' favor that deal expressly with foreclosure trustees and debt collection—such as Alaska Trustee LLC v. Ambridge (Alas. 2016) 2016 Alas. LEXIS 23, and McCray v. Federal Home Loan Mortg. Corp. (4th Cir. Oct. 7, 2016) 839 F.3d 354 [concluding that complaint adequately alleged that foreclosure trustee was debt collector under FDCPA and alleged activities were debt collection activity regulated by the FDCPA]—effectively conceding that it cannot respond to them.

9. QLS' Reliance on *Ho* Is Ill-Founded

QLS' relies at some length on the Ninth Circuit's recent decision in Ho v. ReconTrust Co., NA (9th Cir. Oct. 19, 2016) 840 F.3d 618. For reasons already explained at some length in Plaintiffs' moving papers, such reliance is misplaced. Two additional points are worth noting here: first, because Ho was not issued until October of 2016, it necessarily could not have been something Defendants relied on in 2007 through 2011 in deciding that they did not need to obtain a collection agency license from the FID in Nevada.

Second, QLS' reading of Ho goes well beyond the narrow language of that decision, in ways already illustrated in Plaintiffs' discussion of the case in their moving papers. Despite QLS' seeming suggestions to the contrary, Ho did not rule that non-judicial foreclosure trustees can never be deemed debt collectors. Instead, interpreting the FDCPA and California law, it concluded that foreclosure trustees are not per se debt collectors under the FDCPA. Id. at 622.

Third, as QLS seemingly recognizes, Ho does not assist debt collectors or collection agencies who, while purporting to be foreclosure trustees, go beyond the limits of Nevada's foreclosure statues, such as by violating their duty of impartiality and good faith by engaging in collection agency activities. Since, as Plaintiffs have

demonstrated at length in their moving papers and herein, MTC (and based on its arguments, apparently, QLS also) in fact violated Nevada's foreclosure statutes in myriad ways (such as by acting adversely to deed of trust grantor-debtors on behalf of MTC's creditor-beneficiary clients), Ho would not insulate MTC from liability for being a collection agency.

10. Plaintiffs Have Demonstrated that MTC Knowingly Conducted Business without the Required State License

Plaintiffs have discussed at length the evidence, arguments, and authorities showing that MTC cannot defeat summary judgment here through the self-serving declaration of Rande Johnsen, and MTC knowingly conducted its business activities in Nevada for at least 10 years before ultimately obtaining its collection agency license from the FID in 2012 in their moving papers as well as in their opposition papers to the motion for summary judgment filed by MTC and reply papers in support of Plaintiffs' Motion. To avoid burdening the Court, Plaintiffs hereby incorporate by reference the arguments, evidence, and authorities presented by them in that briefing.

E. NRS 80.015 Does Not Assist MTC or QLS Here

Like MTC, QLS speciously argues that MTC (and foreclosure trustees more generally) are exempt from licensure; however, the defense raised by MTC and QLS is expressly disallowed by the very statute they cite. Clearly, by any logic, subsection (4)(b) of NRS 80.015 is dispositive of the argument. Otherwise, deceptive trade practices committed in Nevada by foreign, rogue companies collecting debts and enforcing mortgages and security interests in property, with or without a license, would be condoned and expressly authorized by the Nevada legislature. That is an incomprehensible conclusion. Stated another way, it is inconceivable that the legislature would have expressly "exempted" and allowed fraud, deception,

unlicensed activities, deceit, misappropriation and breach of duty by foreign entities in connection with acquiring notes, indebtedness, mortgages and security interest in real or personal property in the state, or in employing such deceptive practices in the conduct of securing or collection debts or enforcing mortgages and security interest in property securing the debts.

Nevertheless, in direct violation of N.R.S. 80(015)(4)(b), QLS asserts as a defense that N.R.S. 80.015(1)(h) excludes "securing or collecting debts or enforcing mortgages and security interests in property securing the debts" as transacting business in the State of Nevada and therefore it is exempt from all laws of the State of Nevada. N.R.S. Chapter 80 establishes the filing requirements for foreign corporations that operate in the State of Nevada. N.R.S. 80.010 establishes the resident agent and corporate information requirements. Following QLS' logic, "collecting debts and enforcing mortgages," which are also excluded from the definition of transacting business under NRS 80.0151(1)(h), must also be exempt and, therefore, the entirety of N.R.S. Chapter 649 related to foreign collection agencies must be void. It makes no sense.

NRS 80.015(4)(b) states that an exclusion from this chapter "does not affect the applicability of any other provision of law with respect to the person and may not be offered as a defense or introduced in evidence in any civil action, criminal action, administrative proceeding or regulatory proceeding to prove that the person is not doing business in this State, including without limitation, any civil action …. involving an alleged violation of Chapter …. 598 or 598A of N.R.S." [emphasis added]. Consequently, Defendant's assertion that it is excluded from the requirements of Nevada law is refuted by the express text of the same statute.

Thus, the express language of NRS 80.015 limits this definition of "doing business in the State" to the application of NRS Chapter 80. NRS Chapter 80 deals only with foreign corporations which must register with the Nevada Secretary of

State. Specifically, NRS 80.010 requires a foreign corporation to file certain items before it commences doing any business in this State. Subsection (4)(b) expressly prohibits QLS (or MTC) from using NRS 80.015 as a defense in any civil action, including specifically a civil action for the violation of NRS Chapter 598, which is the cornerstone of this lawsuit.

Given the explicit provisions of NRS 80.015, it is improper and misguided for MTC (or QLS) to rely on this statute as a defense or to even introduce such information into the record.

The reality is that subsection (4)(b) of NRS 80.015 is devastating to QLS' contention here that "enforcing mortgages and security interests in property" (i.e., the MTC non-judicial foreclosure process) without a license under NRS 649 from Nevada does not constitute deceptive trade practice according to NRS 598. The express language of subsection (4)(b) directly reflects the intent of a legislature to apply the deceptive trade practices law and remedies to unlicensed foreign collection agencies that are involved in conducting a business "collecting debts or enforcing mortgages and security interest in property securing the debts," in the state of Nevada. No other intended purpose of subsection (4)(b) is rational. It is dead on point.

QLS' argument to the contrary is based on a tortured interpretation of the statutory language and obtuse semantics. The obvious intent of NRS 80.015 was to avoid placing upon foreign companies, such as national banks, the burden to comply with all of the foreign business filing requirements in Nevada if they simply had to defend a lawsuit in Nevada, prosecute a lawsuit in Nevada, or settle a case in Nevada, or if they simply created or acquired mortgages and security interest on property in Nevada, or simply themselves enforced a security interest in Nevada. However, expressly, under subsection (4)(b), such foreign entities are subject to and held bound by all other Nevada laws, including the prohibition of deceptive trade practices in the

Silver State. Collecting claims for others without a Nevada license, the business of MTC, is a deceptive trade practice as a matter of statutory definition.

Plaintiffs are aware that the Nevada federal district court has issued several orders on this issue in other cases, but none had been found which reflected adequate consideration of NRS 80.015(4)(b). We must assume that the lawyers in those other cases did not present the full articulation of the statute to the federal trial court. Regardless, those non-precedent, unpublished trial court orders are clearly erroneous, for reasons amply explained in Plaintiffs' brief in reply to MTC's opposition briefing to Plaintiffs' Motion.

F. The Admissions by MTC that It Is a Debt Collector Are Evidence in Plaintiffs' Favor despite QLS' Assertions to the Contrary

Despite Defendants' suggestion to the contrary in the past and in QLS' opposition papers, Plaintiffs do not take the position that the so-called "mini-Miranda warnings" contained in MTC and other Defendants' communications with Plaintiffs and other Nevada debtors conclusively establish Plaintiffs' claims standing alone. Instead, as explained by Plaintiffs in their opposition papers to Defendants' NRCP 12(b)(5) motions and as the Ho majority recognized also, inclusion of such language is not alone "sufficient to show that [a non-judicial foreclosure trustee] is a debt collector." Ho, supra, at *623 n. 7. However, these admissions are undoubtedly evidence that must be taken into account in determining whether, under the circumstances, an entity is a debt collector under the FDCPA (or collection agencies under Nevada law). See, e.g., Gburek, 614 F.3d at 386 n. 3 [reversing dismissal in a class action and noting that mini-Miranda warning "does not automatically trigger the protections of the FDCPA, just as the absence of such language does not have dispositive significance."][emphasis added]; Hart v. FCI Lender Servs. (2d Cir. 2015) 797 F.3d 219, 226-227 [considering importance of including such language in a letter to a debtor and noting that "[w]e see no reason why we should not take it [i.e.,

a letter using such language] at its word"]; McLaughlin v. Phelan Hallinan & Schmieg, LLP (3d Cir. 2014) 756 F.3d 240, 246 ["It is reasonable to infer that an entity that identifies itself as a debt collector, lays out the amount of the debt, and explains how to obtain current payoff quotes has engaged in a communication related to collecting a debt."][emphasis added]; Yeager v. Ocwen Loan Servicing, LLC, 2015 U.S. Dist. LEXIS 94149, at *25-27 n.19 (M.D. Ala. July 15, 2015) [denying motion to dismiss and adopting Tocco v. Real Time Resolutions, Inc., 48 F. Supp. 3d 535 (S.D.N.Y. Aug. 13, 2014) approach in rejecting argument that use of mini-Miranda language was immaterial to whether defendant was a debt collector under the FDCPA as alleged]; Crippen v. Stites, 346 B.R. 115 (E.D. Bkr. Pa. July 25, 2006) [denying motion to dismiss where allegations, including defendant's use of mini-Miranda warning, "sufficiently plead[]" defendant is a "'debt collector' as defined under the FDCPA"]; Estes v. Love, Beal & Nixon, P.C., 2015 U.S. Dist. LEXIS 96715 (N.D. Okl. July 24, 2015) [denying summary judgment on FDCPA claim in part because mini-Miranda warning in connection with other evidence supported inference that defendant was a debt collector under the FDCPA]. In Crippen, the court noted that "[s]ignificantly for present purposes, this [mini-Miranda] warning is generally required only of 'debt collectors.'" Crippen, 346 B.R. at 120 [emphasis in original]. The court concluded that it was "reasonable to infer [from the defendant's decision to use the warning] that [the defendant] is a 'debt collector'" under the FDCPA. Id. The Crippen court, denying the motion to dismiss, therefore ruled that the complaint adequately pled that the defendant was a debt collector. Id.

Use of such language is thus not dispositive standing alone, but it is not, as Defendants have suggested in the past and in QLS' opposition briefing, immaterial either. It is simply evidence that should be considered in determining whether the user of the language qualifies as a debt collector under the FDCPA (or, here, as a collection agency under Nevada law). QLS' assertions are also revealing: QLS

seemingly concedes that it and other foreclosure trustees routinely represent and admit that they are debt collectors when communicating with Nevada debtors, and that they are seeking to collect a debt, but contend now that they should not be held accountable for those representations. Thus, QLS apparently believes that it should be allowed to say whatever it likes to Nevada debtors—even if QLS does not believe the statements--so long as the their statements were only made to protect QLS, MTC, and others from liability if a Court eventually concluded they were in fact debt collectors.

III. CONCLUSION

In concluding the portion of its brief on the significance of MTC's admissions that it was debt collector, QLS accurately—but seemingly inadvertently—states that there "is no substance to the Defendants [sic] argument here." QLS Opposition, at 23. For once, Plaintiffs must agree: there is indeed no substance to Defendants' argument. The same could be said to the various other arguments and assertions made by QLS and MTC in their briefs, which, for reasons explained above and in Plaintiffs' related papers, are without merit. The Court should rule in Plaintiffs' favor accordingly.

DATED: March 7, 2017

Respectfully Submitted,

LAW OFFICE OF NICHOLAS A. BOYLAN, APC

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9	MTC's fees and costs for its various services in the State of Nevada are governed by MTC's written contracts with its creditor-clients.	**Exhibit "B"** (Cathe Cole-Sherburn deposition), at 33-34.
10	MTC currently has approximately 150 clients, each with its own particular written contract governing MTC's services for it.	**Exhibit "B"** (Cathe Cole-Sherburn Deposition), at 33-34.
11	If MTC's creditor-clients direct MTC to accept checks (i.e., collect money) from Nevada debtors or third-parties as payment on defaulted debts, MTC itself processes the checks and forwards the funds directly to the creditor-clients and then invoices the client for MTC's services.	**Exhibit "B"** (Cathe Cole-Sherburn Deposition), at 44.
12	According to MTC's current Senior Vice-President of Operations, MTC currently provides both full service default services and foreclosure services to its clients. The two categories are distinct: full service default services include collection services such as handling deed-in-lieu of foreclosure transactions, senior lien monitoring, negotiating loan forbearance agreements, post-foreclosure sale conveyances, and other services.	**Exhibit "B"** (Cathe Cole-Sherburn Deposition), at 140:10-147:12.
13	From at least 2011 to the present, MTC solicits creditor-clients for the services, including full default services and foreclosure services, it provides on defaulted loans in the State of Nevada.	**Exhibit "B"** (Cathe Cole-Sherburn Deposition), at 150:23-151:16.
14	From the contracts for the relevant period produced by MTC thus far, MTC expressly contracted with its creditor-clients to, among other services in the State of Nevada, comply with applicable federal, state, and local laws, including those relating to foreclosures, debt collection, and privacy; represented that it had and would maintain all regulatory approvals, authorizations, licenses, permits, or other permissions, consents, and authorities needed to perform its obligations to its clients; residential foreclosure, collection, recovery,	Boylan Moving Declaration, at ¶15; Exhibits thereto (MTC000485-522, MTC000896-918, MTC001035-1082).

	and all other legal services related to foreclosure of delinquent mortgagors; return telephone calls to defaulted debtors; promptly forward reinstatement or pay-off proceeds received from Nevada debtors on defaulted loans to MTC's creditor-clients; deliver good and marketable title following MTC conducting non-judicial foreclosure sales; attempt to solicit loss mitigation workout options when a Nevada borrower calls MTC; create loss mitigation workouts and send them to borrowers; forward all down payments received from defaulted debtors as part of loss mitigation or forbearance agreements; upon request from Nevada debtors, provide reinstatement and pay-off quotes to Nevada debtors, which would include all amounts owed to MTC's creditor-clients and MTC's fees and costs; handle eviction proceedings on behalf of MTC's creditor-clients; and initiate and carry out non-judicial foreclosure proceedings in the Nevada relating to defaulted loans.	
	15	According to MTC's current Senior Vice-President of Operations, it is one of MTC's duties as a non-judicial foreclosure trustee to collect money from Nevada borrowers and pass it on to MTC's creditor-clients.	**Exhibit "B"** (Cathe Cole-Sherburn Deposition), at 154-158.
	16	In collecting money from Nevada debtors to reinstate or pay-off defaulted debts, and passing the money received on to MTC's creditor-clients, MTC acts as the "middle person" (i.e., agent) in the transaction.	**Exhibit "B"** (Cathe Cole-Sherburn Deposition), at 159:15-25.
	17	MTC's creditor-clients generally require as part of their contracts with MTC that MTC provide a debt-collector, "mini-Miranda warning," to debtors or otherwise inform borrowers to the effect that MTC is a debt collector.	*See* **Exhibit "B"** (Cathe Cole-Sherburn Deposition), at 79-80, 89-90, 124-129.
	18	From at least 2007 to the present, MTC has had an entire department dedicated to handling	*See* **Exhibit "B"** (Cathe Cole-Sherburn

	pay-off and reinstatement of defaulted loans, in response to requests from Nevada borrowers and third-parties.	Deposition), at 42-44.
19	MTC's reinstatement and pay-off process includes receiving (i.e., collecting) money from Nevada debtors, depositing the funds in MTC's trust account, and then passing the money on to MTC's creditor-clients.	**Exhibit "B"** (Cathe Cole-Sherburn Deposition), at 45.
20	As part of MTC's pay-off and reinstatement activities, MTC regularly receives checks, and thus collects money, from Nevada borrowers and third-parties to pay-off or reinstate defaulted mortgage loans in the State of Nevada.	**Exhibit "B"** (Cathe Cole-Sherburn Deposition), at 42-44.
21	As part of MTC's defaulted loan pay-off and reinstatement activities, MTC employees communicate—whether by phone or in writing or both—pay-off and reinstatement quotes to Nevada borrowers and third-parties.	**Exhibit "B"** (Cathe Cole-Sherburn Deposition), at 42-44.
22	MTC currently has approximately 40 employees located in Red Rock, Nevada, alone.	**Exhibit "B"** (Cathe Cole-Sherburn Deposition), at 34.
23	MTC has approximately 15 employees in the State of Nevada who handle calls from Nevada debtors; MTC currently receives approximately 40 such calls a month. In 2011, MTC had approximately triple the number of calls from Nevada debtors, for approximately 100 to 120 such calls per month.	**Exhibit "B"** (Cathe Cole-Sherburn Deposition), at 36-38.
24	It is and was, including between 2007 to 2012, MTC's policy and practice when it receives checks from Nevada borrowers and third-parties for payment on defaulted debts, to confirm with MTC's creditor clients whether the checks should be accepted by MTC on the clients' behalf.	**Exhibit "B"** (Cathe Cole-Sherburn Deposition), at 44.
25	If MTC receives checks from Nevada debtors or third-parties that are made out to MTC's creditor-clients, MTC generally forwards the checks directly to the creditor-clients for processing.	**Exhibit "B"** (Cathe Cole-Sherburn Deposition), at 55-56.

26	All incoming calls to MTC are greeted by an automated recording containing a statement (i.e., admission) to the effect that MTC is a debt collector and all information obtained may be used for that purpose.	**Exhibit "B"** (Cathe Cole-Sherburn Deposition), at 79-80; **Exhibit "I"** (Cathe Cole-Sherburn Deposition), at MTC000314. Authenticated by **Exhibit "B"**, at 73-74, 87-88, 93.
27	It is MTC's practice and procedure that all outgoing communications—including written communications and communications by phone—from MTC to borrowers and their representatives contain a "verbal mini-Miranda warning," admitting that MTC is a debt collector and seeking to collect on debt.	**Exhibit "I"**, at MTC000314. Authenticated by **Exhibit "B"** (Cathe Cole-Sherburn Deposition), at 73-74, 87-88, 93.
28	MTC's so-called "warning" generally consists of a statement disclosing that MTC is a "debt collector" and that the "purpose" of the communication—including calls—is to "collect a debt" and that "any information . . . obtain[ed] will be used for that purpose."	**Exhibit "I"**, at MTC000314. [italics omitted]. Authenticated by **Exhibit "B"** (Cathe Cole-Sherburn Deposition), at 73-74, 87-88, 93.
29	It generally has been MTC's policy, procedure, and practice since at least 2011 for MTC to give Nevada debtors MTC's direct contact information in communications so that Nevada debtors can communicate directly with MTC (rather than its creditor-clients) regarding pay-off or reinstatement of defaulted debts.	**Exhibit "B"** (Cathe Cole-Sherburn Deposition), at 94-95.
30	MTC received no less than $1889.41 from its creditor-client, Wells Fargo Bank, N.A., as payment for MTC's services relating to the named Plaintiffs Raymond and Francine Sansota	**Exhibit "J"**, at TC000072. Authenticated by **Exhibit "B"** (Cathe Cole-Sherburn Deposition), at 107.
31	As to the named Plaintiff Sansotas' property in the State of Nevada, MTC sold the property on or about March 9, 2011, to a third-party buyer at a trustee sale for $51,000.00. MTC itself collected and then remitted these funds to its creditor-client, Wells Fargo Bank, N.A., on or about March 14, 2011, to apply them to the	*See* **Exhibit "J"**, at TC000069-TC000070. Authenticated at **Exhibit "B"** (Cathe Cole-Sherburn Deposition), at 105-107. *See also* **Exhibit "B"** (Cathe Cole-Sherburn

	named Plaintiff Sansotas' defaulted loan.	Deposition), at 105-108.
32	MTC's own internal records demonstrate that MTC deemed itself "Freddie Mac designated counsel (*sic*) . . . authorized on behalf of Freddie Mac to delegate forbearance plans for all Freddie Mac loans."	**Exhibit "J"**, at MTC000113. Authenticated by **Exhibit "B"** (Cathe Cole-Sherburn Deposition), at 105-108.
33	MTC's Senior Vice-President of Operations indicated that MTC was authorized by its client Federal Home Loan Mortgage Corporation ("FHLMC") to enter into loan forbearance plans on FHLMC's behalf with Nevada debtors relating to their defaulted debt from approximately 2007 through 2010.	*See* **Exhibit "B"**, at 136:8-137:5; *see also* **Exhibit "J"**, at MTC000113. Authenticated by **Exhibit "B"** (Cathe Cole-Sherburn Deposition), at 105-108.
34	In the case of Bijan Laghaei, MTC's own documents show that MTC negotiated a forbearance agreement with him in 2009 on behalf of its creditor-client (in its own words, MTC "placed borrower [i.e., Mr. Laghaei] in a forbearance agreement"), FHLMC, relating to Mr. Laghaei's defaulted debt, and received (i.e., collected) funds from Mr. Laghaei to reinstate his defaulted loan, which funds MTC sent to its creditor-client as payment on the loan. MTC collected thousands of dollars from Mr. Laghaei on behalf of its creditor-client.	**Exhibit "J"**, at MTC000113-MTC000157, especially MTC000113 and MTC000117. Authenticated by **Exhibit "B"** (Cathe Cole-Sherburn Deposition), at 105-108.
35	MTC charged Mr. Laghaei a fee of no less than $150.00 for its services negotiating a forbearance agreement with him relating to his defaulted debt on behalf of its creditor-client, FHLMC, in 2009.	**Exhibit "J"**, at MTC000113-MTC000157. Authenticated by **Exhibit "B"** (Cathe Cole-Sherburn Deposition), at 105-108.
36	Maria Diaz was employed by MTC from 2009 to 2011.	**Exhibit "C"**, at 11, 42-43. Authenticated by Boylan Moving Declaration, at ¶6.
37	Ms. Diaz worked for MTC in its Reinstatements Department for approximately 3 months. She admitted that she informed Mr. Boylan when they spoke on the phone that her work in this capacity included handling files in the State of Nevada.	**Exhibit "C"** (Maria Diaz Deposition), at 14-15.
38	According to Ms. Diaz, MTC's reinstatement work involved homeowners who had not paid	**Exhibit "C"** (Maria Diaz Deposition), at 17-18.

	their payments on their loans. The reinstatement amounts provided by Ms. Diaz on behalf of MTC to such homeowners were the amount of money that the homeowners were behind on their loans.	
39	As part of her reinstatement work for MTC, Ms. Diaz would communicate with debtors through inbound calls from them to MTC. Ms. Diaz estimated that she received approximately 3 inbound calls regarding reinstatements per day, and that each call was approximately 5 minutes. During these calls, she would speak with debtors about reinstatement amounts so that the debtors would know the amounts they needed to pay to reinstate their defaulted loans. The bulk of the rest of her working time was spent preparing and processing reinstatement quotes.	**Exhibit "C"** (Maria Diaz Deposition), at 20-22.
40	Ms. Diaz' reinstatement work while employed by MTC also involved accounting, as she was involved in collecting money from debtors. Ms. Diaz would receive checks from debtors and put them on a deposit slip. This work could take a full 8 hours on her busiest days, and at least around 5 hours on other days.	**Exhibit "C"** (Maria Diaz Deposition), at 22-23.
41	According to Ms. Diaz, approximately 840 checks is a fair estimate of the number of checks that she collected each day and wrote deposit slips for while employed by MTC in its Reinstatements Department.	**Exhibit "C"** (Maria Diaz Deposition), at 24-25.
42	As far as Ms. Diaz recalled, the checks that she received came from different debtors located in all the states that MTC serviced (including Nevada).	**Exhibit "C"** (Maria Diaz Deposition), at 26-28.
43	Ms. Diaz had a basic understanding that her employer, MTC, was collecting money on behalf of a bank (or banks) with respect to loans that were not paid.	**Exhibit "C"** (Maria Diaz Deposition), at 29.
44	While employed by MTC in its Reinstatements Department, Ms. Diaz would give the names and phone numbers of debtors that called her	**Exhibit "C"** (Maria Diaz Deposition), at 31-32.

	regarding reinstatement to her supervisor so that she could return their calls.	
45	The information Ms. Diaz provided when preparing reinstatement documents to give debtors included a "breakdown" of how much money a particular debtor owed to the lender or bank. It would also include the name and address of the particular debtors. Ms. Diaz would use MTC's computer system or database to prepare reinstatement documents, print them out, and then mail the documents to the debtors (or give the documents to someone else at MTC to mail).	**Exhibit "C"** (Maria Diaz Deposition), at 37-39.
46	Ms. Diaz estimated that she may have prepared as many as around 80 reinstatement documents (or quotes) on average per day. The reinstatement template that she used in preparing these documents had a phone number on it for the recipient debtors to call MTC. Those who called the number usually wanted to know what the amount was to reinstate their defaulted loans.	**Exhibit "C"** (Maria Diaz Deposition), at 40-41.
47	As part of her reinstatement work for MTC, Ms. Diaz would also prepare separate pay-off documentation every working day. Some of the checks that she received from debtors were to pay off the entire defaulted debt; some were simply to reinstate the defaulted loan. Ms. Diaz estimated that she typically received perhaps 5 reinstatement checks and 2 pay-off checks per working day.	**Exhibit "C"** (Maria Diaz Deposition), at 45-47.
48	The reinstatement work Ms. Diaz performed for MTC also involved processing checks for third-party foreclosures or funds. Her understanding of "third-party deposits" is that they were "checks from someone other than the homeowner who is in default on the loan." In her experience, such checks typically were from foreclosures conducted by MTC. She would collect these checks and fill out deposit slips to deposit the money into MTC's	**Exhibit "C"** (Maria Diaz Deposition), at 47-50.

	account.	
49	Ms. Diaz was involved while employed by MTC in sending to Wells Fargo, N.A., the funds ($51,000.00) reflected in Exhibits 2 and 5 at her deposition. According to Ms. Diaz, these documents reflect that MTC collected money from a third party, and the money that was collected on that loan was then wire transferred by her on behalf of MTC to the lender or creditor (Wells Fargo, N.A.).	**Exhibit "C"** (Maria Diaz Deposition), at 73-75; *see also* **Exhibits "G"** and **"J"** hereto. Authenticated by **Exhibit "D"** (Terry Johnsen Deposition), at 42, 51-53, and **Exhibit "B"** (Cathe Cole-Sherburn Deposition, at 105-107.
50	Terry Johnsen is a co-owner and Vice-President of MTC and has held that position for over twenty years. She holds 50% of MTC's shares.	**Exhibit "D"** (Terry Johnsen Deposition), at 5-7.[3]
51	Ms. Johnsen has her own office at MTC and typically works at least four hours per day, five days per week.	**Exhibit "D"** (Terry Johnsen Deposition), at 8.
52	Ms. Johnsen testified that she has oversight responsibility at MTC for its banking, human resources, and payroll activities.	**Exhibit "D"** (Terry Johnsen Deposition), at 8-9.[4]
53	MTC's various management teams report to Ms. Johnsen and her husband and co-owner, Rande Johnsen.	**Exhibit "D"** (Terry Johnsen Deposition), at 9:1-5, 10:24-11:1.
54	According to Ms. Johnsen, Gloria Juarez is in charge of legal compliance and human resources at MTC, and has held that position for over 14 years.	**Exhibit "D"** (Terry Johnsen Deposition), at 9:14-19.[5]
55	As co-owners of MTC, Mr. and Mrs. Johnsen share the power to hire and fire MTC's management team.	**Exhibit "D"** (Terry Johnsen Deposition), at 11:4-12.
56	Ms. Johnsen testified at her deposition that she	**Exhibit "D"** (Terry

[3] After her deposition, Ms. Johnsen changed her testimony that she held a "Majority" share in MTC to "Equal 50/50" share. *See* **Exhibit "E"** at 1.

[4] After her deposition, Ms. Johnsen changed her testimony "To just oversee and make sure that we are keeping up with the integrity of what we're required to do as far as human resources concerns" to "I oversee payroll" for MTC. *See* **Exhibit "E"** at 1.

[5] After her deposition, Ms. Johnsen added "is in charge of HR legal compliance" to the end of her sentence at 9:17. *See* **Exhibit "E"** at 1.

	and her husband, Mr. Johnsen, have the ultimate authority at MTC over its legal compliance in the State of Nevada, and have since at least 2007.	Johnsen Deposition), at 16:16-21.[6]
57	At her deposition, Ms. Johnsen testified that MTC obtained its collection agency license from the FID in Nevada "[j]ust to have" it and for no other reason. She later stated that MTC applied to obtain its collection agency license in 2011 because MTC was "[j]ust expanding our business" in Nevada.	**Exhibit "D"** (Terry Johnsen Deposition), at 16:22-17:3; 18:11-21; 19:11-13.[7]
58	At her deposition, Ms. Johnsen testified that she attended at least one meeting of MTC's management team in 2011 or before at which there was discussion of whether MTC should obtain a collection agency license from the FID.	**Exhibit "D"** (Terry Johnsen Deposition), at 25:9-27:12.[8]
59	MTC counsel represented to the Discovery Commissioner that MTC obtained its collection agency license because MTC "was considering doing foreclosures for homeowners associations, and they [i.e., MTC] thought they would need a loan collector's license for that." MTC counsel represented that MTC "determined that there would be a conflict of interest with their lender clients. So they just threw up their hands and said we're not going to do that [i.e., foreclosures for HOAs]. In the meantime, they [i.e., MTC] got	**Exhibit "F"** (Terry Johnsen Deposition), at 122:19-123:5. Authenticated by Boylan Moving Declaration, at ¶9.

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[6] After her deposition, Ms. Johnsen changed her testimony at 16:19 and 16:21 from "Yes" and "Yes" to "No, my husband and management team does" and "Yes, as to my husband." *See* **Exhibit "E"** at 1.

[7] After her deposition, Ms. Johnsen changed her testimony in a number of significant respects. *See* **Exhibit "E"** at 1-2. Her testimony that MTC obtained its collection agency license "[j]ust to have" it was changed to "I don't know"; her testimony at 17:3 and 17:6 was changed from "No" and "No" to "I don't know" and "I don't know." *Id.* She also changed her testimony at 19:13 to "I had no involvement in the decision" by MTC to obtain its collection agency license. *Id.*

[8] After her deposition, Ms. Johnsen changed her testimony in significant ways. *See* **Exhibit "E"** at 2-3. For instance, her testimony at 25:14 was changed from "Just came up in a conversation, management" was changed to "No one" while her testimony at 25:16 was changed from "All of our management team" to "No one." *Id.* She also changed her testimony regarding a meeting she attended to the effect that she was never at such a meeting. *See id.* [changes to 25:14 through 27:12].

	their license [from the FID], and they kept it."	
60	MTC counsel represented to the Discovery Commissioner that discussions within MTC regarding obtaining a collection agency license from the FID "may have happened as early as 2009, 2010."	**Exhibit "F"** (Terry Johnsen Deposition), at 123:12-13.
61	Ms. Johnsen described MTC's business activities in the State of Nevada as "[f]oreclosure trustee work."	**Exhibit "D"** (Terry Johnsen Deposition), at 17:7-22.[9]
62	According to Ms. Johnsen at her deposition, MTC's "management team" has authority over MTC employees who are involved in loan modifications or loan workouts. In July 2016, Cathe Cole-Sherburn, MTC's manager over operations, was the particular member of MTC's management team who was in charge of MTC employees involved in loan modifications or loan workouts.	**Exhibit "D"** (Terry Johnsen Deposition), at 24:5-20.[10]
63	According to Ms. Johnsen, MTC's current management team in July 2016 was comprised of Cathe Cole-Sherburn, Gloria Juarez, Victor Hutchins, and Robert Ruelas. Each of these is a vice-president of MTC.	**Exhibit "D"** (Terry Johnsen Deposition), at 29:6-24.[11]
64	According to Ms. Johnsen, Ms. Cole-Sherburn is in charge of MTC's operations. Ms. Johnsen testified that she does not know of any limit on Ms. Cole-Sherburn's authority over MTC's operations.	**Exhibit "D"** (Terry Johnsen Deposition), at 30:14-25.
65	As reflected in Exhibit 1 at her deposition, Ms. Johnsen testified that she as a co-owner of MTC is involved at least approximately once per working day in receiving or transferring funds on behalf of MTC, including funds	**Exhibit "D"** (Terry Johnsen Deposition), at 45:1-46:15, 47:16-25;[12] *see also* **Exhibit "G"**, Authenticated by **Exhibit**

[9] After her deposition, Ms. Johnsen changed her testimony to add "I don't know about applying for a license, but we did" to her testimony at 17:22. *See* **Exhibit "E"** at 1.

[10] After her deposition, Ms. Johnsen changed "Cathy Cole Sherborn" at 24:20 to "Cathe Cole-Sherburn." *See* **Exhibit "E"** at 2.

[11] After her deposition, Ms. Johnsen changed "Cathy Cole Sherborn" at 29:10 to "Cathe Cole-Sherburn." *See* **Exhibit "E"** at 3.

[12] After her deposition, Ms. Johnsen changed "If I know, maybe twice" at 47:21 to "I don't know." *See* **Exhibit "E"** at 4. She also changed "Depends on the day of the week" at 47:25 to "We don't sign checks or wires together." *Id.*

	received from defaulted debtors.	**"D"** (Terry Johnsen Deposition), at 42, 51-53.
66	Ms. Johnsen testified that only she and her husband, Rande Johnsen, as co-owners of MTC have signature authority over MTC's bank accounts.	**Exhibit "D"** (Terry Johnsen Deposition), at 47:4-13.
67	At her deposition, Ms. Johnsen testified that her best estimate of the amount of money MTC collected each year between 2007 and 2012 on behalf of its lender clients and related to defaulted debtors is at least more than $7 million.	**Exhibit "D"** (Terry Johnsen Deposition), at 64:17-66:18.[13]
68	At her deposition, Ms. Johnsen testified that MTC has a phone bank (i.e., a location where MTC employees operate MTC's phones) in each of MTC's four offices, including one in the State of Nevada. Ms. Johnsen estimated that MTC's Nevada office had more than 10 employees working its phone bank in July 2016. She estimated that MTC's employees handling its phones in the State of Nevada made more than 100 phone calls on behalf of MTC per month. She confirmed that these calls include communications with debtors who are in default on their loans.	**Exhibit "D"** (Terry Johnsen Deposition), at 77:6-78:14, 84:2-18.
69	Ms. Johnsen testified at her deposition that, as reflected in Exhibit 4 at TC000069, MTC would remit or send funds collected by MTC to its lender clients (whether the money was collected for reinstatement or pay-off of the loans or through sale of property at non-judicial foreclosure).	**Exhibit "D"** (Terry Johnsen Deposition), at 124:3-125:14; *see also* **Exhibit "H"**, at TC000069. Authenticated by **Exhibit "B"** (Cathe Cole-Sherburn Deposition), at 105-107.
70	Ms. Johnsen testified that the cashier's check reflected in Exhibit 4 at TC000071 is the money MTC collected, put in its trust account in March 2011, and then transferred to its	**Exhibit "D"**, at 127:5-19; *see also* **Exhibit "H"**, at TC000071. Authenticated by **Exhibit "D"** (Terry

[13] After her deposition, Ms. Johnsen changed her testimony in this portion in several significant ways. *See* **Exhibit "E"** at 5. For instance, her testimony at 66:15 ("Yes") was changed to "No. I don't know specific numbers as to Nevada." *Id.* Her testimony at 66:18 was changed in the same way. *Id.* Her testimony at 66:18 was also changed from "Yes" to "No." *Id.*

	lender client, Wells Fargo, N.A., on March 14, 2011, relating to the Plaintiff Sansotas.	Johnsen Deposition), at 114, 127.
71	Ms. Cole-Sherburn testified at her deposition that MTC may have applied for its collection agency license from the FID as early as 2009.	**Exhibit "B"** (Cathe Cole-Sherburn Deposition), at 23-24.
72	Ms. Juarez testified at her deposition that she would match the check to the loan number of the defaulted Nevada debt, and advise the banking client that the funds were remitted on the defaulted loan.	**Exhibit "1"** (Gloria Juarez Deposition), at pp. 30-31. Authenticated by Boylan Reply Declaration, at ¶ 2.
73	Ms. Juarez testified at her deposition that the same applies to the millions of dollars MTC collected as agent for its clients on Nevada as this was admitted in her testimony, as MTC's Senior Vice-President of accounting, and employee of MTC since 2002.	**Exhibit "1"** (Gloria Juarez Deposition), at pp 11-12, 38.
74	According to Ms. Juarez, for one period of a limited example, 2008 to 2011, the number of incoming checks to MTC with respect to Nevada defaulted loans was at least 300 checks per month, or about 50-65 checks per week. About 30% of the checks, or least 75 to 100 checks were directly from Nevada borrowers. In 2008-2011, MTC collected more than $100,000.00 dollars each month with respect to defaulted Nevada debts. All of these checks were with respect to MTC's clients' defaulted loans.	**Exhibit "1"**, (Gloria Juarez Deposition), at pp. 35, 36, 37, 38 and 39.
75	Ms. Juarez would endorse the checks payable to MTC with a stamp.	**Exhibit "1"**, (Gloria Juarez Deposition), at pp. 33-34.
76	At his deposition, Mr. Rande Johnsen stated clearly that foreclosure is a means and method of collecting on defaulted debts (which is the business MTC performs as the agent of and on behalf of its lender clients).	**Exhibit "2"** (Rande Johnsen Deposition), at pp. 42-45. Authenticated by Boylan Reply Declaration, at ¶ 3.
77	Rande Johnsen, MTC's owner and Chief Executive, recently admitted that he began studying for the Nevada test to be MTC's collection agency manager for Nevada in about 2009, and actually took the test in about	**Exhibit "2"** (Rande Johnsen Deposition), at pp.73-74.

	2009 to 2010.	
78	Although he attempted evasion and qualification, Rande Johnsen essentially admitted in his testimony that MTC's fees and costs are added to the debtors obligation to the lender.	**Exhibit "2"** (Rande Johnsen Deposition), at p.88.
79	Plaintiff Raymond Sansota testified at his deposition that MTC was conducting business as an unlicensed claim collection agency by telephoning the Sansotas and asking for payments on the defaulted mortgage loan held by MTC's client, Wells Fargo Bank.	**Exhibit "3"** (Raymond Sansota Deposition), at pp. 28,34,35,37,40,43, and 44. Authenticated by Boylan Reply Declaration, at ¶ 5.
80	MTC omitted the testimony of Raymond Sansota indicating that he became aware in 2020 of the beginning of MTC's claim collection /foreclosure activity against him based on a collection phone call from MTC in 2010. And, before he relocated to Ohio in 2010, he was aware based on that telephone communication that the MTC process to take his home was going forward.	**Exhibit "3"**, (Raymond Sansota Deposition), at pp.28-29, 34-38, 47-78.
81	MTC Admissions regarding collection activities, in the voice of CEO, Rande Johnsen.	**Exhibit "4"** is a flash-drive which contains live video and audio recording from a seminar presented by Rande Johnsen entitled "To Foreclose or not to Forclose?" Authenticated by Boylan Reply Declaration, at ¶ 7.
83	MTC admissions regarding activities of collections in foreclosure, the tools of foreclosure reflecting the element of coercion as a means of collection and stating that foreclosure gets the homeowners attention, forces a limited timeframe and that most people give up. Admits that those conducting foreclosure must be familiar with debt collection laws, such as the FDCPA. Identifies various collection methodologies and alternatives and strategies such as	**Exhibit "6"** contains true and accurate copies of the Power Point pages from a seminar presented by Rande Johnsen, MTC's Chief Executive, controlling person and owner of MTC, entitled "Insider Secrets From A Foreclosure Trustee Investing In Junior Liens".

	reinstatement, payoff and short payoff, forbearance or repayment plan, modification, dead in lieu of foreclosure and workouts.	Authenticated by Boylan Reply Declaration, at ¶12; **Exhibit "2"**, (Rande Johnsen Deposition) at pp. 125, 126, 127,131, 132, 133, 144, 149, 150, 151
84	At his deposition, Rande Johnsen admitted that MTC receives money from Nevada debtors on defaulted loans for purposes of reinstating the loans that are in default with MTC's clients.	**Exhibit "2"**, (Rande Johnsen Deposition) at p. 79.
85	The Sansotas never entered into any type of contract with Defendant MTC Financial Inc. dba Trustee Corps.	Raymond Sansota Declaration, at ¶ 2.

Respectfully submitted,

Dated: March 7, 2017

LAW OFFICE OF NICHOLAS A. BOYLAN
A Professional Corporation

By: _____
Nicholas A. Boylan, Esq.
Attorney for Plaintiffs, except for Plaintiff 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 March 7, 2017, I served a true and correct copy of the foregoing:

- **PLAINTIFF' REPLY MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT AGAINST DEFENDANT MTC**

- **DECLARATION OF NICHOLAS A. BOYLAN IN SUPPORT OF 1)PLAINTIFFS' PRELIMINARY OPPOSITION MEMORANDUM OF POINTS AND AUTHORITIES TO DEFENDANT MTC FINANCIAL INC.'S CROSS-MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, PARTIAL SUMMARY JUDGMENT AGAINST PLAINTIFFS RAYMOND SANSOTA AND FRANCINE SANSOTA; AND 2) PLAINTIFFS' REPLY MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT AGAINST DEFENDANT MTC; EXHIBITS "1" – "6"**

- **DECLARATION OF RAYMOND SANSOTA IN SUPPORT OF PLAINTIFFS' PRELIMINARY OPPOSITION MEMORANDUM OF POINTS AND AUTHORITIES TO DEFENDANT MTC FINANCIAL INC.'S CROSS-MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, PARTIAL SUMMARY JUDGMENT AGAINST PLAINTIFFS RAYMOND SANSOTA AND FRANCINE SANSOTA**

- **PLAINTIFFS' SEPARATE STATEMENT IN SUPPORT OF 1) PLAINTIFFS' PRELIMINARY OPPOSITION MEMORANDUM OF POINTS AND AUTHORITIES TO DEFENDANT MTC FINANCIAL INC.'S CROSS-MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, PARTIAL SUMMARY JUDGMENT AGAINST PLAINTIFFS RAYMOND SANSOTA AND FRANCINE SANSOTA; AND 2) PLAINTIFFS' REPLY MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT AGAINST DEFENDANT MTC**

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

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DISTRICT COURT

CLARK COUNTY, NEVADA

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

CASE NO: A-11-649857-C

Dept. 19

PLAINTIFFS' OBJECTION AND RESPONSE TO QUALITY LOAN SERVICE CORPORATION'S OPPOSITION TO THE MOTION FOR PARTIAL SUMMARY JUDGMENT

Date: March 14, 2017
Time: 9:00 a.m.

Plaintiffs,

v.

QUALITY LOAN SERVICE CORPORATION, a California Corporation; 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.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

As a preliminary matter, the Court should disregard QLS' opposition to Plaintiffs' Motion, as QLS—as QLS recognizes—"does not have a 'dog in the hunt' regarding the partial summary judgment" against MTC. QLS Opposition, at p. 2. QLS concedes that it "takes no position as to many of the facts as alleged"—in fact, proven by Plaintiffs—against MTC. Id. QLS thus fails to present any evidence or otherwise demonstrate that summary judgment would be improper because there is a genuine dispute of material fact.

Even to the extent that QLS purports to be merely challenging Plaintiffs' legal contentions or analysis, the Court should disregard QLS' arguments and assertions. As detailed below, many of those assertions are flawed by QLS' repeatedly ignoring or mischaracterizing the powerful evidence presented by Plaintiffs in support of their Motion. Thus, as discussed below, QLS repeatedly ignores or tries to mischaracterize

the evidence presented by Plaintiffs showing that MTC negotiated, documented, and executed loan forbearance or modification agreements on behalf of its creditor-clients with Nevada debtors toward whom MTC—by Nevada law—was required to be impartial. That QLS "takes objection" to Plaintiffs' proof is meaningless, especially as QLS, as it concedes, does not dispute or challenge Plaintiffs' evidence, and QLS wholly fails to show that there is a genuine dispute of material fact on any issue raised in Plaintiffs' Motion. To muddy things further for the Court, QLS occasionally makes improper assertions of fact, without any properly submitted evidence, that are not germane to the issues actually raised by Plaintiffs' Motion (such as by opining as to whether the Plaintiffs with claims against MTC have suffered any damages or discussing whether QLS could be found to have violated NRS 598.0923(1)). Finally, QLS repeatedly misunderstands or misstates Plaintiffs' actual arguments. Rather than respond to Plaintiffs' actual arguments, evidence, and authorities, QLS instead creates a series of straw men for QLS to try to defeat.

As Defendants CRC and NDSC have seemingly recognized by refraining from opposing Plaintiffs' Motion, the appropriate course for QLS to have taken here is to have waited until the arguments, evidence, and authorities as to QLS were properly before the Court, rather than prejudice Plaintiffs—and burden the Court—in their efforts to respond to the arguments raised by MTC in opposition to Plaintiffs' Motion (and in MTC's own motion for summary judgment). For reasons explained below, the Court should disregard QLS' opposition brief in its entirety, and grant Plaintiffs' Motion accordingly.

II. ARGUMENT

A. Proper Interpretation of Secondary Collection Agency Language

In a rather bizarre passage, QLS accuses Plaintiffs of misinterpreting or ignoring the language of applicable Nevada law and administrative regulations. It is

in fact, however, QLS that is incorrect in its interpretation of these provisions and their application here.

To avoid any confusion, the Nevada legislature has defined "collection agency" as meaning "all persons engaging, directly or indirectly, and as a primary or a secondary object, business, or pursuit, in the collection of or in soliciting or obtaining in any manner the payment of a claim owed or due or asserted to be owed or due to another." NRS 649.020(1) [emphasis added]. The Nevada legislature has also authorized the Commissioner of the FID to "adopt such regulations as may be necessary to carry out the provisions of this chapter [i.e., NRS 649]." NRS 649.053.

Consistent with this authority, the Commissioner of the FID has adopted a number of definitions of terms used in particular provisions of Nevada's administrative regulations, including those provisions specifically relied on by QLS in its opposition papers. See NAC 649.010 ["As used in NAC 649.010 to 649.050, inclusive, unless the context otherwise requires, the words and terms defined in NAC 649.020 to 649.040, inclusive, have the meanings ascribed to them in those sections."][emphasis added]. Thus, the Commissioner of the FID has defined "collection agency"—when used in NAC 649.010 to 649.050—as meaning a "person or entity which is licensed pursuant to NRS 649.075 to 649.167" by the FID. NAC 649.013. By its plain language, this definition is not equivalent to that adopted by the Nevada legislature in NRS 649.020(1), which defines what businesses are deemed to be collection agencies in Nevada: the legislature's definition makes clear what persons and entities qualify as collection agencies in Nevada (and thus need to obtain a license if not exempt from doing so). The FID's definition in contrast deals with those persons or entities who already have obtained a collection agency license from the FID.

Nevada's administrative regulations further distinguish among licensed collection agencies—for purposes of the regulations—specifically, between what are

termed a "[p]rimary collection agency" and a "[s]econdary collection agency." NAC 649.030, NAC 649.040. When used in Nevada's administrative regulations, a primary collection agency "means any collection agency which is not a secondary collection agency." NAC 649.030. A secondary collection agency is defined in turn as meaning "a collection agency which engages directly or indirectly in the solicitation or encouragement of debtors to pay delinquent debts directly to the debtors' creditors through the use of machine derived form letters." NAC 649.040. Notably, neither of these definitions applies to collection agencies as defined by NRS 649.020(1) who have failed or refused to be licensed by the FID, since primary and secondary collection agencies, as defined by Nevada's administrative regulations, are only those collection agencies that the FID has licensed. See NAC 649.013.

QLS' mistaken reliance on the provisions of Nevada's administrative regulations discussed above is especially inappropriate because the distinction between primary and secondary collection agencies as defined in these regulations does not hinge on whether collection activities are a primary or secondary object, business, or pursuit of a collection agency business. Indeed, it is perfectly consistent with the definition of a secondary collection agency, as found in NAC 649.040, for collection activities to be a primary object of a secondary collection agency because what makes the agency a secondary collection agency is not that collection is its secondary object, business, or pursuit. Instead, secondary collection agencies, by definition, are simply a specific category of licensed collection agencies that use machine derived form letters to engage, directly or indirectly, in the solicitation or encouragement of debtors to pay delinquent debts directly to their creditors (as opposed to directly to the secondary collection agency). See NAC 649.040.

QLS seemingly suggests that Plaintiffs accuse MTC of being a secondary collection agency because Plaintiffs correctly point out that MTC would be a collection agency under NRS 649.020(1) even if MTC's collection agency activities

were only a secondary object, business, or pursuit of MTC. To dispel any confusion created by QLS, Plaintiffs in pointing this out do not concede, as QLS seemingly believes, that MTC's unlicensed collection activities in Nevada during the relevant period were no more than a secondary object for MTC. As is clear from Plaintiffs' motion and the powerful evidence submitted with it, the proof demonstrates that MTC's collection agency activities were a primary object, business, or pursuit of MTC, (and, at a minimum, its collection agency activities were a secondary object, business, or pursuit). Thus, QLS' assertion that MTC is not a secondary collection agency under NAC 649.053 (and discussion of machine derived form letters) is simply QLS' confused attempt to dispose of a straw man that is not grounded in Plaintiffs' actual arguments and the powerful evidence presented in support of their motion.

B. QLS Fundamentally Misunderstands or Misstates Plaintiffs' Argument

1. Plaintiffs Do Not Contend that Only Collection Agencies Licensed under NRS 649 (and Attorneys) Can Be Foreclosure Trustees

In one of several instances of QLS mischaracterizing or ignoring Plaintiffs' actual arguments and proof in order to defeat straw men created by itself, QLS inaccurately accuses Plaintiffs of interpreting NRS 107.028(1) as meaning that all entities that act as a foreclosure trustee in Nevada must be licensed as a collection agency by the FID pursuant to NRS 649. That is simply not Plaintiffs' argument. Rather, Plaintiffs argue—correctly—that entities such as MTC which engage in a variety of activities in the State of Nevada that constitute claim collection agency activity are not exempt from licensure by the FID as collection agencies, or otherwise insulated from liability for failing to be so licensed, simply because they carry out their illicit collection agency activities under the guise of being foreclosure trustees.

Beyond any doubt, the Nevada legislature knows how to exempt specific entities from statutory mandates, controls, and prohibitions. Notably, QLS does not and cannot argue that a "trustee" is expressly exempted under the statutory dictates of

NRS 649 or NRS 107 from being licensed as a collection agency because it is foreclosure trustee. Because QLS' assertions and muddled analysis confuse what should be two distinct but related questions, Plaintiffs must make plain what QLS seemingly wishes to obscure. The two questions are: (1) do MTC's activities, as established by Plaintiffs' proof, qualify MTC as a collection agency under NRS 649 that must be licensed by the FID?; and, if the answer to the first question is yes, then (2) is MTC exempt from licensure as a collection agency because it purports to act as a foreclosure trustee under NRS 107? The answer to the first question is yes; the answer to the second is no.

a. THE PLAIN LANGUAGE OF NRS 649 SUPPORTS PLAINTIFFS HERE

Proper review of the statutory scheme found in the plain language of NRS 649, supports Plaintiffs here. In pertinent part, NRS 649 broadly defines "collection agency" as meaning "all persons engaging, directly or indirectly, and as a primary or a secondary object, business or pursuit, in the collection of or in soliciting or obtaining in any manner the payment of a claim owed or due or asserted to be owed or due to another." NRS 649.020(1).

The statute then expressly provides for several limited exceptions to this broad definition: for instance, banks, nonprofit cooperative associations, and "[a]ttorneys and counselors at law licensed to practice in this State, so long as they are retained by their clients to collect or to solicit or obtain payment of such clients' claims in the usual course of the practice of their profession" are not deemed to be collection agencies for purposes of NRS 649 unless "they are conducting collection agencies." NRS 649.020(2). Thus, the Nevada legislature in crafting NRS 649.020 sought to broadly define "collection agency," while expressly carving out several specifically identified and limited exceptions i.e. "exemptions," to that definition. Notably, neither MTC nor QLS have sought to avail themselves of any of these exceptions. Indeed, QLS even seeks to read out of existence the important limitation on these

exceptions when a person or entity falling within one of the categories listed in NRS 649.020(2) is also conducting collection agencies (and therefore must be licensed). Compare QLS Opposition at 8, with NRS 649.020(2).

It is a maxim of statutory construction that generally the expression of one thing in a statute is the exclusion of another. See *Cramer v. State Dep't of Motor* Vehicles, 126 Nev. Adv. Rep. 38, 240 P.3d 8, 12 (2010); *O'Callaghan v. Eighth* Judicial Dist. Court of the State of Nevada, 89 Nev. 33, 35, 505 P.2d 1215, 1216 (1973); State v. Boerlin, 38 Nev. 39, 45, 144 P. 738 740 (1914). The expression by the Nevada legislature in NRS 649.020(2) of certain enumerated exceptions to the definition of collection agency necessarily excludes any other enumerated exceptions—such as the very exception Defendants seek to carve out for businesses carrying out non-judicial foreclosures in order to and as part of their efforts to collect claims.

The Nevada legislature would not have expressly stated that a trustee's enforcement of a security interest through non-judicial foreclosure constitutes collection agency business because doing so would undermine the broadly inclusive statutory scheme; rather, the Nevada legislature would have expressly excepted such activity from the definition of collection agency by listing it in NRS 649.020(2) only if the Nevada legislature did not intend for such conduct to fall within the ambit of NRS 649.020(1). The Nevada legislature, however, did no such thing. Indeed, NRS 649.020's treatment of community managers supports Plaintiffs' reading of the statute: the limited exception for certain types of community managers, found in NRS 649.020 makes clear that a community manager who does not "perform[] or offer[] to perform any act associated with the foreclosure of a lien" is not deemed to be a collection agency under Nevada law, while a community manager who does lien foreclosure is held to be a collection agency (and must therefore be licensed as such). See NRS 649.020(3)(a)-(b).

b. THE PLAIN LANGUAGE OF NRS 107.028 FAVORS PLAINTIFFS HERE

The plain language of NRS 107.028 also supports Plaintiffs here. The Nevada legislature, by expressly identifying the ten persons (including entities) that may serve as trustees under a deed of trust, clarified its pre-existing intent and made clear that persons acting as licensed collection agencies under NRS 649 could be such trustees. NRS 107.028(1)(i). Under NRS 107.028, licensed collection agencies as defined by NRS 649 can serve as trustees of deeds of trust. Thus, while not all trustees under deeds of trust are licensed collection agencies, some of them—such as MTC and QLS now—will be. There is absolutely nothing, however, to suggest that the Nevada legislature intended thereby to insulate claim collection agencies from the licensing requirements found in NRS 649 (as QLS seemingly would have it).

Simply, no provision in NRS 107 states that unlicensed claim collection by a trustee is exempt from NRS 649.

c. THE LEGISLATIVE HISTORY OF NRS 107.028 IS CONSISTENT WITH PLAINTIFFS' INTERPRETATION HERE

Although QLS has not identified any ambiguity in the plain language of NRS 107.028, it has referred in passing to its legislative history. It is thus worth noting that NRS 107.028 was originally enacted in May 2011 as part of Assembly Bill No. 284, which, in pertinent part, stated that the "trustee under a deed of trust must be:"

> (a) An attorney licensed to practice law in this State;
> (b) A title insurer or title agent authorized to do business in this State pursuant to chapter 692A of NRS; or
> (c) A person licensed pursuant to chapter 669 of NRS [governing trust companies] or a person exempt from the provisions of chapter 669 of NRS pursuant to paragraph (a) or (h) of subsection 1 of NRS 669.080. [emphasis added].

Thus, as originally drafted, NRS 107.028 would have limited those who could serve as trustees under deeds of trust to (1) Nevada attorneys, (2) title insurers or title agents, or (3) trust companies licensed by Nevada or otherwise exempt from licensing by Nevada law. In June 2011, the Nevada legislature amended NRS

107.028 through Assembly Bill No. 273, which, in pertinent part, added seven other categories, including licensed collection agencies under NRS 649, to NRS 107.028(1)'s list of those who could serve as trustees under deeds of trust in Nevada. (Assembly Bill No. 273 also made NRS 107.028 effective October 1, 2011, rather than July 1, 2011 as originally drafted. It thus was not in effect for the bulk of the relevant period in this case.)

On May 30, 2011, Senator Wiener explained that the pertinent portions of A.B. No. 273 "revises Section 6 of Assembly Bill No. 284 that requires the trustee under a deed of trust to be an attorney licensed in Nevada, a title insurer or title agent authorized to do business in Nevada, or person licensed as a trust company or otherwise exempt from the requirements to be a licensed trust company in this State." Nevada State Legislature, Journal of the Senate (5/30/11) at 4284. Thus, in Senator Wiener's view:

> Amendment No. 824 [of Assembly Bill No. 273] expands those provisions in Assembly Bill No. 284 so that a trustee under a deed of trust may be a domestic or foreign entity which holds a current state business license or certain persons who are exempt from having to obtain a license as a trust company but are authorized to be a trustee under a deed of trust. They include a person who does business relating to banks, savings and loan associations, or thrift companies, a person appointed as a fiduciary, a trustee of a trust that is holding real property for the purpose of facilitation real estate transaction [sic] or a registered agent, collection agency or escrow agency.
>
> Id. [emphasis added]

Senator Roberson then clarified that "the purpose of this amendment is to clean up some things that were missed on Assembly Bill No. 284" by "clarify[ing] who can act as a trustee under a deed of trust for a residential property." Id. He went on:

> There was a concern that there were certain small, family owned businesses in this State that would have been put out of business by Assembly Bill No. 284. We want to make certain this does not happen. This clarifies Assembly Bill No. 284 so we do not put businesses out of business.
>
> Id.

Taken in their proper context and in light of the full legislative history of NRS 107.028, Senators Wiener and Roberson's remarks make clear that the Nevada legislature was concerned that certain local companies might be put out of business because they were not licensed as attorneys, title insurers or title agents, or licensed as trust companies or otherwise exempt from licensing in Nevada as trust companies. The Nevada legislature therefore expressly exempted several additional categories, including licensed collection agencies. Senators Wiener and Roberson's remarks make clear that they were concerned about the requirement that certain local, Nevada businesses might be harmed by too strict a requirement that they be licensed as trust companies in order to serve as foreclosure trustees. There is nothing to suggest, however, that the Nevada legislature meant to exempt these categories of persons or entities from complying with their other licensing obligations under Nevada law: specifically, as it relates to collection agencies, from the requirement that they be licensed or certified by the FID as collection agencies pursuant to NRS 649. Thus, nothing in NRS 107.028's language or legislative history suggests that it repeals or displaces or excludes NRS 649.020(1) et seq., when the business involved meets the statutory definition of a collection agency found therein.

d. PLAINTIFFS' INTERPRETATION IS CONSISTENT WITH NRS 107 AND 649

QLS suggests that Plaintiffs' interpretation of NRS 107.028 and NRS 649.020(1) would render portions of NRS 107.028 nugatory or non-existent. Not so. As a preliminary matter, it is worth pointing out that collection agencies under NRS 649.020(1) are defined in part by whether they carry out their collection agency activities as part of their primary or secondary object, business, or pursuit. Thus, a person or entity who only engages in only isolated or occasional collection activity that did not rise to a primary or secondary object, business, or pursuit would not need to be licensed as a collection agency as defined by NRS 649.020. By its terms, NRS 107.028 does not address how often a person or entity serves as a trustee of a deed of

trust. Thus, a trustee of a deed of trust—such as a title insurer—who only served as a trustee on limited occasions would only need to obtain a license as a collection agency if non-judicial foreclosure collections were a primary or secondary object, business, or pursuit for it. Similarly, banks which were not serving regularly as foreclosure trustees would not need to be licensed (because they would satisfy the exemption under NRS 649.020(2) for banks that are not "conducting collection agencies").

QLS seeks to make much of NRS 107.028(1)(d)'s provision allowing entities holding state business registrations issued by the Nevada Secretary of State to serve as foreclosure trustees. However, this provision does not exempt entities with such registrations from obtaining any licenses otherwise applicable to them under law, simply because they purport to act as non-judicial foreclosure trustees: if it did, the reference to licensed collection agencies in NRS 107.028(1)(i) would be unnecessary, because acquisition of a registration would suffice to allow collection agencies to serve as trustees. Other categories listed in NRS 107.028(1) would also be rendered unnecessary, because the entities referenced would only need registrations to be trustees. See, e.g., NRS 107.028(1)(b), (e), or (j).

C. QLS Effectively Concedes that Plaintiffs Have Demonstrated that MTC (and, seemingly, QLS) Regularly Collected Money from Nevada Debtors during the Relevant Period under the Guise of Being Foreclosure Trustees

1. QLS Cannot Decide Whether Foreclosure Trustees Are Agents of Debtors and Deed of Trust Beneficiaries (or Both) Or Are Forbidden from Being Agents

As further illustration of the muddled arguments found throughout its opposition papers, QLS seemingly cannot decide whether foreclosure trustees such as MTC (and QLS) are barred by Nevada law from acting on behalf of mortgage

beneficiaries and deed of trust debtors or are expressly permitted (perhaps, indeed, required) to act on behalf of mortgage beneficiaries in collecting debts from Nevada debtors. For instance, relying on NRS 107.028(6), QLS on the one hand contends that non-judicial foreclosure trustees such as QLS and MTC are "actually not allowed to act for the mortgage beneficiary by operation of statute" (QLS Opposition Brief, at p. 10), while asserting on the other hand that foreclosure trustees "act[] as agent both for the borrower as well as for the lender in the foreclosure" (Id. at 20 ["The California Foreclosure trustee acts as agent both for the borrower as well as for the lender in the foreclosure, in the exact same manner as Nevada."][italics in original; emphasis added]). Compare also id. at 9-10 ["In fact a foreclosure trustee is statutorily mandated to act for neither the benefit of the homeowner nor the mortgage beneficiary."], with id. at 11 ["Foreclosure Trustees are required to collect this money [for reinstatement of defaulted debt] and apply it as appropriate and/or foreclose on the property. In fact it would make little sense for an entity acting for the benefit of the laws of [sic] State of Nevada, the beneficiary, and the trustor, to ensure a foreclosure was only completed on an unpaid debt."][emphasis added].

Despite QLS' confusion or infelicitous choice of words to describe foreclosure trustees' duties, Nevada foreclosure trustees do indeed owe a duty of impartiality and good faith toward the deed of trust and the parties to it (i.e., the beneficiary and the Nevada debtor), and are required to "act in accordance with the laws" of Nevada. NRS 107.028(6). Although this is not a fiduciary obligation, foreclosure trustees are effectively required to act akin to agents of both the beneficiary and the debtor-grantor of the deed of trust. NRS 107.028(6); see also Klem v. Washington Mutual Bank (Wash. 2013) 176 Wn.2d 771, 788-798, 295 P.3d 1179, 1187-1190 [holding that QLS violated its duty of impartiality as a non-judicial foreclosure trustee under Washington law by deferring to its lender-client on whether to postpone a foreclosure sale, thereby impermissibly becoming a "mere agent" of the beneficiary only];

Yvanova v. New Century Mort. Corp. (Cal. 2016) 62 Cal.4th 919, 927, 365 P.3d 845, 850 [Under California law, the "trustee of a deed of trust is not a true trustee with fiduciary obligations, but acts merely as an agent for the borrower-trustor and lender-beneficiary."]. Although, as reflected in Klem, Washington law differs from that of Nevada and California in considering foreclosure trustees to owe fiduciary obligations to both beneficiaries and debtors under deeds of trust, these States agree that at a minimum, foreclosure trustees must act impartially and in good faith as effectively the agents for both sides of the deed of trust. See Klem, supra, 176 Wn.2d at 788-798, 295 P.3d at 1187-1190; Yvanova, supra, 62 Cal.4th at 927, 365 P.3d at 850; NRS 107.028(6). As illustrated by Klem, it is in fact a violation of that duty for a foreclosure trustee to act in ways that effectively make it the agent only of the deed of trust beneficiary (such as a trustee abdicating its independence by deferring to the beneficiary on matters that entrusted to the trustee, or, even more clearly, acting on behalf of the beneficiary in ways that are necessarily adverse to the debtor-grantor of the deed of trust).

QLS' confusion on this issue is especially remarkable, because the Washington Supreme Court in Klem concluded that QLS breached its duty of impartiality as a foreclosure trustee in Washington by deferring entirely to the beneficiary as to whether a foreclosure sale should be postponed, thereby improperly acting as the agent of the beneficiary only. Klem, supra, 176 Wn.2d at 788-798, 295 P.3d at 1187-1190. In doing so, QLS "abdicated its duty to act impartially toward both sides" and instead "merely honored an agency relationship with one" side (its creditor-beneficiary client). Id. at 791-792, 1188-1189. The Washington Supreme Court went on to hold that the "practice of a trustee in a nonjudicial foreclosure deferring to the lender on whether to postpone a foreclosure sale and thereby failing to exercise its independent discretion as an impartial third party with duties to both sides is an unfair or deceptive act or practice and satisfies the first element" of Washington's

Consumer Protection Act, which deals unfair or deceptive acts or practices. Id. Thus, of all the parties here, QLS should be especially cognizant by now of the nature of its duties as a foreclosure trustee and its obligation of impartiality and good faith to both sides of the deed of trust.

The proof presented by Plaintiffs in support of their motion demonstrates that MTC contracted with its lender-clients to act as their agents as part of MTC's activities in the State of Nevada, thereby violating MTC's duty of impartiality under NRS 107.028(6). For instance, by contract, MTC agreed that it would act on behalf of its lender-clients in carrying out evictions of foreclosed homeowners, which would necessarily entail MTC taking an adverse position to these Nevada debtors that MTC was seeking to evict. (SS#5, 14.) As QLS is correct that foreclosure trustees are required by Nevada law to be impartial and act in good faith toward debtors and beneficiaries under deeds of trust—as NRS 107.028(6) demonstrates—then the undisputed material facts show that MTC violated Nevada law in this respect as well by breaching its duty of impartiality and good faith toward Nevada debtors. Such misconduct belies QLS' repeated assertions that MTC's activities were consistent with—and, indeed, in some respects even required by—Nevada law on foreclosure trustees.

2. Negotiating Loan Modification Agreements and Attending Mediation on Behalf of Lender-Clients with Debtors Conflicts with Foreclosure Trustees' Purported Obligation to Be Neutral

Similarly, MTC agreed to and in fact did act on behalf of its lender-clients in preparing loan modification or forbearance agreements or loan workouts with Nevada debtors, thereby violating its duty to be impartial under NRS 107.028(6). (SS#12-14, 32-35, 62.) In the case of Plaintiff Laghaei, for instance, MTC, acting on behalf of its lender-client, negotiated and executed a loan forbearance agreement with Plaintiff Laghaei, and received (i.e., collected) funds from him to reinstate his defaulted loan. (SS#32-35.) MTC then sent these funds to its creditor-client as

payment on the defaulted loan. (Id.) Plaintiff Laghaei's experience was hardly unique, as MTC's Senior Vice-President of Operations indicated that MTC was authorized by its client to enter into loan forbearance plans on the client's behalf with Nevada debtors relating to their defaulted debt from approximately 2007 through 2010. (SS#33.) QLS does not even attempt to present any evidence disputing these facts.

Given that, as QLS seemingly recognizes in at least part of its brief, foreclosure trustees are required by Nevada law to act impartially and in good faith with respect to the deed of trust (and the trustor-debtors and creditor-beneficiaries of deeds of trust), then it should be self-evident that MTC engaging in these activities as agent only of its lender-clients (i.e., deed of trust beneficiaries) necessarily meant that MTC violated its statutory duty of neutrality, since it would be acting adversely to the trustor-debtors in such transactions. See, e.g., Klem, supra, 176 Wn.2d at 788-798, 295 P.3d at 1187-1190 [holding that QLS violated its duty of impartiality as a non-judicial foreclosure trustee under Washington law by deferring to its lender-client on whether to postpone a foreclosure sale, thereby impermissibly becoming a "mere agent" of the beneficiary only]. After all, negotiating a loan forbearance deal with one side as the agent only of the opposing side is hardly an action taken by one neutral or impartial in the transaction!

The Court need not decide whether MTC violated its duties as a trustee in order to rule that the undisputed material facts show that MTC was an unlicensed collection agency during the relevant period in Nevada. However, because QLS repeatedly asserts that MTC's conduct was consistent with or even required by the duties imposed on foreclosure trustees by Nevada law, Plaintiffs must point out that the evidence presented by Plaintiffs in fact shows that MTC seemingly violated those duties as part of its collection agency activities at issue here.

3. MTC Was Engaged in Claim Collection Activities against the Named Plaintiffs, Laghaei and the Sansotas

Plaintiffs have discussed at length the evidence showing that MTC engaged in claim collection activities against the named Plaintiffs Laghaei and the Sansotas here in their concurrently filed opposition papers to the motion for summary judgment filed by MTC (and in Plaintiffs' Motion itself). To avoid burdening the Court, Plaintiffs hereby incorporate by reference the arguments and authorities presented by them in that briefing.

4. MTC's Relevant Conduct Went Far Beyond the Requirements Imposed by Nevada Law on Foreclosure Trustees

As part of its efforts to insulate MTC (and other foreclosure trustees such as QLS) from liability for its unlicensed collection agency activities in the State of Nevada, QLS repeatedly asserts that MTC's activities in the State of Nevada during the relevant period were within the "confines of normal trustee duties" required by Nevada law. See, e.g., QLS Opposition, at 10. As detailed above, QLS frequently mischaracterizes or outright ignores the powerful evidence presented by Plaintiffs in support of their motion that demonstrates the true nature and scope of MTC's collection agency activities in the State of Nevada. Notably, QLS does not effectively dispute the material facts presented by Plaintiffs. Simply as a threshold matter, QLS' unsupported claims as to the lawfulness of MTC's conduct therefore should be treated with considerable skepticism. Moreover, Plaintiffs discuss at length in their Motion as well as in their reply briefing to MTC's motion for summary judgment (and herein below) the ways in which MTC's activities went far beyond the requirements imposed by Nevada law on foreclosures trustees.

5. QLS Effectively Concedes that Plaintiffs Have Demonstrated that MTC (and, seemingly, QLS) Regularly Collected Money from Nevada Debtors during the Relevant Period under the Guise of Being Foreclosure Trustees

A further ground for rejecting QLS' assertions is that its interpretations of Nevada law and related rules are often misleading, if not simply wrong. For instance, while conceding that foreclosure trustees such as MTC (and, seemingly, QLS and the

other Defendants) regularly collect money from Nevada debtors as part of their business activities in Nevada for payment on these debtors' defaulted debts, QLS claims that Nevada law allows or even requires trustees to do so. Nothing in the statutes cited by QLS, however, authorizes or requires Nevada foreclosure trustees to actively and regularly solicit or demand that Nevada debtors make payments on their defaulted debts to QLS so that QLS can collect and remit those payments to its creditor-clients. The statutes certainly do not authorize—let alone require—that foreclosure trustees demand that the payments be sent directly to the foreclosure trustees so that they can collect and remit the funds to their creditor-clients.

Defendants, including QLS, have made much in the past of what they contend is a "common-sense distinction" between foreclosure trustees and collection agencies. Defendants' NRCP 12(b)(5) Motion to Dismiss Plaintiffs' Second Amended Complaint, at 14 n. 3. While trustees must "act impartially when engaging in non-judicial foreclosure activities" pursuant to NRS 107.028(6), "[c]ollection agencies engaging in collection of a claim must be partial to the person owed the debt and engage in dogged pursuit to collect the claim; as a result, foreclosure activities are not part of the claim collection process." Id. Defendants are correct at least in part: it would necessarily be a violation of a foreclosure trustee's duty of impartiality for the trustee to act for the beneficiary under the deed of trust alone by seeking to collect on the claim (i.e., debt) that is tied to the deed of trust. As even Defendants seemingly concede, the claim collection process is necessarily supposed to be separate from the foreclosure activities of a trustee, because it would be a violation of the duty of impartiality for trustees to act as collection agencies toward their debtor-trustors. What has gotten trustees such as MTC and QLS repeatedly in trouble—whether here in Nevada, Washington, or California—at least in part is their practice of engaging in collection agency activities on behalf of deed of trust beneficiaries while purporting to serve as foreclosure trustees for those very same deeds of trust.

As the proof presented by Plaintiffs in support of their motion shows, MTC's collection agency activities in Nevada have included doggedly pursuing Nevada trustor-debtors to collect on claims and acting adversely to debtors—to whom MTC owes a duty of impartiality and good faith—by, among other things, seeking to evict them from their homes following foreclosure, negotiating loan forbearance and modification agreements with debtors on behalf of MTC's creditor-clients, and collecting payments from Nevada debtors on defaulted debts so that MTC can remit those funds to its creditor-clients.

6. Nevada Foreclosure Trustees Are Not Obligated to Actively Solicit Reinstatement or Payment in Full of Debts as the Agent of the Lender Alone: They Are in Fact Barred from Doing So

QLS' reliance on NRS 107.080(2)(c)(3) for the proposition that Nevada foreclosure trustees may "involve themselves in the reinstatement process" (QLS Opposition, at 10) is misplaced and misleading. The current version of NRS 107.080(2)(c)(3) mandates that a Nevada debtor under a deed of trust be sent a written statement with several categories of information, including "the amount in default" on the debt, "the principal amount of the obligation or debt secured by the deed of trust," the amount of payment required to reinstate the loan and avoid foreclosure, and the "principal amount of accrued interest and late charges." The statute makes clear, however, that this written statement need not come from the foreclosure trustee: instead, it can come from the "beneficiary or its successor in interest, the servicer of the obligation or debt secured by the deed of trust or the trustee, or an attorney representing any of those persons." NRS 107.080(2)(c)(3). There is similarly nothing in NRS 107.080 that requires that any payments on the defaulted debt be sent to the foreclosure trustee, so it can collect and remit these amounts to the creditor-client. Similarly, there is nothing in NRS 107.080(2), despite QLS' assertions to the contrary, that "state that the trustee has an affirmative duty to monitor the reinstatement process prior to exercising the power of sale" as part of a

duty to be impartial and act in good faith with respect to the deed of trust and the beneficiary and debtor. Despite QLS' express reliance on these provisions, NRS 107.080(2)(b) and NRS 107.080(2) more generally simply do not require trustees to "monitor the reinstatement process" as QLS suggests. Instead, they put limits on the time before which trustees may exercise the power of sale and require that certain notices be given—not necessarily by the trustee—at specified times prior to foreclosure. See NRS 107.080(2). Put plainly, QLS' assertions regarding the duties of trustees simply are not supported by the statutory provisions cited by QLS (or other provisions of Nevada law).

Nothing in NRS 107.080(c), properly construed, authorizes or requires foreclosure trustees to engage in the variety of activities that Plaintiffs' proof in support of their motion demonstrates MTC regularly engaged in for years as part of its collection agency activity in the State of Nevada. Thus, according to MTC's current Senior Vice-President of Operations, MTC currently provides both full service default services and foreclosure services to its clients. (SS#12.) MTC's activities in Nevada have not materially changed between the relevant period here to the present. (SS#4.) The two categories of services provided by MTC are distinct: full service default services include collection services such as handling deed-in-lieu of foreclosure transactions, senior lien monitoring, negotiating loan forbearance agreements, post-foreclosure sale conveyances, and other services. (SS#12.) During the relevant period, MTC expressly contracted with its creditor-clients to, among other services in the State of Nevada, comply with applicable federal, state, and local laws, including those relating to foreclosures, debt collection, and privacy; represented that it had and would maintain all regulatory approvals, authorizations, licenses, permits, or other permissions, consents, and authorities needed to perform its obligations to its clients; residential foreclosure, collection, recovery, and all other legal services related to foreclosure of delinquent mortgagors; return telephone calls

to defaulted debtors; promptly forward reinstatement or pay-off proceeds received from Nevada debtors on defaulted loans to MTC's creditor-clients; deliver good and marketable title following MTC conducting non-judicial foreclosure sales; attempt to solicit loss mitigation workout options when a Nevada borrower calls MTC; create loss mitigation workouts and send them to borrowers; forward all down payments received from defaulted debtors as part of loss mitigation or forbearance agreements; upon request from Nevada debtors, provide reinstatement and pay-off quotes to Nevada debtors, which would include all amounts owed to MTC's creditor-clients and MTC's fees and costs; handle eviction proceedings on behalf of MTC's creditor-clients; and initiate and carry out non-judicial foreclosure proceedings in the Nevada relating to defaulted loans. (SS#14.) These are certainly not activities required by Nevada law, and, to the extent that they necessarily conflict with MTC's duty to be impartial—such as MTC evicting Nevada debtors following foreclosure or negotiating loan workouts with Nevada debtors on behalf of MTC's creditor-clients—are in fact not authorized by Nevada law. See NRS 107.028(6); see also Klem, supra, 176 Wn.2d at 788-798, 295 P.3d at 1187-1190.

Similarly, it is QLS and not Plaintiffs who have ignored or mischaracterized the requirements of the foreclosure mediation program in Nevada and its rules. Nevada Foreclosure Mediation Rule ("NFMR") 5, for instance, does not authorize or require trustees such as MTC to actively solicit or demand that payments by Nevada debtors on defaulted loans be sent to MTC directly so it can collect and remit those payments to its creditor-clients. It merely instructs trustees how to handle payments sent as fees to participate in Nevada's foreclosure mediation program. Similarly, NFMR 11 does not, despite QLS' suggestion to the contrary, authorize MTC or other trustees to involve themselves in negotiating deed in lieu transactions with Nevada debtors on behalf of MTC's creditor-clients: NFMR 11 instead in pertinent part merely confirms that borrowers may "surrender or deliver[] . . . the keys to the [real]

property to the trustee" (or others such as the deed of trust beneficiary) as part of borrowers opting to pursue a deed in lieu transaction (i.e., surrender the real property) to avoid foreclosure on the property.

7. Nevada Foreclosure Trustees Are Not Obligated to Negotiate, Document, and Execute Loan Modification Agreements with Debtors on Behalf of Lender-Clients: The Trustee Duty of Impartiality Bars Them from Doing So

QLS' reliance on NFMR 8 for the proposition that the rule "specifically provides that foreclosure trustees are involved in loan workouts" (QLS Opposition, at 10) is especially inaccurate and misleading. From QLS' description, one would believe that NFMR 8 provides for foreclosure trustees to be involved in the negotiation, documentation, and execution of loan modification or forbearance agreements. Not so. NFMR 8 only provides for limited and neutral involvement by foreclosure trustees in Nevada's Foreclosure Mediation Program. See NFMR 8(3). Thus, foreclosure trustees are required to provide eligible Nevada debtors under deeds of trust with certain notices of the Foreclosure Mediation Program so that the debtors can decide whether to seek to participate in mediation through the program. Id. at (3)(a). Should eligible Nevada debtors decide to pursue mediation by completing the required forms and sending them to trustee and the program administrator (or designee), then the trustee will be so notified by the administrator and be required shortly thereafter to deposit certain documents with the administrator and any fees required by NFMR 5 for participation (including any such fees received by the trustee from the applicable Nevada debtor). Id. at (b). Thus, the only involvement in "loan workouts" required (or expected) of foreclosure trustees by NFMR 8 is a limited and neutral role in facilitating mediation should eligible Nevada debtors seek to enroll in the program. This is a far cry from MTC's actual role in negotiating, documenting, and executing—on behalf of its creditor-clients—loan forbearance agreements with Nevada debtors, which role Plaintiffs' proof

conclusively demonstrates MTC regularly played in Nevada during the relevant period. (SS#12, 14, 32-35.)

8. QLS' Assertions regarding Senior Lien Monitoring Are Unsupported by Authority

QLS asserts at some length that the senior lien monitoring services that QLS does not dispute that MTC (and, apparently, other trustees such as QLS) regularly provided their creditor-clients are required of Nevada foreclosure trustees as part of their statutory duties. Without any evidence or authority, QLS claims, among other things, that lien monitoring by trustees is a necessary part of the foreclosure process, and that trustees must protect all interests of record. Notably, the first authority that QLS cites for any of its assertions regarding lien monitoring does not support the specific proposition QLS cites it for, as explained above in some detail. Despite QLS' assertions to the contrary, NRS 107.080(2) does not require or provide for foreclosure trustees to monitor reinstatements. The second authority relied on by QLS does not require, despite its claims, that trustees monitor senior liens: NRS 107.090 in pertinent part requires trustees (or others authorized to record notices of default or of sale) to give certain notices to those who have requested notice pursuant to NRS 107.090 and to junior lien holders. NRS 107.090(2)-(4),(7). QLS' failure to support its various assertions with authority is especially curious, because QLS contends that the duty it describes is "delineated" by NRS 107. If so, QLS should be able to support its claims with specific and accurate references to the statute.

The consequences of QLS' failure to support its arguments and assertions with authorities are clear: QLS thereby effectively admits that the points are without merit or waives them. See EDCR 2.20(c) ["A party filing a motion must also serve and file with it a memorandum of points and authorities in support of each ground thereof. The absence of such memorandum may be construed as an admission that the motion is not meritorious, as cause for its denial or as a waiver of all grounds not so supported."].

9. QLS' Assertions regarding Post-Foreclosure Sale Conveyances Are Inaccurate and Misleading

In another instance of misunderstanding or mischaracterizing Plaintiffs' actual arguments and proof, QLS accuses Plaintiffs of incorrectly contending that foreclosure trustees such as MTC (and QLS) are agents of deed of trust beneficiaries because they file deeds and deliver title to property following foreclosure. See QLS Opposition, at 12. As a preliminary matter, QLS is again trying to have it both ways in its brief: while suggesting that trustees are not agents of the beneficiary here, QLS contends elsewhere that trustees are actually required to act for the benefit of beneficiaries, grantor-debtors, and the laws of Nevada. Compare id. with id. at 9-11.

Turning to Plaintiffs' actual arguments and proof in their moving papers, Plaintiffs demonstrate that MTC did more than merely file and deliver title and deeds following a foreclosure sale. Instead, Plaintiffs' proof shows that MTC would ensure that title to the foreclosed property was good and marketable following a foreclosure sale, by, for instance, monitoring for senior liens, evicting the foreclosed debtors of the property, and removing encumbrances if needed. (See SS#5, 12-14.) Despite QLS' suggestions to the contrary, these activities go beyond the requirement that trustees either record the trustee's deed of sale or deliver the deed to the successful bidder at the foreclosure sale within a required period of time (and, if the trustee opts to record the deed, to post on the property a copy of the recorded deed within a required period of time). See NRS 107.080(10)-(11). QLS' claim that trustees would be subject to substantial penalties under NRS 107.080(12)&(13) if they did not convey title is especially strange, because neither provision has anything to do with penalties that trustees can be subjected to. NRS 107.080(12) deals with penalties that bidders at foreclosure sales—not trustees—can be subject to if they fail to record the deed of trust (if it is delivered to them by the trustee pursuant to NRS 107.080(10)(b)). NRS 107.080(13) has nothing to do with penalties at all—whether for bidders, trustees, or anyone—but simply delineates certain fees that must be paid

to the county recorder when a notice of default is recorded. Plaintiffs' proof of these post-foreclosure activities, standing alone, does not establish that trustees such as MTC are collection agencies, but it does demonstrate that, contrary to what QLS would have the Court believe, MTC's activities in Nevada went far beyond what Nevada law requires of foreclosure trustees. Indeed, as explained above, to the extent that MTC was the agent only of its creditor-client beneficiaries by acting adversely to Nevada debtors (by, for instance, seeking to evict them or negotiate loan forbearance deals with them on behalf of beneficiaries), Plaintiffs' proof shows that MTC in fact violated its duty under NRS 107.028(6) to be impartial and act in good faith to both beneficiaries and Nevada debtors. See also Klem, supra, 176 Wn.2d at 788-798, 295 P.3d at 1187-1190.

D. QLS' "Knowingly" Defense Fails

1. QLS Misinterprets the Language and Requirements of NRS 598.0923(1)

QLS, as it has in the past, mistakenly tries to mischaracterize Plaintiffs' burden by claiming that Plaintiffs must show that MTC (or QLS) conducted business knowing that doing so amounted to a violation of Nevada law. This is not what NRS 598.0923 states. Instead, NRS 598.0923(1) states in pertinent part that a "person engages in a 'deceptive trade practice' when in the course of his or her business or occupation he or she knowingly . . . [c]onducts the business or occupation without all required state, county or city licenses." [emphasis added]. The plain language of this statute makes clear that "knowingly" modifies "conducts" the business, such that Plaintiffs must only show that MTC knowingly conducted the business itself (but not that MTC knew it was doing so in violation of Nevada law). This is not, as QLS misleadingly suggests, Plaintiffs' attempt to read the intent requirement reflected in "knowingly" out of the statute altogether, but simply the interpretation required by the statute's words and grammatical structure.

Under this proper interpretation of the statute, it is absurd for QLS to contend that Plaintiffs have not met their burden. After all, QLS cannot expect the Court to conclude that MTC conducted its business in Nevada "inadvertently" or without awareness that it was carrying on a business or occupation for more than a decade and "unknowingly" received about $50,000,000 in fees and costs from 2007 to 2012! (SS#1-2, 4-5, 7-8, 12, 14-16, 18-35, 37-49, 57-61, 65-70.) Unlike a person who might engage in desultory or isolated activities without realizing that he was in fact carrying on a business or occupation (and thus might not be liable for knowingly conducting a business), MTC's business activities in Nevada were extended and systematic and clearly carried out in full knowledge that it was engaged in a business.

2. The Cases Relied on by QLS Are Not to the Contrary

Instead of addressing Plaintiffs' actual arguments, QLS engages with a series of straw men, premised on the inaccurate accusation that Plaintiffs have wholly ignored the language "knowingly" used in NRS 598.0923(1). In defiance of the actual language of NRS 598.0923(1), QLS seeks to import a heightened intent requirement by relying on language from different provisions of NRS 598.0923, and language from other jurisdictions entirely, for the propositions that Plaintiffs must show that MTC knew both that it was conducting a business and that it lacked the required licenses to do so.

In an attempt to define "knowingly" as used in NRS 598.0923 (or Nevada's Deceptive Trade Practices Act more generally), QLS relies on a general definition of the term from the 1990 edition of Black's Law Dictionary and references to deceptive trade practices laws from other jurisdiction. The latter are unpersuasive, especially as QLS does not even attempt to show that Nevada statutory scheme for its Deceptive Trade Practices Act ("DTPA") is similar to those in Texas, Alabama, or Colorado that are discussed in the cases QLS cites. QLS does not demonstrate, for instance, that Nevada's DTPA provides an "'absolute defense' to actions which result from negligence or an honest mistake'" (even if Colorado's Consumer Protection Act

perhaps does). See QLS Opposition, at 14 [quoting Crowe v. Tull (Colo. 2006) 126 P.3d 196]. These references are thus not much assistance in determining how Nevada defines "knowingly" as used in NRS 598.0923.

In order to construe the proper definition of the word "knowingly," as used in NRS 598.0923, it would be better to look to the definition assigned to that term by the Nevada legislature in NRS 281A.115 and NRS 624.024 instead of looking further afield. In these provisions, the Nevada legislature gave the following definition: "'Knowingly'" imports a knowledge that the facts exist which constitute the act or omission, and does not require knowledge of the prohibition against the act or omission. Knowledge of any particular fact may be inferred from the knowledge of such other facts as should put an ordinary prudent person upon inquiry." NRS 281A.115, NRS 624.024 [emphasis added]. QLS' interpretation of NRS 598.0923(1) would not be consistent with this definition because QLS would have NRS 598.0923(1) require proof of knowledge both of the facts which constitute the act or omission as well as of the prohibition against the act or omission. Had the Nevada legislature wished this to be the law, it could have revised the language of NRS 598.0923(1) so that it prohibited knowingly violating Nevada law by conducting the business or occupation while lacking the required licenses to do so.

The two trial court orders from federal district courts in Nevada also do not assist QLS here. In the first order, the federal district court dealt with a different provision of NRS 598.0923, which states that a "person engages in a 'deceptive trade practice' when in the course of his business or occupation he knowingly: . . . [v]iolates a state or federal statute or regulation relating to the sale or lease of good or services.'" Sobel v. Hertz Corp. (D. Nev. 2010) 698 F.Supp.2d 1218, 1230 [quoting NRS 598.0923(3)][alterations in original], affirmed in part, reversed in part, and vacated in part by Sobel v. Hertz Corp. (9th Cir. Jan. 5, 2017) 2017 U.S. App. LEXIS 217. Although the trial court in Sobel did not address the definition of "knowingly"

as used in NRS 598.0923(3), it concluded that it required the plaintiff to establish that the defendant "intentional circumvented the requirements" of a statute or "knowingly violated" a law. Id. Given the pertinent language of NRS 598.0923(3)—i.e., the knowingly violated requirement—it was not unreasonable for the trial court to reach that conclusion, although the better reasoned approach would have been for the trial court to require only that the acts or omissions constituting the violation of law be knowingly done or omitted (and not that the defendant also know that it was thereby violating a law). See NRS 281A.115, NRS 624.024. In contrast, as explained above, "knowingly" as used in NRS 598.0923(1) modifies "conducts the business or occupation," which does not require knowledge that all required licenses were not obtained. The second order cited by QLS is even more unhelpful because the trial court there only noted in passing several provisions from Nevada's DTPA which have the word "knowingly" used in them. See Phillips v. Dignified Transition Solutions (D. Nev. 2014) 2014 U.S. Dist. LEXIS 120221, at *8-9 n. 2. The trial court did not otherwise discuss or consider how "knowingly" should be interpreted. Id. Since, as reflected in Plaintiffs' moving papers and herein, Plaintiffs do not dispute that "knowingly" is used in NRS 598.0923(1), but simply reject QLS' unreasonable interpretation of the statute, Phillips does not provide much persuasive guidance on the point QLS cites it for.

3. The Hypotheticals Offered by QLS Do Not Assist It

The colorful hypotheticals offered by QLS in discussing several other provisions of Nevada's DTPA are not of much assistance to QLS here because its misreading of these statutes are not consistent with Plaintiffs' actual interpretation of NRS 598.0923(1) and its language. Thus, for instance, NRS 598.092(12) would not lead to the result that QLS suggests in its hypothetical, because, given the facts stated therein, there is nothing suggesting that someone is knowingly taking advantage of another person, as is required by NRS 598.092(12) for there to be liability. Since the dementia described by QLS is not readily apparent, one doing business with the

consumer apparently is not knowingly taking advantage of the woman suffering from it. Similarly, QLS' discussion of merchants presenting false information by in applications for credit is not of much use, because the provision relied on by QLS has nothing to do with such conduct at all: NRS 598.0913 merely defines the term "Commissioner" when used in NRS 598.

4. Plaintiffs' Proof Demonstrates that MTC Knowingly Conducted Its Business without All Required Licenses

QLS' "knowingly" argument is also fatally weak for multiple other reasons, including that the proof presented by Plaintiffs in support of their motion—which proof QLS does not even attempt to dispute—show that MTC in fact knew that it was conducting business as a collection agency, as it had service contracts with its lender-clients specifically for that purpose.[1] (SS#10, 12-17.) If MTC claims that such items were not done knowingly, then it must be that it claims that it unknowingly sent an untold number of notices of default and notices of trustee's sale to Nevadans, and accidentally foreclosed on thousands of Nevada homeowners, including the Plaintiff Sansotas. (SS#1-2, 4-5, 7-8, 11-16, 18-21, 23-25, 30-35, 38-49, 61, 67-70.) Moreover, MTC expressly considered obtaining its Nevada license on multiple occasions and in multiple high-level management meetings, but decided not to do so until 2012, after this lawsuit was filed in 2011. (SS#1-4, 50-64, 71.) This is "knowing" conduct, as a matter of law.

Nor can MTC claim that it was ignorant of the Nevada law which required that it hold a license, or that the law applied to MTC. Although such ignorance of the law would not be a defense—see NRS 281A.115, and NRS 624.024—the undisputed material facts show that MTC was fully aware of the applicable law here, and made a conscious decision not to obtain the Nevada collection agency license, until 2012. (See, e.g., SS#1-4, 15-17, 50-53, 56-61.) Both Ms. Johnsen and Ms. Cole-Sherburn

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[1] To date, despite repeated requests, MTC has refused to produce all these contracts. Boylan Declaration in Support of Plaintiffs' Motion, at ¶15.

testified at their depositions that, well before the filing of this lawsuit, MTC expressly considered whether to obtain a collection agency license from the FID, and, ultimately, did obtain such a license in early 2012. (SS#1-6, 14-16, 50-53, 56-61.) To date, MTC continues to maintain that license. (SS#3.) Thus, even assuming that Plaintiffs were required to show that MTC knew or should have known that it was conducting its business without all required licenses, Plaintiffs through their proof have met that burden.

5. Judge Scann Properly Rejected QLS' Previous Reliance on Judge Williams' Decision

a. THE REASONING OF COMMISSIONER BURNS, ON BEHALF OF THE NEVADA DEPARTMENT OF BUSINESS AND INDUSTRY, FINANCIAL INSTITUTIONS DIVISION, IS COMPELLING

With respect to the substantive issues of Nevada law presented here, including proper interpretation and application of most of the Nevada statutes at issue, the legal reasoning and analysis stated in the decision of Commissioner Burns of the FID is truly compelling. Commissioner Burns is the highest authority at the FID, and the single most experienced and knowledgeable Nevadan on the issues at hand. Commissioner Burns' fourteen-page decision in the Quality Loan Service Corporation proceedings before the FID persuasively dismantles most every argument asserted here by QLS. Defendants' only response of note thus far has been that Commissioner Burns' decision was overturned by a trial court, and not appealed.

In contrast, the Department 16 order, ostensibly signed by Judge Williams and previously and properly rejected as authority in this case by Judge Scann, appears to be an advocacy piece, every word of which was crafted by QLS's attorneys at the firm of Lionel, Sawyer & Collins. The order contains no indication of any independent review, analysis, or contribution by the Judge. In fact, the order is not signed by the Judge, but says instead, "Jessie Walsh for Timothy C. Williams." Below that signature, the order indicates that it was "prepared and submitted" by Attorney Paul Larson, of the firm Lionel, Sawyer & Collins representing QLS. In

paragraph 9 of the order, there is a significant mischaracterization of Commissioner Burns' fact-finding and his determinations, which mischaracterization and various related omissions illustrate the inaccuracies spread throughout the entire order. Specifically, the order misstated that Commissioner Burns determined that merely exercising the power of sale in a deed of trust constitutes the action of a collection agency. The trial court order omits any reference to the pervasive evidence discussed and the critical findings of Commissioner Burns' decision, which show a variety of debt collection activities (including demanding and collecting payments on past due amounts), different from and well beyond the mere recordation of a default notice or the mere statutory exercise of the power of sale. See, e.g., Reese v. Ellis, Painter, Ratterree & Adams LLP (11th Cir. 2012) 678 F.3d 1211. As Judge Scann previously concluded in rejecting it when Defendants sought to have her give it preclusive effect in this case, the order is without persuasive force.

Pursuant to NRS Chapter 649, the FID has the authority to interpret the statute and is the most knowledgeable about the statutory scheme. See NRS 649.051 ("The Commissioner shall administer and enforce the provisions of this chapter"); NRS 649.053 ("The Commissioner shall adopt such regulations as may be necessary to carry out the provisions of this chapter."); NRS 649.440 ("Commissioner may impose an administrative fine of not more than $10,000 upon a person who . . .[w]ithout a license or certificate, conducts any business or activity for which a license or certificate is required pursuant to the provisions of this chapter; or . . . [v]iolates any provision of this chapter or any regulation adopted pursuant thereto."); NRS 649.135 ("Commissioner shall enter an order approving the application for a license, . . . if the Commissioner finds that the applicant has met all the other requirements of this chapter pertaining to the applicant's qualifications and application."). In the prior case against QLS, the FID's then Commissioner personally acted as the hearing officer, and determined exactly the opposite of what

Defendants contend. That is, conducting various foreclosure activities in the manner performed here, by demanding and collecting money on past due amounts, constitutes debt collection in Nevada. Accordingly, the Commissioner correctly determined that QLS was not exempt from the licensing requirement under NRS 649.020. Id.

This Court should defer to the FID, as the applicable Nevada administrative agency. See, e.g., Holiday Ret. Corp. v. State Div. of Indus. Rels., 128 Nev. Adv. Rep. 13, 274 P.3d 759, 761 (2012); Ford Motor Credit Co. v. Milhollin, 444 U.S. 555, 566 (1980). Nothing in Judge Williams' order reflects any consideration whatsoever of the law indicating that it is the Court's duty to give primary deference to the administrative agency in charge.

b. THE PRIOR QLS DECISION IN DEPARTMENT 16 IS NOT CONTROLLING OR PERSUASIVE HERE

Defendants have previously claimed that Department 16 "scrutinized the legislative history of the various Nevada statutes implicated" in its determination. Although drafted by the QLS lawyers at Lionel Sawyer, the text of the order does not expressly show or recite any scrutiny, analysis, review, or consideration of any legislative history. There is no citation to legislative history in the order. Nor is there any quotation of the legislative record in the order. Moreover, the text of the order reflects no consideration of the 2011 amendment of NRS Chapter 107 and its express inclusion of NRS 649 licensed collection agencies. NRS 107.028. This is classic legislative clarification of prior intent.

i. The Prior QLS Order Is Distinguishable on the Critical Facts

According to the text of the order from Dept. 16 in the QLS matter, the Court limited its determination to what it saw as the simple fact that QLS did nothing other than record a notice of default (and possibly conduct the sale). The evidence here shows a very different scenario, with a variety of debt collection activities by MTC,

including demanding payments, receiving payments, forwarding payments, soliciting from the banks the opportunity to act on their behalf to collect the debts, seeking payment by cashier's checks and/or wire transfers made payable to MTC, all as collection agents for the lenders, etc.

ii. The Prior QLS Order Is Incorrect on Its Face

The prior QLS order is also incorrect on its face, both as to facts and law. For example, it seems that there is a glaring legal error on the face of the QLS order from Department 16 that is relied upon by QLS here. In the "Conclusions of Law," paragraph numbers 2 and 3 thereof, it appears that Judge Williams based his order in substantial part on a determination that the California company, QLS, was not doing business in the State of Nevada pursuant to NRS 80.015. It is inexplicable that the order did not cite or discuss the contrary, dispositive portion of that same statute, with respect to the issue. Specifically, NRS 80.015(4)(b) provides that: "The fact that a person is not doing business in this state within the meaning of this section . . . [d]oes not affect the applicability of any other provision of law with respect to the person and may not be offered as a defense or introduced in evidence in any civil action, . . . involving an alleged violation of chapter 597, 598,[2] or 598A of NRS." As detailed below and in Plaintiffs' reply and opposition papers to the briefs filed by MTC, NRS 80.015(4)(b) demonstrates that Judge Williams' conclusion of law on this point was simply wrong. Thus, issue of whether QLS or MTC was doing business in Nevada for purposes of NRS 80.015 is not even allowed to be an issue on this matter, yet it was the basis of Judge Williams' order.

6. Plaintiffs' Powerful <u>Appellate</u> Cases Demonstrate that QLS' Reliance on Federal Trial Court Orders Is Misplaced

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[2] NRS 598.0923(1) defines a deceptive trade practice in the course of a person's business or occupation when he or she knowingly conducts the business or occupation without all required state, county, or city licenses.

As QLS and the other Defendants in this case have done in the past, QLS relies on a number of unpublished orders from the federal district court in Nevada to suggest that MTC and other Defendants such as QLS could not have known that they were required to obtain collection agency licenses from the FID.

As a preliminary matter, QLS presents no evidence that MTC, which is the subject of Plaintiffs' motion here, knew of or otherwise relied on the cases cited by QLS as justification for not obtaining a collection agency license from the FID. Even if MTC made such a claim, however, it would not assist it (or others such as QLS) because such reliance on unpublished federal trial court orders would not have been reasonable in light of the powerful appellate decisions in Plaintiffs' favor. MTC and QLS also could not have reasonably relied on these orders, because they do not carry any binding precedential effect, let alone on Nevada state courts and their interpretation of Nevada law. See, e.g., NASD Dispute Resolution, Inc. v. Judicial Council (9th Cir. 2007) 488 F. 3d 1065, 1069 ("[A] district court opinion does not have binding precedential effect.").

As Plaintiffs explained in their moving papers, according to almost all the federal appellate courts, which issue the binding decisions that set the legal precedents which must be followed by federal trial courts, even under the less stringent federal law,[3] trustees conducting foreclosure activities of the kind at issue in this case are debt collectors. See Wilson v. Draper & Goldberg PLLC (4th Cir. 2006) 443 F.3d 373; Piper v. Portnoff Law Assocs. (3rd Cir. 2005) 396 F.3d 227; Reese v. Ellis, Painter, Ratterree & Adams LLP (11th Cir. 2012) 678 F.3d 1211, 1217-1218 ["A communication related to debt collection does not become unrelated to debt collection simply because it also relates to the enforcement of a security interest. A 'debt' is still a 'debt' even if it is secured."]; Romea v. Heiberger & Assocs. (2nd Cir. 1998) 163 F.3d 111, 117; Gburek v. Litton Loan Servicing LP (7th Cir. 2010) 614

[3] The FDCPA, not specifically at issue here, but relevant in the trial court orders previously relied upon by Defendants.

F.3d 380, 386; Kaltenbach v. Richards (5th Cir. 2006) 464 F.3d 524; Glazer v. Chase Home Fin. LLC (6th Cir. 2013) 704 F.3d 453, 455; see also Rowe v. Educ. Credit Mgmt. Corp. (9th Cir. 2009) 559 F.3d 1028; Alaska Trustee LLC v. Ambridge (Alas. 2016) 2016 Alas. LEXIS 23; Porada v. Monroe (Minn. App. July 28, 2014) No. A-13-1615, 2014 WL 3700820 [unpublished]; Kaymark v. Bank of America, N.A. (3d Cir. 2015) 783 F.3d 168, 176-178 [judicial foreclosure complaint can be communication subject to FDCPA protections]; McCray v. Federal Home Loan Mortg. Corp. (4th Cir. Oct. 7, 2016) 839 F.3d 354 [concluding that complaint adequately alleged that foreclosure trustee was debt collector under FDCPA and alleged activities were debt collection activity regulated by the FDCPA]; Shapiro & Meinhold v. Zartman (Colo. 1992) 823 P.2d 120, 122-124 [en banc]; Mashiri v. Epsten Grinnell & Howell (9th Cir. Jan. 13, 2017) 2017 U.S. App. LEXIS 665, at *3, 8-13.[4] Thus, the great weight of near-uniform appellate authority and the persuasive content of those near-uniform decisions completely overwhelm the erroneous prior unpublished federal trial court orders in Nevada that Defendants have relied on in the past.

QLS also seemingly ignores the fact that Judge Scann previously rejected Defendants' attempt to rely on such federal trial court orders, including several of those relied on by QLS now, when Defendants cited them in seeking to have Plaintiffs' Second Amended Complaint dismissed pursuant to NRCP 12(b)(5). Judge Scann's refusal to be guided by these cases as authority was well-founded, as there is little in the ones relied on by QLS here suggesting that the courts had not given adequate attention to the nuances of Nevada collection agency and non-judicial foreclosure law.

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[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.

Plaintiffs must point out that in a number of the federal trial court orders in Nevada that QLS relies on,[5] the plaintiffs contending that QLS or other foreclosure trustees were collection agencies or debt collectors were acting pro se, and therefore likely were unable to fully and adequately respond to the misleading or inaccurate arguments presented by the foreclosure trustee defendants. See Charov v. Perry (D. Nev. June 30, 2010) 2010 U.S. Dist. LEXIS 65798; March v. Pinnacle Mortg. of Nev. (D. Nev. Oct. 7, 2011) 2011 U.S. Dist. LEXIS 117185.

It is also worth noting that many of these cases were decided at the motion to dismiss stage, which almost necessarily means that the plaintiffs had not had an opportunity to marshal and present the powerful proof of collection agency activity that Plaintiffs provide in support of their motion for summary judgment here. See, e.g., Charov, supra; Maves v. First Horizon Home Loans (D. Nev. Sept. 15, 2010) 2010 U.S. Dist. LEXIS 97387; Barlow v. BNC Mortg., Inc. (D. Nev. Aug. 25, 2011) 2011 U.S. Dist. LEXIS 96327; Gillespie v. Countrywide Bank FSB (D. Nev. Aug. 19, 2011) 2011 U.S. Dist. LEXIS 93118; Martinez v. Bank of Am. Nat'l Ass'n (D. Nev. Oct. 20, 2010) 2010 U.S. Dist. LEXIS 113378; Regas v. Freemont Invs. & Loan (D. Nev. Dec. 14, 2010) 2010 U.S. Dist. LEXIS 132925; and Erickson v. PNC Mortg. (D. Nev. April 27, 2011) 2011 U.S. Dist. LEXIS 46387.

In their concurrently-filed briefing in reply to MTC's opposition to Plaintiffs' Motion, Plaintiffs provide in detail other compelling reasons why the unpublished federal trial orders relied on by QLS (and MTC) are not persuasive, including the clear errors in interpretation of Nevada law reflected in them. See Plaintiffs' Reply [discussing, among others, Maves, supra; Rinehold v. Indymac Bank, FSB (D. Nev. Jan. 4, 2011) 2011 U.S. Dist. LEXIS 896; Kenneweg v. Indymac Bank (D. Nev. Jan. 4, 2011) 2011 U.S. Dist. LEXIS 661 [Hicks, J.]; Regas, supra; and March v.

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[5] Hulse v. Ocwen Federal Bank (D. Or. 2002) 195 F.Supp.2d 1188, which QLS relies on, is of little assistance to it, as it in pertinent part deals only with liability under the FDCPA and Oregon's unfair debt collection practices act. Id. at 1202-1206. It did not consider whether a license was required from the FID under NRS 649.075. Id.

Pinnacle Mortg. of Nev. (D. Nev. Oct. 7, 2011) 2011 U.S. Dist. LEXIS 117185]. To ease the burden on the Court, Plaintiffs hereby incorporate the arguments and authorities discussed in their concurrently-filed briefing on these points.

7. QLS Knew by the Time of the FID's Cease-and-Desist Order that It Needed a Collection Agency License from the FID

Over and above the reasons that QLS' reliance on such federal trial court orders from Nevada is misplaced, QLS knew at least as early as the date it received the cease-and-desist order from the FID that it needed a collection agency license from the FID to continue its collection agency activities in the State of Nevada (even if carried out under the guise of being a foreclosure trustee). It is indisputable that QLS received this order prior to the hearing before the Commissioner of the FID on December 13, 2010. See Quality Loan Service Corp., supra, at *1-2. QLS was thus on notice—i.e., knew—that the FID contended it needed a collection agency license from the FID to conduct its business activities in Nevada at least as early as before December 2010. QLS failed to obtain such a license, however, until after the relevant period here. As explained above, Judge Williams' erroneous—and non-binding—opinion in Quality Loan Service Corporation was not issued until well after the relevant period here (in January 2013), so it cannot serve as a basis for QLS to claim that it did not know it was required to be licensed as a collection agency (even if QLS' mistaken interpretation of "knowingly" in NRS 598.0923(1) were adopted by the Court).

8. QLS' Attempt to Distinguish Some of the Powerful Appellate Cases in Plaintiffs' Favor Fails

In their moving papers, Plaintiffs cited many appellate cases—from the federal circuit courts to the highest courts of a number of States—in support of their argument that foreclosure trustees conducting foreclosure activities of the kind at

issue in this case are debt collectors, whether under the FDCPA, collection agency statutes of other jurisdictions, or both. Although QLS only attempts to distinguish a handful of these powerful cases, it accuses Plaintiffs of misstating the holdings in nearly all of these cases.

As a preliminary matter, citation signals—such as the "See" signal used by Plaintiffs when citing the cases QLS takes issue with—are useful tools when readers pay attention to them. For instance, by using the citation signal ("See"), Plaintiffs made clear that the cases cited did not directly state the proposition they were cited for, but supported it. QLS fails to show that any of the few cases it discusses do not in fact support Plaintiffs' proposition here. Plaintiffs' reliance on Piper v. Portnoff Law Assocs. (3rd Cir. 2005) 396 F.3d 227, or Reese v. Ellis, Painter, Ratterree & Adams LLP (11th Cir. 2012) 678 F.3d 1211, 1217-1218, is well-founded. Although the cases do not involve non-judicial foreclosure trustees—and, despite QLS' quibbling, Plaintiffs did not suggest they do—they demonstrate that debt collectors are not insulated from liability simply because they characterize their debt collection activities as enforcement of a security interest (as QLS and MTC seek to do here). See Piper, supra, 396 F.3d at 236-237; Reese, supra, 678 F.3d at 1217-1218 ["A communication related to debt collection does not become unrelated to debt collection simply because it also relates to the enforcement of a security interest. A 'debt' is still a 'debt' even if it is secured."][emphasis added].

QLS' carping attempts to distinguish several of Plaintiffs' other cases by complaining only that they do not involve foreclosure trustees is similarly misleading and misguided.[6] First, Plaintiffs did not claim that each of these cases involved foreclosure trustees. Second, and perhaps more importantly to Plaintiffs' actual

[6] It is particularly ironic that QLS accuses Plaintiffs of misstating holdings, rulings, facts, and law, when, as detailed throughout Plaintiffs' papers herein, QLS in its brief repeatedly ignores or mischaracterizes Plaintiffs' actual arguments, makes assertions without any authority or relies on authority that does not support QLS (and, indeed, in some instances, has no connection at all to QLS' assertions), and indulges in inconsistent allegations of law and fact.

arguments, QLS does not otherwise attempt to argue that the cases do not support the contention for which Plaintiffs actually cited them. See QLS Opposition, at 21. QLS simply ignores entirely those cases cited in Plaintiffs' favor that deal expressly with foreclosure trustees and debt collection—such as Alaska Trustee LLC v. Ambridge (Alas. 2016) 2016 Alas. LEXIS 23, and McCray v. Federal Home Loan Mortg. Corp. (4th Cir. Oct. 7, 2016) 839 F.3d 354 [concluding that complaint adequately alleged that foreclosure trustee was debt collector under FDCPA and alleged activities were debt collection activity regulated by the FDCPA]—effectively conceding that it cannot respond to them.

9. QLS' Reliance on *Ho* Is Ill-Founded

QLS' relies at some length on the Ninth Circuit's recent decision in Ho v. ReconTrust Co., NA (9th Cir. Oct. 19, 2016) 840 F.3d 618. For reasons already explained at some length in Plaintiffs' moving papers, such reliance is misplaced. Two additional points are worth noting here: first, because Ho was not issued until October of 2016, it necessarily could not have been something Defendants relied on in 2007 through 2011 in deciding that they did not need to obtain a collection agency license from the FID in Nevada.

Second, QLS' reading of Ho goes well beyond the narrow language of that decision, in ways already illustrated in Plaintiffs' discussion of the case in their moving papers. Despite QLS' seeming suggestions to the contrary, Ho did not rule that non-judicial foreclosure trustees can never be deemed debt collectors. Instead, interpreting the FDCPA and California law, it concluded that foreclosure trustees are not per se debt collectors under the FDCPA. Id. at 622.

Third, as QLS seemingly recognizes, Ho does not assist debt collectors or collection agencies who, while purporting to be foreclosure trustees, go beyond the limits of Nevada's foreclosure statues, such as by violating their duty of impartiality and good faith by engaging in collection agency activities. Since, as Plaintiffs have

demonstrated at length in their moving papers and herein, MTC (and based on its arguments, apparently, QLS also) in fact violated Nevada's foreclosure statutes in myriad ways (such as by acting adversely to deed of trust grantor-debtors on behalf of MTC's creditor-beneficiary clients), Ho would not insulate MTC from liability for being a collection agency.

10. Plaintiffs Have Demonstrated that MTC Knowingly Conducted Business without the Required State License

Plaintiffs have discussed at length the evidence, arguments, and authorities showing that MTC cannot defeat summary judgment here through the self-serving declaration of Rande Johnsen, and MTC knowingly conducted its business activities in Nevada for at least 10 years before ultimately obtaining its collection agency license from the FID in 2012 in their moving papers as well as in their opposition papers to the motion for summary judgment filed by MTC and reply papers in support of Plaintiffs' Motion. To avoid burdening the Court, Plaintiffs hereby incorporate by reference the arguments, evidence, and authorities presented by them in that briefing.

E. NRS 80.015 Does Not Assist MTC or QLS Here

Like MTC, QLS speciously argues that MTC (and foreclosure trustees more generally) are exempt from licensure; however, the defense raised by MTC and QLS is expressly disallowed by the very statute they cite. Clearly, by any logic, subsection (4)(b) of NRS 80.015 is dispositive of the argument. Otherwise, deceptive trade practices committed in Nevada by foreign, rogue companies collecting debts and enforcing mortgages and security interests in property, with or without a license, would be condoned and expressly authorized by the Nevada legislature. That is an incomprehensible conclusion. Stated another way, it is inconceivable that the legislature would have expressly "exempted" and allowed fraud, deception,

unlicensed activities, deceit, misappropriation and breach of duty by foreign entities in connection with acquiring notes, indebtedness, mortgages and security interest in real or personal property in the state, or in employing such deceptive practices in the conduct of securing or collection debts or enforcing mortgages and security interest in property securing the debts.

Nevertheless, in direct violation of N.R.S. 80(015)(4)(b), QLS asserts as a defense that N.R.S. 80.015(1)(h) excludes "securing or collecting debts or enforcing mortgages and security interests in property securing the debts" as transacting business in the State of Nevada and therefore it is exempt from all laws of the State of Nevada. N.R.S. Chapter 80 establishes the filing requirements for foreign corporations that operate in the State of Nevada. N.R.S. 80.010 establishes the resident agent and corporate information requirements. Following QLS' logic, "collecting debts and enforcing mortgages," which are also excluded from the definition of transacting business under NRS 80.0151(1)(h), must also be exempt and, therefore, the entirety of N.R.S. Chapter 649 related to foreign collection agencies must be void. It makes no sense.

NRS 80.015(4)(b) states that an exclusion from this chapter "does not affect the applicability of any other provision of law with respect to the person and may not be offered as a defense or introduced in evidence in any civil action, criminal action, administrative proceeding or regulatory proceeding to prove that the person is not doing business in this State, including without limitation, any civil action …. involving an alleged violation of Chapter …. 598 or 598A of N.R.S." [emphasis added]. Consequently, Defendant's assertion that it is excluded from the requirements of Nevada law is refuted by the express text of the same statute.

Thus, the express language of NRS 80.015 limits this definition of "doing business in the State" to the application of NRS Chapter 80. NRS Chapter 80 deals only with foreign corporations which must register with the Nevada Secretary of

State. Specifically, NRS 80.010 requires a foreign corporation to file certain items before it commences doing any business in this State. Subsection (4)(b) expressly prohibits QLS (or MTC) from using NRS 80.015 as a defense in any civil action, including specifically a civil action for the violation of NRS Chapter 598, which is the cornerstone of this lawsuit.

Given the explicit provisions of NRS 80.015, it is improper and misguided for MTC (or QLS) to rely on this statute as a defense or to even introduce such information into the record.

The reality is that subsection (4)(b) of NRS 80.015 is devastating to QLS' contention here that "enforcing mortgages and security interests in property" (i.e., the MTC non-judicial foreclosure process) without a license under NRS 649 from Nevada does not constitute deceptive trade practice according to NRS 598. The express language of subsection (4)(b) directly reflects the intent of a legislature to apply the deceptive trade practices law and remedies to unlicensed foreign collection agencies that are involved in conducting a business "collecting debts or enforcing mortgages and security interest in property securing the debts," in the state of Nevada. No other intended purpose of subsection (4)(b) is rational. It is dead on point.

QLS' argument to the contrary is based on a tortured interpretation of the statutory language and obtuse semantics. The obvious intent of NRS 80.015 was to avoid placing upon foreign companies, such as national banks, the burden to comply with all of the foreign business filing requirements in Nevada if they simply had to defend a lawsuit in Nevada, prosecute a lawsuit in Nevada, or settle a case in Nevada, or if they simply created or acquired mortgages and security interest on property in Nevada, or simply themselves enforced a security interest in Nevada. However, expressly, under subsection (4)(b), such foreign entities are subject to and held bound by all other Nevada laws, including the prohibition of deceptive trade practices in the

Silver State. Collecting claims for others without a Nevada license, the business of MTC, is a deceptive trade practice as a matter of statutory definition.

Plaintiffs are aware that the Nevada federal district court has issued several orders on this issue in other cases, but none had been found which reflected adequate consideration of NRS 80.015(4)(b). We must assume that the lawyers in those other cases did not present the full articulation of the statute to the federal trial court. Regardless, those non-precedent, unpublished trial court orders are clearly erroneous, for reasons amply explained in Plaintiffs' brief in reply to MTC's opposition briefing to Plaintiffs' Motion.

F. The Admissions by MTC that It Is a Debt Collector Are Evidence in Plaintiffs' Favor despite QLS' Assertions to the Contrary

Despite Defendants' suggestion to the contrary in the past and in QLS' opposition papers, Plaintiffs do not take the position that the so-called "mini-Miranda warnings" contained in MTC and other Defendants' communications with Plaintiffs and other Nevada debtors conclusively establish Plaintiffs' claims standing alone. Instead, as explained by Plaintiffs in their opposition papers to Defendants' NRCP 12(b)(5) motions and as the Ho majority recognized also, inclusion of such language is not alone "sufficient to show that [a non-judicial foreclosure trustee] is a debt collector." Ho, supra, at *623 n. 7. However, these admissions are undoubtedly evidence that must be taken into account in determining whether, under the circumstances, an entity is a debt collector under the FDCPA (or collection agencies under Nevada law). See, e.g., Gburek, 614 F.3d at 386 n. 3 [reversing dismissal in a class action and noting that mini-Miranda warning "does not automatically trigger the protections of the FDCPA, just as the absence of such language does not have dispositive significance."][emphasis added]; Hart v. FCI Lender Servs. (2d Cir. 2015) 797 F.3d 219, 226-227 [considering importance of including such language in a letter to a debtor and noting that "[w]e see no reason why we should not take it [i.e.,

a letter using such language] at its word"]; McLaughlin v. Phelan Hallinan & Schmieg, LLP (3d Cir. 2014) 756 F.3d 240, 246 ["It is reasonable to infer that an entity that identifies itself as a debt collector, lays out the amount of the debt, and explains how to obtain current payoff quotes has engaged in a communication related to collecting a debt."][emphasis added]; Yeager v. Ocwen Loan Servicing, LLC, 2015 U.S. Dist. LEXIS 94149, at *25-27 n.19 (M.D. Ala. July 15, 2015) [denying motion to dismiss and adopting Tocco v. Real Time Resolutions, Inc., 48 F. Supp. 3d 535 (S.D.N.Y. Aug. 13, 2014) approach in rejecting argument that use of mini-Miranda language was immaterial to whether defendant was a debt collector under the FDCPA as alleged]; Crippen v. Stites, 346 B.R. 115 (E.D. Bkr. Pa. July 25, 2006) [denying motion to dismiss where allegations, including defendant's use of mini-Miranda warning, "sufficiently plead[]" defendant is a "'debt collector' as defined under the FDCPA"]; Estes v. Love, Beal & Nixon, P.C., 2015 U.S. Dist. LEXIS 96715 (N.D. Okl. July 24, 2015) [denying summary judgment on FDCPA claim in part because mini-Miranda warning in connection with other evidence supported inference that defendant was a debt collector under the FDCPA]. In Crippen, the court noted that "[s]ignificantly for present purposes, this [mini-Miranda] warning is generally required only of 'debt collectors.'" Crippen, 346 B.R. at 120 [emphasis in original]. The court concluded that it was "reasonable to infer [from the defendant's decision to use the warning] that [the defendant] is a 'debt collector'" under the FDCPA. Id. The Crippen court, denying the motion to dismiss, therefore ruled that the complaint adequately pled that the defendant was a debt collector. Id.

Use of such language is thus not dispositive standing alone, but it is not, as Defendants have suggested in the past and in QLS' opposition briefing, immaterial either. It is simply evidence that should be considered in determining whether the user of the language qualifies as a debt collector under the FDCPA (or, here, as a collection agency under Nevada law). QLS' assertions are also revealing: QLS

seemingly concedes that it and other foreclosure trustees routinely represent and admit that they are debt collectors when communicating with Nevada debtors, and that they are seeking to collect a debt, but contend now that they should not be held accountable for those representations. Thus, QLS apparently believes that it should be allowed to say whatever it likes to Nevada debtors—even if QLS does not believe the statements--so long as the their statements were only made to protect QLS, MTC, and others from liability if a Court eventually concluded they were in fact debt collectors.

III. CONCLUSION

In concluding the portion of its brief on the significance of MTC's admissions that it was debt collector, QLS accurately—but seemingly inadvertently—states that there "is no substance to the Defendants [sic] argument here." QLS Opposition, at 23. For once, Plaintiffs must agree: there is indeed no substance to Defendants' argument. The same could be said to the various other arguments and assertions made by QLS and MTC in their briefs, which, for reasons explained above and in Plaintiffs' related papers, are without merit. The Court should rule in Plaintiffs' favor accordingly.

DATED: March 7, 2017

Respectfully Submitted,

LAW OFFICE OF NICHOLAS A. BOYLAN, APC

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knowingly done or omitted (and not that the defendant also know that it was thereby violating a law). See NRS 281A.115, NRS 624.024. In contrast, as explained above, "knowingly" as used in NRS 598.0923(1) modifies "conducts the business or occupation," which does not require knowledge that all required licenses were not obtained. A second order cited by QLS in its opposition brief is even more unhelpful for MTC (and QLS) because the trial court there only noted in passing several provisions from Nevada's DTPA that have the word "knowingly" used in them. See Phillips v. Dignified Transition Solutions (D. Nev. 2014) 2014 U.S. Dist. LEXIS 120221, at *8-9 n. 2. The trial court did not otherwise discuss or consider how "knowingly" should be interpreted. Id. Since, as reflected in Plaintiffs' moving papers and herein, Plaintiffs do not dispute that "knowingly" is used in NRS 598.0923(1), but simply reject MTC's unreasonable interpretation of the statute, Phillips does not provide much persuasive guidance on the point QLS cites it for.

MTC suggests that the Nevada legislature "required scienter as a precondition to finding a person liable" for statutory consumer fraud under the DTPA. MTC Opposition, at 25. As noted above, MTC is wrong that the Nevada legislature has always required some wrongful intent for there to be a violation of the DTPA: some provisions of the DTPA seemingly do not require any wrongful intent by expressly omitting the word "knowingly" from the statutory language. Moreover, MTC's attempt to draw a parallel between the intent required to prove common law fraud and Nevada's statutory consumer fraud provisions ignores the fact that the Nevada Supreme Court has already ruled that "[s]tatutory offenses that sound in fraud [such as Nevada's NRS 598.0923(2)] are separate and distinct from common law fraud." Betsinger, supra, 232 P.3d at 436. In reaching this conclusion, the Nevada Supreme Court expressly noted with approval a ruling from the Arizona Court of Appeals construing Arizona's consumer protection statute. Id. at 435-436. There, the Arizona Court of Appeals had recognized that the "purpose of the consumer protection statute

was to provide consumers with a cause of action that was easier to establish than common law fraud, and therefore, statutory fraud must only be proven by a preponderance of the evidence. Id. [citing Dunlap v. Jimmy GMC of Tucson, Inc. (Ariz. Ct. App. 1983) 136 Ariz. 338, 666 P.2d 83, 88-89][emphasis added]. Although, as Plaintiffs recognize, NRS 598.0923(1) by its language does have an intent requirement, it is improper for MTC to assert, without adequate authority or analysis, that the intent required must be akin to that demanded common law fraud, because that would ignore the fact that statutes such as the DTPA are intended to make it easier for victims of consumer fraud to establish claims than if they were limited to causes of action for common law fraud.

b. Plaintiffs Have Demonstrated that MTC Knowingly Conducted Business without Required State License

i. MTC Cannot Defeat Summary Judgment through Self-Serving Declaration on Subjective Element

As detailed in Plaintiffs' moving papers, below, and in Plaintiffs' preliminary opposition to MTC's motion for summary judgment, Plaintiffs have presented powerful evidence—taken from the testimony of MTC's own officers and directors and internal files—that MTC knew or had constructive knowledge that it was required to obtain a collection agency license from the FID during the relevant period. In an attempt to defeat Plaintiffs' Motion by manufacturing a factual dispute as to MTC's knowledge, MTC presents the declaration of its Chief Executive Officer, founder, and owner, Rande Johnsen. Johnsen Declaration, at ¶ 22.

Mr. Johnsen's declaration is inadequate to defeat Plaintiffs' Motion here by creating a genuine issue of material fact for a number of reasons. In his declaration, Mr. Johnsen avers that "neither Trustee Corps [i.e., MTC] nor I knew, believed, or understood, during the time period beginning with the Notice of Default and continuing through the foreclosure sale of Sansota's property, that Trustee Corps was obligated to obtain a collection agency license from the State of Nevada in order to

conduct foreclosures in Nevada." Id. This statement is contradicted from the testimony of MTC's own officers and witnesses in this matter, however, including the testimony of two of MTC's Senior Vice-Presidents (Ms. Juarez and Ms. Cole-Sherburn), Mr. Johnsen's own wife (and co-owner of MTC), Ms. Johnsen,, and Mr. Johnsen himself. Their testimony, taken together, has been to the effect that MTC may have considered obtaining a collection agency license from the FID as early as 2009, and held senior management meetings on whether to obtain a collection agency license in 2011, and possibly 2010. (See SS#58-60, 71, 77.) Mr. Johnsen himself admitted at his deposition in this matter that began studying for Nevada test to be MTC's collection agency manager for Nevada in about 2009, and actually took the test in approximately 2009 to 2010. (SS#77.)

MTC's own witnesses and documents also contradict Mr. Johnsen's statement was that his "understanding was that no such license was required, based on the fact that Trustee Corps' efforts in Nevada were confined to conducting foreclosure sales pursuant to the provisions of deeds of trust and Nevada Revised Statutes, Chapter 107." Johnsen Declaration, at ¶ 22. As detailed in Plaintiffs' Motion, reply papers, and opposition papers to MTC's motion for summary judgment and as demonstrated by Plaintiffs' powerful proof in support of its papers, MTC's business activities in the State of Nevada in fact and indisputably went far beyond conducting foreclosure sales pursuant to Nevada law (and, in fact, violated Nevada law by breaching MTC's duty of impartiality to the parties to the deeds of trust). (See, e.g., SS#1-35, 37-49, 62, 67-70, 72-76, 78, 84.) MTC, for instance, regularly engages in evicting—on behalf of MTC's creditor-clients—the Nevada debtors whose homes MTC foreclosed on following the foreclosure sale. (SS#5, 14.) MTC regularly negotiates, documents, and executes—again, on behalf of its creditor-clients—loan modification and forbearance agreements with Nevada debtors (thereby violating MTC's duty of impartiality to those debtors) whose deeds of trust MTC is purportedly serving as a

trustee for. (SS#14, 32-35.) Mr. Johnsen's statement is thus contradicted by evidence from MTC's own witnesses and documents. It is also conclusory to the extent that it provides little to no information as to the basis for Mr. Johnsen's alleged understanding: Mr. Johnsen, for instance, provides effectively no information as to whether his claimed understanding was based on the advice and counsel of experts (such as counsel) or based solely on his own experience and judgment (or lack thereof) and opinions as to Nevada law.

Mr. Johnsen's carefully-worded declaration is also pregnant with a number of damaging admissions. For instance, Mr. Johnsen avers that he did not know, believe, or understand that MTC required a collection agency license during the period relating to the foreclosure of the Sansotas' property, implicitly conceding that he knew, believed, or understood that a license was required at some other period. See Johnsen Declaration, at ¶ 22. Similarly, Mr. Johnsen states that MTC's client with respect to the Sansotas "did not hire Trustee Corps to negotiate a loan extension or collect money or property directly from Sansota." Id. [emphasis added]. This coyly worded statement is pregnant with an admission that MTC's client or clients hired MTC during the relevant period to negotiate loan extensions or collect money or property directly from other Nevada debtors, such as Bijan Laghaei. Compare id. with, e.g., SS#14, 32-35. It is also pregnant with an admission that MTC's client hired MTC to collect money or property indirectly from the Sansotas.

As explained in Plaintiffs' moving papers, when the only evidence presented of fact issues is self-serving and uncorroborated, the Court is not bound to find the issues or disputes to be "genuine" for purposes of NRCP 56. *See DuBois v. Ass'n of* Apartment Owners of 2987 Kalakaua (9th Cir. 2006) 453 F.3d 1175, 1180. Thus, while the "summary judgment procedure is not available to test and resolve the credibility of opposing witnesses to a fact issue, . . . it may appropriately be invoked to defeat a lie from the mouth of a party against whom the judgment is sought, when

that lie is claimed to be the source of a 'genuine' issue of fact for trial." Aldabe v. Adams (1965) 81 Nev. 280, 282, 402 P.2d 34, 35 [overruled on other grounds by Siragusa v. Brown (1998) 114 Nev. 1384, 1392-93, 971 P.2d 801, 806-07][citing Short v. Hotel Riviera, Inc. (1963) 79 Nev. 94, 374 P.2d 979 and Schoener v. Waltman (1954) 125 Cal.App.2d 182, 270 P.2d 543][emphasis added]; see also *Luciano v. St. Mary's Preferred Health Ins. Co.* (2016) 2016 Nev. Unpub. LEXIS 183, at *6-7 ["contradictory statements may be used against a party on a summary judgment motion when no reasonable justification exists to explain the contradiction"][citing Aldabe, supra, 81 Nev. at 282, 402 P.2d at 35 and Nutton v. Sunset Station, Inc. (Ct. App. 2015) 131 Nev. Adv. Op. 34, 357 P.3d 966, 976]; Nutton, supra, 131 Nev. Adv. Op. at 30-31, 357 P.3d at 976 ["The mere fact that a party seeks to proffer apparently inconsistent testimony or assert apparently inconsistent positions at some point during the course of litigation does not, by itself, justify the granting of summary judgment against that party. <u>The general rule is that a party cannot defeat summary judgment by contradicting itself in response to an already-pending NRCP 56 motion</u>."][citing Aldabe, supra, 81 Nev. at 284-85, 402 P.2d at 36-37 and Cleveland v. Policy Mgmt. Sys. Corp. (1999) 526 U.S. 795, 806-07][emphasis added]; Sawyer v. Sugarless Shops (1990) 106 Nev. 265, 269, 792 P.2d 14, 16 ["The Aldabe court properly held that one cannot modify his or her own statements in an effort to create a genuine issue and to avoid summary judgment."][citing Aldabe, supra, 81 Nev. at 282, 402 P.2d at 35].

Notably, despite the manifest contradictions between Mr. Johnsen's declaration testimony and the testimony of MTC's own witnesses—including Mr. Johnsen—at their depositions in this matter and powerful contrary evidence from MTC's own documents, neither Mr. Johnsen nor MTC more generally attempt to explain or excuse the contradictions. Compare, e.g., Kennedy v. Allied Mut. Ins. Co. (9th Cir. 1991) 952 F.2d 262, 266-267. MTC thus effectively concedes that it cannot

explain or otherwise excuse these contradictions, and that Mr. Johnsen's declaration testimony can be disregarded for purposes of summary judgment as a sham affidavit. See, e.g., Nutton, supra, 131 Nev. Adv. Op. at 30-31, 357 P.3d at 976; Colemen v. Circus Circus Casinos, Inc. (D. Nev. Sept. 6, 2006) 2006 U.S. Dist. LEXIS 64421, at *10-12.

At this stage, MTC is bound by the deposition testimony of Ms. Cole-Sherburn, Ms. Juarez, and Mr. and Ms. Johnsen as its employees, officers, and, in the Johnsens' case, owners, regarding matters within the scope of their agency or employment. See NRS 51.035(3)(d). "A statement is not [inadmissible] hearsay if it is offered against a party and is made by the party's agent or servant concerning a matter within the scope of agency or employment, before termination of the relationship." Paul v. Imperial Palace (1995) 111 Nev. 1544, 1549, 908 P.2d 226, 230 [citing NRS 51.035(3)(d)]. The testimony of these witnesses at their depositions in this matter, and the evidence from MTC's own documents, constitute party's admissions under Nevada law, which cannot be contradicted by MTC in order to avoid summary judgment. See NRS 51.035(d)(3); see also Paul, supra, 111 Nev. at 1549, 908 P.2d at 230; Sawyer, supra, 106 Nev. at 269, 792 P.2d at 16.

ii. MTC Knew or Had Constructive Knowledge that It Was Required to Obtain Collection Agency License from FID

Under Plaintiffs' proper interpretation of the statute, it is absurd for MTC to contend that Plaintiffs have not met their burden. After all, MTC cannot expect the Court to conclude that MTC conducted its business in Nevada "inadvertently" or without awareness that it was carrying on a business or occupation for more than a decade and "unknowingly" received about $50,000,000 in fees and costs from 2007 to 2012! (SS#1-2, 4-5, 7-8, 12, 14-16, 18-35, 37-49, 57-61, 65-70.) Unlike a person who might engage in desultory or isolated activities without realizing that he was in fact carrying on a business or occupation (and thus might not be liable for knowingly

conducting a business), MTC's business activities in Nevada were extended and systematic and clearly carried out in full knowledge that it was engaged in a business.

Although bordering on frivolous, MTC therefore claims that it was ignorant of the Nevada law that required that it hold a license, or that the law applied to MTC. The classic rule is true and applies here as a matter of law: ignorance of the law is not a defense. See NRS 281A.115, and NRS 624.024.[9] Again, undisputed evidence shows that MTC made a conscious decision not to obtain the Nevada license, until 2012. (See, e.g., SS#1-4, 15-17, 50-53, 56-61.)

As discussed above, Plaintiffs have presented powerful proof—from MTC's own officers and directors and internal files—showing that MTC knew it was a debt collector during the relevant period, and therefore required a collection agency license from the FID. Both Ms. Johnsen, a co-owner of MTC, and Ms. Cole-Sherburn, a vice-president of MTC, testified at their depositions that, years before the filing of this lawsuit, MTC expressly considered whether to obtain a collection agency license from the FID, and, ultimately, did obtain such a license in 2012. (SS#1-6, 14-16, 50-53, 56-61.) To date, MTC continues to maintain that license. (SS#3.) About 2009, on behalf of MTC, MTC's owner and chief executive officer Rande Johnsen took the Nevada test to become a collection agency manager, demonstrating his full knowledge years before MTC acted to obtain the license in 2012. (SS#77). MTC's own documents show that MTC regularly held itself out to others—including the Nevada debtors it targeted for its collection agency activities—during the relevant period as a debt collector, and specifically warned the recipients of communications from MTC that it was attempting to collect a debt. (SS#6, 17, 21,

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[9] In order to construe the proper definition of the word "knowingly," as used in NRS 598.0923, we should look to the definition assigned to that term by the Nevada legislature in NRS 281A.115 and NRS 624.024, both of which provide the following definition: "'Knowingly'" imports a knowledge that the facts exist which constitute the act or omission, and does not require knowledge of the prohibition against the act or omission. Knowledge of any particular fact may be inferred from the knowledge of such other facts as should put an ordinary prudent person upon inquiry."

23, 26-28.) It is MTC's practice and procedure that "[a]ll incoming calls to MTC are greeted by an automated recording containing a statement (i.e., admission) to the effect that MTC is a debt collector and all information obtained may be used for that purpose." (SS#26.) It is similarly "MTC's practice and procedure that all outgoing communications—including written communications and communications by phone—from MTC to borrowers and their representatives contain a 'verbal mini-Miranda warning,' admitting that MTC is a debt collector and seeking to collect on debt." (SS#27 [emphasis added].) MTC's "so-called 'warning' generally consists of a statement disclosing that MTC is a 'debt collector' and that the 'purpose' of the communication—including calls—is to 'collect a debt' and that 'any information . . . obtain[ed] will be used for that purpose.'" (SS#28.)

Beginning at least in 2009, MTC expressly considered obtaining its Nevada license on multiple occasions and in multiple high-level management meetings, but decided not to do so until 2012, after this lawsuit was filed in 2011. (SS#1-4, 50-64, 71.) Rande Johnsen took the test to be a collection agency manager for MTC in Nevada in 2009 or 2010. (SS#77.)

MTC's "knowingly" argument is also fatally weak for multiple other reasons. First, MTC clearly "knew" that it was conducting business as a collection agency, as it had service contracts with its lender-clients specifically for that purpose.[10] (SS#10, 12-17.) If MTC claims that such items were not done knowingly, then it must be that it claims that it unknowingly sent an untold number of notices of default and notices of trustee's sale to Nevadans, and accidentally foreclosed on thousands of Nevada homeowners, including the Plaintiff Sansotas. (SS#1-2, 4-5, 7-8, 11-16, 18-21, 23-25, 30-35, 38-49, 61, 67-70.)

Whether under Plaintiffs' proper interpretation or MTC's interpretation of NRS 598.0923(1), this is "knowing" conduct, as a matter of law.

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[10] To date, despite repeated requests, MTC has refused to produce all these contracts. Boylan Moving Declaration, at ¶15.

D. The Court Should Deny MTC's Request for a Continuance

The Court should not grant MTC's request, pursuant to NRCP 56(f), that the Court vacate or continue the hearing on Plaintiffs' Motion. As a threshold matter, as explained above, MTC is incorrect in asserting that Plaintiffs' proof relating to Plaintiff Laghaei and MTC's collection agency activities with respect to him is irrelevant to Plaintiffs' Motion. Proof of MTC's unlawful collection agency activities with respect to Plaintiff Laghaei is powerful evidence of the true nature and scope of MTC's collection agency activities in the State of Nevada during the relevant period.

MTC's NRCP 56(f) should be denied on two independent grounds: first, MTC has not been diligent in conducting discovery relating to Plaintiff Laghaei, despite knowing of his existence and relevance to the Plaintiff Sansotas' claims in this lawsuit since as early as July 2016. And Plaintiff Laghaei's documents were disclosed and produced to MTC's counsel in July 2016. Boylan Declaration, at ¶ 11; see also Ceran Declaration, at ¶ 4. Second, and equally fatal to MTC's request, MTC has failed to meet its burden of showing <u>how</u> the further discovery it seeks would lead to the creation of a genuine issue of material fact. The party requesting a continuance pursuant to NRCP 56(f) has the burden of showing by affidavit or declaration that "further discovery will lead to the creation of a genuine issue of material fact," and, early in a case, that the party has been diligent in conducting discovery. Aviation Ventures, Inc. v. Joan Morris, Inc. (2005) 121 Nev. 113, 117-118, 110 P.3d 59, 62-63 [A "motion for a continuance under NRCP 56(f) is appropriate only when the movant expresses how further discovery will lead to the creation of a genuine issue of material fact."]. MTC has not met its burden on either of these grounds.

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1. MTC Has Not Been Diligent in Conducting Discovery regarding Bijan Laghaei

a. MTC Has Known of Bijan Laghaei's Relevance Here Since at Least as Early as July 2016

Although the affidavit of MTC counsel offered in support of its NRCP 56(f) is silent as to when MTC first learned of the relevance of Plaintiff Laghaei to this case, it is clear that MTC knew at least as early as July 2016, when MTC counsel concedes Plaintiffs included information regarding Plaintiff Laghaei in Plaintiffs' supplemental NRCP 16.1 disclosures. Indeed, as reflected in Plaintiffs' ultimately successful motions to amend their Second Amended Complaint to add Plaintiff Laghaei as a named Plaintiff with claims against MTC, Plaintiffs put MTC on notice of Plaintiff Laghaei's relevance to this case as early as July 2016. As is also reflected in MTC's opposition briefs to Plaintiffs' motions to amend, MTC knew of Plaintiff Laghaei's relevance even earlier than 2016, as MTC had been opposed him in separate but similar litigation for years before Plaintiffs learned of his existence.

b. MTC Has, by Its Own Admission, Failed to Conduct Any Discovery regarding Mr. Laghaei until Plaintiffs' Motion Was Filed

Despite being on notice of Plaintiff Laghaei's relevance in this matter as early and of Plaintiffs' intention to move to amend their pleadings to add him as a named Plaintiff against MTC as July 2016, MTC, by the admissions of its own counsel, effectively did nothing to conduct any discovery as to Plaintiff Laghaei between July 2016 and early February 2017 (when MTC served premature discovery requests on Plaintiff Laghaei). See Ceran Declaration, at ¶¶3-4 [admitting knowledge of Plaintiff Laghaei as early as July 2016 and failure to conduct discovery relating to him until February 10, 2017].

c. MTC Could Have Conducted Discovery of Mr. Laghaei at Least as Early as July 2016

MTC lamely suggests that it failed to conduct any discovery of Plaintiff Laghaei and facts relating to him because there were, according to MTC, no

allegations in the operative complaint relating to Plaintiff Laghaei or complaining that MTC improperly negotiated forbearance agreements. Ceran Declaration, at ¶3. This excuse is plainly inadequate to justify a continuance under NRCP 56(f). MTC was not limited in discovery under Nevada's liberal rules of civil procedure to the allegations of the operative complaint. See NRCP 26(b)(1) ["Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including . . . the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence."]. Moreover, MTC was on notice as early as July 2016 of the substance of the allegations relating to Plaintiff Laghaei, and the relevance of those allegations to the claims of the Plaintiff Sansotas. Ceran Declaration, at ¶¶3-4.

Although it is true that MTC could not propound interrogatories, requests for admissions, or requests for production to Plaintiff Laghaei until he was added as a named Plaintiff in this lawsuit, MTC had several avenues of discovery available to it if it had wished to diligently pursue discovery relating to Plaintiff Laghaei. For instance, MTC could have sought production of documents from Plaintiff Laghaei pursuant to a civil subpoena and NRCP 45. MTC was also entitled to receive—and did in fact receive from Plaintiffs—information related to Plaintiff Laghaei as part of the existing Plaintiffs' NRCP 16.1 disclosures. Although MTC's counsel contends now that Plaintiffs' NRCP 16.1 disclosures regarding Plaintiff Laghaei were inadequate, it concedes that it did receive disclosures relating to him from Plaintiffs as early as July 2016. Ceran Declaration, at ¶4. (MTC counsel does not even attempt to explain how Plaintiffs' NRCP 16.1 disclosures may be inadequate; however, if any deficiencies in fact existed, the appropriate course, pursuant to NRCP 16.1 and

NRCP 37(a)(2)(A), would have been for MTC to timely bring the matter to Plaintiffs' attention rather than make vague accusations of impropriety now on the eve of summary judgment.)

The Court should also be mindful of the fact that much of the proof relating to Plaintiff Laghaei that Plaintiffs offer in support of their Motion comes directly from MTC's own documents, which MTC belatedly disclosed and produced in discovery pursuant to NRCP 16.1. MTC surely could have conducted informal and formal discovery regarding such documents, by, for instance, having its counsel diligently interview, and, if necessary, depose, current and former employees of MTC who might have knowledge relevant to Plaintiff Laghaei and Plaintiffs' allegations and evidence relating to him. MTC's counsel seemingly concedes that thus far MTC has not even taken the basic step of interviewing such employees, as it acknowledges that its counsel has has not conducted "any discovery relating to [Plaintiff] Laghaei or its [i.e., MTC's] alleged involvement in a forbearance agreement" that MTC negotiated on behalf of its creditor-client with Plaintiff Laghaei. See Ceran Declaration, at ¶¶3, 5; SS#32-35.

d. MTC Must Be Held to Its Strategic Decision Not to Diligently Conduct Discovery of Mr. Laghaei

It is apparent from the declaration of MTC's counsel and MTC's litigation strategy in this matter thus far that MTC made the strategic decision not to conduct any discovery—let alone diligent discovery—of Plaintiff Laghaei for many months, despite knowing of his existence and relevance to this lawsuit. See Ceran Declaration, at ¶¶3-5. MTC's excuses for delaying conducting any discovery of Plaintiff Laghaei until the Court granted Plaintiffs' motion to amend in February 2017 ring hollow, especially given that Plaintiffs' proof relating to Plaintiff Laghaei and MTC's collection agency activities with respect to him would have been relevant to the existing named Plaintiffs' claims against MTC even if the Court had denied Plaintiffs' motion to amend. Such evidence would still have been powerful proof of

the full nature and scope of MTC's collection agency activities in the State of Nevada, and thus directly relevant to the issues that are properly before the Court in Phase I of discovery and raised in Plaintiffs' Motion.

Plaintiffs also must point out that they sought to add Plaintiff Laghaei as a named Plaintiff against MTC by stipulation as early as July 2016, as reflected in Plaintiffs' prior motions to amend papers. MTC refused to agree, despite the apparent likelihood that Plaintiffs' motion to amend would be granted and Plaintiff Laghaei added as a named Plaintiff against MTC (as ultimately occurred in February 2017). It was MTC's strategic decision to oppose Plaintiffs' motion to amend—as MTC did vigorously for months—but it should not now be heard to complain that it was deprived of an opportunity to conduct discovery of Plaintiff Laghaei because he was not yet a party due to those very efforts!

2. MTC Has Not Met Its Burden of Showing How Further Discovery Would Lead to the Creation of a Genuine Issue of Material Fact

MTC's NRCP 56(f) request should also be denied independently of MTC's lack of diligence because MTC has utterly failed to meet its burden of showing by affidavit "how further discovery will lead to the creation of a genuine issue of material fact." Aviation Ventures, Inc., supra, 121 Nev. at 117-118, 110 P.3d at 62-63. MTC does not, for instance, even attempt to explain how further discovery might—let alone will—create a genuine issue of material fact. Ceran Declaration, at ¶¶3-6. MTC does not identify <u>one</u> fact from Plaintiffs' proof relating to Plaintiff Laghaei that it expects in good faith it will dispute if further discovery relating to him were conducted. Id. MTC does not suggest, for instance, that further discovery would lead to a genuine of material fact as to whether MTC negotiated a forbearance agreement with Plaintiff Laghaei in 2009 on behalf of its creditor-client, relating to Plaintiff Laghaei's defaulted debt, and received (i.e., collected) funds from him to reinstate his defaulted loan, which funds MTC sent to its creditor-client as payment

on the loan. (SS#34.) Similarly, MTC does not suggest that further discovery would create a good faith dispute as to whether MTC collected thousands of dollars from Plaintiff Laghaei on behalf of its creditor-client, and charged him a fee of no less than $150 for its services negotiating a forbearance agreement with him relating to his defaulted debt on behalf of its creditor-client, FHLMC, in 2009. (SS#34-35.) Since Plaintiffs' proof on these points is derived at least in part from MTC's own records, produced by MTC in the course of discovery, it seems unlikely that further discovery would likely lead to a genuine issue of material fact here.

The Nevada Supreme Court has noted that a request pursuant to NRCP 56(f) is properly denied when a party makes "no attempt to identify in his affidavit what facts might be obtained, in addition to the records, depositions, and affidavits already on file, that were essential to justify his opposition." Bakerink v. Orthopaedic Assocs. (1978) 94 Nev. 428, 431, 581 P.2d 9, 11. As the Nevada Supreme Court observed in Bakerink,

> 'Rule 56(f) is not a shield that can be raised to block a motion for summary judgment without even the slightest showing by the opposing party that his opposition is meritorious. A party invoking its protections must do so in good faith by affirmatively demonstrating why he cannot respond to a movant's affidavits as otherwise required by Rule 56(e) and how postponement of a ruling on the motion will enable him, by discovery or other means, to rebut the movant's showing of the absence of a genuine issue of fact. Where, as here, a party fails to carry his burden under Rule 56(f), postponement of a ruling on a motion for summary judgment is unjustified.'
> Id. [quoting Willmar Poultry Co. v. Morton-Norwich Products (8th Cir. 1975) 520 F.2d 289, 297][emphasis added].

The conclusory assertion of MTC's counsel that further discovery is needed to avoid prejudice to MTC's ability to oppose Plaintiffs' Motion (see Ceran Declaration, at ¶6) does not meet MTC's burden under NRCP 56(f) to identify what facts might be obtained----above and beyond the records, depositions, and declarations already on file----that would be essential to MTC's opposition. See Bakerink, supra, 94 Nev. at 431, 581 P.2d at 11; see also Deutsche Bank Nat'l Trust Co. v. Premier One

Holdings, Inc. (May 10, 2016) 2016 Nev. Unpub. LEXIS 165, at *1-2 [concluding that "declaration provided in support of its request [which] stated without elaboration that appellant needed to conduct discovery on the general issues of notice, tender, compliance of NRS 116, and the amount of the HOA lien . . . failed to specify what discovery appellant needed to undertake and what it expected that discovery to yield that would generate genuine issues of material fact to defeat summary judgment"][internal quotation marks omitted]; Francis v. Wynn Las Vegas, LLC (2011) 127 Nev. 657, 670, 262 P.3d 705, 714 [no abuse of discretion in denying NRCP 56(f) request where supporting affidavit stated only that movant's counsel "wished to subpoena bank records and depose two individuals, but . . . did not explain why [movant] had not previously subpoenaed these records or deposed these individuals during discovery," and there was other evidence of lack of diligence during discovery, even though "only about one year had passed" from the filing of the lawsuit and entry of summary judgment].

MTC's NRCP 56(f) request should be denied accordingly.

III. CONCLUSION

Plaintiffs' Motion for Partial Summary Judgment Against Defendant MTC should be granted.

DATED: March 7, 2017

Respectfully Submitted,

LAW OFFICE OF NICHOLAS A. BOYLAN, APC

By: /s/Nicholas A. Boylan
NICHOLAS A. BOYLAN, ESQ.
Attorney for Plaintiffs

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DISTRICT COURT

CLARK COUNTY, NEVADA

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

CASE NO: A-11-649857-C

Dept. 19

DECLARATION OF NICHOLAS A. BOYLAN IN SUPPORT OF
1) PLAINTIFFS' PRELIMINARY OPPOSITION MEMORANDUM OF POINTS AND AUTHORITIES TO DEFENDANT MTC FINANCIAL INC.'S CROSS-MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, PARTIAL SUMMARY JUDGMENT AGAINST PLAINTIFFS RAYMOND SANSOTA AND FRANCINE SANSOTA; AND

Plaintiffs,

v.

QUALITY LOAN SERVICE CORPORATION, a California Corporation; 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.

2) **PLAINTIFFS' REPLY MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT AGAINST DEFENDANT MTC**

Date: March 14, 2017
Time: 9:00 a.m.

I, Nicholas A. Boylan, declare:

1. I am an attorney licensed to practice before all courts of the State of Nevada. I have been the lead Plaintiffs' attorney in this case since it was filed in 2011. Matters set forth herein are true of my personal knowledge and, if called as a witness and sworn, I would and could testify competently thereto.

2. Submitted herewith as **Exhibit "1"** are true and accurate copies of the Certified Transcript of the supporting pages from the deposition of Gloria Juarez, taken on January 31, 2017, in the matter of *Benko, et al. v. Quality Loan Service Corporation, et al.*, Case No. A-11-649857-C.

3. Submitted herewith as **Exhibit "2"** are true and accurate copies of the Certified Transcript of the supporting pages from the deposition of Rande Johnsen, taken on February 8, 2017, in the matter of *Benko, et al. v. Quality Loan Service Corporation, et al.*, Case No. A-11-649857-C.

4. Submitted previously as **Exhibit "B"** with Plaintiffs' moving papers are

true and accurate copies of the Certified Transcripts of the supporting pages from the deposition of Cathy Cole Sherburn, taken on November 1, 2016, in the matter of *Benko, et al. v. Quality Loan Service Corporation, et al.*, Case No. A-11-649857-C.

5. Submitted herewith as **Exhibit "4"** are true and accurate copies of the Certified Transcript of the supporting pages from the deposition of Raymond Sansota, taken on November 17, 2016, in the matter of *Benko, et al. v. Quality Loan Service Corporation, et al.*, Case No. A-11-649857-C.

6. Submitted herewith as **Exhibit "5"** is a flash-drive which contains a live video and audio recording from a seminar presented by Rande Johnson (who self-identifies by voice), entitled "To Foreclose or not to Foreclose?"

7. Submitted herewith as **Exhibit "6"** are true and accurate copies of the Power Point pages from a seminar presented by Rande Johnsen, the Chief Executive, controlling person, and owner of MTC, entitled "Insider Secrets From A Foreclosure Trustee Investing In Junior Liens".

8. I have suffered from a significant lower-back and hip problem, believed to involve a lumbar disc and joint issue, for several weeks. The problem was growing worse and more disabling at the time that MTC electronically served its motion and papers on February 24, 2017. I was able to see a doctor on March 1, 2017. However, the problem has been debilitating, as the pain is nearly constant, and it has therefore materially impeded my ability to perform the work, research, and writing necessary to submit all appropriate opposition and reply papers in the very short window prior to the hearing date of March 14, 2017. I cannot work as efficiently. I cannot fully concentrate, and I cannot work the great number of hours per day necessary for the voluminous tasks and writings necessitated by MTC's motion papers, in the time before March 7 or March 14, 2017.

9. At page 14 of its counter motion, including footnote 5, MTC provides a misleading characterization of comments I made before Judge Scann. From the outset

of this case in 2011, in numerous briefs to the state and federal courts, Plaintiffs have maintained two clear assertions. First, non-judicial foreclosure, even as envisioned myopically by the Defendants, constitutes claim collection under Nevada law and the definition stated in NRS 649.020(1). Secondarily, and alternatively, we have alleged, and now proven, that MTC and the other Defendants pursued massive, all-encompassing claim collection operations in Nevada that included the collection of millions of dollars directly and indirectly from and on behalf of Nevada borrowers who held defaulted loans with Defendants' clients, maintained extensive phone communications with the defaulted debtors in order to request and facilitate, collect and process payments for reinstatement and payoff, and sometimes loan forbearance and/or loan modification agreements, that Defendants conducted other alternative methods of claim collection not involving foreclosure, such as taking a deed in lieu, etc. The comments attributed to me by MTC at the hearing before Judge Scann reflected a response to Judge Scann concerning only the alternative or fallback position consistently maintained by the Plaintiffs.

10. As to the new Plaintiff, Bijan Lahgaei, although his documentation and information was provided to defense counsel in July 2016 pursuant to NRCP 16.1, no NRCP 16.1 disclosures or discovery responses of any kind are now due from Bijan Lahgaei to MTC. MTC has completely disregarded the Nevada Rules of Civil Procedure. MTC served written discovery on Bijan Lahgaei recently, before the Third Amended Complaint was filed with Court and before the Court signed the Order allowing the Third Amended Complaint to be filed. And, in fact, the submission of the Order was substantially delayed because the gaggle of Defendants engaged in their typical tactic of delay and/or obstruction and/or inattention to the matter. It took several weeks to gather signatures for the Order from the various defense lawyers. One such signature was only received by Plaintiffs on February 27, 2017. At the time of this writing it appears that the Order has not yet been signed and

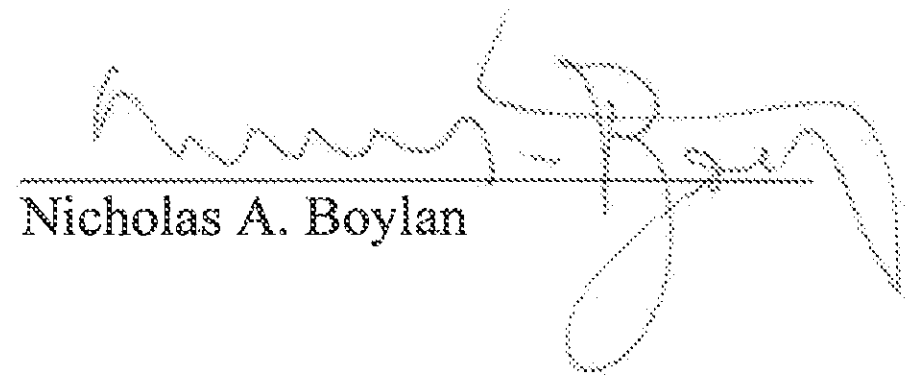
filed. When it is, the Third Amended Complaint will be filed.

11. As reflected in several Recommendation and Reports from the Commissioner, adopted by the Court, Plaintiffs were completely barred from major discovery in this case from the beginning, pursuant to the "Phase One" limitation. Plaintiffs argued repeatedly and without success to the Discovery Commissioner that, at a minimum, discovery was needed to obtain from the Defendants the names and contact information from other Nevada victims in their capacity as witnesses. Plaintiffs argued unsuccessfully to the Commissioner that the contemplated summary judgment motions by the Defendants should not and could not proceed until Plaintiffs could fully investigate and obtain discovery from the other witnesses, who would have personal knowledge of Defendants broad variety of claim collection practices in Nevada. Also, and perhaps even more critically, Plaintiffs have not had discovery of Defendants files, information and data regarding these other witness victims. The documents are always the most revealing. In addition, although MTC makes arguments related to damages in its summary judgment motion, due to the Phasing limitation, Plaintiffs have had virtually no access to discovery regarding the accounting necessary to disgorge Defendants illicit gain/profits. The Commissioner has only allowed one interrogatory, modified by the Commissioner and known as Interrogatory No. 18. However, Plaintiffs have not been able to pursue the underlined discovery, including the accounting records, and Plaintiffs have good reason to believe that Defendants answer to Interrogatory No. 18 is suspect and unreliable! In fact as to one Defendant, CRC, the interrogatory answer ultimately obtained after motion practice expressly states that it is unreliable. Due to the severe limitation on Plaintiffs on Phase One discovery, Plaintiffs have not been allowed to pursue the underlying source of accounting records and data to prove and validate the dollar figures related to the disgorgement remedy.

12. Submitted herewith as Exhibit "6" is a copy of a power point

MTC Financial - - its dba "Trustee Corps." The last page, 20, also includes a picture of Rande Johnsen, who I recognize from his first deposition session and he confirmed the same at his deposition. Page 8 references both collections and foreclosure, and page 13 describes some of the "tools of foreclosure" reflecting the element of coercion as a means of collection and stating that foreclosure gets the homeowners attention, forces a limited timeframe and that most people give up. Page 15 references that the person conducting foreclosure must be familiar with debt collection laws, such as the FDCPA. Page 16 references calling the homeowner and the use of a door knocker. Page 17 refers specifically to collection methodologies, alternatives and strategies such as reinstatement, payoff and short payoff, forbearance or repayment plan, modification, deed in lieu of foreclosure. Page 18 references other ideas for collection in the form of a "workout."

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct. Executed on March 7, 2017, at San Diego, California.



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DISTRICT COURT

CLARK COUNTY, NEVADA

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

CASE NO: A-11-649857-C

Judge: William D. Kephart
Dept. 19

DECLARATION OF RAYMOND SANSOTA IN SUPPORT OF PLAINTIFFS' PRELIMINARY OPPOSITION MEMORANDUM OF POINTS AND AUTHORITIES TO DEFENDANT MTC FINANCIAL INC.'S CROSS-MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, PARTIAL SUMMARY JUDGMENT AGAINST PLAINTIFFS RAYMOND SANSOTA AND FRANCINE SANSOTA

Nevada resident

Plaintiffs,

v.

QUALITY LOAN SERVICE CORPORATION, a California Corporation; 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.

Date: March 14, 2017
Time: 9:00 a.m.

DECLARATION OF RAYMOND SANSOTA IN SUPPORT OF PLAINTIFFS' PRELIMINARY OPPOSITION MEMORANDUM OF POINTS AND AUTHORITIES TO DEFENDANT MTC FINANCIAL INC.'S CROSS-MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, PARTIAL SUMMARY JUDGMENT AGAINST PLAINTIFFS RAYMOND SANSOTA AND FRANCINE SANSOTA

I, Raymond Sansota, declare:

1. I have personal knowledge of each fact stated in this declaration. I make this declaration in support of support of Plaintiffs' Preliminary Opposition Memorandum of Points and Authorities to Defendant MTC Financial Inc.'s Cross-Motion for Summary Judgment Or, In the Alternative, Partial Summary Judgment Against Plaintiffs Raymond Sansota and Francine Sansota.

2. Neither myself nor my wife, nor the two of us together, ever entered into any type of contract with Defendant MTC Financial Inc. dba Trustee Corps.

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct. Executed on Monday of March 6, 2017, at Youngstown, OH

Raymond Sansota

03/06/2017 17:55 330--726-3309 FEDEX OFFICE 1236 PAGE 01

EXHIBIT "1"

DISTRICT COURT

CLARK COUNTY, NEVADA

JEFFREY BENKO, a Nevada resident, et al., Plaintiffs, vs. QUALITY LOAN SERVICE CORPORATION, et al., Defendants.	No. A-11-649857-C

VIDEOTAPED DEPOSITION OF

GLORIA JUAREZ

MISSION VIEJO, CALIFORNIA

TUESDAY, JANUARY 31, 2017

ATKINSON-BAKER, INC.
COURT REPORTERS
(800) 288-3376
www.depo.com

REPORTED BY: DIXIE LYNCH, CSR NO. 9521

FILE NO. AB00D75

your --
A No.
Q -- mental acuity?
A Not at all. I just wanted to --
Q Very good. 10:39
A -- put that on the record.
Q So no problem. If you need to take a break for any reason to use that medication, we can take a break at any time.
A Okay. Thank you. 10:39
Q So just let us know.
The -- typically we ask that we not do it while the question is pending. But answer the question and then say, "Hey, I've got to take a break," and it's no problem. Same thing for the 10:39 restroom. If you have calls, if you've got to check on childcare or anything important, if you need a break, just let us know, and we will take a break.
A Okay.
Q Okay. What is your current position with 10:39 MTC?
A Senior vice president over accounting and human resources.
Q How long have you held that position?
A Less than a year. 10:39

Q So 2015, 2016?
A 2016.
Q Can you give us the month you received that promotion or that title rather?
A Possibly August or September. 10:40
Q Thank you.
What was your position prior to assuming that title?
A Vice president.
Q Simply vice president or vice president with respect to a specific function? 10:40
A With respect to accounting and HR.
Q And how long did you hold that position with MTC?
A Three years. 10:40
Q All right. And if we can still go back in time, immediately prior to becoming the vice president over accounting and HR, what was your position with MTC?
A Accounting manager. 10:40
Q What years did you hold that position, to your best recollection?
A Ten years.
Q What year did you join MTC as an employee?
A 2002. 10:41

Q Approximately how many years?
A Three, four years.
Q Let's go step by step and describe the actual functions of processing funds that you performed during those years. 11:04
Okay. So let's start at the very beginning. Funds arrive in the door, so to speak, at MTC; correct?
A Correct.
Q What were the different sources by which those funds arrived? 11:05
A FedEx, UPS, mail. Those are the only mail. UPS, FedEx, overnight usually. Certified mail.
Q Okay. So we are talking about checks --
A Correct. 11:05
Q -- as to each of those sources; correct?
A Correct.
Q All right. So the checks would arrive to MTC, and they would come to -- to your desk in some -- some form? 11:05
A Correct.
Q And you would open the package whether it be mail, UPS, or whatever it is and pull out the check; correct?
A Correct. 11:05

Q Then what would you do?
A I would match the funds with the file.
Q And would you do that by loan number or foreclosure number, by borrower, or all of the above?
A All of the above I ensured matched. 11:06
Q I'm sorry?
A All of the above.
Q And how would you go about doing that? On the computer?
A Yes. 11:06
Q What system, if any software system, did you use for that purpose?
A It was an old system.
Q All right. I will withdraw that question if you can't remember. 11:07
A I can't remember.
Q All right.
So once you matched it to the particular borrower, what would you do next?
A Advise the client the funds were remitted. 11:07
Q That meaning the bank to whom the defaulted loan was outstanding?
A That's correct.
Q How would you do that? Through what software or communication mechanism? 11:07

as well. What accounting system is that?
A QuickBooks.
Q That still exists today?
A Yes.
Q Does -- as far as you know, does that -- the QuickBooks data that you described where you entered these funds received, does that data still go back to at least 2007? 11:08
A It's archived.
Q All right. 11:09
And you have access to that archive?
A No, I do not.
Q Who does?
A Our IT department.
Q Who is the leader of that? 11:09
A Ravi -- I can't pronounce his name. I cannot pronounce his last name. It starts with a J, I believe.
Q Thank you.
Okay. So you would fill out the deposit slip. Would you also endorse the checks, for example, if they were made payable to MTC either with a stamp or by other means? 11:09
A A stamp.
Q And you would do that personally back at the 11:09

time you were -- you were at -- at the entry level doing this work for three to four years?

A That's correct.

Q About how many hours on average would you process funds in the way you've described back during those years? 11:09

A Two hours, two and a half hours, maybe.

Q So you were no longer personally processing checks when the crash came, so to speak, around 2008; is that true? 11:10

A That's correct. Well, unless I had to.

Q Okay.

What's your estimate -- I understand it was before the crash. But in the last year, for example, that you were actually processing incoming checks, what is your best ballpark estimate of the number of checks of received funds would you process on a typical day? 11:10

A It could be zero to five.

Q Per two to two and a half hours? 11:11

A Two to -- two to two and a half hours would -- would have been my -- my full day. And you are asking me regarding Nevada. I apologize. So with regards to Nevada, it would have been zero to five. No, that would be right. Two and a half -- it 11:11

would have been two, two and a half hours.
Q And although you are no longer personally, in most cases, physically processing the checks, that continued on with your staff, that particular work function, all the way to today; correct? 11:11
A That is correct.
Q Okay.
During the peak of the foreclosure period, say, between 2008 and 2012, what's your best estimate of the number of checks for incoming funds were 11:12 processed on a daily basis?
MR. CERAN: For Nevada?
BY MR. BOYLAN:
Q Let's start it collectively first, and then we will try to do Nevada. 11:12
A On average, it could have been 20, 25, maybe on average -- or no. Let me -- on average, are we talking -- or -- and I'm sorry. Repeat your question. I got -- I got lost. I tried to --
Q That's okay. Let's focus on the -- what we 11:12 will call the peak --
A Okay.
Q -- years, 2008 to 2012.
A That's a large span.
Q Thousands and thousands of foreclosures 11:12

during that period; right?
A I wouldn't consider '12 the peak, but --
Q What is your peak then? You know better than I.
A No, I actually don't. If you are -- okay. 11:12
Repeat the question so I can understand.
Q All right. First we need to know what you think is the peak. What was the peak year in terms of the greatest number of thousands of foreclosures?
A I don't know how many foreclosures, but 2008 11:13
maybe -- I don't know when the actual peak was, but --
Q All right. Let's assume for this question between 2008 and 2011.
A Okay. 11:13
Q All right. Focusing your -- your mind on that time period. What was a typical -- during a typical week, your estimate of the number of checks received for funds, payments that were processed at MTC? 11:13
A In a typical week, on average 50, 65. On average, 50 to 65.
Q So somewhere -- somewhere in the neighborhood of 300 a month?
A Okay. 300 possibly. 11:14

Q Fair estimate?
A Fair estimate.
Q And what percentage would you estimate of those were Nevada? From Nevada borrowers or concerning Nevada foreclosures? 11:14
A 75 to 100 maybe.
Q Percent?
A Or 75 to 100, no, files or -- or checks or however you want to call it.
Q So approximately 30 percent on a -- 11:14
A Possibly 30 percent.
Q And I know you are in accounting and you have to keep track of the numbers. So, if I may ask you, please, what's your best estimate of the dollar amount on either a weekly or a monthly basis, I don't 11:15
know how you keep track of it, that MTC received in terms of these fund payments through the checks that you processed for reinstatement and payoff?
A I couldn't give you a guesstimate without going back and trying to figure that out. I wouldn't 11:15
even -- I couldn't even give a guesstimate.
Q Let me see if I can help you, if I may. And if you can't, then I understand.
A Okay.
Q Again, focusing on this peak period that we 11:15

are assuming, say, between 2008 and 2011 --
A Uh-huh.
Q -- would you estimate that MTC received these fund payments for these checks you processed in an amount of greater than $100,000 a month? 11:15
A I would say.
Q Yes?
A Yes.
MR. CERAN: Are we talking about Nevada or across the board? 11:16
BY MR. BOYLAN:
Q Were you speaking -- when you said "yes," were you speaking about Nevada or all states?
A I'm -- you stated over -- you said monthly 100,000, I'm assuming Nevada. 11:16
Q Okay. Thank you.
A I apologize.
Q No problem.
Now, you've been talking to me about these monies received and these checks you processed. I want to probe that a little more deeply now, if I may. The checks you are describing, these you had to match up to particular borrowers for particular clients; correct? 11:16
A Correct. 11:16

Q Okay.

And the checks that you are describing, the receipt of these funds, were -- were you describing only those received from borrowers for reinstatement and payoff? Because that was my question. I just want to make sure that was your understanding. 11:17

A No.

Q All right. So you were referring to all checks received related to particular defaulted loans even if those came from third parties; correct? I'm trying to get an understanding. Your -- your -- all of these checks are coming in and you are processing them. We were talking about reinstatement and payoff. 11:17

A Yes. 11:17

Q So those checks would be typically from borrowers; correct?

A No.

Q All right.

What percentage of them would you estimate, say, from 2008 to 2011 were from borrowers? 11:17

A I couldn't give a -- a specific estimate.

Q Can you say where it's -- whether it's more or less than 50 percent?

A I could not. I would be comfortable 11:18

agreement with respect to Nevada borrowers on behalf of its clients?

A I don't know.

Q Do you know whether or not that's ever occurred? 12:13

A No.

Q Was that ever -- that particular function ever part of the accounting department?

A No.

Q Moving backward through Exhibit 1, go to Bates number page 106 on the lower hand-hand corner. 12:13

MR. CERAN: 6. Lower --

THE WITNESS: Where are we? What page?

BY MR. BOYLAN:

Q Look in the lower right-hand corner, the little stamped numbers it says MTC. 12:14

A Yes.

Q And then it says 106. 000106. You have to go deep into the document. Are you with me?

A Yes. 12:14

Q What is this page?

A This looks like -- I don't know if this is -- I don't know.

Q Do you see where it says "Comments" at the top for a particular loan file related to 12:15

Mr. Bijan Laghaei?
A Yes.
Q It has a Nevada file number; correct?
A Correct.
Q Do you recognize what this is from? 12:15
A This looks like it's a comment that was printed out.
Q From MTC's database; correct?
A Correct.
Q Is that called CaseAware? 12:15
A Yes.
Q And the employee involved here was under your supervision at the time, Natalie Resendiz; correct?
A Correct. 12:15
Q As the -- as the senior professional involved, can you interpret this document? Tell us what this document means.
A They are -- it's -- these are comments or it's a comment log. 12:16
Q Yes, but what does it mean? Can you explain what it means in -- in your professional way?
A It means --
MR. CERAN: Wait. Hold on. Objection. It calls for opinion testimony. There is no foundation. 12:16

EXHIBIT "2"

DISTRICT COURT

CLARK COUNTY, NEVADA

JEFFREY BENKO, et al., Plaintiffs, vs. QUALITY LOAN SERVICE CORPORATION, a California Corporation, et al., Defendants.	Case No. A-11-649857-C

DEPOSITION OF

RANDE DEAN JOHNSEN

SANTA ANA, CALIFORNIA

FEBRUARY 8, 2017

VOLUME I

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operate as a trustee.

MR. BOYLAN: Move to strike as nonresponsive.

BY MR. BOYLAN:

Q My question went back to default services. Based on your knowledge -- I'm not relating this yet to what MTC does or does not do. But based on your knowledge of the industry, does default services include collection services with respect to loans in default -- 01:26

MR. CERAN: No.

MR. BOYLAN: -- acting on behalf of the lender? 01:26

MR. CERAN: No foundation.

You can answer.

THE WITNESS: No.

BY MR. BOYLAN:

Q Have you, at any time, referred to foreclosure as a means of collecting on debts? 01:27

A I don't recall if I have. I don't recall.

Q Can you recall -- given your earlier testimony, can you recall any reason why you would have done so, if you have? 01:27

MR. CERAN: Objection. Calls for speculation. No foundation.

You can answer.

THE WITNESS: If I -- can you just repeat the back part of that question, again, ma'am? 01:28

MR. BOYLAN: Please.
THE WITNESS: Or just repeat the end.
(Record read.)
MR. CERAN: Same objections.
BY MR. BOYLAN: 01:28
Q In other words, can you recall, as you sit here, any reason why you would have said or referred to foreclosure as a means or method of collecting on debts?
MR. CERAN: No foundation. Calls for speculation.
You can answer. 01:28
THE WITNESS: It could have been, if I was doing a seminar and giving options to a loan servicer or a beneficiary, what their options are and for using foreclosure as a method. But that would probably be about the best of my recollection, sir. 01:28
BY MR. BOYLAN:
Q And if -- and that was a true statement, when you said that at a seminar, that foreclosure is a means or a method of collecting --
A It is. 01:29
Q -- on defaulted debts?
MR. CERAN: Objection. It totally misstates his testimony.
You -- you can answer.
MR. BOYLAN: We have the recording so I'm happy to let 01:29

him answer.

MR. CERAN: Yeah.

BY MR. BOYLAN:

Q Can you answer that, sir?

A You're going to have to repeat the question. 01:29

MR. BOYLAN: Can you repeat the question, please?

MR. CERAN: Of course, that -- what you just said doesn't make any sense, but -- but you can answer the question.

THE WITNESS: Can you repeat it again? 01:29

(Record read.)

THE WITNESS: It's an option. It would be an option for a loan service or a bank to go through and collect on their debts.

BY MR. BOYLAN: 01:29

Q And how exactly, according to your industry or knowledge, does it function as an option for the lender to collect on defaulted debts?

A It's one of their many options they have.

Q How does it function as debt collection is what 01:30 I'm asking you.

A I don't know how it functions as debt collection. I only know how it functions as a foreclosure trustee.

Q Okay. I'm not trying to argue with you. But I think you just said, that foreclosure is an option for 01:30

lenders to collect on debts, one of many, correct?
A It's an option for them to collect on their past due payments.
Q On the defaulted loans, correct?
A On their defaulted loans. 01:30
Q Okay. My question, now, is, how does it function as a collection mechanism?
A It functions as a foreclosure mechanism only as an option for them. I don't know how it -- I'm not -- I don't know how it operates as a collection method for 01:30 them. All I know is how it operates as a foreclosure method for them.
Q But you have told them in seminars, that foreclosure is a method or means of collecting their debts, correct? 01:31
A It's a method where they can collect on their past due payments.
Q And that methodology involves either collecting money to reinstate the loan, collecting money to pay off the loan, or in some cases, selling the property and using 01:31 the sales proceeds to pay down the loan, correct?
A No. It just means to foreclose. It means to go through and use whatever code section's available, by that particular state, in order to operate under the requirements of the note and the deed of trust to 01:31

A No.
Q Has MTC performed HOA foreclosures in Nevada at any time since 2012?
A No.
Q Why is it that MTC has continued to retain its collection agency license in Nevada since it first acquired the license in 2012? 02:26
A Based on my decision.
Q And what are the reasons for that decision?
A One, it's a difficult license to obtain. It's not the easiest license to obtain under any means. And it was just as easy to maintain it and not use it. 02:27
Q So your testimony is that, although it obtained the license in 2012 and has retained that license, MTC has not utilized that license since 2012 up until today, correct? 02:27
A We haven't utilized it for its purpose to foreclosed on homeowners association liens.
Q Have you used it for any other purpose?
A Not that I know of. 02:27
Q How did you know that it was a difficult license to obtain?
A I took the test to be a debt collector manager.
Q When did you do that?
A I started studying and looking into it in 2009 02:28

and '10. They -- I don't remember when I took the test. The test is given not very often. And it's basically on a first come, first serve or first sign-up basis. And I -- I believe I probably took it somewhere in like 2010 or '11. The exact date, I don't remember, sir. 02:28

Q How many times did you take the test?

A One.

Q Did you pass the test in 2010?

MR. CERAN: Objection. Assumes facts not in evidence. But you can answer. 02:28

THE WITNESS: I don't know the year I -- I passed it, but I passed it on the first time.

BY MR. BOYLAN:

Q And is that the same year in which, then, MTC obtained its collection agency license? 02:29

A As I said before, sir, I don't know the exact year we obtained a license. Before, what I did, is I passed a test to be a debt collect -- to the -- be the debt collection manager. Then -- then you can apply for that other license that you mentioned. 02:29

Q The collection agency license?

A Yes, sir.

Q Right. Because you understood that was a requirement. You had to have some individual who would serve as the manager, who would pass the test submitted by 02:29

BY MR. BOYLAN:

Q Okay. Well, I think we established this earlier, and it's in the record. But we're going to have to go back, because I -- I need to kind of orient you towards my questions. 02:46

I think you said earlier that in order to reinstate or pay off the loan, the borrowers had to tender the amounts due plus the fees and costs associated with the process, correct?

A Yes. 02:47

Q Okay. And that included the fees and costs charged by MTC for its work, correct?

A Yes.

Q Can you estimate how many thousands of Nevada homeowners paid those fees and costs charged by MTC as a result of reinstating or paying off their loans during 2007 to 2012? 02:47

A No.

Q Can you tell us whether it's most likely more or less than 2,000 Nevada homeowners? 02:48

A I don't know, sir.

Q I'm just asking for your estimate. I understand. Can you estimate whether it's more or less than a hundred thousand Nevada homeowners?

A Sir, I don't know. 02:48

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

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APPELLANTS' APPENDIX

VOLUME 15

Appeal from Eighth Judicial District Court
Clark County, Nevada

The Honorable William Kephart

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EXHIBIT "2"

FORBEARANCE AGREEMENT

Loan No. 8945199 Foreclosure No. NV09184051-1

THIS AGREEMENT is dated this 8TH day of JULY 2009 and is made by and between ELIAN 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 # 2001-852898, (the "Deed of Trust"); and

Whereas the Deed of Trust encumbers the real property as described therein (the "Property") (commonly known as 28 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 NV09184051-1, 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

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, 2002, (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, 2002 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, 2002, (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, 2002 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
MS SV-35
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 advise of competent counsel, and are not acting under any material disability or duress; and

16) Foreclosure No. # NV08318405-1 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 on 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) Survivorability – The provisions of this Agreement shall survive any discontinuance of the pending mortgage foreclosure action.

Dated: 8/6/09

BIJAN LAOHAFI

Dated: _____

BANK OF AMERICA HOME LOANS

By _____

Its: _____

EXHIBIT "3"

26-14-3774B 09-2005

Bank of America

Cashier's Check

No. 003108367

Remitter

Date 10/16/2009

Pay

To The Order Of

"THREE THOUSAND THREE HUNDRED DOLLARS AND 00 CENTS"

$ **3300.00**

"THOMAS CORY"

Authorized Signature

Bank of America, N.A.
Phoenix, AZ

VOID AFTER 90 DAYS

⑈003108367⑈ ⑆122101706⑆ 252563588⑈

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Bank of America

Cashier's Check

No. 003108899

91-7701221

Date OCTOBER 09, 2009

Banking Center SOUTH BEND BRANCH

0008671 00007 003108899

Remitter: RYAN LARSEN

$ **11310.00**

Pay **ELEVEN THOUSAND THREE HUNDRED TEN DOLLARS AND 00 CENTS**

To The Order Of **TRUSTEE CORPS.**
LOAN # 8845399 REPOSITIONING OF PAYMENT

Authorized Signature

Bank of America, N.A.
Phoenix, AZ

VOID AFTER 90 DAYS

⑈003108899⑈ ⑆122101706⑆ 25256358 1⑈

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THE ORIGINAL DOCUMENT HAS REFLECTIVE WATERMARK ON THE BACK

Bank of America

Cashier's Check

No. 003161

Notice to Purchaser - In the event this check is lost, destroyed or stolen, a sworn statement and we may require a bond will be required prior to replacement. This check should be negotiated within 90 days.

Date AUGUST 05, 2009

Banking Center CALDER BANKING CENTER

0008557 00001 003168367

Remitter (Purchased By) BIJAN LAGHAEI

$ **200.00**

Pay **TWO HUNDRED DOLLARS AND 00 CENTS**

To The Order Of **TRUSTEE CORP** ****

Authorized Signature

28-14-377/1220 09-2005

Bank of America, N.A.
Phoenix, AZ

VOID AFTER 90 DAYS

⑈003168367⑈ ⑆122101706⑆ 25256398⑈

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

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

QUALITY LOAN SERVICE CORPORATION, a California Corporation;

Case No. A-11-649857-C

Dept. No.: XXIX

DEFENDANT MTC FINANCIAL INC.'S SECOND SUPPLEMENTAL RESPOSNES TO RAYMOND SANSOTA AND FRANCINE SANSOTA'S INTERROGATORIES, SET ONE

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.

DEFENDANT MTC FINANCIAL INC.'S SECOND SUPPLEMENTAL RESPOSNES TO RAYMOND SANSOTA AND FRANCINE SANSOTA'S INTERROGATORIES, SET ONE

PROPOUNDING PARTY: PLAINTIFFS RAYMOND SANSOTA and FRANCINE SANSOTA

RESPONDING PARTY: DEFENDANT MTC FINANCIAL INC.

SET NUMBER: ONE

INTERROGATORY NO. 1:

State YOUR best estimate of the total amount of dollars received by YOU as payment of fees and/or costs related to foreclosure related and/or collection agency services provided by YOU as to the entirety of the PUTATIVE CLASS, as stated against YOU in the Operative Complaint in this matter.

SECOND SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 1:

In accordance with the Discovery Commissioner's Report and Recommendations, which modified the Interrogatory to state: "State YOUR best estimate of the total amount of dollars received by YOU as payment of fees and/or costs related to foreclosure related and/or collection agency services provided by YOU" -- and limited the Interrogatory to the amount of money MTC received from the services performed in Nevada for the years at issue -- Defendant responds: Defendant's best estimate is $12,317,679 in fees and $34,772,022.71 in costs incurred on behalf

of clients during the years in issue, 2007-2012.

DATED: 10 day of November, 2016.

BROOKS HUBLEY, LLP

BY:
MICHAEL R. BROOKS, ESQ.
(SBN 7287)
1645 VILLAGE CENTER CIRCLE, SUITE 60
LAS VEGAS, NV 89134

RICHARD J. REYNOLDS, ESQ.
(SBN 11864)
BURKE, WILLIAMS & SORENSEN, LLP
1851 EAST FIRST STREET, SUITE 1550
SANTA ANA, CA 92705-4067
ATTORNEYS FOR DEFENDANT MTC FINANCIAL INC. DBA TRUSTEE CORPS

VERIFICATION

I, Rande Johnsen, declare:

I am an officer of MTC FINANCIAL INC. dba TRUSTEE CORPS, a corporation organized and existing under the laws of California, which is a Defendant in the above-entitled action, and I have been authorized to make this verification on its behalf.

I have read the foregoing **DEFENDANT MTC FINANCIAL INC.'S SECOND SUPPLEMENTAL RESPOSNES TO RAYMOND SANSOTA AND FRANCINE SANSOTA'S INTERROGATORIES, SET ONE** herein and know the contents thereof. The same is true of my own knowledge, or on information and belief, and, as to those matters, I believe them to be true.

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

Executed at Irvine, California on November 10, 2016.

Rande Johnsen

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of BROOKS HUBLEY, LLP, and that on November 10th, 2016, that a true copy of the **DEFENDANT MTC FINANCIAL INC.'S SECOND SUPPLEMENTAL RESPOSNES TO RAYMOND SANSOTA AND FRANCINE SANSOTA'S INTERROGATORIES, SET ONE** 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:

- Bryan Cave, LLP – Jessica R. Maziarz, Julie Martin, Kathryn Brown, Lawrence G. Scarborough, Lisa Kirkeby, Mary Ann Vila, and Sarah Burwick
- Christopher Legal Group - Shawn Christopher, Esq.
- Law Office of Nicholas A. Boylan, APC – Nicholas A. Boylan, Esq., Marina Vaisman
- McCarthy & Holthus - Kristin A. Schuler-Hintz, Esq., Thomas N. Beckom, Esq.
- Smith Larsen & Wixom – Elise Fossum, Katie Weber, and Kent F. Larsen, Esq.
- Tiffany & Bosco, P.A. - Gregory L. Wilde, Esq., Kevin S. Soderstrom, Esq.

Via U.S. Mail to:

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

An employee of BROOKS HUBLEY, LLP

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 February 3, 2017, I served a true and correct copy of the foregoing:

- **NOTICE OF MOTION RE PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT**
- **PLAINTIFFS' (SANSOTAS) MOTION FOR PARTIAL SUMMARY JUDGMENT AGAINST MTC FINANCIAL, INC.**
- **PLAINTIFFS' SEPARATE STATEMENT IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT**
- **DECLARATION OF NICHOLAS A. BOYLAN IN SUPPORT OF PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT (EXHIBITS "A" – "L")**

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/ Michele L. Cullen
An Employee of Nicholas A. Boylan

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CLERK OF THE COURT

TRAN

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

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

BEFORE THE HONORABLE BONNIE BULLA, DISCOVERY COMMISSIONER

FRIDAY, FEBRUARY 17, 2017

TRANSCRIPT RE:
DEFENDANT CALIFORNIA RECONVEYANCE COMPANY'S MOTION FOR PROTECTIVE ORDER REGARDING INTERROGATORY NO. 18

STATUS CHECK: COMPLIANCE / PRODUCTION / INTERROGATORY NO. 18 / UPDATE ON DEPOSITIONS

APPEARANCES:

For the Plaintiffs:	NICHOLAS A. BOYLAN, ESQ. (CourtCall) SHAWN CHRISTOPHER, ESQ.
For Defendant Quality Loan Service Corporation:	KRISTIN A. SCHULER-HINTZ, ESQ.
For Defendant California Reconveyance Company:	LAWRENCE SCARBOROUGH, ESQ. KATHRYN E. BROWN, ESQ. KATIE M. WEBER, ESQ.
For Defendant MTC Financial, Inc.:	ALLAN E. CERAN, ESQ. JESSICA E. PERLICK, ESQ.
For Defendant National Default Servicing Corporation:	KEVIN S. SODERSTROM, ESQ.

RECORDED BY: Debra Winn, Court Recorder

CLARK COUNTY, NEVADA FRIDAY, FEBRUARY 17, 2017

PROCEEDINGS

(PROCEEDINGS BEGAN AT 10:53 A.M.)

DISCOVERY COMMISSIONER: Benko. CourtCall Operator?

COURT CALL OPERATOR: Counsel, your line is open.

DISCOVERY COMMISSIONER: Can I have my CourtCall counsel state their appearance, please, for the record? And then everyone else needs to state their appearance and who they represent.

COURT RECORDER: And speak up.

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

DISCOVERY COMMISSIONER: Good morning, Mr. Boylan.

MR. CHRISTOPHER: Shawn Christopher also representing the plaintiffs.

MR. SCARBOROUGH: Good morning, Your Honor. Larry Scarborough and Katie Brown from Bryan Cave, working for CRC. And we also have Katie Weber.

DISCOVERY COMMISSIONER: Good morning.

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

MS. PERLICK: Jessica Perlick, Bar Number 13218, also for MTC.

MS. SCHULER-HINTZ: Good morning, Your Honor. Kristin Schuler-Hintz. Bar Number 7171, on behalf of Quality Loan Service Corporation.

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

COURT RECORDER: You need to speak up or stand by the microphone.

MR. SODERSTROM: Good morning. Kevin Soderstrom for National Default Servicing Corporation. Bar Number 10235.

DISCOVERY COMMISSIONER: Thank you so much. First, let me apologize and just say I'm sorry I can't give you CLE credit for the last case. I hope perhaps it was somewhat instructive.

With respect to what is before me today, I believe actually the motion might be moot, but I need to double-check with plaintiff's counsel on that because I did read the supplement that was provided by CRC and it appears to me that what I was concerned about, although I recognize it's not information they have direct control over, it came from Wells Fargo, I believe.

MR. CHRISTOPHER: Chase.

DISCOVERY COMMISSIONER: Chase. I get those banks confused. I apologize. Chase. But I believe it addresses the concerns that I had wanted to have addressed earlier.

MR. SCARBOROUGH: Your Honor, Larry Scarborough for CRC. I think you were probably directing that to Mr. Boylan.

MR. BOYLAN: Your Honor, shall I speak to that?

DISCOVERY COMMISSIONER: Just a moment. I'm sorry, go ahead.

MR. SCARBOROUGH: But I was saying, from our perspective we're certainly happy -- they're mirror-image motions here. You have a motion for a protective order and then the continuation of the motion to compel.

DISCOVERY COMMISSIONER: Correct.

MR. SCARBOROUGH: We're certainly happy to withdraw the protective order motion based on the supplement that we provided.

DISCOVERY COMMISSIONER: And just so we're clear, what I had done last time when we were here, I had continued the motion concerning Interrogatory 18 to today's hearing, and then I had the countermotion for a protective order on that interrogatory.

So I just want to make sure, Mr. Boylan, from the information that has now been provided by CRC, that addresses my concerns about insuring that you had that type of information available to you. I recognize it's not directly from CRC, but I think it's probably sufficiently valid for the purposes today. But I need to hear from plaintiff's counsel on that.

MR. BOYLAN: Appreciate that, Your Honor. And if I'm talking too soft or too loud, please let me know and I'll adjust.

DISCOVERY COMMISSIONER: We will let you know.

MR. BOYLAN: From our perspective, as I mentioned in a letter to Mr. Scarborough yesterday, it seems to raise as many questions as anything. For example, the verification is not based on personal knowledge, it's based on information and belief. The content of the interrogatory response I'm sure they would later contend is inadmissible if they say that they can't even comment on whether it's accurate or complete. And from looking at the dollar figure, 3.5 million dollars, it's very, very likely inaccurate and incomplete.

DISCOVERY COMMISSIONER: If anything, I think it's more than what I figured because I extrapolated the 2,000 with 10,000 cases and that's 2.2 million, so I think actually that number was higher than what I thought it would be.

MR. BOYLAN: Well, the best independent information, and you may recall you had asked -- in fact directed CRC to report to you today on what are the actual

number of files in Nevada from 2007 to 2012. They have not provided you that information. You also asked them to report on how much time it would take to load those files onto a disk so that they could be reviewed by plaintiff's counsel. They have sidestepped all of that by giving a number, which they say themselves they don't know if it's accurate. But even if you assume only 7,000 Nevada files during the relevant period, from what we've seen the typical cost on these, cost and fees, is somewhere in the neighborhood of $1,500 to $2,500. So at a minimum you'd be thinking about 15 million dollars.

There's another issue, too, because although Chase was their only -- was their primary customer in Nevada, Chase was not their only customer. So it appears they've given us data only with respect to Chase. If you compare this, for example, to the other defendants, for example, QLS reported a figure of 106 million dollars during the relevant period. So the 3.5 million, as they perhaps suggest, is likely very inaccurate. From our perspective we don't -- and I've written Mr. Scarborough on this, we don't know who they got this data from, how it was mined, what sources, who we can depose in order to pursue this matter. And based on the verification and the content of the interrogatory, we see this as essentially a non-answer. They have not given an answer. They have given a hearsay statement that they say they don't know the methodology, they don't know if it's accurate. And on its face the number seems very low.

So what I would perhaps ask the Court to do is to defer on this again until we can get the documents and take the deposition testimony needed to get to the source on this.

DISCOVERY COMMISSIONER: Well, Ms. Crawford gave a declaration

where she explained the difficulty of having to use the system that we were all talking about before, which -- I wrote it down.

MR. SCARBOROUGH: FANDS, Your Honor.

DISCOVERY COMMISSIONER: FANDS. F-A-N-D-S, capitalized. The FANDS system. And she discusses that it is not that easy when it's archived because you'd have to go through them manually and there are arguably a number of files.

MR. BOYLAN: Your Honor, I think what you mentioned at the last hearing is that they need to give you some specific report on what time and effort it would take to do that. But more importantly here, all of the other defendants got the information in a matter of minutes from the accounting records and files. This woman's declaration doesn't deal with where the information would most likely be in a quick and easy, accessible form.

DISCOVERY COMMISSIONER: Because it isn't.

MR. BOYLAN: The example we gave you, for example, from the deposition of NDSC, the principal there was able to get the information from Peachtree, from their accounting software, in about twenty to twenty-five minutes.

DISCOVERY COMMISSIONER: Okay. But this -- this is not this company.

MR. BOYLAN: So that declaration, frankly, doesn't answer anything.

DISCOVERY COMMISSIONER: Mr. Boylan, I know it's hard being on CourtCall and I apologize for interrupting you.

MR. BOYLAN: I'm sorry, too.

DISCOVERY COMMISSIONER: But this is not that company. We have to look at CRC on its own merits. They no longer operate in Nevada, so everything

is archived. So that's the problem. And I believe the accountant gave an affidavit or a declaration as well that he does not have that information. Is that correct?

MR. BOYLAN: No, Your Honor. They had mentioned before that Mr. Santos was the man but he's in the Philippines. Now they've recently told us for the first time, and I think it was yesterday, they've told us and the Court that Mr. Santos does not have that information. There is no declaration from any person with accounting responsibility. And now -- for our purposes it's a constantly moving target. Now we're told Mr. Santos doesn't have the information, either. We are not told who it is.

Also, I think, Your Honor, under possession, custody or control CRC still has the right to possess this information. This was shared data with Chase. And under their contracts and based on the shared ownership, CRC effectively, I think under the authorities, has possession, custody or control of this information, notwithstanding that its corporate owner, you know, has the physical repository. I think it's no different than if they had to call their accountant and get the information from their accountant. That would still be within their possession, custody or control.

So from our perspective all the things you asked them to do, they've dodged all of that. They didn't provide the number of files. They didn't provide the time. They provided no information about accounting sources, which you did mention at the last hearing, too. So they've dodged everything you've said and they've given us a number that they will say is inadmissible hearsay and which we believe is suspect. So we are probably going to have to, with your permission, I've already started the meet and confer process on this. We may have to have some additional motion practice, first, in order to get the depositions and the accounting documentation, and then to present all that to you when we can get the actual

testimony, because what we have here is unreliable and I think they will contend is inadmissible.

DISCOVERY COMMISSIONER: Thank you.

Let me hear from CRC's counsel, please.

MR. SCARBOROUGH: So, Your Honor, we have several things going on here coming out of the last hearing, most of which were instructions that you issued to me personally. We were both there, we both have the transcript, on things you wanted to know. And you wanted an officer of the court, and that would be me, to stand in front of you today and answer your questions. So I'm here to answer all of your questions. I thought one of the -- to start, the first one you asked was an understanding -- and I want to draw a hard line here, not against the Court or Mr. Boylan or anybody else -- I do not represent Chase.

DISCOVERY COMMISSIONER: I understand.

MR. SCARBOROUGH: Chase is a third party. And Mr. Boylan is correct, says he started a meet and confer process with me about what Chase might do. I can say right here, right now the answer is Mr. Boylan knows how to conduct third party discovery and I can't be an impediment and I can only do what I can do. But Your Honor ordered me at the last hearing to go talk to Chase, to procure the number, and I absolutely did that.

DISCOVERY COMMISSIONER: Yes, you did.

MR. SCARBOROUGH: CRC asked. We got the answer. The other thing that Mr. Boylan raised, and I don't know if I mentally filed each of the things that he raised, but there's the issue of Mr. Santos, which we did put in our compliance report because, again, Your Honor said if that's the accounting person who was

responsible at CRC, who's represented by another lawyer, Heather Stern, in California, then you, Mr. Scarborough, should ask that lawyer to ask Mr. Santos. We've done that. Mr. Santos reported to Ms. Stern, Ms. Stern reported to us, and what Mr. Santos says -- and of course, I didn't talk to Mr. Santos, but what we were told was he didn't have the knowledge or the information to compile the fees and costs number that is at the root of Interrogatory 18 as you rephrased it during the course of our proceedings here.

Mr. Boylan is absolutely correct, he sought the deposition of Mr. Santos. Mr. Santos happens to be in the Philippines. There might have been talk about doing it on the phone. Certainly this is not the kind of case where anybody would go to the Philippines for this; let's be pragmatic. And I think, but I don't know, that where Ms. Stern and Mr. Boylan left it is that when Mr. Santos comes back in the middle of March there will be a deposition time arranged and whatever Mr. Santos did as the accounting lead at CRC can be examined in full in California where he resides.

So that takes care of that aspect of the report, and then I am more than happy to answer anything else that the Court wishes to know. Obviously there are two ways to go about getting this number. One was to do what Your Honor suggested, which was to go ask Chase and have them present a number, which they did. Mr. Boylan is correct, we don't have a view into their methodology. And I disclosed that forthrightly. Don't know what they looked at, but we know what we asked them: What were fees and costs during the relevant period? Relevant period isn't a trick. Mr. Boylan for plaintiffs has defined that '07 to '12. I don't know what data they had. I don't know what data they consulted. So that goes that far

on the items that Mr. Boylan raised. If there was another one that you wanted to hear about, ask me and I will be able to report on it.

DISCOVERY COMMISSIONER: What about the issue that Mr. Boylan raised that there were other banks that were -- that CRC worked with other than Chase.

MR. SCARBOROUGH: That appears to be the case. Ms. Brignac, whose deposition transcript -- I'm not saying you've read it or looked at the video, but you have it. You ordered us to provide it. Ms. Brignac didn't identify, to my recollection, who those were. This was a wholly-owned operation from Chase to CRC. There is talk of other customers. The lion's share, the overwhelming volume came from Chase. I don't know what those were. And in terms of our on-going obligations on disclosure -- and I did attend the CLE portion of this morning's proceedings and am mindful of what our requirements are -- we have not been able to come up with the other ones. But I know there was testimony, and as we continue to step through, if we come up with any of those we certainly are going to disclose them.

DISCOVERY COMMISSIONER: Thank you.

Does anyone have anything further to add on Interrogatory 18 that was served on CRC? I'm going to grant the motion for a protective order for now.

Mr. Boylan, take your deposition. If you learn more information, if there's an easier way to provide the information that you need, please come back and see me on it. With respect to the interrogatory itself, I am going to protect it. I'm going to grant the motion for a protective order. And I'm going to deny the motion to compel without prejudice as to Interrogatory 18. And who's going to prepare my Report and Recommendation on that?

MR. SCARBOROUGH: I'm happy to volunteer.

DISCOVERY COMMISSIONER: That would be wonderful. I will need it in ten days and please run it by your colleagues to approve as to form and content.

MR. SCARBOROUGH: Of course, Your Honor.

THE CLERK: Status check is March 24th at 11:00.

DISCOVERY COMMISSIONER: Before we --

MR. BOYLAN: Your Honor, Nick Boylan. The only thing I would ask on that, so that we don't have another dispute about what should be in the recommendation, I just wanted to ask, please, if Mr. Scarborough would include that we may -- you know, not withstanding the ruling, we may proceed to gather the evidence by deposition and come back as needed. I just don't want to have to argue about that later, about whether that should be in the Report and Recommendation because that's very important to us and we appreciate that very much.

DISCOVERY COMMISSIONER: Well, Mr. Scarborough I think said and indicated that he was confident you could do your third party discovery, so I don't know if that's what you're talking about here.

MR. SCARBOROUGH: Yes. Confident -- I'm confident Mr. Boylan knows how to pursue third party discovery. I don't have -- I just can't -- I'm not retained by Chase. I have no authority to speak for Chase. What Mr. Boylan does with Chase is going to have to proceed on whatever path it proceeds. But I know Mr. Boylan knows how to institute third party discovery emanating from a Nevada case.

MR. BOYLAN: Well, Your Honor, if I may.

DISCOVERY COMMISSIONER: I don't have a problem if we add this in no way hinders any party from conducting necessary third party discovery in the Report and Recommendation.

MR. SCARBOROUGH: That is absolutely -- I guarantee we will put that in the Report and Recommendation.

MR. BOYLAN: Appreciate that, Your Honor. Just as a point of information, we talked to you about this before and unfortunately it's going to affect -- I know you're trying to do your job and get this case on track, but you had previously, I think, suggested to Mr. Scarborough that he work and cooperate to get these witnesses produced that are former employees and are now at least ostensibly represented by other law firms. Just a short report on that. I'm afraid that we're going to need your help and it's going to take many months because we've been referred to two different lawyers for former employees, even clerical employees, and those lawyers are saying we have to issue California subpoenas.

DISCOVERY COMMISSIONER: You will.

MR. BOYLAN: But they typically --

DISCOVERY COMMISSIONER: Just go subpoena them in California. Domesticate -- you'll have to issue the subpoena out of the court of Nevada and domesticate them in California and take their depositions. If they're represented by --

MR. BOYLAN: Yes, but here's the problem.

DISCOVERY COMMISSIONER: Yes?

MR. BOYLAN: Here's the problem is they won't give us dates or weeks and then when they do give us a date it's at the last minute --

DISCOVERY COMMISSIONER: Pick a date.

MR. BOYLAN: -- and there's not enough time --

DISCOVERY COMMISSIONER: Pick a date 30 days out. Pick a date and set them.

MR. BOYLAN: Yeah, we're going to have to because they're just --

DISCOVERY COMMISSIONER: That's fine.

MR. BOYLAN: -- it's become a shell game. We can't get any witnesses. They keep switching the dates and then we have to redo the subpoena.

DISCOVERY COMMISSIONER: Well, let's not blame defense counsel for that. If there are other parties that he has no control over, other former employees, etcetera, then subpoena them. That's what you need to do.

MR. BOYLAN: The other thing on that --

DISCOVERY COMMISSIONER: And they'll have to move to quash the subpoena in a California court.

MR. BOYLAN: Yes. But, Your Honor, notwithstanding your orders and including you just ordered this again on the case that we had the CLE tutorial on one case earlier, they won't give us the -- they won't give us the last known address for these former employees so we can subpoena them. They tell us we have to speak to the lawyers, and frankly, we don't even think the lawyers represent them. So we're getting blocked at every turn.

DISCOVERY COMMISSIONER: Okay. So just a little tutorial here, 16.1 requires the parties to identify the witnesses that may have knowledge -- may have knowledge and their addresses and telephone numbers. So for those of my corporate attorneys here who have corporate clients, if you have former employees give the last known address.

MR. SCARBOROUGH: So let me be clear about that. Those -- the individuals Mr. Boylan is talking about, they're not represented by two different sets of lawyers. The amount of half truth is thick in what was just said. I'm not going to

deconstruct it for you. You don't have time and probably not the interest. But what we have done from a 16.1 perspective is we've identified each person within this small group. He hasn't asked for all employees. It's a small group of people he wishes to depose. They happen to be represented by counsel. We've disclosed the person, care of their particular lawyer. One lawyer per person. It happens to be split into two groups for reasons that are historical and I don't even begin to understand. And Mr. Boylan can pick up the phone, talk to the lawyers. I know enough to know that the lawyers have said they would accept the subpoenas. I know enough to know that dates have been exchanged, which would get into my deconstruction of the half truth or misrepresentation that's been made. So I don't understand in terms of my -- sorry to be frustrated -- in my offer to the Court --

DISCOVERY COMMISSIONER: Welcome to my world.

MR. SCARBOROUGH: -- to try to facilitate scheduling because Mr. Boylan does have a fair amount on his plate. He has the depositions that deal with all the other defendants. There are depositions of all the plaintiffs he's representing. We've tried to be a conduit for Mr. Boylan to the lawyers to find dates on Mr. Boylan's calendar when he is free, and then we put them into close contact. The rest is not for us. These people are in California. They're former employees. They're represented by individuals.

DISCOVERY COMMISSIONER: So here's my suggestion, for all it's worth.

MR. BOYLAN: Could I comment briefly first, please, Your Honor?

DISCOVERY COMMISSIONER: No.

MR. BOYLAN: You know my work in this case. You know we've done --

DISCOVERY COMMISSIONER: No, you can't comment. I'm going to finish

my sentence or my thought before I lose it. So here's what I'm going to recommend that you do. You and Mr. Scarborough work together to find out when you both are available. I can't address everybody because it's a huge case, a lot of lawyers, but you two figure out when you're available. You make sure it's at least 20 to 30 days out. You prepare your subpoenas. You serve them directly on the lawyers. You don't need to domes-- if they're going to accept service, then just serve the subpoenas directly on the lawyers for those employees.

And they'll let you know whether, number one, they really are accepting service. And if they're not, then you -- and if they're not going to represent them, then you'll have to domesticate your subpoena in California and serve it. And number two, if the date doesn't work for them, then you can let them know that Commissioner Bulla then requires that they provide dates by which the witness will be available for deposition, and failure to do so will result in potential sanctions. So I'm fine with that, but that's the way to handle it. Let's get those witnesses served with a subpoena --

MR. BOYLAN: Thank you, Your Honor.

DISCOVERY COMMISSIONER: -- through their lawyer.

MR. BOYLAN: Thank you, Your Honor, very much, and I'm happy to do that. As you may know, we've only -- in a year we've only been able to take one CRC deposition. So I'm sure you know that's not because of me. I mean, we --

DISCOVERY COMMISSIONER: Well, listen, it's not necessarily because of CRC. You have had a lot of procedural problems and I don't want to start going through the list. And I'm not blaming anyone, okay. I'm not sitting here and I'm not going to blame the lawyers involved. There were a lot of issues that happened in

this case. Unfortunately the procedural history has been very difficult. But let's not blame each other. I mean, I'm going to say this lecture one more time. Your clients hired you to be the voice of reason. That means you be professional with one another. Period; end of discussion. So I don't want to hear anybody blaming anybody else right now for anything. I just want your discovery done. So serve those subpoenas on the lawyers representing the former employees and we'll go from there. Mr. Boylan, it will be --

MR. BOYLAN: Thank you, Your Honor.

DISCOVERY COMMISSIONER: -- in my record. I will enforce appropriate Rule 37 sanctions if there's a lack of compliance and a problem. Okay? I'll take care of it.

MR. BOYLAN: Understood. Understood and appreciated very much, Your Honor. And I don't know if you want to talk about this today or wait until March 8th, or if that's going to come off calendar, but there's been talk among counsel about the Phase 1 deadline. You mentioned some talk about it last time. It's pretty clear that -- I mean, if you just use this one example and there are many, to get these CRC depositions is going to take -- it's going to take months, potentially all the way through the end of the summer if we have to come to you for enforcement. But -- so that may be on the table today. I don't know if you want to address that.

And then there's just one other small thing that is a point of dispute between the plaintiffs and QLS that we'd like to perhaps ask your guidance today so we can avoid some motion practice.

DISCOVERY COMMISSIONER: So let's talk about the March 8th hearing. I believe that was the hearing I set to address the Phase 1 discovery issues. I'm

happy to address them today and vacate the March 8th hearing, if that would be everyone's preference and set out another status check hearing for 60 days. I'm happy to do that, or we can wait until March 8th and you all can meet and confer a little bit more extensively and maybe come up with a discovery plan for me to address on March 8th.

MR. BOYLAN: I think that might be good, Your Honor. I heard an indication from the defendants that they're willing to at least extend it 60 days. That's not going to be sufficient, but it's enough I think to allow us to do as you say, to take that off calendar and then come back to you either with a unified plan or opposing plans.

DISCOVERY COMMISSIONER: Well, let's just leave the March 8th hearing on calendar for now and we will address the staging of discovery at that time. Have you also been back in front of the district court judge now handling the case, and have any issues been resolved there?

MR. SCARBOROUGH: Well --

MR. BOYLAN: Your Honor, he has set up a hearing on the key motions for the 14th of March. And I think he mentioned and/or his clerk mentioned that they cleared pretty much the entire calendar for us for that day. And he indicated that he really wanted to kind of get his arms around the case.

DISCOVERY COMMISSIONER: Would it make sense if you have to be here for those hearings, which, Mr. Boylan, I'm assuming you would want to be, for me just to move the March 8th hearing to the 15th? And then you can come and see me --

MR. SCARBOROUGH: I'll be -- I appreciate the courtesy the Commissioner always shows to us on scheduling. I'll be arguing in another courtroom on the other

side of the country on the 15th.

DISCOVERY COMMISSIONER: That will be a problem for you, unless you can clone yourself quickly.

MR. SCARBOROUGH: That will, but that's the way it goes. I would be more than happy to leave it, speaking for myself, on the 8th.

DISCOVERY COMMISSIONER: On March 8th. Let's leave it on March 8th and we will address the issues then. I'll see what I can find out, too, from the court at that point. So, we'll address these issues on March 8th with respect to the timing of the remainder of the discovery. So, Mr. Scarborough is going to prepare my Report and Recommendation from today's hearing on Interrogatory 18.

My last problem that I do need to talk about today, unless you have other issues you want to address, is the Report and Recommendations from the January 11th hearing. I would like to have had one Report and Recommendations, but I would like to sign one today. That would make me happy. And I looked at both of them and I'm not -- and I did -- and, Mr. Boylan, I appreciate your cover letter, that helped me a little bit, but I just need to understand -- it doesn't seem like we have a great deal of conflict between the two, but I am a little bit concerned about where we can't agree, and can we work that through so I can sign one of these Report and Recommendations?

MR. SCARBOROUGH: Your Honor, I'll be happy to speak to CRC's difficulty with plaintiff's version. I first would say from our perspective we agree there's not a lot that separates them. The two things that are important to us in Mr. Boylan's draft are the statement that we were ordered as part of what you ordered us to do, not relating to the colloquy back and forth that we have and the spirited arguments we

have in your courtroom, but Mr. Boylan has in there that we were ordered to provide how many Nevada citizens were contacted by CRC. That was not a part of your order, in our estimation. And of course, what would it do? It would take us right back to the file-by-file archive data and a look at the notes fields of each of them, which would be an enormous burden and expense. That wasn't part of Interrogatory 18, and we've given you a cite to that.

And my only other piece from us is sometimes, and this I suppose is sort of a complaint, sort of not. Plaintiff's version often says that we have to produce everything, dash, formal or informal, and without getting into another CLE on what our discovery obligations are, which quite clearly are to look at places that are reasonably likely to contain responsive information with respect to each of the types of discovery, we're just very worried that this kind of -- and I will call it loose language for these purposes, will end up in a Report and Recommendation, then will be used against the defendants and there will be sanctions motions and motions to compel. And we just want to do and we know we're required to do what the rules require, not what verbiage like that may seem to suggest.

DISCOVERY COMMISSIONER: Okay. So we all know that loose lips sink ships, and sometimes I try to lighten things up and I am afraid that my sense of humor sometimes might be misconstrued as an order, and I certainly don't want that. I'm going to have to keep my day job, so I guess I'm going to have to give up on trying to be light and lighten things when they get too difficult in here, which is unfortunate. But I need to know the point of the transcript, Mr. Boylan, and I do have it in front of me, what you believe constituted -- you know, what you all are in disagreement with.

MR. BOYLAN: I have the transcript in front of me, Your Honor, but I was not aware of that particular point of dispute. I can try to dig it up quickly, but I don't think I have that tabbed.

DISCOVERY COMMISSIONER: So, on page 4 of your Report and Recommendations at the very bottom, line 27-28: "Commissioner advised counsel for CRC that the Court will want to know how many citizens were contacted by CRC and what fees CRC earned from its work in the state of Nevada."

MR. SCARBOROUGH: The latter part we obviously agree was 18.

MR. BOYLAN: Yes. And on that, Your Honor, I think Mr. Scarborough has not described the intention correctly. Contacted means basically any which way, so they don't have to search each individual file. They can do searches for Nevada addresses where they made contact in the form of a notice of default or notice of sale.

DISCOVERY COMMISSIONER: I think that's --

MR. BOYLAN: So I don't think that's what you --

DISCOVERY COMMISSIONER: No. That's beyond what I intended for this hearing because, again, I did continue Interrogatory 18 to today. So, can someone point me to the place in the transcript where I indicated that they needed to -- I might have said this may be the issues the Court wants to know, thinking in advance, but I don't know if I specifically ordered that or how I said it. And so I have to apologize to you all if somehow I wasn't clear or caused a problem.

MR. BOYLAN: I'm sorry, Your Honor, I'll try to find it real quickly. I'm paging through it.

DISCOVERY COMMISSIONER: Yeah. I'm looking, but I don't know where

we're at. Does anybody know?

MR. SCARBOROUGH: 52, Your Honor, at the very top. And this was right at the point we began talking about 18. As you recall, there were other things at issue back in January. So on 51 at the bottom you say, "Let's focus on Nevada," and then the "Here's my concern" statement at the top of 52.

DISCOVERY COMMISSIONER: Okay.

MR. BOYLAN: Yes, Your Honor, that is where it is. And it's not comedy. That was a clear statement by the Court.

DISCOVERY COMMISSIONER: I'm beginning to wonder these days. All right. So, my thought was that they would need to know how many citizens were contacted.

MR. SCARBOROUGH: And that wasn't part of Interrogatory 18. You can see my response there. We got into, well, that's Phase 2, not Phase 1, which deals with our policies and procedures, and from the plaintiff's perspective the validity of their claims. So that's not even a piece of discovery that was, to be a little technical about it, was in front of us because that's not what Interrogatory 18 was about. Eighteen was about a number, an estimate on fees and costs, and that's what we just resolved. So this is something additional, and when you go to Your Honor's order, which is more toward page 57 as it related to us, you won't see that appear again.

MR. BOYLAN: If you look, Your Honor, at the top of page 55, you tried to press on this and they, from our perspective, respectfully, they dodged it completely. You say, "I need to know from JPMorgan what type of time-consuming activity they think this would involve." And then you also say --

DISCOVERY COMMISSIONER: I'm confident, Mr. Boylan, they've answered that question. I do --

MR. BOYLAN: But then you also indicated you needed to know who the accountant and the bookkeeper or manager was.

DISCOVERY COMMISSIONER: Which they've told us.

MR. BOYLAN: They now say that's not Mr. Santos, apparently. It's very unclear, the messages we're getting from these folks.

DISCOVERY COMMISSIONER: No. I think it is Mr. Santos. He's just been in the Philippines. He's coming back and he'll be available for deposition in March.

I do think, in all fairness to plaintiffs' counsel, I did in fact say that I think the Court is going to want to know about the number of contacts. Now, I think on a very practical level once -- if and once the class becomes certified that information is going to have to be provided, and that's why we talked about the Phase 2 discovery. But I also think, and I envisioned this and I did not make it clear that my idea was how difficult is it to get this information. And I don't know if I have a direct answer yet on the number of people that were called by CRC. I don't know if I have that answer. I know it's difficult to be able to obtain the information on -- and I'm confident that protecting Interrogatory 18 at this point is appropriate, but that doesn't mean at some point we're not going to have to address it.

MR. SCARBOROUGH: And I agree with that, and if it's going to be a Phase 1 consideration and that's what Your Honor is thinking, then we would -- I know enough right now but I don't know everything to know that that burden would be even more substantial than trying to get the number. And I can explain that and if you want me to be prepared to do that on the 8th, I will.

DISCOVERY COMMISSIONER: I think it's going to depend in part on what the judge does with your substantive motions.

MR. SCARBOROUGH: I think that's absolutely true. If phasing is undone, then so much of this is going to be somewhat moot. If it's retained, it's going to be very germane. And it's absolutely clear that motion is on for the 14th.

DISCOVERY COMMISSIONER: I just can't fault the plaintiff for including the language in his Report and Recommendations because I said it.

MR. SCARBOROUGH: And I don't fault it for being included, but as it wasn't part of the order, I didn't want to be under a Report and Recommendation order that I had to do that right now, since that's a whole different -- again, my non-legal term, different kettle of fish.

DISCOVERY COMMISSIONER: So I will figure out how best to address that when I look at the Report and Recommendations. I'll make a decision on it.

Probably, Mr. Boylan, what I'm going to do is something to the effect of this information does not need to be provided in Phase 1 but will need to be readdresed in the future. I'll drop a footnote because that -- and I don't fault you, sir, at all for including it because I did say that.

MR. BOYLAN: Thank you, Your Honor.

DISCOVERY COMMISSIONER: All right. What is the other problem with the Report and Recommendations? Was that it?

MR. CERAN: Your Honor, Allan Ceran for MTC Financial. I guess the problem that I had -- I had a couple problems with the plaintiff's proposed order. One was the general problem of either by design or by accident Mr. Boylan did not provide cites and references to what he was asking. We did. When the defendants

provided their proposed order, theirs cites the reasons because we're confident that what we've set forth actually corresponds with what the Court ordered.

Secondly, in Mr. Boylan's -- and I don't have his proposed order in front of me and I apologize for that, but what I remember is the level of detail that he was putting into the order about what MTC or what counsel for MTC was supposed to do in order to comply with certain directives of the Court. I mean, for instance, there was some language like MTC's counsel has to talk to so and so and report back on what he found out, all of which would -- sort of gets in the way of attorney-client privilege that we all know about and also attorney work product. I'm fine with getting directives on what we have to do. I'm not so sure that it's necessary or appropriate that I'm in a position where I then have to report back on what conversations I've had with my client and what efforts I've actually made. And I don't think that was the intent of the Court when the Court made its ruling to have that kind of micro-management. I think that the Court's intent was that, you know, get this done. And that's I think a major difference between what the defendants have proposed in their order and what the plaintiff has set forth in his proposed order.

MR. BOYLAN: Your Honor, page 8 of our proposed order I assume is what counsel is referring to, but it doesn't support that interpretation. It even says they can do a privilege log. It doesn't in any way require them to reveal privileged or work product information. I'm looking at it. Mr. Ceran has not cited any particular language, but I have it in front of me and it doesn't seem to do any of those things.

DISCOVERY COMMISSIONER: Well, I will take into consideration what you've advised me of today and I'll make modifications to one of the Report and Recommendations and I'll sign it. Let's move on. There's one other issue. I believe

it deals with QLS. Is that right?

MR. BOYLAN: Yes, Your Honor. If I may, on this issue we have -- there's been a few depositions of the QLS plaintiffs in the case. All of those so far have taken place in Nevada. But we have one couple that relocated to California and they're within an hour of San Diego, and those folks would be the only exception. We've got one or two others that are scheduled for Las Vegas, but these folks have some problems. The mother is -- she's a stay-at-home mom. She's got an 11-year-old. She prepares him, takes him to school, picks him up. And they want to depose both her and the husband, but Ms. Schuler-Hintz has indicated that it must be in Las Vegas.

DISCOVERY COMMISSIONER: So what case controls, counsel?

MR. BOYLAN: Pardon me?

DISCOVERY COMMISSIONER: What case in Nevada controls this issue, counsel?

MR. BOYLAN: Yes. We have -- I have that in front of me, Your Honor. We have the case that you cited, Okada.

DISCOVERY COMMISSIONER: Okay.

MR. BOYLAN: And it seems, as I read it, to give you pretty wide discretion to consider a number of factors.

DISCOVERY COMMISSIONER: Yes, it does.

MR. BOYLAN: And there's a lot of ways to balance it. And obviously the residence of folks, the burden, you know, who must travel and all that can come into play. And I'm afraid with these folks -- you know, I would hate to lose them, have them literally walk away from the case because they can't just appear --

DISCOVERY COMMISSIONER: Can you state their --

MR. BOYLAN: -- and be in Las Vegas for --

DISCOVERY COMMISSIONER: I'm sorry. Can you state their names for the record so we know exactly who we're talking about, please?

MR. BOYLAN: Yes. Thank you, Your Honor. It's Camilo and Ana Martinez. And so, as you might -- you probably wouldn't be aware, but the depositions that the plaintiff has taken so far in the case have been by an associate, and my understanding is not only is QLS based in San Diego but they've got 14 lawyers here. And we did their CFO here in my office, actually, because that was convenient for QLS because literally the CFO's office is only a few blocks from my office. And an associate attorney appeared for the deposition of the QLS CFO in my office. So --

DISCOVERY COMMISSIONER: Everybody knows this is a Nevada case, right, so you still have to be a licensed Nevada lawyer.

MS. SCHULER-HINTZ: Yes, Your Honor. The attorney that appeared flew out from Las Vegas. It's Mr. Beckom, who's appeared in the hearings before you.

DISCOVERY COMMISSIONER: Thank you.

MR. BOYLAN: And, yeah, I think there's dual admission by a number of lawyers, Your Honor, and I think --

MS. SCHULER-HINTZ: That's actually incorrect, Your Honor. There's no other licensed Nevada attorney in California other than Mr. Holthus.

DISCOVERY COMMISSIONER: So this is a hardship issue. Okada does give the Court a fair amount of discretion. We are not talking about going to the Philippines, we're talking about California. The last time I checked it was part of

the United States. In addition to which, the last time I checked it was in the Pacific Time Zone. So if you run into trouble during the deposition, you're welcome to call me because we are on the same time as California.

Number two. If I have a situation where I have parents with a young child that makes it cost and time prohibitive for them to travel, even though they're plaintiffs in this case and the general rule is that the plaintiffs do come to the jurisdiction for deposition because they've brought the lawsuit, but there are options that I have exercised in the past where there is a hardship issue, including taking the depositions by way of video conferencing, which, believe it or not, as you can see from the large screen in my courtroom or hearing room, actually works fairly well.

MS. SCHULER-HINTZ: Your Honor, may I speak to the hardship issue? I'm sorry.

DISCOVERY COMMISSIONER: Yes, you may.

MS. SCHULER-HINTZ: The Martinezes purchased the property. All of the foreclosure notices in this case actually went to them in California. So they --

MR. BOYLAN: I'm sorry, Your Honor, I can't hear counsel.

MS. SCHULER-HINTZ: They've been -- it is my understanding that at the time when they purchased the property they were actually residing in California. So this is a property that was a second home for them, so it wasn't a hardship for them to have a second home and manage it here in Nevada. The only hardship that has arisen and the first time I've heard that there is a hardship is today in court. He has never stated that there was a hardship. He has stated an inconvenience.

DISCOVERY COMMISSIONER: Well, I suppose the fact that they got their property foreclosed on would maybe suggest that fortunes changed.

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

DISCOVERY COMMISSIONER: I'm actually more concerned about the family situation.

MS. SCHULER-HINTZ: And I do understand.

DISCOVERY COMMISSIONER: And the child and taking care of -- and being able to come over here. I don't think these depositions will be very lengthy. To force two parents to come over here when they have difficulties and hardships at home, I'm probably not going to do that. Now, if you want to take the deposition by video conference, I'm fine with that. But those are your choices. You can go to San Diego. Is that where they're located?

MS. SCHULER-HINTZ: They're located in Los Angeles, Your Honor.

DISCOVERY COMMISSIONER: Los Angeles.

MS. SCHULER-HINTZ: Your Honor, the hardship --

DISCOVERY COMMISSIONER: Do you have other depositions to take in Los Angeles?

MS. SCHULER-HINTZ: No, Your Honor.

DISCOVERY COMMISSIONER: Okay.

MR. BOYLAN: It's Corona, Your Honor, so it's about fifty minutes from San Diego. It's Corona, California.

DISCOVERY COMMISSIONER: Okay. So, one of two ways we can handle this, and I will let counsel decide how they would like to handle it. You can obviously have a video conferencing. I think that would be easier than a telephone conference. I really don't expect these depositions would go more than an hour and a half each, if that, because the issues are so very discrete, I would think, but I could be wrong.

But in any event, we can take the --

MR. BOYLAN: Your Honor, you're exactly right. When these plaintiffs' depositions, these homeowner depositions are taken by senior lawyers, they last about an hour, and if they're taken by associates they last about 90 minutes, but that is exactly correct.

DISCOVERY COMMISSIONER: So I am requesting, therefore, that we either take these depositions by video conferencing or the counsel that are involved and feel that they need to travel to California will travel to California for those depositions. Other attorneys might be present by video conferencing. So I will grant the protection for those two plaintiffs from having to be deposed in Las Vegas. Their depositions will be taken via video conferencing based on hardship issues, location. If problems arise, I would be available to address them.

MS. SCHULER-HINTZ: I'm sorry, Your Honor, just to be clear, they can be in person in San Diego?

DISCOVERY COMMISSIONER: Yes.

MS. SCHULER-HINTZ: Okay.

DISCOVERY COMMISSIONER: Yes.

MS. SCHULER-HINTZ: You said video conferencing, so I just wanted to --

DISCOVERY COMMISSIONER: Or by video conferencing.

MS. SCHULER-HINTZ: Okay. Thank you, ma'am.

DISCOVERY COMMISSIONER: Those are your two choices. You can go to San Diego in person or by video conferencing.

Mr. Scarborough, can I impose on you to include that in the Report and Recommendations?

MR. SCARBOROUGH: Absolutely you can, Your Honor.

DISCOVERY COMMISSIONER: Thank you.

Anything further today? All right. So in advance of the March 8th hearing, will you all please make an effort to work together and come up with a schedule, and then I will assist you on that day in finalizing one for the remainder of the discovery. If something changes after the hearing with the district court judge, then I will address it in the future if necessary. All right?

Make sure you cite Okada, too. Thank you.

MR. SCARBOROUGH: We will cite it.

MS. SCHULER-HINTZ: Thank you, ma'am.

MR. SCARBOROUGH: Thank you, Your Honor.

DISCOVERY COMMISSIONER: Thank you very much. You all have a wonderful weekend.

MR. BOYLAN: Thank you. You too, Your Honor. Bye.

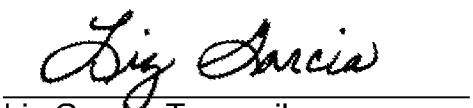
DISCOVERY COMMISSIONER: Bye-bye.

MR. CHRISTOPHER: Thank you, Your Honor.

(PROCEEDINGS CONCLUDED AT 11:41 A.M.)

* * * * * *

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



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DISTRICT COURT

CLARK COUNTY, NEVADA

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

CASE NO: A-11-649857-C

Dept. 19

PLAINTIFF' REPLY MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT AGAINST DEFENDANT MTC

Date: March 14, 2017
Time: 9:00 a.m.

Plaintiffs,

v.

QUALITY LOAN SERVICE CORPORATION, a California Corporation; 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.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

A. Plaintiffs' Motion Should Be Granted

From the beginning, this case was flipped backwards, away from determining class certification. "Phase One" discovery was ordered and severely limited to whether Defendants conducted an illegal, i.e., unlicensed, claim collection business in the State of Nevada. Accordingly, and continuously thereafter, Plaintiffs have been blocked from obtaining from Defendants all discovery related to other victims, other Plaintiffs, other witnesses with personal knowledge and experience with MTC, other potential class representatives, etc. However, fortunately, despite great discovery limitations put upon the Plaintiffs, Plaintiffs have gathered compelling evidence demonstrating that the answer is clearly "**YES**" to the Phase One question: Whether MTC's business conducted against thousands of Nevadans was an illegal business operation. As a result all Nevadans who were the object of MTC's illegal business operation, and the victims used by MTC to enable tens of millions of dollars of profit

for MTC, are entitled to partial summary judgment on the First Cause of Action (or, at a minimum, the legal issue defined for Phase One). This includes the named Plaintiff Sansotas and Plaintiff Bijan Laghaei, regardless of whether each of them, or each and every Nevadan who was a victim MTC's various types of claim collection, are viewed independently. In other words, with respect to the operation of MTC's illegal business statewide, it is not necessary that each and every victim targeted received a collection phone call, received a collection demand by correspondence, paid money to MTC, reinstated their loan with MTC, paid-off their loan with MTC, and/or lost their home to MTC, etc.

Consistent with the disgorgement of illicit profits remedy discussed below and in Plaintiffs' concurrently-filed brief in opposition to MTC's motion for summary judgment, here, the focus of the law is to disallow the illicit multi-million dollar profits obtained by MTC for its years of statutory consumer fraud, related to each and every Nevada victim who provided MTC the means to obtain the massive, illicit revenue from its lenders-clients.

Nevertheless, on this record, the undisputed facts and compelling evidence demonstrate that the illegal business operation by MTC targeted and included the named Plaintiffs Laghaei and Sansotas. (E.g., SS#30-31, 34-35, 49, 70.) And, it is absolutely undisputed that MTC achieved nearly $2,000.00 of illicit income for its unlicensed claim collection activities against the Plaintiff Sansotas (and that amount, for the Plaintiff Sansotas, and eventually the amounts for all Nevadans, must be disgorged). (SS#30.)

B. In Several Respects, The Opposition States A Misleading and/or Incorrect Description of Events

The Plaintiff Sansotas became a part of this lawsuit on October 12, 2011, when the Complaint for Damages was filed. Mr. Sansota obviously knew and was aware at that time that MTC operated an unlicensed claim collection business, and took his

(and his wife's) home from him in the process of doing so, in order to obtain a profit.[1] Also, as a matter of fact, the moving papers presented the evidence demonstrating MTC's profitable "interaction" with the Plaintiff Sansotas, specifically proving a claim collection pursued by MTC against the Plaintiff Sansotas, culminating in the taking of their home while acting as a rogue, illicit foreign claim collector in Nevada on behalf of its banking client. (E.g., SS#30-31, 49, 70.) MTC omitted the testimony of Raymond Sansota indicating that he became aware of the beginning of MTC's claim collection/foreclosure activity against him based on a collection phone call from MTC in 2010. (SS#79-80.) And, before the Sansotas relocated to Ohio in 2010, Mr. Sansota was aware based on that telephone call that the MTC process to take his home was going forward. (SS#79-80; see also **Ex. "3"**, Sansota Depo. Trans., at pp. 28, 29, 34-38, 47-48).

II. ARGUMENT

A. Plaintiffs' Motion Is Not Procedurally Defective

MTC mistakenly suggests that Plaintiffs' Motion must be denied because it is based on a pleading—Plaintiffs' Second Amended Complaint ("SAC")—that, according to MTC, was superseded by Plaintiffs' Third Amended Complaint ("TAC"). As a preliminary matter, MTC is incorrect insofar as Plaintiffs' TAC has not been filed yet (although Plaintiffs expect that it will be by the time their Motion is heard). In any case, MTC is wrong that Plaintiffs' Motion is somehow procedurally defective, because, as MTC concedes, Plaintiffs gave MTC adequate notice that their Motion would be based on whichever pleading was operative at the time the Motion is heard (whether the SAC or the TAC). Plaintiffs' Motion, at 4. Finally, although MTC accuses Plaintiffs of gamesmanship with respect to the filing of Plaintiffs' TAC, it is in fact MTC which has engaged in gamesmanship on this issue (and

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[1] MTC "cherry-picks" isolated portions of Mr. Sansota's deposition where he misspoke or was confused by the repetitious and misleading questioning by MTC, and omits clarifying testimony (**Ex. "3"**, Sansota Depo. Trans., pp. 28-29, 34-38, 47-78.)

others).

1. Plaintiffs' Third Amended Complaint Has Not Been Filed Yet But Will Be by Time Plaintiffs' Motion Heard

MTC mistakenly contends that Plaintiffs' Motion must be denied because, according to MTC, it is based on Plaintiffs' superseded SAC. As even MTC concedes, however, and as the Court's files will bear out, Plaintiffs' TAC has not been filed yet: although the Court granted Plaintiffs' Motion to Amend at the hearing on February 7, 2017, the Court's written order on that motion has not been entered by the Court yet. Accordingly, Plaintiffs have not yet filed their TAC with the Court, and the SAC has not yet been superseded. Plaintiffs fully expect that their TAC will be filed with the Court—and, thus, be the operative pleading—by the time Plaintiffs' Motion is heard by the Court. For reasons explained below, however, Plaintiffs' Motion will not be null and void (as MTC, without authority, asserts).

2. Plaintiffs' Motion Would Not Be Procedurally Defective Even If Third Amended Complaint Deemed Operative, and Notice Was Given by Plaintiffs

Regardless of which pleading—the SAC or the TAC—is deemed to operative, Plaintiffs' Motion would not be procedurally defective. As a preliminary matter, MTC presents no authority that in circumstances such as these Plaintiffs' Motion would be procedurally defective under Nevada law, and must be denied.[2] In contrast, in factually similar circumstances, the Nevada Supreme Court has upheld a grant of summary judgment to a defendant on a cause of action in a complaint even though the trial court had granted the plaintiff leave to amend the complaint after the motion for summary judgment had been filed. Soebbing v. Carpet Barn (1993) 109 Nev. 78,

[2] The three cases cited by MTC stand for the unremarkable proposition that amended pleadings supersede earlier pleadings once filed. Randono v. Ballow (1984) 100 Nev. 142, 676 P.2d 807; McFadden v. Ellsworth Mill & Mining Co. (1872) 8 Nev. 57; Associated Aviation Underwriters, Inc. v. Vegas Jet, L.L.C. (D. Nev. 2000) 106 F. Supp. 2d 1051. They do not address whether a motion for summary judgment is rendered void because it is based on a pleading that has been amended after the filing of the motion. Id.

847 P.2d 731. If MTC were correct that the grant of leave to amend by itself would render a motion for summary judgment premised on an earlier pleading void, then the Nevada Supreme Court would have clearly erred by upholding the grant of summary judgment on the—according to MTC—superseded complaint. The Nevada Supreme Court's ruling in Soebbing thus demonstrates that MTC is mistaken as to the effect that Plaintiffs' TAC has on their Motion here.

MTC's argument is further weakened by the fact that Plaintiffs expressly gave notice to MTC in their moving papers that their Motion would be based on whichever pleading—whether the SAC or the TAC—was operative at the time Plaintiffs' Motion is heard. Plaintiffs' Motion, at 4. Plaintiffs also noted in their moving papers—and MTC presents no argument, evidence, or authority to the contrary—that the allegations in their SAC and TAC are "indistinguishable in terms of the legal foundation for Plaintiffs' motion." Id. There can thus be no concern—as there was in Soebbing—that granting summary judgment on the basis of cause of action in a proposed amended pleading would violate due process and NRCP 56(c) by depriving a party of notice and opportunity to respond before summary judgment is entered. See Soebbing, supra, 109 Nev. at 83-84, 847 P.2d at 735. MTC has been on notice of both the allegations in the SAC and TAC for months, and, consistent with due process and NRCP 56(c), was put on notice by Plaintiffs in their moving papers that their Motion was based on those allegations. Plaintiffs' Motion, at 4. Thus, despite MTC's accusations to the contrary, Plaintiffs' Motion is not procedurally defective.

3. It Is MTC Who Has Engaged in Gamesmanship Here

MTC accuses Plaintiffs of gamesmanship and trickery with respect to Plaintiffs' submission of their proposed written order granting Plaintiffs' motion to amend to the Court, suggesting that Plaintiffs may hold off on submitting the proposed order to the Court so as to gain a "tactical edge." MTC Opposition, at 10 n. 6. This is unfair to Plaintiffs, and beneath MTC, especially as MTC is the one engaging in gamesmanship here.

As reflected in the declaration of Plaintiffs' counsel hereto, Plaintiffs diligently drafted and submitted their proposed order on Plaintiffs' motion to amend to defense counsel—including MTC counsel—for approval as to form before submitting it to the Court for approval and entry. Boylan Declaration, at ¶11. As MTC counsel surely knew when MTC filed its opposition papers on February 24, 2017, the submission of the proposed order to the Court was "substantially delayed because the gaggle of Defendants engaged in their typical tactic of delay and/or obstruction and/or inattention to the matter." Id. Indeed, it took "several weeks to gather signatures" for the proposed order from the "various defense lawyers" (including MTC counsel). Id. [emphasis added]. Thus, if there has been any gamesmanship or trickery here, it is MTC who has engaged in it.

MTC's gamesmanship on this point is also illustrated by the fact that MTC's conduct belies its own argument that Plaintiffs' Motion is void for being based on Plaintiffs' SAC. MTC's own motion for summary judgment, filed by MTC on February 24, 2017, relies solely on the allegations in Plaintiffs' SAC, even though, according to MTC, the SAC was superseded on February 7, 2017, by Plaintiffs' TAC when the Court granted Plaintiffs' motion to amend. MTC is therefore either being disingenuous in its assertions regarding Plaintiffs' Motion being void, or filing with the Court motions that MTC believes to be void because based on a superseded pleading.

B. MTC's Business Activities in the State of Nevada during the Relevant Period Determine the Adjudication of Plaintiffs' Motion

In support of their moving papers, Plaintiffs have offered powerful proof that MTC was required to be licensed as a collection agency by the FID pursuant to NRS 649.075, because of the nature and scope of MTC's business activities in Nevada during the relevant period. This evidence—including the incontrovertible evidence of MTC's collection activities with respect to Plaintiff Bijan Laghaei—is devastating to

MTC's assertions that it did nothing more than required by statute as a foreclosure trustee.

In an attempt to avoid the liability demonstrated by Plaintiffs' proof, MTC seeks to mislead the Court by suggesting that only the Plaintiff Sansotas' individual claims are before the Court at this time, and therefore the Court should not consider evidence as to MTC's claim collection activities in Nevada with respect to other Nevada debtors in ruling on Plaintiffs' motion. As a preliminary matter, MTC is plainly trying to have it both ways here. While claiming on the one hand that Plaintiffs' motion is procedurally defective because the Second Amended Complaint has been superseded by the Third Amended Complaint, MTC on the other hand asserts that only the Plaintiff Sansotas are before the Court as named Plaintiffs with claims against MTC—even though the Third Amended Complaint added Plaintiff Laghaei as a named Plaintiff with claims against MTC!

MTC's argument suffers from an even greater defect, however. Even assuming arguendo that only the Plaintiff Sansotas' individual claim[3] were before the Court at this time, it would not follow that evidence of MTC's collection activities related to other Nevada debtors—such as Plaintiff Laghaei—would be irrelevant to adjudication of Plaintiffs' motion. After all, whether MTC was required to be licensed as a collection agency by the FID during the relevant period hinges on the full nature and scope of MTC's business activities in the State of Nevada during that time. In pertinent part, NRS 649 broadly defines "collection agency" as meaning "all persons engaging, directly or indirectly, and as a primary or a secondary object, business or pursuit, in the collection of or in soliciting or obtaining in any manner the payment of a claim owed or due or asserted to be owed or due to another." NRS 649.020(1) [emphasis added]. Thus, under the statutory definition, Plaintiffs seemingly must show that MTC did more than engage in one isolated instance of

[3] That is, Plaintiff Sansotas' First Cause of Action against MTC.

claim collection in order to demonstrate that MTC required a license because its claim collection activities were a primary or secondary object, business, or pursuit for it. (If MTC is suggesting that it would need to be licensed if it sought to collect on a claim from even one Nevada debtor, then Plaintiffs' evidence from Plaintiff Laghaei demonstrates that Plaintiffs' burden has been met.)

Under these circumstances, the authorities cited by MTC regarding class certification are simply irrelevant here. As is clear from Plaintiffs' motion, Plaintiffs are not asking the Court to adjudicate the claims of the putative class as a whole, but to rule on Plaintiffs' first cause of action—as to liability—which necessarily entails the Court consider evidence relating to the nature and scope of MTC's business activities in the State of Nevada, including MTC's policies, procedures, and practices, with respect to the named Plaintiffs and other Nevada debtors who were subject to MTC's unlawful collection agency activities.

C. Plaintiffs Have Met Their Burden of Establishing MTC's Liability as to the First Cause of Action for Violating Nevada's Deceptive Trade Practices Act

1. Plaintiffs Have Established that MTC Is Required to Be Licensed under NRS 649.075

MTC's contention that Plaintiffs have not met their burden as moving party is unpersuasive in light of MTC's failure—or inability—to respond to the powerful proof presented by Plaintiffs in support of their motion. Relying on its unfounded assertion that only evidence relating to MTC's dealings as to the Plaintiff Sansotas may be considered, MTC does not attempt to address the overwhelming majority of Plaintiffs' proof, showing conclusively that MTC's business activities in the State of Nevada required it to obtain a collection agency license from the FID, other than to assert that they have no "nexus" as to the Plaintiff Sansotas and do not show that MTC "engaged in any debt collection practices as to Sansota." MTC Opposition, at 13. MTC's myopic view of the issues relevant to Plaintiffs' motion necessarily renders its assertions regarding Plaintiffs' purported failure to meet their burden

unconvincing.

Plaintiffs' evidence—properly considered—demonstrates that MTC was required to have a collection agency license from the FID, and that MTC failed to obtain one during the relevant period. (E.g., SS#1-49, 57-62, 67-78, 84.) As a result, MTC engaged in a deceptive trade practice—in violation of NRS 598.0923(1)—by "knowingly . . . [c]onduct[ing] . . . [its] business or occupation without all required state, county or city licenses." [emphasis added]. NRS 41.600(1)&(2)(e) in turn give the Plaintiff Sansotas a cause of action—which they are pursuing through their First Cause of Action here—as victims of MTC's statutory consumer fraud.[4]

2. MTC Is Not Exempt from the Licensing Requirements of NRS 649.075

Relying on a number of trial orders from the federal district court in Nevada, MTC incorrectly asserts that it is exempt from needing to obtain a license as a collection agency from the FID, pursuant to NRS 649.075. As a preliminary matter, the first case cited by MTC (and the cases cited therein) did not decide whether foreclosure trustees are required to be licensed as collection agencies, because it incorrectly concluded that, regardless of whether a license was required, Nevada's DTPA did not apply to "most real estate loan transactions." Bailin v. Select Portfolio Servicing, Inc. (D. Nev. Aug. 7, 2015) 2015 U.S. Dist. LEXIS 104655, at *7-8. It thus does not stand for the proposition that MTC is exempt from being licensed as a collection agency pursuant to NRS 649.075.

Like MTC here, Bailin cited an impressive number of trial orders from the federal district court in Nevada in order to make it appear as though its claim that Nevada's DTPA does not apply to most real estate loan transactions had the weight of authority

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[4] MTC, in discussing NRS 41.600, seemingly suggests that the private right of action provided by NRS 41.600 is only available to consumers. This is not accurate. Southern Serv. Corp. v. Excel Bldg. Servs. (D. Nev. Aug. 13, 2007) 617 F.Supp.2d 1097, 1099-1100 [allowing competitor harmed by consumer fraud to sue under NRS 41.600 because the phrase "victim of consumer fraud" in the statute does not mean only consumers]. Thus, the Court need not decide whether the Plaintiff Sansotas are "consumers" under NRS 41.600, but only whether they were among the victims of MTC's deceptive trade practice of unlicensed collection agency activity.

behind it. Id. at *7-8. Of the 6 orders cited in Bailin, however, no less than three of them had been decided by the same judge (Judge Navarro) deciding Bailin. See Morris v. Green Tree Servicing, LLC (D. Nev. July 8, 2015) 2015 U.S. Dist. LEXIS 89416; Bartello v. CitiMortgage, Inc. (D. Nev. April 16, 2014) 2014 U.S. Dist. LEXIS 52592; Tello v. Bank of Am. N.A. (D. Nev. Jan. 3, 2014) 2014 U.S. Dist. LEXIS 842. Of the remaining three orders, one simply cited itself generally as authority for the proposition that the DTPA does not apply to real estate loan transactions. Reyna v. Wells Fargo Bank, N.A. (D. Nev. July 8, 2011) 2011 U.S. Dist. LEXIS 74456, at *23. The next order (by Judge Mahan) also relied on an order previously entered in a different case by the same judge. See Dowers v. Nationstar Mortg. LLC (D. Nev. Dec. 31, 2014) 2014 U.S. Dist. LEXIS 179025, at *9-11 [citing Fung Ying Leung v. Mortg. Elec. Registration Sys., Inc. (D. Nev. Jan. 22, 2013) 2013 U.S. Dist. LEXIS 8943, 2013 WL 237225, at *3 [Mahan, J.]. Bailin's reliance on the last order it cites is strange, because the federal district court did not hold that the NDTPA does not apply to most real estate loan transactions. See Kawahara v. Kennedy (D. Nev. Feb. 25, 2015) 2015 U.S. Dist. LEXIS 22852, at *14-18. Instead, the court there, while noting that other federal district courts in Nevada had ruled that the DTPA did not apply to real estate loan transactions, expressly concluded that the DTPA did in fact apply to at least some real estate loan transactions (and did not decide whether it did not apply to most such transactions). Id. Under these circumstances, the Bailin court's reliance on other orders from the federal district court in Nevada is far less impressive than it might at first seem.

In a remarkable inconsistency, the same judge that decided Bailin had previously noted in an earlier order in a different case that no less than the "Nevada Supreme Court has explicitly rejected Defendants' argument that the DTPA does not apply to real estate transactions." Phillips v. Dignified Transition Solutions (D. Nev. Aug. 28, 2014) 2014 U.S. Dist. LEXIS 120221, at *8 [quoting with approval Betsinger v. D.R.

Horton, Inc. (Nev. 2010) 232 P.3d 433, 436 n.4]. In the orders relied on by Judge Navarro in Bailin, the trial courts seemingly were either ignorant of or simply ignored the Nevada Supreme Court's application of the DTPA to a real estate transaction, as not one of these orders attempted to distinguish Betsinger. In a further inconsistency by Judge Navarro, her trial court order in Bartello incorrectly stated that "no legal authority supports a finding that Nevada's Deceptive Trade Practices Act applies to real property transactions," Bartello, supra, 2014 U.S. Dist. LEXIS 52592, at *17-18 [emphasis added], even though not only the Nevada Supreme Court in Betsinger as well as previous orders from the federal district court in Nevada supported just that proposition (as Judge Navarro recognized four months later in her Phillips order, before seemingly changing her mind in Bailin). See generally Betsinger, supra; see also Weinstein v. Mortgage Capital Assocs. (D. Nev. Jan. 11, 2011) 2011 U.S. Dist. LEXIS 2770, at *29 ["Chapter 598 applies to 'the deceptive sale of real property.' Betsinger v. D.R. Horton, Inc., 232 P.3d 433, 436 n.4 (Nev. 2010). Although Mortgage Capital argues Betsinger applies only to real estate transactions, and not mortgages, Betsinger rejected the argument by a home builder and the home builder's financing division that Chapter 598 did not apply to the financing division's 'bait and switch' of the offered mortgage rate as well as the builder's broken promise to return the plaintiff's deposit. Betsinger applied Chapter 598 to the home lender's conduct in offering to finance the plaintiff's purchase of the home. Thus, the Court rejects Mortgage Capital's argument that Chapter 598 categorically cannot apply to mortgage transactions."][emphasis added][Pro, J.]; Garner v. Bank of Am. Corp. (D. Nev. Sept. 28, 2013) 2013 U.S. Dist. LEXIS 140810, at *25-26 [Pro, J.].

In Bailin, Judge Navarro attempted to distinguish Betsinger on the ground that its facts were distinguishable in various ways, and therefore what Judge Navarro referred to as the "Betsinger exception" should not apply. Bailin, supra, 2015 U.S.

Dist. LEXIS 104655, at *7-8. Despite Judge Navarro's suggestion to the contrary, there is simply nothing in Betsinger warranting a conclusion that the Nevada Supreme Court meant its application of the DTPA to the specific transaction there to be an exception to a general rule that the DTPA does not apply to real estate loan transactions generally. The Nevada Supreme Court in Betsinger in fact rejected an argument that the DTPA's "statutory scheme does not regulate the deceptive sale of real property" as a "narrow interpretation" of NRS 598 that was "without merit." Betsinger, supra, 232 P.3d at 435 n.4 [emphasis added]. Bailin is also incorrect: the Nevada Supreme Court has recognized one at least one other occasion that the DTPA applies to real estate loan transactions. See Davenport v. Homecomings Financial, LLC (2014) 2014 Nev. Unpub. LEXIS 508, at *7-8 [recognizing that provisions of the DTPA can apply to real estate loan transactions, but concluding that complaint as pled did not state a claim under the DTPA]. The attempt to distinguish Betsinger in Bailin is also unpersuasive, as there is nothing in the provision of the DTPA there—the same provision at issue here—that by its very language would make it inapplicable to real estate loan transactions. See Bailin, supra, 2015 U.S. Dist. LEXIS 104655, at *7-8; NRS 598.0923(1). In contrast, other provisions of the DTPA by their language are inapplicable to real estate loan transactions: NRS 598.0915(2), by its terms, would not apply to real estate loan transactions because it expressly refers to "goods or services for sale or lease."

Finally, in considering what weight, if any, to give Bailin, it is worth noting that the paragraphs in it discussing Betsinger have been lifted—word for word—from an earlier order from the federal district court in Nevada (this time, one authored by Judge Dawson), and were used again by Judge Navarro in another order issued days after Bailin.[5] See Medina v. Quality Loan Serv. Corp. (D. Nev. Oct. 25, 2012) 2012 U.S. Dist. LEXIS 154031, at *7-8; Gonzales v. Bank of Am., N.A. (D. Nev. Aug. 10,

[5] It seems likely that the use of identical language is a result of clerks of the federal district courts in Nevada copying each other's wording, rather than engaging in independent analysis of their own.

2015) 2015 U.S. Dist. LEXIS 106312, at *8-9. Under such circumstances, one cannot have much confidence that the Bailin order and the other orders it relied on are of much persuasive guidance here, given the echo chamber effect illustrated by their relying on each other—rather than rigorous analysis of applicable authorities—for the propositions stated in them.

3. NRS 80.015(4)(b) Does Not Assist MTC Here

MTC mistakenly relies on NRS 80.015 as a basis for claiming that it is not doing business in Nevada, and specifically therefore does not need to be licensed as a collection agency by the FID. NRS 80.015 provides, in pertinent part that, "[f]or the purposes of this chapter [i.e., NRS 80], the following activities do not constitute doing business in this state . . . [s]ecuring or collecting debts or enforcing mortgages and security interests in property securing the debts." [emphasis added]. NRS 80.015 goes on to further expressly limit the application of NRS 80.015 for purposes other than NRS 80, by stating "[t]he fact that a person is not doing business in this state within the meaning of this section . . . (a) [d]oes not affect the determination of whether any court, administrative agency or regulatory body in this State may exercise personal jurisdiction over the person in any civil action, criminal action, administrative proceeding or regulatory proceeding; and (b) [e]xcept as otherwise provided in subsection 3, does not affect the applicability of any other provision of law with respect to the person and may not be offered as a defense or introduced in evidence in any civil action, criminal action, administrative proceeding or regulatory proceeding to prove that the person is not doing business in this State, including, without limitation, any civil action, criminal action, administrative proceeding or regulatory proceeding involving an alleged violation of chapter 597, 598 or 598A of NRS. [emphasis added].

Accordingly, revealing the lack of merit in MTC's Opposition, MTC's argument that it was exempt from being licensed as a collection agency by NRS 80.015 is specious, because the defense is expressly disallowed by Nevada law. The

express language of NRS 80.015 limits this definition of "doing business in the state" to the application of NRS Chapter 80 only. NRS Chapter 80 deals only with foreign corporations which must register with the Nevada Secretary of State. Specifically, NRS 80.010 requires a foreign corporation to file certain items before it commences doing any business in this State. NRS 80.015(4)(b) expressly prohibits MTC from using NRS 80.015 as a defense in any civil action, including specifically a civil action for the violation of NRS Chapter 598, which is the cornerstone of this lawsuit. Given the explicit provisions of NRS 80.015, it is improper and misguided for MTC to rely on this statute as a defense or to even introduce such information into the record.

Clearly, by any logic, NRS 80.015(4)(b) is dispositive of MTC's argument. Otherwise, deceptive trade practices committed in Nevada by foreign, rogue companies collecting debts and enforcing mortgages and security interests in property, with or without a license, would be condoned and expressly authorized by the Nevada legislature. That is an incomprehensible conclusion. Stated another way, it is inconceivable that the Nevada legislature would have expressly "exempted" and allowed fraud, deception, unlicensed activities, deceit, misappropriation and breach of duty by foreign entities in connection with acquiring notes, indebtedness, mortgages and security interest in real or personal property in Nevada, or in employing such deceptive practices in the conduct of securing or collection debts or enforcing mortgages and security interest in property securing the debts.

Nevertheless, in direct violation of NRS 80.015 (4)(b), MTC asserts as a defense that NRS 80.015(1)(h) excludes "securing or collecting debts or enforcing mortgages and security interests in property securing the debts" as doing business in the State of Nevada and therefore MTC effectively is exempt from all consumer-protection laws of the State of Nevada. Not so.

NRS Chapter 80 establishes the filing requirements for foreign corporations

that operate in the State of Nevada. NRS 80.010 mandates the resident agent and corporate information requirements. Following MTC's logic, all foreign businesses "collecting debts and enforcing mortgages," which are excluded from the definition of transacting business under NRS 80.0151(1)(h), must also be exempt from the entirety of NRS Chapter 649 related to foreign collection agencies and thus NRS 649 is void as to rogue foreign entities, like MTC. It makes no sense.

The reality is that subsection (4)(b) of NRS 80.015 is devastating to MTC's contention here that "enforcing mortgages and security interests in property" (i.e. the MTC non-judicial foreclosure process) without a license under NRS 649 from Nevada does not constitute deceptive trade practice according to NRS 598. The express language of subsection (4)(b) directly reflects the intent of a legislature to apply the deceptive trade practices law and remedies to unlicensed foreign collection agencies that are involved in conducting a business "collecting debts or enforcing mortgages and security interest in property securing the debts," in the state of Nevada. No other intended purpose of subsection (4)(b) is rational. It is dead on point, and applies directly to the business MTC conducts.

The Nevada legislature has demonstrated that it knows how to use NRS 80.015's "doing business" in Nevada test to exempt businesses from complying with the requirements of other provisions of Nevada law when it wishes to do so. See NRS 80.015(3) [stating that a "person who is not doing business in this State within the meaning of this section need not qualify or comply with any provision of this chapter, chapter 645A, 645B or 645E of NRS or title 55 or 56 of NRS" unless certain requirements are met][emphasis added]. The Nevada legislature's refusal to make a similar exception for collection agencies such as MTC to relieve them of complying with NRS 649.075 if NRS 80.015(1)'s "doing business" in Nevada test is not met should dispose of MTC's argument.

The Nevada Supreme Court, in considering whether a party was doing

business in Nevada for purposes of Nevada's employment agency licensure statutes found in NRS 611.030, expressly noted that Nevada's "foreign corporations statutes specifically disavow their applicability to 'any other provision of law'" (such as NRS 611.030). RTTC Communs., LLC v. The Saratoga Flier, Inc. (2005) 121 Nev. 34, 40, 110 P.3d 24, 28 [quoting NRS 80.015(4)(b)][emphasis added]. The Court went on to note that "the two-prong test utilized" by the Nevada Supreme Court in evaluating "doing business" for purposes of NRS 80.015 "is instructive in determining whether Pinsker was 'doing business in this state' for the employment agency statutes at issue." Id. [referring to Sierra Glass & Mirror v. Viking Industries (1991) 107 Nev. 119, 80 P.2d 512][emphasis added]. If MTC's interpretation of NRS 80.015's application—in defiance of the express language of NRS 80.015(4)(b)—were correct, however, the test used for "doing business" under NRS 80.015 would be not only instructive, but conclusive (which the Nevada Supreme Court expressly recognized it was not).

Thus, MTC's arguments to the contrary are based on a tortured interpretation of the statutory language and obtuse semantics. The obvious intent of NRS 80.015 was to avoid placing upon foreign companies, such as national banks, the burden to comply with all of the foreign business filing requirements in Nevada if they simply had to defend a lawsuit in Nevada, prosecute a lawsuit in Nevada or settle a case in Nevada, or if they created or acquired mortgages and security interest on properly in Nevada, or simply themselves enforced a security interest in Nevada. However, expressly, under subsection (4)(b), such foreign entities are subject to and held bound by all other Nevada laws, including the prohibition of deceptive trade practices in the Silver State. Collecting claims for others without a Nevada license, the business of MTC, is a deceptive trade practice as a matter of statutory definition.

Plaintiffs are aware that, as illustrated in the orders cited by MTC, the Nevada federal district court has issued different orders on this issue in other cases, but the

orders relied on by MTC do not reflect consideration of NRS 80.015(4)(b). We must assume that the pro se plaintiffs or lawyers in those other cases did not present the full articulation of the statute to the federal trial court. Regardless, as discussed, those non-precedent, unpublished trial court orders are clearly erroneous, as Judge Scann recognized in rejecting Defendants' efforts in the past to rely on such orders.

As it did with Bailin, MTC attempts to bolster its argument by relying on orders of trial courts in the State of Nevada that have ruled that NRS 80.015 exempts foreclosure trustees from obtaining licenses in Nevada. See Wensley v. First *Nat'l* Bank of Nev. (D. Nev. 2012) 874 F. Supp. 2d 957, 963; Marley v. Greater Nevada Mortgage Services (D. Nev. May 22, 2012) 2012 U.S. Dist. LEXIS 70887; James v. Countrywide Home Loans, Inc. (D. Nev. Feb. 23, 2012) 2012 U.S. Dist. LEXIS 23617; Marin v. Wells Fargo Bank, N.A. (D. Nev. Feb. 8, 2012) 2012 U.S. Dist. LEXIS 15989; March v. Pinnacle Mortg. of Nev. (D. Nev. Oct. 7, 2011) 2011 U.S. Dist. LEXIS 117185; Fitzgerald v. Clarion Mortg. Capital (D. Nev. July 5, 2011) 2011 U.S. Dist. LEXIS 72169; Quality Loan Service Corp. v. State of Nevada (Nev. Dist. Ct. Jan. 3, 2013) 2013 WL 6911859 [Williams, J.]. Although the string citation may appear impressive, a reading of any of these orders reveals they each reflect the cursory analysis of NRS 598.0923(1) and NRS 80.015(1) found in Wensley. Moreover, of the six orders from federal trial courts in Nevada cited by MTC, three are written by the same judge (Judge Reed), see Wensley, supra; Marin, supra; and Marley, supra, while the other three are written by Judge Jones, see James, supra; March, supra; and Fitzgerald, supra. Not one of these orders—including that by Judge Williams—reflect <u>any</u> consideration of NRS 80.015(4)(b). Instead, the federal orders repeat—nearly verbatim—the conclusory statements and cursory analysis found in Wensley. Id. As reflected in Wensley, the federal trial orders incorrectly conflate "doing business" in Nevada for purposes of NRS Chapter 80 and NRS 80.015 and conducting business for purposes of NRS 598.0923(1). They therefore

reach the incorrect conclusion that trustees such as MTC are exempt from all licensing requirements in Nevada. Given the lack of consideration of NRS 80.015(4)(b) and the improper conflation of NRS 80.015 and NRS 598.0923's language, the conclusions reached by these federal trial courts in Nevada are of little persuasive assistance to the Court here.

Judge Williams' order in Quality Loan Service Corp. is not precedent here and should not be followed by the Court, for reasons previously explained in Plaintiffs' prior papers successfully opposing Defendants' NRCP 12(b)(5) motion to dismiss. Judge Scann seemingly concluded as much when she rejected Defendants' earlier efforts to have the Court give Judge Williams' order preclusive effect in this case. Judge Williams' conclusion that trustees exercising the power of sale under a deed of trust are not "doing business" in Nevada and therefore need not be licensed as collection agencies by the FID is founded on a number of errors. As a preliminary matter, Judge Williams also did not consider the application of NRS 80.015(4)(b) and its conclusive demolition of MTC's NRS 80.015(1) defense. See Quality Loan Service Corp., supra, at *2. Moreover, two of the cases Judge Williams relied on had nothing to do with whether trustees were deemed to be doing business in the State of Nevada or NRS 80.015 (but, instead, concerned application of the "one-action rule"). See id.; McMillan v. United Mortgage Co. (1966) 82 Nev. 117, 412 P.2d 604; Bonicamp v. Vazquez (2004) 120 Nev. 377, 91 P.3d 584. The federal trial order cited by Judge Williams did deal with NRS 80.015, but reflected the same cursory analysis and incorrect conclusion of Nevada law reflected in the federal trial orders cited by MTC and discussed above. See Quality Loan Service Corp., supra, at *2; Bruce v. Homefield Fin., Inc. (D. Nev. Sept. 23, 2011) 2011 U.S. Dist. LEXIS 110243, at *6-7.

Seemingly aware that NRS 80.015(4)(b), properly considered, disposes of its argument regarding NRS 80.015, MTC asserts that NRS 80.015(4)(b) does not apply

because MTC is "not attempting to prove that it was not doing business in Nevada, but, rather, that it has been exempted from obtaining a license that it otherwise may have had to acquire." MTC Opposition, at 16. This is nonsense: the two grounds MTC has presented for its claim that it is exempt from obtaining a license are (1) federal district courts in Nevada have—incorrectly—ruled that Nevada's DTPA does not apply to real estate loan transactions; and (2) MTC is not doing business in Nevada pursuant to NRS 80.015, and therefore could not have been conducting its business in Nevada without required licenses in violation of NRS 598.0923(1). As amply explained above, the first ground is premised on orders such as Bailin that do not hold that collection agencies such as MTC are exempt from licensure (and are simply wrong as to Nevada law on the application of the DTPA to real estate loan transactions), and thus do not assist MTC here. The second ground is premised on orders such as Wensley in which federal district judges in Nevada have incorrectly concluded that collection agencies such as MTC are not deemed to be doing business in Nevada, and thus are not in violation of NRS 598.0923(1). As illustrated by Wensley, the second ground therefore necessarily entails MTC prove that it was "not doing business" in Nevada (because otherwise NRS 598.0923(1) would apply to it). As Plaintiffs explain, NRS 80.015(1) is not intended to affect interpretation of statutory language from other chapters of the NRS, such as NRS 598 or NRS 649, as NRS 80.015(4)(b) expressly recognizes.

4. MTC Failed to Obtain a Certificate of "Exemption" From the FID, as Required by Law

By MTC's admissions, it is undisputed that MTC considered obtaining its Nevada collection agency license around 2009 or 2010, but failed to do so at that time, and continued to conduct its business without a license until 2012. (SS#1-4, 50-60, 62-64, 71, 77.) In fact, MTC's owner and Chief Executive Officer, Rande Johnsen, recently admitted that he began studying for the Nevada test to be MTC's collection agency manager for Nevada in about 2009, and actually took the test in

about 2009 to 2010. (SS#77). See also NAC 649.210 and 649.151. Despite its ongoing, multi-million dollar activities in Nevada throughout that period, however, MTC did not obtain its collection agency license until 2012, after this lawsuit was filed. (SS#1-2.) Under the applicable Nevada Administrative Code, 649.105, MTC was required to obtain from the Commissioner of the FID a certification confirming that MTC was "exempt" and not required to obtain a collection agency license, and that certification was a mandatory requirement before MTC could engage in its subject business activities in Nevada. Accordingly, by rule of law, MTC cannot be deemed "exempt" from NRS 649.075.

5. MTC Was Engaged in Claim Collection Activities against the Named Plaintiffs, Laghaei and the Sansotas

Plaintiffs have discussed at length the arguments, evidence, and authorities showing that MTC engaged in claim collection activities against the named Plaintiffs Laghaei and the Sansotas here in their concurrently filed opposition papers to the motion for summary judgment filed by MTC (and in Plaintiffs' Motion itself). To avoid burdening the Court, Plaintiffs hereby incorporate by reference the arguments and authorities presented by them in that briefing.

6. MTC's Relevant Conduct Went Far Beyond the Requirements Imposed by Nevada Law on Foreclosure Trustees

Plaintiffs have discussed at length the arguments, evidence, and authorities showing that MTC's relevant conduct went far beyond the requirements imposed on foreclosure trustees by Nevada law in both their Motion as well as in their concurrently filed opposition papers to the motion for summary judgment filed by MTC and in their reply papers to the opposition brief by QLS. To avoid burdening the Court, Plaintiffs hereby incorporate by reference the arguments and authorities presented by them in that briefing.

7. The Ninth Circuit's Decision in *Ho* and Unpublished Federal Trial Court Orders from Nevada Do Not Assist MTC

In their moving papers, Plaintiffs discuss at length the Ninth Circuit's recent decision in Ho v. ReconTrust Co., NA (9th Cir. Oct. 19, 2016) 840 F.3d 618, and the reasons why it does not assist MTC here. For reasons more fully explained in Plaintiffs' Motion, MTC's reliance on Ho (and unpublished federal trial court orders from Nevada) is misplaced.

The interpretation of Ho advanced by MTC in its opposition papers goes well beyond the expressly narrow language of that decision, in ways already illustrated in Plaintiffs' discussion of the case in their moving papers. Despite MTC's suggestions to the contrary, Ho did not rule that non-judicial foreclosure trustees can never be deemed debt collectors under the FDCPA. Instead, interpreting the FDCPA and California law, it concluded that foreclosure trustees are not per se debt collectors under the FDCPA. Id. at 622. The Ho decision effectively left for another day what activities would be needed to render a foreclosure trustee a debt collector for purposes of the FDCPA, because the Ninth Circuit concluded, based on the particular facts in Ho, that the defendant there did not qualify as a debt collector. Id. The Ho decision did not address whether the defendant there might be deemed a collection agency under Nevada law because of its claim collection activities. Id.

As the language from Ho quoted at length by MTC illustrates, Ho does not assist debt collectors or collection agencies such as MTC, who, while purporting to be foreclosure trustees, go far beyond the limits of Nevada's foreclosure statues, such as by violating their duty of impartiality and good faith by engaging in collection agency activities. Since, as Plaintiffs have demonstrated at length in their moving papers as well as in their concurrently filed reply papers to QLS' opposition brief and in their opposition papers to MTC's motion for summary judgment, MTC in fact violated Nevada's foreclosure statutes in myriad ways (such as by acting adversely to

deed of trust grantor-debtors on behalf of MTC's creditor-beneficiary clients), Ho would not insulate MTC from liability for being a collection agency.

The Ninth Circuit in Ho, for instance, detailed several examples of conduct that might be deemed debt collection under the FDCPA because they went beyond what was required for the foreclosure process. Id. at 623. Thus, notices of default or of sale that demand or request payment on the defaulted debt, or harassing communications, might well lead to a different result. Id. The Ninth Circuit also did not consider other conduct, such as a foreclosure trustee negotiating loan forbearance agreements on behalf of its creditor-clients with trustor-debtors, that would go well beyond the foreclosure trustee's appropriate role in the foreclosure process. Yet, as Plaintiffs' proof amply demonstrates, MTC, among other things, regularly engaged in demanding or requesting payment from Nevada debtors, so that it could collect and remit such payments to its creditor-clients. (E.g., SS#4, 6-25, 29-31, 38-49, 67-70, 73-76, 78, 84.) MTC also regularly engaged in negotiating, documenting, and executing loan forbearance agreements on behalf of its creditor-clients with Nevada trustor-debtors, as is conclusively shown by the evidence relating to Plaintiff Laghaei. (SS#32-35.) MTC lamely tries to avoid the consequences of this conduct by suggesting that only its dealings with respect to the Plaintiff Sansotas are relevant to Plaintiffs' Motion, but, for reasons amply explained above and in Plaintiffs' moving papers, that is simply not the case. Despite MTC's assertions to the contrary, Plaintiffs have not only identified but have proven specific activities by MTC that went well beyond the duties required of foreclosure trustees by Nevada law (and, indeed, likely violated MTC's duties as a foreclosure trustee).

MTC also chides Plaintiffs for purportedly being unable to explain why the unpublished federal trial court orders from Nevada cited by MTC are against Plaintiffs. Not so. As a preliminary matter, as Plaintiffs have already demonstrated in connection with Bailin and Wensley, the orders from the federal district courts in

Nevada are all too often unreliable in their interpretation of Nevada law. These orders often reflect a failure to consider or adequately follow decisions from the Nevada Supreme Court that dispose of arguments advanced by defendants such as MTC, instead preferring to follow—at times, word for word—the pronouncements of other federal district judges in Nevada (or, in some instances, their own prior orders) rather than engage in rigorous and independent analysis of the legal issues before them. The persuasiveness—or lack thereof—of such orders should be measured by the extent to which they demonstrate careful attention to and analysis of Nevada law, and not, as MTC would seemingly have it, by simply counting the number of orders on the issue.

Turning to the six federal trial orders from Nevada cited by MTC on this point, no less than 4 of them were written by the same judge. See Maves v. First Horizon Home Loans (D. Nev. Sept. 15, 2010) 2010 U.S. Dist. LEXIS 97387 [Hicks, J.]; Rinehold v. Indymac Bank, FSB (D. Nev. Jan. 4, 2011) 2011 U.S. Dist. LEXIS 896 [Hicks, J.]; Kenneweg v. Indymac Bank (D. Nev. Jan. 4, 2011) 2011 U.S. Dist. LEXIS 661 [Hicks, J.]; and Regas v. Freemont Invs. & Loan (D. Nev. Dec. 14, 2010) 2010 U.S. Dist. LEXIS 132925 [Hicks, J.]. Indeed, two of these decisions were filed the same day (January 4, 2011) by Judge Hicks. Rinehold, supra, at *4-6; Kenneweg, supra, at *4-6. In these two cases, Judge Hicks used almost identical language—nearly word for word, paragraph for paragraph—in his brief discussions of the plaintiffs' claims there under the FDCPA and Nevada's DTPA. Id. Judge Hicks had used this nearly identical language regarding the DTPA in his earlier orders in Maves and Regas. Maves, supra, at *6-7; Regas, supra, at *4-6. Such use of boilerplate language—of both the law and of its application to the facts in a case—does not instill much confidence in the rigor of the analysis, especially when the passages reflect little consideration of the nuances of Nevada and federal law on these points. These orders thus offer little persuasive guidance to the Court here.

The federal district court's order in Wittrig v. First Nat'l Bank of Nev. (D. Nev. Nov. 15, 2011) 2011 U.S. Dist. LEXIS 132808 does not offer much guidance here either. As a preliminary matter, it commits the same errors regarding NRS 80.015 and NRS 598.0923(1) that many of the judges in the federal district court in Nevada have fallen prey to, as amply demonstrated herein above by Plaintiffs. See Wittrig, supra, at *7-8 [failing to consider NRS 80.015(4)(b) in discussing NRS 598.0923(1) and NRS 80.015]. Its three-line discussion of the FDCPA and its application to foreclosure trustees, which cites only one case, also is of little value here, as it provides no information as to the particular facts before the court in Wittrig. Id. at *7. The one authority cited in Wittrig on this point—authored by the same judge that issued Wittrig, did not deal with whether a non-judicial foreclosure trustee is a debt collector under the FDCPA, as the defendant there was deemed by the court to be a mortgage servicing company. See Camacho-Villa v. Great Western Home Loans (D. Nev. March 23, 2011) 2011 U.S. Dist. LEXIS 37063, at *10-13.

MTC's reliance on the last federal trial order it cites is especially curious, because the federal district court in Nevada there did not conclude—as MTC states—that non-judicial foreclosure is not debt collection under the FDCPA. See Evalobo v. Aldridge Pite, LLC (D. Nev. Dec. 20, 2016) 2016 U.S. Dist. LEXIS 177763, at *14-15. Instead, the district court, citing Ho, concluded that the alleged communication at issue was not sufficient to "convert the non-judicial foreclosure into an attempt to collect a debt under the FDCPA." Id. The federal district court went on to allow the plaintiff leave to amend the complaint to perhaps state a FDCPA claim, "because it is not clear whether there may be other communications from the defendants that pertained to attempts to collect a debt outside the foreclosure process." Id. [emphasis added].

Plaintiffs detail the weaknesses in Judge Williams' decision in Quality Loan Service Corporation above, as well as in their concurrently filed briefing in reply to

QLS' opposition to Plaintiffs' Motion. For even more detailed discussion of the reasons why the Court is not bound by—and should not follow—Judge Williams' decision here, Plaintiffs direct the Court to their briefing in opposition to Defendants' NRCP 12(b)(5) motions to dismiss Plaintiffs' Second Amended Complaint. Indeed, Judge Scann properly rejected the Quality Loan Service Corporation ruling when Defendants sought as part of their NRCP 12(b)(5) motions to have the Court give it preclusive effect here.

8. MTC Does Not Accurately Portray the Plaintiff Sansotas' Claims, the Controlling Legal Authority, or the Effect of a Bankruptcy Discharge

MTC appears to suggest that the Plaintiffs Sansotas' bankruptcy is inconsistent with the allegations made in this lawsuit, or means that MTC could not be liable for collecting—or attempt to collect—on the Plaintiff Sansotas' defaulted debt. It is unclear how MTC reaches this conclusion, but it somehow uses twisted logic to imply that the bankruptcy discharge received by the Plaintiff Sansotas prohibits a demand for money to pay prepetition debt, so MTC could not have been attempting to collect a debt from the Plaintiff Sansotas. This untenable position reflects how little MTC understands these legal issues.

Nevada law defines "Collection Agency" as:

> [A]ll persons engaging, directly or indirectly, and as a primary or a secondary object, business or pursuit, in the collection of or in soliciting or obtaining in any manner the payment of a claim owed or due or asserted to be owed or due to another.
> NRS 649.020(1) [emphasis added].[6]

Under Nevada law, a "Claim" is "any obligation for the payment of money or its equivalent that is past due." NRS 649.010.

In the context of bankruptcy law, a "claim" is the right to payment or the right to an equitable remedy for breach of performance if such breach gives rise to a right

[6] This statute also sets forth certain businesses or professions that are not included as a "Collection Agency" under Nevada law; however, noticeably absent from this list of exclusions are either companies who process foreclosures for another or trustees under a deed of trust. NRS 649.020(2).

to payment. 11 USC §101(5). Similarly, "debt" is liability on a claim. 11 USC §101(12). In short, the creditor owns the claim**,** and the debtor has the debt.

The discharge granted in bankruptcy discharges a debtor from all debts and any liability on a claim. 11 USC §727(b). The discharge does <u>not</u> discharge or extinguish the claim, but merely a debtor's personal liability on a claim. A lien that arises from a deed of trust/mortgage that secures an obligation, for which a debtor's personal liability has been discharged in bankruptcy, is still a claim. See Johnson v. Home State Bank (1991) 501 U.S. 78, 111 S.Ct. 2150. Thus, "[e]ven after a debtor's personal obligations have been extinguished [by a discharge], the mortgage holder still retains a 'right to payment' in the form of its right to the proceeds from the sale of the debtor's property." Id. at 84. "Alternatively, the creditor's surviving right to foreclose[ure] can be viewed as a 'right to an equitable remedy' for the debtor's default on the underlying obligation." Id. Thus, a "bankruptcy discharge extinguishes only one mode of enforcing a claim–namely, an action against the debtor in personam–while leaving intact another–namely, an action against the debtor in rem." Id.

Former local bankruptcy judge, the Honorable Bruce Markell, addresses this very issue as follows:

> [B]ankruptcy affects the availability of different collection remedies, without affecting the existence of the debt itself. Indeed, even after the bankruptcy discharge has been granted, so long as a viable means of collection remains, such as the pursuit of collateral for the discharged debt, a creditor will be able to collect some, if not all, of the debt.
> In re Okosisi, 451 B.R. 90, 95 (Bankr. D.Nev. 2011).
>
> MTC is attempting to impose the term "debt" where it does not belong.

Plaintiffs allege that MTC is a "Collection Agency" under the definition of Nevada law, not necessarily a debt collector under federal law.[7] By definition, collection agencies under Nevada law engage in the collection of claims that belong to another.

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[7] A debt collector is a definition used in the federal Fair Debt Collection Practices Act ("FDCPA") in 15 USC §1692a(6). This case does not allege a violation of the FDCPA.

NRS 640.020. The terms "debt" and "claim" are related, but not necessarily the same. While all debts are claims, not all claims are debts.

The bankruptcy discharge received by the Plaintiff Sansotas discharged the debts of the Plaintiff Sansotas, as well as their personal liability on any claim. The bankruptcy discharge, however, left intact the right to collect on the claim against the Plaintiff Sansotas in rem, allowing the beneficiary under the deed of trust, through the various services of MTC, to collect on the "right to payment" in the form of its right to the proceeds from the foreclosure sale of the Plaintiff Sansotas' home. See Johnson, supra, 501 U.S. at 83-84.

Under Nevada law, a "claim" is broadly defined as "any obligation for the payment of money or its equivalent that is past due." NRS 640.010 [emphasis added]. A "claim" is not limited to just non-discharged debts of a borrower. It is not limited to obligations owed personally by a borrower. It is not limited in any manner.

Correspondingly, in Nevada, a "Collection Agency" collects, in any manner, payment of a claim that is due to another. NRS 649.020. There are no limitations of this definition other than the narrow items contained in NRS 649.020(2), and MTC does not enjoy the protection of one of the exclusions in that subsection.

Thus, the bankruptcy discharge received by the Plaintiff Sansotas did not discharge the ability to enforce the "right to payment" by utilizing an in rem claim against the Plaintiff Sansotas. Since a "claim," as defined by NRS 649.010, is any obligation for the payment of money, this in rem claim must be a "claim" under this statute. There is no conflict with bankruptcy law on this issue. Moreover, to the extent that MTC is arguing that it was barred by law from collecting—or attempting to collect—on the Plaintiffs Sansotas' defaulted debt from the Plaintiff Sansotas personally, MTC would not be demonstrating that it did not in fact collect or attempt to collect on the Plaintiffs Sansotas' debt personally, but rather that it was also a violation of federal bankruptcy law for MTC to do so.

9. MTC's "Knowingly" Defense Fails

a. MTC Misinterprets the Language and Requirements of NRS 598.0923(1)

MTC, as it has in the past, mistakenly tries to mischaracterize Plaintiffs' burden by claiming that Plaintiffs must show that MTC conducted business knowing that doing so amounted to a violation of Nevada law. This is not what NRS 598.0923 states. As a preliminary matter, however, it is also worth noting that MTC is plainly incorrect in contending that the DTPA as a whole does not "impose[] liability upon a person for a negligent act" or is not a strict liability statute. As QLS recognizes in its opposition papers, some provisions of Nevada's DTPA do indeed impose liability for negligence; others are effectively strict liability provisions. See QLS Opposition, at 16 [discussing NRS 598.0918(1) and NRS 598.092(9)]. MTC's assertions to the contrary are simply wrong.

Turning to the provision of the DTPA at issue here, NRS 598.0923(1) states in pertinent part that a "person engages in a 'deceptive trade practice' when in the course of his or her business or occupation he or she knowingly . . . [c]onducts the business or occupation without all required state, county or city licenses." [emphasis added]. The plain language of this statute makes clear that "knowingly" modifies "conducts" the business, such that Plaintiffs must only show that MTC knowingly conducted the business itself (but not that MTC knew it was doing so in violation of Nevada law). This is not, as MTC misleadingly suggests, Plaintiffs' attempt to read the intent requirement reflected in "knowingly" out of the statute altogether, but simply the interpretation required by the statute's words and grammatical structure.

In order to construe the proper definition of the word "knowingly," as used in NRS 598.0923, the better practice is to look to the definition assigned to that term by the Nevada legislature in NRS 281A.115 and NRS 624.024 instead of looking further afield.[8] In these provisions, the Nevada legislature gave the following definition:

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[8] It is odd that MTC lectures Plaintiffs (and the Court) on the importance of giving statutory terms their plain meaning and having express statutory definitions controlling weight in interpretation,

"'Knowingly'" imports a knowledge that the facts exist which constitute the act or omission, and does not require knowledge of the prohibition against the act or omission. Knowledge of any particular fact may be inferred from the knowledge of such other facts as should put an ordinary prudent person upon inquiry." NRS 281A.115, NRS 624.024 [emphasis added]. MTC's interpretation of NRS 598.0923(1) would not be consistent with this definition because MTC seemingly would have NRS 598.0923(1) require proof of knowledge both of the facts that constitute the act or omission as well as of the prohibition against the act or omission. Had the Nevada legislature wished this to be the law, it could have revised the language of NRS 598.0923(1) so that it prohibited knowingly violating Nevada law by conducting the business or occupation while lacking the required licenses to do so.

The single trial court order from a federal district court in Nevada also does not assist MTC here. There, the federal district court dealt with a different provision of NRS 598.0923, which states that a "person engages in a 'deceptive trade practice' when in the course of his business or occupation he knowingly: . . . [v]iolates a state or federal statute or regulation relating to the sale or lease of good or services.'" Sobel v. Hertz Corp. (D. Nev. 2010) 698 F.Supp.2d 1218, 1230 [quoting NRS 598.0923(3)][alterations in original], affirmed in part, reversed in part, and vacated in part by Sobel v. Hertz Corp. (9th Cir. Jan. 5, 2017) 2017 U.S. App. LEXIS 217. Although the trial court in Sobel did not address the definition of "knowingly" as used in NRS 598.0923(3), it concluded that it required the plaintiff to establish that the defendant "intentional circumvented the requirements" of a statute or "knowingly violated" a law. Id. Given the pertinent language of NRS 598.0923(3)—i.e., the knowingly violated requirement—it was not unreasonable for the trial court to reach that conclusion, although the better reasoned approach would have been for the trial court to require only that the acts or omissions constituting the violation of law be

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because, unlike Plaintiffs, MTC points to no provision of Nevada law that defines "knowingly" as a term, whether in the DTPA or Nevada law more generally.