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

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SANTA ANA, CALIFORNIA

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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

phase -- phase one. Also irrelevant.
BY MR. BOYLAN:
Q Are you going to follow those instructions and not answer the question, sir?
A Yes, sir. 03:47
Q What are insider secrets of a foreclosure trustee investing in junior liens?
A I don't know.
Q Does Trustee Corporation invest in junior liens that are secured by real estate? 03:48
A No.
Q Any other company associated or affiliated with MTC do that?
MR. CERAN: It's a yes-or-no question. You can answer it. 03:48
THE WITNESS: Can you repeat it again? I'm sorry.
MR. BOYLAN: Yeah, please.
(Record read).
THE WITNESS: No.
BY MR. BOYLAN: 03:48
Q Take a look, please, at what's been marked as Exhibit 6.
(Exhibit 6 was so marked.)
BY MR. BOYLAN:
Q On the face of it, it says, "Trustee" -- 03:48

A I have two of them.
Q Okay.
A Just one.
Q All right. On the face of it, it says, "Trustee Corps experience, trust and integrity. Insider secrets from a foreclosure trustee investing in junior liens. The due diligence checklist: What we do and why we do it."
Can you tell us what this is?
A No, I don't know.
Q Do you recognize the logo of Trustee Corps on the first page?
A Yes. Do you mind if I read through this first?
Q Sure.
MR. BOYLAN: While he's looking, Counsel, I'd just like to note for the record, again, that, I think of the 11,000 e-mails -- and I think there's probably more than that -- but my understanding is you've produced none of them. And I assume that includes e-mails regarding the subject matter of Exhibit 6 and referenced --
MR. CERAN: Well, since we --
MR. BOYLAN: -- on the last page of Exhibit 6.
MR. CERAN: Well, since we've had no testimony regarding what you've marked as Exhibit 6, I think it's kind of -- I -- I wouldn't even know what to say about this. I, personally, have never seen this document

before.

MR. BOYLAN: So you didn't know your client would --

MR. CERAN: One would have thought that -- I'm sorry. I was still talking.

One would have thought that this would be a part of your pretrial disclosures as -- as I would have thought several of the other documents that you produced today would have been, but... 03:52

MR. BOYLAN: You know, I'm sorry, but that is absurd. In fact, it's just the opposite. This is what should have been disclosed to us, in which we were only able to find through investigation recently on the Internet. 03:52

So you don't know your client gave these seminars? Well you sure as well should have.

MR. CERAN: Well, like I said, we haven't had any testimony about this yet. It's not apparent why this would be -- 03:52

MR. BOYLAN: Well, per- --

MR. CERAN: Pertinent -- excuse me -- pertinent to -- to your lawsuit in Nevada about debt collection. 03:52

But you have questions. Let's go for it.

BY MR. BOYLAN:

Q Is that your picture on the last page, Mr. Johnsen?

A Yes. 03:52

A I don't know, sir.
Q I understand that. But from looking at the content, is there anything that signals to you that it's fraudulent, or it was forged by some other entity?
MR. CERAN: Calls for opinion testimony. 03:56
THE WITNESS: I don't know, sir.
BY MR. BOYLAN:
Q In looking at the first page -- please correct me -- but it seems to indicate that MTC is a foreclosure trustee that invests in junior liens. 03:56
Is that an incorrect statement of fact?
MR. CERAN: Calls for speculation. The document speaks for itself.
You can answer.
THE WITNESS: No, it doesn't. 03:56
BY MR. BOYLAN:
Q Do you know what that heading of the page 1 means?
MR. CERAN: Calls for speculation.
You can answer. 03:56
THE WITNESS: It looks like it should -- there should have been a space or a period after that. And there are two separate subjects.
BY MR. BOYLAN:
Q So there should have been a period after the word 03:57

"trustee"?

A It's -- it looks like it's just giving them information from a foreclosure trustee's standpoint about how somebody should be -- should look for, with items they should look for when they're investing in junior liens 03:57

followed up by the statement underneath. And I --

Q Did MTC provide services including foreclosure services to invest junior lien investors?

A No.

Q Do you know why Trustee Corporation would have been providing them insider secrets? 03:57

A It's -- it's not -- it's not insider secrets as insider training. It's just what to look out for if -- when you're investing in junior liens. That's what it appears. 03:58

Q But why would -- if Trustee Corporation didn't represent junior lienholders and collection or foreclosure, do you know why they were sharing insider secrets with them at a presentation?

MR. CERAN: No foundation. 03:58

But you can answer.

THE WITNESS: We do represent junior lienholders.

BY MR. BOYLAN:

Q Okay. That's what I asked you. I thought you said, "no." I'm sorry. 03:58

MTC represents junior lienholders in foreclosure matters?

A Yes.

Q And what about also collection services?

A No. 03:58

Q The word "collection" never appears?

A No.

Q Okay. Can we --

THE WITNESS: Do you have one that's reversed out to the other side? 03:58

MR. CERAN: No.

BY MR. BOYLAN:

Q Can we turn to the page that refers to cost of collection and collection timelines?

A Where is that? Which page number, sir? 03:58

Q Why don't we just number them, because we're going to spend some time on this document. Let's each hand number them, please.

MR. BOYLAN: By the way, Counsel, while he's doing that, can I ask you, the commissioner referenced at the 03:59 last hearing, the issue about whether --

MR. CERAN: Do you have a question?

MR. BOYLAN: Yeah. Any of those defendants are going to be asserting the advice of counsel defense?

MR. CERAN: I don't -- I don't remember that. But 04:00

THE WITNESS: No. It sets a -- it sets the minimum time frame by statute that a property can be foreclosed upon.
BY MR. BOYLAN:
Q Meaning that the homeowner will lose their home, correct? 04:11
MR. CERAN: Objection. Argumentative.
THE WITNESS: No, the homeown- -- it gives the amount of time where the homeowner can cure the debt or allow the foreclosure to go forward. 04:11
BY MR. BOYLAN:
Q And by "cure the debt," you mean pay the money on the defaulted loan, correct?
A By bringing the loan current.
Q As reflected on page 15, MTC gave advice to its clients, including those who vested in junior liens, that they need to comply with state laws including debt collection laws, correct? 04:11
MR. CERAN: Objection. Misstates his testimony.
You can answer. 04:12
THE WITNESS: As -- as to what this -- as to what this form says? It says, they -- we did not give advice. We just -- we just suggested they be familiar with.
BY MR. BOYLAN:
Q And MTC suggested that they be familiar with debt 04:12

Q And the same is true with respect to what's shown on page 17 as payoff and short payoff, correct?

MR. CERAN: Objection. Unintelligible. No foundation.

THE WITNESS: This has to do with a beneficiary's exit strategy. Not a trustee -- not a service provided by the trustee. 04:17

BY MR. BOYLAN:

Q I'm sorry. I apologize. Let me try to clarify.

I thought we established this with you earlier as well as Kathy Cerborn Shole [verbatim] or -- and others. 04:17

But one of the services that MTC provided, in which it's promoting in Exhibit 6, is the process of paying off the loan, providing services to obtain paying off the loan, correct? 04:17

MR. CERAN: Assumes facts not in evidence. Misstates prior testimony.

THE WITNESS: No. What item No. 6, I -- what Exhibit 6 appears to be is not services that are provided, but recommend -- but options to an investor in junior liens. 04:18

MR. BOYLAN: Move to strike as nonresponsive.

BY MR. BOYLAN:

Q I see -- think I see the point here. You're not understanding my question. Let me try to clarify it for 04:18

you.

This document is a promotional document; right, it's a seminar given to potential clients or existing clients; is that true?

MR. CERAN: Objection. Calls for speculation. No foundation. You -- you can answer. 04:18

THE WITNESS: I don't know, sir. It's -- it's a -- it's -- I don't know. I really don't know.

BY MR. BOYLAN:

Q What do you think it is, then -- 04:18

A It --

Q -- just based on your 35 years of industry experience?

MR. CERAN: Calling for speculation.

You can answer. 04:18

THE WITNESS: It appears to be talking points on a -- on a seminar though it was given in order -- not to do -- I'm sorry.

Let me re- -- let me finish the sentence a little bit better. 04:18

It appears to be a seminar given on behalf of Max Roi, R-o-i, which I don't -- you know, I don't know what that means.

In order to provide information to people that invest in junior liens, on what some of the things they 04:19

should look out for, and some of the items -- some of their benefits or some of their problems they may incur when they are investing in junior liens.

BY MR. BOYLAN:

Q And those people in the audience are potential clients of Trustee Corporation, which is motivated Trustee Corporation to spend the time and energy to make the presentation, correct? 04:19

MR. CERAN: Objection. There's no foundation. Calls for speculation. 04:19

You can answer.

THE WITNESS: I don't know, sir.

BY MR. BOYLAN:

Q Did Matt Kelley have your permission to use your picture and your contact information on the last page of Exhibit 6? 04:19

A I don't recall, sir.

Q What's association foreclosure service?

A Association foreclosures? It's a d/b/a that we had filed at one time. 04:20

Q For what purpose? And when you say "we," you mean MTC?

A MTC, I'm sorry -- M- -- MTC.

Q And for what purpose?

A We were possibly thinking of doing foreclosure 04:20

EXHIBIT “4”

MR. BOYLAN: And it is understandable. People do it, spouses do it.

FRANCINE SANSOTA: Okay.

MR. BOYLAN: But it's better that we not.

FRANCINE SANSOTA: Okay.

BY MR. CERAN:

Q All right. Thank you.

A The lender. Okay.

Q I am just trying to -- you know, this is -- I am just going for your best memory. Do you remember ever being in on a conversation with a lender in which the subject was refinancing the mortgage, the first mortgage on your property?

A I can't recall if that happened. Like I said, I heard about it secondhand. She would tell me later on when this all occurred. But I can't remember, no, for myself, no.

Q Okay. All right. So at some point in time you became aware that your property was being foreclosed on; right?

A Yes.

Q Do you remember how you became aware of that?

A I believe we got a phone call from one company. Like I said, we got behind on payments.

And we had our mortgage rate decreased at a price we had to pay money up front to have it refinanced. And then after several months, then the interest rate went back up begin.

Q I appreciate receiving that information. But I am trying to get from you your best memory as to how you found out that your home was being foreclosed on?

A I think it had to be in the -- through the mail. We got a letter through the mail saying we were foreclosed and they couldn't help us.

Q Well, let's mark as Exhibit 2 a document entitled Notice of Breach and Default and Election to Cause Sale of Property Under Deed of Trust. It has control numbers TC39 through TC41.

(Exhibit 2 was marked.)

MR. BOYLAN: No clips or staples there, Counsel? I am going to have to talk to your secretary.

BY MR. CERAN

Q You wanted to have the deposition in here. You didn't tell me I needed to bring my own paperclips. Somehow I think you will manage to survive.

Okay. We have Exhibit 2. Have you ever

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MR. BOYLAN: You mean MTC, Counsel?

THE WITNESS: MTC.

BY MR. CERAN:

Q Yes? You are nodding your heading. You are not answering.

A Yes. Yes. Yes.

Q Remember the rules at the beginning?

A Yes.

Q Who have you spoken with at -- you want to call them MTC. Who have you spoken with at MTC, ever?

A I believe they called me a couple times on the phone. But I am not sure what time. They called me a couple times about the property.

Q Is that two times they called you?

A I would say two.

Q Okay. When was the first conversation?

A I don't know. It was, I believe, 2010, 2011.

Q So were you the only person on that telephone call besides the person from MTC?

A Yes.

Q And so what time of the day did this person from MTC call you?

A It had to have been -- had to have been in

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the late afternoon, Eastern Standard Time.

Q This is the first conversation we are talking about; right?

A I believe so, yes.

Q Okay. So was it a male or female?

A I don't know.

Q Did they -- did this person give you his or her name?

A I believe they did, yes. I believe they did.

Q And what was their name?

A The name, I don't know.

Q And what was your phone number at that time?

A I -- we still have our Nevada numbers to this day right now.

Q Can you answer my question?

A What's that again?

Q What was the phone number that MTC called you on in 2010 or 2011?

A My number is 702-249-7894.

Q How long was the conversation?

A Just -- not too long at all. I would say not too long.

Q And for us persons who rely more on

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minutes to sort of estimate time, approximately how many minutes?

A Mostly five, five minutes.

Q And had you called MTC before you received this call from this man or woman from MTC?

A No.

Q And what did the person from MTC say in that first telephone call to you?

A They were talking about money, money for -- money for -- what do they call it? Collection, a collection fee or something, collection fee about the mortgage.

Q Right.

A I wasn't sure what they were talking about.

Q What were the words that they were saying to you during that telephone call?

A Saying that we need to get this -- some kind of collection for your -- you know, to save the -- to save the mortgage or save the house or something to that effect. They were talking -- talking fast, but I didn't know what they were trying to get at. I didn't.

Q Did you tell your wife about that call?

A Yes.

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Q And what did she say?
A She couldn't believe they would be contacting us at that time, after we left Vegas and left the property.
Q Is that what she said?
A Uh-huh.
Q Yes?
A Yes.
Q And what is it that you told your wife about what they told you on that first telephone call?
A Well, just asked me for money, asked me for money for the mortgage.
Q How much did they ask for?
A I believe $1,000, $1,500.
Q Which? Which one, $1,000 or $1,500, did they ask you for?
A I would say $1,500.
Q That's what they said?
A Yeah.
Q That's what this man or woman told you?
A Uh-huh.
Q Yes?
A Yes.
Q And did you make any notes of that

conversation?

A No. No.

Q So at this point in time you had never spoken to anybody at MTC; right? Correct?

A Correct.

Q And out of the blue, after you leave Las Vegas, a man or a woman from MTC called you late in the afternoon; is that right?

MR. BOYLAN: Asked and answered.

THE WITNESS: Yes.

BY MR. CERAN:

Q I am just trying to understand his testimony.

A Yeah. Yeah.

Q And they asked you for $1,500 at that point; correct?

A Yes, they said they needed $1,500 to correct some kind of problem with the property. But I explained that we left the property. We assumed they already took it over. They already took it over. You know, it is after the fact. I said we are already in Ohio at a new residence and we assume they took the property back from us. We lost it, lost our down payment, lost money that we put into the property. And they weren't acting -- none of

about whether or not MTC actually contacted you?

A No. MTC, yeah, I remember the name.

Q That was the name that they told you when they -- tell me what the introduction was in that first phone call?

A Oh, I don't know. They said the whole name. They didn't say MTC. They said the whole legal name. But at that time I was very busy and I couldn't believe it. I thought it was for somebody else, but I can't remember the whole conversation.

Q No, I am not asking for the whole conversation.

A Yeah.

Q All I am asking for at this point, Mr. Sansota, is that the way the introduction was made by this person from MTC, the words that they used to introduce themself when they made that first phone call to you in 2010 or 2011?

A They have introduced themselves on behalf of such and such company, that we would like to save your property and this and that and figure amount, and please get back with us. That is it.

Q Did they leave you a message or were you actually talking to a person?

A I was talking to a person.

MTC? Were you holding down a job at that point?

A I believe -- I believe I just started. I just started at a job in Ohio when that happened. And I worked evenings. So they called me at work. I was working at the time when they called.

Q And that was a cell -- I mean the number that you gave me earlier was your cell number?

A Yes.

Q So you would have it with you?

A Yes.

Q So now you remembered that the call was in the evening as opposed to the late afternoon?

A All I know is I was working at that time because I worked -- you know, I worked from 2:00 in the afternoon until 12:00 midnight.

Q Okay. So have you now told me everything that you remember about this first phone call with MTC?

A I believe so, yes.

Q Okay.

A I think so.

Q Well, now we are going to talk about the second one. Okay? When was the second one?

A The second phone call?

Q Yeah.

talking about all day.

A No.

Q Oh, you had already left?

A Yes.

Q Okay. So I want to go back to Exhibit 2, which you don't have to look at it really.

A Oh, yes.

Q Because you said you never saw it before. But it indicates it was recorded in late July of 2010. Is it possible that you had already moved out of the property by late July, by July 28th of 2010?

MR. BOYLAN: Speculation. Also question lacks foundation.

BY MR. CERAN:

Q Let me rephrase it.

Do you remember whether you had moved out of the property by July 28 of 2010?

MR. BOYLAN: Asked and answered as to move out date, several times.

THE WITNESS: What's that again? The move out date or what?

BY MR. CERAN:

Q No. My question is do you remember whether you moved out of the property by July 28, 2010?

A Yes.
Q And did you?
A Yes.
Q Okay. Thank you.
So when you left for Ohio in 2010, did you have any understanding as to what was going to happen to your property?
A We knew it is going to be taken back.
Q Okay.
A Taken back by the company, yes.
Q Is that because you would stop making payments?
A Well, we didn't want to get behind on our payments and lose the house. Eventually it happened anyhow.
Q Well, why did you stop making payments?
A Because they said in order to get refinanced we would have to be behind on our payments, in order to -- instead of foreclosing on that house, they would want to renegotiate with a lower mortgage rate in order to keep the house, lower house payments.
Q Well, we went over those conversations already. And correct me if I am wrong, but you don't remember any particular conversation with

EXHIBIT “6”

AA003954

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INSIDER SECRETS FROM A FORECLOSURE TRUSTEE INVESTING IN JUNIOR LIENS

THE DUE DILIGENCE CHECKLIST

WHAT WE DO AND WHY WE DO IT...

AA003955

RULES

- I am not an attorney and I do not provide legal advice
- You are responsible for your level of knowledge and education
- Take Notes! This presentation is an outline
- There will be a Q & A period at the end of this presentation so save your questions!

I AM AVAILABLE TO ANSWER QUESTIONS VIA EMAIL AND CONTACT INFORMATION WILL BE PROVIDED AT THE END OF THIS PRESENTATION

AA003956

WHAT WE WILL DISCUSS

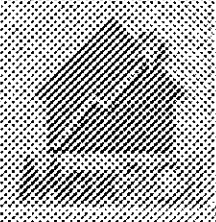
I have approximately 60 Minutes

- How to Succeed at Note Investing
- The Purchase and Due Diligence
- The Collateral
- Foreclosure and Pre-Foreclosure
- Exit Strategies
- What We do on our personal notes
- The Workout
- Additional Resources
- Question and Answers

AA003957

THREE WAYS TO SUCCEED AND HOW TO DO IT

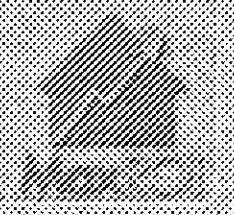
- Knowing the right people
  - Sellers
  - Vendors
  - Trustee/Attorney
  - Competition
- Be in the right place at the right time
  - Be ready!
  - Do as you say and say as you do...
- Knowing more than the Next Person
  - The more you know the better you will do
  - You get what you pay for...
  - Ask questions but you will learn the most by becoming involved



AA003958

EVALUATING A NOTE AND WHAT YOU ARE GETTING INTO...

- Take off your Real Estate hat...
  - Real Estate vs. Notes
- Cost
  - No Bad Notes... only bad prices
  - Cost of Collections
- Time
  - Most of the work takes place before a note is purchased
  - Collection timelines
  - Risks of waiting



AA003959

HOW MUCH DOES IT COST?

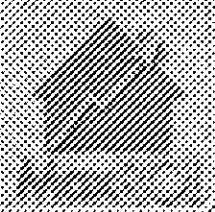
- Ask yourself these questions
  - What type of note do I really want?
  - How many notes could I handle if they were free...
  - Yields and returns vs expectations
- Cost of the note depends on the seller and the type of note
  - Secured vs Unsecured
  - Commercial vs Residential
  - 1st position vs 2nd position
  - Performing vs Non-Performing
  - Foreclosure and Bankruptcy
  - State
  - How much information you are provided

AA003960

RESEARCH, PLAN & BUDGET

DON'T BE AFRAID TO OUTSOURCE

- Don't plan on eating the elephant with one bite
- Don't blow your budget on the first transaction
- Research who you want to work with
- Assemble your team
  - Trustee Attorney
  - Title Company or abstractor
  - Skip Tracing
  - Door Knockers
  - Loan Servicer
  - Insurance and Real Estate Agents
  - Product Sources
  - Etc.



AA003961

TIME

ACTIVE VS. PASSIVE INVESTING

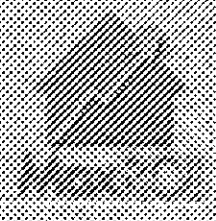
- Outsourcing
- Purchase
- Research
- Servicing
- Collections
- Foreclosure
- Legal

AA003962

THE CHECKLIST

EVALUATING THE PROPERTY

- Condition of Title and Collateral
  - Secured vs Unsecured
  - Lien position
  - Adverse liens
  - Taxes
  - Assistance or other Jr. Liens
  - Foreclosure
- Equity
  - True Equity
  - Positive Equity
  - Negative Equity
  - Emotional Equity



AA003963

THE CHECKLIST

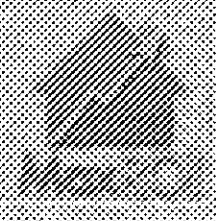
EVALUATING THE HOMEOWNER

- Emotional Equity
  - Condition
  - Location
  - Community
- Bankruptcy
  - Have they filed?
  - Repeat Filings
  - Intent
  - Active, Dismissed and Discharged
  - Planned Default

THE COLLATERAL

AND WHAT YOU ACTUALLY HAVE...

- Deed of Trust/Mortgage
- Promissory Note
  - Fixed/Amortized vs. HELOC
  - Draw period vs. Repayment Period
  - WSJ Prime vs. Treasury Yield and the Margin
- Endorsed Note/Allonge
- Loan Application
- Title Policy and/or HUD-1
- Correspondence/Demands
- Payment History
- Credit Report



AA003965

FORECLOSURE

FRIEND OR FOE

fore·clo·sure
fôr'klōZHər/

noun: foreclosure;
plural noun: foreclosures
the process of taking possession of a mortgaged property as a result of the mortgagor's failure to keep up mortgage payments

AA003966

THE TOOLS OF FORECLOSURE

FRIEND OR FOE

FRIEND

- Gets the Homeowner's Attention
- Forces a limited timeframe
- Constructive knowledge and public record
- Property sold at public sale
- Most people give up...
- Easier, if well prepared

FOE

- Costs Money
- State and Federal compliance issues
- Litigation
- Some fight too long for nothing...

DIFFERENT KINDS OF FORECLOSURE

(DIFFERS BY STATE AND SITUATION)

NON-JUDICIAL FORECLOSURE

- Deed of Trust/Note
- Generally does not require court action
- Generally NO right to redeem
- "As is"
- Generally NO recourse

JUDICIAL FORECLOSURE

- Mortgage
- Always requires court action
- Generally right to redeem
- Often used to clean up messes
- Recourse

AA003968

COMPLIANCE

Be familiar with:

- Your Collateral Documents
- The foreclosure laws in the state where the Property is located
- State specific laws and requirements:
- Homeowner's Bill of Rights
- Mediation
- Etc.
- CFPB
- FDCPA
- RESPA
- TILA

WHAT WE DO...

ON OUR PERSONAL NOTES

- Know Before you Go...
- Title
- Payoff Quote From Sr. Lien
- The Wake-up
- 30 Day Demand Letter
- Statutory required notices with state specific language
- Foreclosure
- Calling the Homeowner(s)
- Door Knocker
- Additional Notices

AA003969

EXIT STRATEGIES

- Reinstatement
- Payoff and Short Payoff
- Forbearance or Repayment Plan
- State and Local assistance programs
- Modification
- Deed in Lieu of Foreclosure
- Trustee Sale
- Assumption of Loan
- Sell your Note
- Deficiency Judgment
- Redemption Rights

AA003971

THE WORKOUT

You are only limited by your imagination...
and the law

- Permanent - Semi-permanent - Temporary
- New Principal Balance and Maturity Date
- Deferred Principal Balance
- Forgivable Principal Balance (Deferred Principal Reduction Amount)
- Step Up Interest Rates (Variable)
- Disclaimers - more is more
  - What they have to do
  - What will happen if they default
  - What is a default
  - Release of Claims
  - Miscellaneous Provisions

RESOURCES

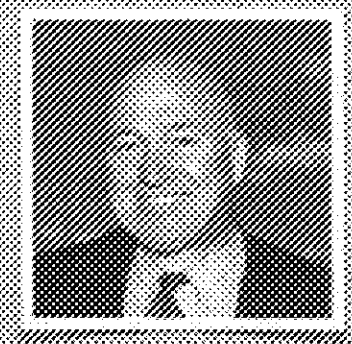
NetrOnline - Public Records	www.publicrecords.netronline.com
Consumer Financial Protection Bureau	www.consumerfinance.gov
Mortgage Banker's Association	www.mbaa.org
Nationwide Mortgage Licensing System	www.mortgage.nationwidelicensingsystem.org
AllRegs	www.allregs.com
United Trustees Association	www.unitedtrustees.com
California Mortgage Broker's Association	www.CMBA.com
USFN (United States Foreclosure Network)	www.USFN.org

Just to name a few...

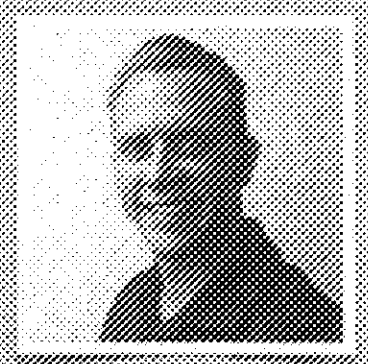
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ANY QUESTIONS? PLEASE EMAIL US
AND WE WILL GET BACK TO YOU!

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' 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**

- **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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RTRAN

CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

JEFFREY BENKO, ET AL., Plaintiffs, vs. QUALITY LOAN SERVICE CORPORATION, ET AL., Defendants.	CASE NO. A649857 DEPT. XIX

BEFORE THE HONORABLE BONNIE A. BULLA, DISCOVERY COMMISSIONER

WEDNESDAY, MARCH 8, 2017

RECORDER'S TRANSCRIPT OF PROCEEDINGS

COURT CALL - STATUS CHECK: PHASE 2 AND PHASE 3 DISCOVERY

RECORDED BY: FRANCESCA HAAK, COURT RECORDER

APPEARANCES:

For the Plaintiffs:	NICHOLAS A. BOYLAN, ESQ., [via CourtCall] SHAWN CHRISTOPHER, ESQ.
For the Defendant California Reconveyance:	LAWRENCE SCARBOROUGH, ESQ. PRESTON MATHEWS, ESQ.
For the Defendant MTC:	ALLAN CERAN, ESQ. [via CourtCall] JESSICA E. PERLICK, ESQ.
For the Defendant Quality Loan:	THOMAS N. BECKOM, ESQ.
For the Defendant National Default:	KEVIN S. SODERSTROM, ESQ.

Las Vegas, Nevada - Wednesday, March 8, 2017, 11:06 a.m.

* * * * *

DISCOVERY COMMISSIONER: Benko.

THE CLERK: This is a CourtCall.

DISCOVERY COMMISSIONER: Could everyone state their appearances, please. I'll start with my CourtCall counsel.

MR. BOYLAN: Good morning, Your Honor. Thank you. It's Nicholas Boylan, representing the Plaintiffs.

DISCOVERY COMMISSIONER: Good morning.

MR. CHRISTOPHER: Shawn Christopher, for Plaintiffs.

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

DISCOVERY COMMISSIONER: Good morning.

MR. CHRISTOPHER: Shawn Christopher, for Plaintiffs.

MR. SCARBOROUGH: Good morning, Your Honor. Larry Scarborough from Bryan Cave, and Preston Mathews from Smith Larsen, for CRC.

DISCOVERY COMMISSIONER: Good morning.

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

MS. PERLICK: Good morning, Your Honor. Jessica Perlick, on behalf of MTC Financial.

THE RECORDER: I'm sorry. Could you repeat that?

MS. PERLICK: Jessica Perlick, 13218, and MTC Financial.

MR. BECKOM: Thomas Beckom, on behalf of Quality Loan Service Corporation.

DISCOVERY COMMISSIONER: Good morning. Okay. So I believe we're here

today to discuss the phases of the discovery, specifically Phase 2 and then Phase 3.

I don't know at this point if there are any other issues that I left on the table for today's hearing. I don't believe so. I know your trial date, I believe, is next year, so I think what we need to do is discuss how we're going to handle the rest of the discovery, and I don't know if you all had the opportunity to speak with each other about this issue or -- I'm --

MR. BOYLAN: Your Honor, Nick Boylan. The defense has suggested that we stipulate to extend Phase 1 for about 60 days, and I had suggested to them that we'll probably need till the end of the summer to complete Phase 1.

We've got approximately 15 defense depositions yet to be done. Some of 'em require travel. Some of 'em -- we've got one witness who I think is still in the Philippines. So we've got a bunch of work to do. We've also got some follow-up written discovery to do that is sparked by these depos, and we're still getting transcripts, you know, each week we're getting a new transcript from depositions taken.

So I'm suggesting at this point about I guess about 120 days or so, and they're suggesting 60 days for Phase 1. The Court may want to consider allowing Phase 2 to begin contemporaneously perhaps.

MTC has kind of deviated from the schedule in terms of defense summary judgments. The contemplation was that after Phase 1 the Defendants would file summary judgment motions related to the Phase 1 issue, but MTC has already filed a summary judgment motion, actually a countermotion to ours, on that issue.

So -- and also we have set for the 14th the motion in Department XIX to consider whether phasing should be maintained in the case or whether we should take a different course, and the summary judgment motions are set for that same day. I don't know whether Judge Kephart will actually proceed on that day or will feel the need to continue it

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, 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.) This is "knowing" conduct, as a matter of law.

VII. THE HO DECISION AND VARIOUS UNPUBLISHED FEDERAL TRIAL COURT ORDERS CANNOT PROVIDE A BASIS FOR SUMMARY JUDGMENT IN FAVOR OF MTC

Plaintiffs have discussed 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 various federal trial court orders relied on by MTC and QLS, in both Plaintiffs' moving papers and in their concurrently filed reply papers to the opposition briefs filed by MTC and QLS to Plaintiffs' Motion. To avoid burdening the Court, Plaintiffs hereby incorporate by reference the arguments and authorities presented by them in those papers.

VIII. MTC'S "DAMAGES" CONTENTIONS CANNOT SUPPORT SUMMARY JUDGMENT, AND ARE ERRONEOUS

As admitted by MTC's Senior Vice President of operations, the fees and costs charged by MTC for its illicit claim collection are added to the obligation/debt of the homeowner victim, such as the Sansotas in this case. (SS#8; **Ex. "2"**, at pp.107:18-23.) Although he attempted evasion and qualification, Rande Johnsen admitted essentially the same in his testimony. (SS¶78; **Ex. "2"**, at p. 88.) Accordingly, consistent with Defendant's perceived authorization under the deed of trust, the illicit money that MTC put into its pocket for its illegal activity in Nevada was also added to its bank client's claim against the Sansotas and their property. The amount was just under $2,000.00. (SS#30.)

A. The Statute Provides Equitable Relief, Remedies and Fees; Damages Are Not Required

MTC's Brief does reference the controlling statute, NRS 41.600. The governing portion of NRS 41.600 is as follows:

1. An action may be brought by any person who is a victim of consumer fraud.
2. As used in this section, "consumer fraud: means:
   (e)(A) deceptive trade practice as defined in NRS 598.0915 to 598.0925, inclusive.
3. If the claimant is the prevailing party, the court shall award the claimant:
   a) Any damages that the claimant has sustained;
   b) Any equitable relief that the court deems appropriate; and
   c) The claimant's costs in the action and reasonable attorney's fees.

Accordingly, while damages can be included in the Court's award, equitable relief is also available and a distinct remedy provided by law, as well as costs and reasonable attorney's fees. Equitable relief includes, of course, an injunction prohibiting MTC from continuing its claim collection business in Nevada unless it maintains its collection agency license, and thus authorization from the FID. (This requires bonding and full compliance with all consumer protection regulations. See

NAC 649.010 to 649.340). Equally obvious is the fact that equitable relief includes a variety of possible equitable adjustments by the Court, including restitution (unjust enrichment) remedies related to illicit compensation received by MTC, and/or the illicit profits of MTC.

Restitution, also known as unjust enrichment, can be awarded in law or in equity. See Restatement (Third) of Restitution and Unjust Enrichment ("Restatement of Restitution, Third"), § 4 (2011); American Master Lease LLC v. Idanta Partners, LLC (2014) 225 Cal.App. 4th 1451, 1483. Thus, under Plaintiffs' first cause of action for deceptive trade practice, pursuant to NRS 41.600(3)(a) or (b), restitution is available to Plaintiffs.[4] Even if it were true, the Plaintiffs did not suffer damages, which is absolutely not true, restitution is available based on the disgorgement (and accounting for) of the illicit gains/profits obtained by the Defendants as a result of their unlawful and statutorily-fraudulent practices committed against the Plaintiffs. See American Master Lease LLC v. Idanta Partners, LLC, supra, 225 Cal.App. 4th at 1483. The Nevada Supreme Court has cited and utilized the Restatement of Restitution (in its various iterations) on multiple occasions.[5] Restitution by full disgorgement of Defendants' gains and profits, based on MTC's violation of law and conscious wrongdoing, is perfectly appropriate here. Restatement of Restitution, Third, § 51; see also American Master Lease LLC, supra, 225 Cal.App. 4th at 1483; *Guy Tel. & Tel. Co. v. Melbourne Int'l.* (11th Cir. 2003) 329 F. 3d 1241.

In fact the disgorgement remedy rests upon one of the most critical foundations underlying the entirety of the law of restitution, which is, "A person is not permitted to profit by his own wrong." Restatement of Restitution, Third, § 3 [emphasis added].

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[4] Restitution/unjust enrichment was not considered by Judge Pro in Picus v. Wal-Mart Stores Inc. (D. Nev. 2009) 256 F.R.D. 651, which involved only traditional damages for affirmative misrepresentation in the sale of a product. Disgorgement was not an issue.

[5] See, e.g., Monzo v. Eighth Judicial Dist. Court of Nev. (2014) 331 P.3d 881; Sanguinetti v. Strecker (1978) 94 Nev. 200, 577 P.2d 404; Namow Corp. v. Egger (1983) 99 Nev. 590, 668 P.2d 265; Wheeler Springs Plaza, LLC v. Beemon (2003) 119 Nev. 260, 71 P.3d 1258.

For example, the comments to § 3 of the Restatement of Restitution, Third, explain that: "Restitution requires full disgorgement of profit by a conscious wrongdoer, not just because of the moral judgment implicit in the rule of this section, but because any lesser liability would provide an inadequate incentive to lawful behavior. [emphasis added]; see also American Master Lease LLC v. Idanta Partners, LLC., supra. "If A anticipates (accurately) that unauthorized interference with B's entitlement may yield profits exceeding any damages B could prove, A has a dangerous incentive to take without asking—since the nonconsensual transaction promises to be more profitable than the forgone negotiation with B. The objective of that part of the law of restitution summarized by the rule of § 3 is to frustrate any such calculation." Restatement of Restitution, Third, § 3. In American Master Lease LLC, the Court of Appeal explained it this way:

> Disgorgement as a remedy is broader than restitution or restoration of what the plaintiff lost. There are two types of disgorgement: restitutionary disgorgement, which focuses on the plaintiff's loss, and nonrestitutionary disgorgement, which focuses on the defendant's unjust enrichment. Typically, the defendant's benefit and the plaintiff's loss are the same, and restitution requires the defendant to restore the plaintiff to his or her original position. However, [m]any instances of liability based on unjust enrichment . . . do not involve the restoration of anything the claimant previously possessed . . . includ[ing] cases involving the disgorgement of profits ... wrongfully obtained . . . . [T]he public policy of this state does not permit one to take advantage of his own wrong regardless of whether the other party suffers actual damage. Where a benefit has been received by the defendant but the plaintiff has not suffered a corresponding loss or, in some cases, any loss, but nevertheless the enrichment of the defendant would be unjust . . . the defendant may be under a duty to give to the plaintiff the amount by which [the defendant] has been enriched.
>
> 225 Cal.App. 4th at 1482 [internal quotation marks and citations omitted; alterations in original].

The American Master Lease LLC Court of Appeal went on to note:

> Moreover, [i]t is not essential that money be paid directly to the recipient by the party seeking restitution . . . . The emphasis is on the wrongdoer's enrichment, not the victim's loss. In particular, a person acting in conscious

> disregard of the rights of another should be required to disgorge all profit because disgorgement both benefits the injured parties and deters the perpetrator from committing the same unlawful actions again. Disgorgement may include a restitutionary element, but it may compel a defendant to surrender all money obtained through an unfair business practice . . . regardless of whether those profits represent money taken directly from persons who were victims of the unfair practice. Without this result, there would be an insufficient deterrent to improper conduct that is more profitable than lawful conduct.
>
> Id. [internal quotation marks and citations omitted; alterations in original].

Here, MTC and the other Defendants expressly seek to capitalize by about $80 million dollars of profit obtained by their illegal actions interfering with the Plaintiffs' consumer rights (and occupation of their homes), and now Defendants specifically confirm that part of their defensive calculus is the argument that Plaintiffs suffered and/or can prove no damages in any event! It is shameful.

B. <u>Evidence Shows Damage Suffered Here</u>

1. <u>MTC's Illicit Fees and Costs Were Added to Borrowers (Sansotas') Obligation, and Thus The Claim Against The Property, Which Claim Was 'Collected," Property Sold and Funds Passed By MTC To The Lender, Wells Fargo Bank</u>

Consistent with language in the deed of trust upon which MTC relies, and as confirmed by the sworn testimony admission from MTC's Senior Vice-President and operations manager, Ms. Sherburn-Cole, the illicit fees and costs charged and received by MTC for its illegal work, including with respect to the Sansotas, were added to Nevada debtors' obligations and thus the claim against the debtors by MTC's principals, including Wells Fargo and other creditor-clients. (SS#7-10, 12-16, 30-31, 34-35, 43,49, 65, 67, 69-70, 73-74, 76, 77.) For the Sansotas, the amount was just under $2,000. (SS#30.) That claim, in total, was effectively recovered to the maximum extent possible by MTC, on behalf of its client, through the acquisition and sale of the Sansotas' home and the collection of the cash money paid therefor,

which MTC collected into its own account and then passed on to its client, Wells Fargo bank (SS#30-31, 43, 49.)

2. Laghaei Also Has Damages

MTC goes to such pains to try to minimize or disregard the proof Plaintiffs have presented related to the full nature and scope of MTC's activities in the State of Nevada, both as to the putative class of Nevada debtors who were subject to MTC's unlawful collection activities and Plaintiff Laghaei more specifically. The undisputed material facts presented by Plaintiffs in support of their Motion, however, demonstrate that Plaintiff Laghaei also has suffered thousands of dollars in damages due to MTC's misconduct.

MTC's own documents—produced by MTC in the course of discovery in this case—show that MTC negotiated a forbearance agreement with Plaintiff Laghaei in 2009 on behalf of its creditor-client. (SS#34.) In its own words—taken from these internal documents—MTC "placed borrower [i.e., Plaintiff Laghaei] in a forbearance agreement")—i.e., negotiated and documented a forbearance agreement with Plaintiff Laghaei—on behalf of its client, FHLMC, relating to Plaintiff Laghaei's defaulted debt. Id. Pursuant to this forbearance agreement, MTC received (i.e., collected) funds from Plaintiff Laghaei to reinstate his defaulted loan, which funds MTC sent to its creditor-client as payment on the loan. Id. MTC collected thousands of dollars from Mr. Laghaei on behalf of its creditor-client, FHLMC. Id. MTC also charged Plaintiff 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. (SS#35.) Insofar as MTC was not licensed by the FID at the time it directed these collection activities at Plaintiff Laghaei, MTC was not entitled to collect this money from Plaintiff Laghaei, or to charge him for its services in doing so. Plaintiff Laghaei's damages from MTC's statutory consumer fraud and deceptive

trade practice would necessarily include at a minimum these amounts. Once the question of Plaintiffs' damages—rather than MTC's liability—is properly before the Court, the full amount of damages suffered by Plaintiff Laghaei are likely to be even higher.

IX. UNJUST ENRICHMENT IS APPLICABLE HERE

A. Plaintiffs Did Not Enter Into A Contract With MTC

As a matter of fact, the Sansotas never entered into a contract with MTC. (SS#85.). The analogous Nevada authority is the decision by the Supreme Court of Nevada in Leasepartners Corp. v. The Robert L. Brooks Trust (1997) 113 Nev. 747, 942 P.2d 182. In Nevada, unjust enrichment occurs whenever "a person has and retains a benefit which is equity and good conscience belongs to another." Id. at 756, 187-188. In Leasepartners Corp., many related contracts existed between and among the entities involved in the transactions at issue, but no contract existed between Leasepartners and the Brooks Trust. Id. Summary Judgment was therefore reversed. Id. As stated here, there is no contract between Plaintiffs and the Defendant collection agencies, MTC specifically here. (SS#85.)

Under restitution, i.e., unjust enrichment, the wrongdoer who obtains a benefit, gain, and/or illicit profit is required to disgorge all of that benefit, gain and/or profit to the victim if the conscious wrongdoing involved any type of fraud or undue pressure or coercion against a victim (here, we have statutory fraud in the form of a deceptive trade practice, as a matter of law, and illicit coercion against the victims by pursuing a foreclosure-styled collection process without a license, in order to intimidate the Nevada victims). See Restatement of Restitution, Third, § 14, at 199 [citing Leeper v. Beltrami (1959) 53 Cal.2d 195; Wake Development Co. v. O'Leary (1931) 118 Cal.App. 131; McRae v. Pope (1942) 311 Mass. 500; Chandler v. Sanger (1874) 114 Mass. 364; Aronoff v. Levine (1919) 190 A.D. 172; *Pape' v. Knoll* (1984)

69 Ore. App. 372]; id. at 202-203 [citing Leeper, supra; Ogle v. Freeman (1939) 150 Kan. 864; Fairbanks v. Snow (1887) 145 Mass. 153; Bumgardner v. Corey (1942) 124 W. Va. 373]; see also generally id. § 51.

MTC's brief does not reference one of the cornerstones of the Law of Restitution, as reflected in Section 3 of the Restatement of Restitution, Third, which prohibits "Wrongful Gain." The first comment to Section 3 states: "The present section marks one of the cornerstones of the law of restitution and unjust enrichment. The general principle it identifies is the one underlying the 'disgorgement' remedies in restitution, whereby a claimant potentially recovers more than a provable loss so that the defendant may be stripped of a wrongful gain." Restatement of Restitution, Third, § 3, and cmt. a [emphasis added]. In other words, under Restitution, a knowing wrongdoer like MTC here cannot escape full liability and the disgorgement of illicit profit simply because the cash was not taken directly out of the hand of the plaintiff victim (although here, the Plaintiffs' home was taken and sold and the resulting cash delivered to MTC, which forwarded the cash to Wells Fargo bank and was paid fees therefor). See Kossian v. American Nat. Ins. Co. (1967) 254 Cal.2d 647; Guy Tel & Tel. Co., supra. Comment (c) to Section 3 of the Restatement of Restitution, Third, states as follows in pertinent part:

> (c) *Recovery Exceeding the Claimant's Loss*
>
> When the defendant has acted in conscious disregard of the claimant's rights, the whole of the resulting gain is treated as unjust enrichment, even though the defendant's gain may exceed both (i) the measurable injury to the claimant, and (ii) the reasonable value of a license authorizing the defendant's conduct. Restitution from a conscious wrongdoer may therefore yield a recovery that is profitable to the claimant plaintiff—a result that is generally not permitted when the restitution claim is against an innocent recipient."
>
> Restatement of Restitution, Third, § 3, and cmt. c.

MTC's reliance on Unionamerica Mortgage & Equity Trust v. McDonald (1981) 97 Nev. 210, 626 P.2d 1272, is misplaced. The per curiam opinion in that case

involved a markedly different situation from the instant case. Id. A consumer protection statutory scheme was not involved or consciously violated by the defendant. Id. Statutory fraud did not exist in that case either. Id. The plaintiff had had full opportunity to remove the sign at any time. Id. The defendant had not committed any illegal conduct and had not made any use of the sign. Id. The governing lease provided for the removal of the sign upon breach of the lease. Id. Furthermore, there was no evidence supporting a finding that there had been an assumption of the lease, and the plaintiff had been informed that the sign was of no interest to the defendant. Id. Under such circumstances, the plaintiff could not recover damages for unjust enrichment, since no unjust enrichment had occurred. Id.

B. The Deed of Trust is Irrelevant And Void As Authority To Commit Illegal Acts, So Unjust Enrichment Applies

MTC's reliance on the deed of trust is also misplaced. MTC was unjustly enriched by its receipt of money (almost $50 million from 2007-2012; SS#7, 67, 74) for conducting unlicensed collection agency activities, which are illegal under Nevada law. Neither the deed of trust, nor any contract between private parties, can authorize or otherwise justify the commission of illegal acts, and the receipt of illicit compensation therefor. The issue is not simply the non-judicial foreclosure process that may be referenced in the deed of trust. MTC needed a license as a collection agency from the FID. And, the governing issue here concerns unlicensed claim collection agency activities described in the evidence, which are illegal acts under applicable Nevada law, as explained in Plaintiffs' moving papers and reply papers and herein. MTC's argument that some provision in the deed of trust allowed it to conduct unlicensed claim collection agency activities in contravention of Nevada law cannot stand; any such provision in the deed of trust is void as a matter of public policy. See Magill v. Lewis (1958) 74 Nev. 381, 333 P.2d 717.

According to law, where the subject contract is unenforceable, the cause of action for unjust enrichment is valid. Id. Under governing Nevada Supreme Court authority, the deed of trust cannot authorize defendants to commit illegal acts, and any such contract stipulation is unenforceable such that plaintiffs' unjust enrichment cause of action must be sustained. See Magill, supra, 74 Nev. 381, 333 P.2d 717; Loomis v. Lange Fin. Corp. (1993) 109 Nev. 1121, 865 P.2d 1161. As a matter of strong Nevada public policy, defendants collectively cannot be allowed to enrich themselves with perhaps as much as $80 million dollars in fees for conducting illegal acts against the Plaintiffs, i.e., unlicensed claim collection agency activities. See Loomis, supra, 109 Nev. 1121, 865 P.2d 1161; see also Webb v. Clark County School Dist. (2009) 125 Nev. 611, 218 P. 3d 1239; Vincent v. Santa Cruz (1982) 98 Nev. 338, 647 P. 2d 379.

X. CONCLUSION

Defendant MTC Financial Inc.'s Cross-Motion should be denied.

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

Plaintiffs,

v.

CASE NO: A-11-649857-C

Dept. 19

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**

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.

AGAINST DEFENDANT MTC

Jury Trial Demanded

Hearing Date: March 14, 2017

Hearing Time: 9:00 a.m.

Plaintiffs Raymond and Francine Sansota (collectively "Plaintiffs" here) respectfully submit the following Separate Statement in Support of their Motion for Partial Summary Judgment against Defendant MTC Financial Inc. dba Trustee Corps ("MTC" or "Defendant").

No.	Moving Party's Undisputed Material Facts	Supporting Evidence
1	MTC has been continuously conducting business in the State of Nevada since at least as early as 2000.	**Exhibit "D"** (Terry Johnsen Deposition), at 19:14-15.[1] Authenticated by Boylan Moving Declaration, at ¶7.
2	MTC did not obtain a collection agency license from the State of Nevada's Financial Institutions Division ("FID") until April 19, 2012.	*See* **Exhibit "I"**, at MTC000338. Authenticated by **Exhibit "B"** (Cathe Cole-Sherburn Deposition), at 74, 102.
3	MTC has continued to renew its collection	*See* **Exhibit "I"**, at

[1] After her deposition, Ms. Johnsen provided an errata sheet, dated August 11, 2016, making various "corrections" to her deposition testimony. *See* **Exhibit "E"** at 2. As pertinent here, Ms. Johnsen changed her testimony from "2000" to "2000, I believe." *See id.* The reason given for this change (as with all of her changes to her deposition testimony) was "Correction/recollection/completeness." *Id.* at 1.

	agency license with the FID from 2012 to the present.	MTC000338-MTC000353. Authenticated by **Exhibit "B"** (Cathe Cole-Sherburn Deposition), at 74, 102.
4	From before MTC obtained its Nevada license, the nature of MTC's business operations in the State of Nevada has not materially changed, i.e., it is the same Nevada operations as after MTC obtained its collection agency license from the FID on April 19, 2012. (Senior Vice-President Gloria Juarez swore on January 31, 2017, that there had been no material change since 2002.	**Exhibit "B"** (Cathe Cole-Sherburn Deposition), at 29, 99-101; Boylan Moving Declaration, at ¶16; Juarez Deposition, at _____ (pages to be submitted upon receipt of transcript). **Exhibit "B"** is authenticated by Boylan Moving Declaration, at ¶5.
5	At her deposition, Ms. Johnsen, a co-owner and vice-president of MTC, testified that MTC's "[t]rustee work" includes "[f]oreclosure" and "[w]hatever else goes with it." By way of example, she stated that MTC does "eviction work" as part of its "trustee work" in the State of Nevada.	**Exhibit "D"** (Terry Johnsen Deposition), at 20:24-21:11.[2]
6	It is and has been generally MTC's practice, policy, and procedure to hold its employees to the standards imposed on debt collectors by the federal Fair Debt Collection Practices Act ("FDCPA"), including in all communications with Nevada debtors.	*See, e.g.*, **Exhibit "I"**, at MTC000312. Authenticated by **Exhibit "B"** (Cathe Cole-Sherburn Deposition), at 73-74, 87-88, 93.
7	Between 2007 through 2012, MTC estimates that it received payments from its clients of $12,317,679 in fees and $34,772,022.71 in costs incurred on behalf of MTC's clients for MTC's services in the State of Nevada during that period.	*See* **Exhibit "L"**, at 2-3. Authenticated as described Boylan Moving Declaration, at ¶18.
8	As a general rule, MTC's fees and costs for its services are added to the loan balance of defaulted debtors in Nevada whose files MTC handles, and become a part of the homeowners' outstanding debt.	**Exhibit "B"** (Cathe Cole-Sherburn Deposition), at 107:18-23.

[2] After her deposition, Ms. Johnsen changed her testimony that "We do eviction work" to "Nonjudicial foreclosure work." *See* **Exhibit "E"** at 2.

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

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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

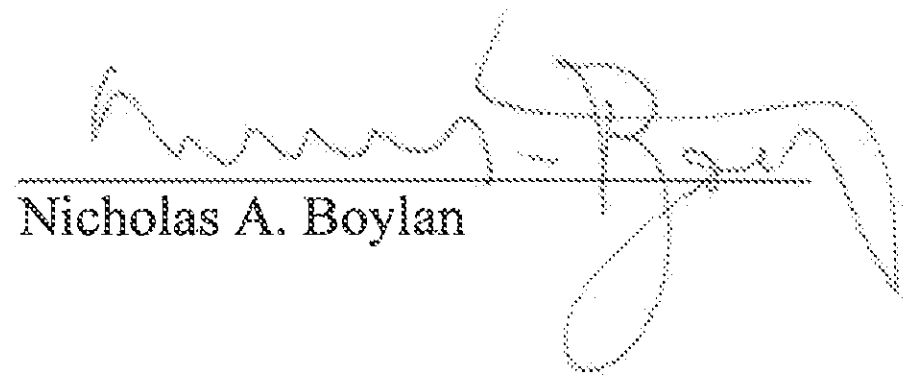
filed. When it is, the Third Amended Complaint will be filed.

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--726-3909 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

	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: _____
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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

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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:

- **PLAINTIFFS' OBJECTION AND RESPONSE TO QUALITY LOAN SERVICE CORPORATION'S OPPOSITION TO THE MOTION FOR PARTIAL SUMMARY JUDGMENT**
- **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;**
  2) PLAINTIFFS' REPLY MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT AGAINST DEFENDANT MTC; EXHIBITS "1" – "6"; AND
  3) PLAINTIFFS' OBJECTION AND RESPONSE TO QUALITY LOAN SERVICE CORPORATION'S OPPOSITION TO THE MOTION FOR PARTIAL SUMMARY JUDGMENT
- **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;**
  2) PLAINTIFFS' REPLY MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT

AGAINST DEFENDANT MTC AND
3) PLAINTIFFS' OBJECTION AND RESPONSE TO QUALITY LOAN SERVICE CORPORATION'S OPPOSITION TO THE MOTION FOR PARTIAL SUMMARY JUDGMENT

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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CASE NO: A-11-649857-C

Dept. 19

PLAINTIFF' 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

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

The chief executive, controlling person and owner of MTC is Rande Johnsen. Mr. Johnsen's deposition was begun on February 8, 2017 and the transcript was just received. Although Mr. Johnsen was, at a minimum, a highly evasive if not openly deceitful witness, he reluctantly provided a flat admission illustrating MTC's liability in this case. As he has done over the years in seminars he has given[1], Mr. 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). This admission by Mr. Johnsen is found in pp. 42-45 of his deposition transcript, **Ex. "2"**, submitted herewith (SS#76).

Also, the following testimonial admission by Mr. Rande Johnsen is helpful

[1] Plaintiffs have obtained his power point presentations and some audio-recording of his presentations. (SS#81-83, **Exhibits "4"-"6"**.)

here:

> Q. From the beginning of 2007 and still to this day, MTC receives money from Nevada debtors on defaulted loans for purposes of reinstating the loans that are in default with MTC's clients, correct?
> A. We receive payments from Nevada homeowners in the state of Nevada.
> Q. So is that yes?
> A. With regards that it's Nevada homeowners.
> Q. So is the answer yes?
> A. The answer's yes -- yes as to Nevada homeowners.
> Q. And why are you making that distinction? I'm sorry, I don't understand.
> A. Because I don't understand if they're a debtor. All I understand is homeowners or property owners. That's all, sir.
> Q. All right. But you understand that they're -- they are property homeowners who are in default on their loans, correct?
> A. Best to my knowledge, yes.

(SS#84; **Ex. "2"**, at p. 79)

MTC's Motion for Summary Judgment must be denied for all of the following reasons:

1. The timing of MTC's Motion (and non-existent Notice of Motion) was unfairly prejudicial to Plaintiffs, contrary to the mandate of due process and NRCP 56(c) and EDCR 2.20;
2. MTC's Motion is defective because it does not address Plaintiff Bijan Lahgaei, who is a Plaintiff in the Operative Third Amended Complaint.
3. MTC's Motion is defective and cannot be granted because the Court has severely limited Plaintiffs discovery to a "Phase One" issue, disallowed Plaintiffs' discovery of the names and contact information of other, critical witnesses (other victims and class members), and the Court has restricted Plaintiffs discovery to the named Plaintiffs only. Plaintiffs

have been allowed virtually zero discovery regarding recoverable damages, e.g. disgorgement of Defendants' illicit profits.

4. MTC was not "exempt" from the statutory license requirement; MTC's argument to that effect is expressly barred by the statute and, as a matter of law, the NRS Chapter 80 defense cannot be asserted in a civil action.

5. Overwhelming evidence, predominantly in the form of binding admissions from MTC's executive officers, shows that MTC engaged in the business of an unlicensed claim collection agency in Nevada for a decade prior to capitulating and obtaining its license in 2012 (months after this lawsuit was filed).

6. In any event, MTC never obtained the required certificate of "exemption" from the Nevada Financial Institutions Division, as mandated by the Nevada Administrative Code.

7. Voluminous evidence, mostly constituted by MTC's binding admissions, shows that MTC engaged in unlicensed claim collection activities directed against both named Plaintiffs, Laghaei and Sansotas.

8. MTC "knowingly" conducted its claim collection business activities in Nevada for years before obtaining its collection agency license in 2012.

9. The Ho decision and various unpublished federal trial court orders cannot provide a basis for summary judgment in favor of MTC. The vast majority of appellate decisions, state and federal, support Plaintiffs' claims.

10. MTC's "damages" contentions cannot support summary judgment, and are erroneous.

11. Unjust enrichment (i.e., Restitution) is applicable here. The operative complaint includes a demand and prayer for disgorgement of illicit profits obtained by Defendants (including MTC).

II. MTC'S PURPORTED "CROSS-MOTION" FOR SUMMARY JUDGMENT SHOULD BE DENIED

MTC mistakenly contends that its motion for summary judgment—inaccurately described by MTC as a "cross-motion for summary judgment"—should be considered a "counter-motion" pursuant to EDCR 2.20(f), such that it should be heard at the same time as Plaintiffs' pending Motion for Partial Summary Judgment. MTC is wrong in at least two ways: (1) MTC's motion is not a true counter-motion under EDCR 2.20(f); and (2) hearing MTC's motion for summary judgment at the same time as Plaintiffs' pending motion would violate due process and the governing statute by effectively denying Plaintiffs the time to respond required by NRCP 56(c) and EDCR 2.20. In fact, under EDCR 2.20, Plaintiffs' Opposition brief is not due until the day before the hearing.

A. MTC's Motion Is Not a Counter-Motion as Defined by EDCR 2.20(f)

EDCR 2.20(f) states that an "opposition to a motion which contains a motion related to the same subject matter [as the original motion] will be considered as a counter-motion." [emphasis added]. Such counter-motions "will be heard and decided at the same time set for the hearing of the original motion and no separate notice of motion is required." Id. MTC contends its motion for summary judgment qualifies under this rule because it "relates to the same subject matter" as Plaintiffs' pending Motion. MTC's motion does not qualify as a counter-motion under EDCR 2.20(f), however, because it is not "contain[ed]" within MTC's opposition to Plaintiffs' Motion (as EDCR 2.20(f) requires) and goes well beyond the subject matter of Plaintiffs' Motion. Rather, MTC's motion is a separate motion that MTC filed more or less concurrently with its actual opposition papers to Plaintiffs' Motion. The fact that there is significant overlap—and, in many instances, seemingly verbatim duplication in arguments and language—between MTC's two briefs does

not mean that MTC's motion for summary judgment qualifies as a counter-motion under EDCR 2.20(f). MTC's motion asserts arguments regarding damages, and also the second cause of action for unjust enrichment, none of which is at issue by Plaintiffs' motion.

Given that it does not qualify as an EDCR 2.20(f) counter-motion, MTC's motion for summary judgment should be heard and decided by the Court in due course, and not at the same time as Plaintiffs' pending Motion. Moreover, MTC must be required to comply with its obligations under EDCR 2.20, including by providing the notice of motion required by EDCR 2.20(b).

B. The Timing of MTC's Motion Is Prejudicial under NRCP 56(c)

Even assuming arguendo that MTC's motion qualified as counter-motion under EDCR 2.20(f), due process and the summary judgment statute itself requires that MTC's motion not be heard at the time set for hearing Plaintiffs' Motion, March 14, 2017. NRCP 56(c)'s clear language requires that a motion for summary judgment pursuant to NRCP 56 "shall be served at least 10 days before the time fixed for the hearing." [emphasis added]. Here, MTC served its motion for summary judgment electronically via Wiznet, such that an additional three days must be added to the period prescribed for giving notice. See NRCP 6(e). Because the prescribed 10 days is less than 11 days, the period of time required is computed by excluding "intermediate Saturdays, Sundays, and non-judicial days" from the calculation. See NRCP 6(a); see also Winston Prods. Co. v. Deboer (2006) 122 Nev. 517, 518-519, 134 P.3d 726, 727 [when period is less than 11 days, the computation is first made under NRCP 6(a) "and then 3 additional days are added under NRCP 6(e) when service was made by mail or electronic means"]. Since MTC's motion was not filed and served—electronically—until February 24, 2017, the earliest date that it could be heard by the Court, consistent with due process and NRCP 6(c) and NRCP 6, would

be March 13, 2017. Despite these clear rules, however, MTC seeks to have its motion heard on March 14, 2017, one day before the minimum date for MTC to give notice.

The Nevada Supreme Court has repeatedly "held that an appellant's right to notice has nothing to do with the merits of the case." Cheeks v. FNF Constr. (1996) 112 Nev. 1249, 1251, 924 P.2d 1347, 1350 [citing Soebbing v. Carpet Barn, Inc. (1993) 109 Nev. 78, 83, 847 P.2d 731, 735]. In Cheeks, the Nevada Supreme Court stated the ground for this rule by explaining that motions for summary judgment can "only be disposed of in accordance with the rules of civil procedure and the dictates of due process." Id. It also observed that "noncompliance with the time provisions" of NRCP 56(c)'s "federal counterpart" "'deprives the court of authority to grant summary judgment, unless . . . there has been no prejudice to the opposing party by the court's failure to comply with this provision of the rule.'" Id. at 1251, 1349 [emphasis added; ellipsis in original][quoting Kistner v. Califano (6th Cir. 1978) 579 F.2d 1004, 1006].

In Cheeks, the Nevada Supreme Court drew from a number of federal cases discussing NRCP 56(c)'s federal counterpart to explain why the notice requirements are so crucial. Thus, the 10-day time period required for motions for summary judgment is "'especially important . . . because it provides an opportunity for the opposing party to prepare himself as well as he can with regard to whether summary judgment should be entered.'" Id. at 1251, 1349 [quoting Osbakken v. Venable (10th Cir. 1991) 931 F.2d 36, 37][ellipsis added]. Crucially, "'since opposition to a summary judgment motion is a difficult task, usually involving preparation of both legal and factual arguments as well as affidavits, and since the results of failure are so drastic, it is felt that the additional time is needed to assure that the summary judgment proceeding is fair.'" Id. [also citing and quoting Winfrey v. Brewer (8th Cir. 1978) 570 F.2d 761, 764]. As the Nevada Supreme Court observed, in Osbakken the 10th Circuit vacated a lower court's grant of summary judgment where the opponent

of the motion was "only afford . . . eight days' notice of the hearing on the motion." Id. Similarly, in Cheeks, the Nevada Supreme Court ultimately vacated Judge Bonaventure's grant of summary judgment over the plaintiffs' objection of insufficient notice because only 7 days' notice of the hearing on the motion was given, and plaintiffs were prejudiced by the lack of notice. Id. at 1254-1255, 1351. The trial court therefore lacked authority to hear the motion for summary judgment on the scheduled hearing date. Id. The Court concluded that "NRCP 56(c), in conjunction with case law, mandates ten days' notice unless the opponent will not suffer prejudice as a result of shorter notice." Id. at 1253, 1350 [emphasis in original].

As in Cheeks and the other cases discussed by the Nevada Supreme Court therein, Plaintiffs here would be significantly prejudiced by the Court's hearing MTC's motion on March 14, 2017. By barely giving the minimum notice required by NRCP 56(c) and the dictates of due process, MTC has impeded Plaintiffs' ability to oppose MTC's motion by preparing not only legal and factual arguments, but also obtaining and submitting counter-affidavits or declarations.

MTC may suggest that EDCR 2.20(f) allows MTC's motion to be heard at the same time as Plaintiffs' pending motion for summary judgment even if it effectively shortens the notice Plaintiffs are entitled to have in order to adequately oppose MTC's motion. For reasons explained above, MTC's motion does not qualify as a counter-motion under EDCR 2.20(f). Even if it did, however, Plaintiffs would still be entitled to receive the minimum statutory notice required by NRCP 56(c), as EDCR 2.20(f) would be invalid to the extent that it was inconsistent with or attempted to abrogate NRCP 56(c). See Cheeks, at 1253, 1350-1351 [concluding that trial court order could not shorten time for motion to be heard to less than 10 days' notice when opposing party would be thereby prejudiced]. Because, as explained below,

Plaintiffs' Opposition is not due until the before the hearing, MTC has effectively deprived Plaintiffs of their right to due process.

C. Plaintiffs' Opposition Is Not Due Until The Day Before The Hearing

The unfair prejudice to Plaintiffs here caused by MTC's gamesmanship is further illustrated by the fact that Plaintiffs' opposition brief to MTC's motion for summary judgment would not even be due—if it had been properly and separately filed and noticed by MTC—until the day before the hearing at which MTC seeks to have it heard. That would be impossibly unfair to the Court and Plaintiff. MTC filed its motion for summary judgment on February 24, 2017, serving it electronically via Wiznet on Plaintiffs on that date. Under EDCR 2.20(e), Plaintiffs' opposition brief would not be due until 10 days after service of the motion. Because this prescribed period is less than 11 days and MTC served its motion electronically via Wiznet, service pursuant to NRCP served its motion for summary judgment electronically via Wiznet, such that an additional three days must be added to the period prescribed for giving notice. See NRCP 6(e). Thus, computing the prescribed 10 days by excluding "intermediate Saturdays, Sundays, and non-judicial days" from the calculation, and additional three days, Plaintiffs' Opposition is not due until March 13, 2017, the day before Plaintiffs' Motion is to be heard. See NRCP 6(a); see also Winston Prods. Co. v. Deboer (2006) 122 Nev. 517, 518-519, 134 P.3d 726, 727. In engaging in this sort of gamesmanship, MTC has unfairly put Plaintiffs in the impossible position of either filing their Opposition well before the time it is due so that the Court has a fair opportunity to read and consider Plaintiffs' arguments and authorities, or file it when it is due, but thereby depriving the Court of a reasonable chance to evaluate Plaintiffs' briefing. Under the circumstances, the Court should deny MTC's motion for summary judgment outright, or continue the matter until after Plaintiffs have full discovery, and so that Plaintiffs may have the full opportunity to comprehensively

respond to it, as required by EDCR 2.20(e) and consistent with the principles of due process reflected in NRCP 56(c).

D. <u>The MTC Motion Is Defective And Cannot Be Granted Because It Does Not Address Plaintiff Bijan Laghaei</u>

As crafted and "noticed" (a notice of motion was <u>not</u> served or filed by MTC), MTC's motion seeks full adjudication of all claims against it in this matter, and a final judgment in its favor. Therefore, the motion is defective on its face and cannot be granted, because it does not address it anyway, or present any evidence or argument related to, Plaintiff Bijan Laghaei. By Order of this Court signed on March _, the Third Amended Complaint, now the operative complaint, was filed with the Court on March _, 2017. Plaintiff Laghaei is therefore a Plaintiff in both causes of action pled against MTC.

III. MTC'S MOTION IS DEFECTIVE AND CANNOT BE GRANTED BECAUSE, PURSUANT TO RECOMMENDATION OF THE DISCOVERY COMMISSIONER, THE COURT HAS SEVERELY LIMITED PLAINTIFFS' DISCOVERY TO THE PHASE ONE "ISSUE" – WHETHER, AS A <u>GENERAL</u> MATTER, DEFENDANTS CONDUCTED BUSINESS ACTIVITIES IN NEVADA THAT CONSTITUTED "UNLICENSED" CLAIM COLLECTION, UNDER NRS 649.020(1), AND THE COURT RESTRICTED DISCOVERY TO THE NAMED PLAINTIFFS ONLY

Unfortunately for the Plaintiffs, but important to the instant motion, is the fact that this case has been upside down and backwards from the very beginning. As addressed in Plaintiffs' Clarification Motion also set to be heard on March 14, 2017, this case was improperly "phased," severely limiting Plaintiffs discovery and their opportunity to develop key evidence, as a result of the Discovery Commissioner's interpretation of some general comments made by Judge Scann at the end of 12(b) motion hearing over a year ago. If there were any contouring of discovery whatsoever utilized in this case, the immediate focus should have been on discovery related to class certification, so that the class certification motion could be heard first, and as promptly as possible, consistent with predominant class action jurisprudence

and practice.

It is wrong to even consider, let alone grant, summary judgment against a single named Plaintiff (i.e., here, the Sansotas) in the circumstances of this case. For example, Plaintiffs have been absolutely prohibited by the Discovery Commissioner's recommendations and resulting orders, from any discovery related to other Nevada victims as witnesses, potential other Plaintiffs, potential other class representatives, and a wide body of evidence held by them to show and present diverse unlicensed claim collection agency practices by MTC and the other Defendants against citizens throughout the state of Nevada. See Court's two Orders of November 9, 2016, and Court's Order of December 7, 2016. The evidence from these witnesses is needed to fully oppose summary judgment. (Affidavits from these witnesses cannot be obtained because the Orders prohibited Plaintiffs from obtaining their contact names and information from Defendants). See NRCP 56(f); see also Boylan Declaration, at ¶ 12. As a further, adverse and improper result, if summary judgment were to occur in these circumstances as to a single Plaintiff, confusion, waste, and additional litigation would surely occur, because the thousands of other class members would not be bound by the adjudication (and, because the statute of limitations is tolled, new lawsuits by others would be quickly filed). Nothing would be accomplished, and further burdensome litigation for the Court would be fomented.

There is good reason to determine class certification first. Even after certification, absent class members can only be bound to a class judgment on common issues, for which their interests were adequately represented. 5 Newberg & Conte, Newberg on Class Actions, §1623. If their individual issues were not litigated or adequately represented, i.e., were not common, unnamed class members may ignore the judgment, collaterally attack it, or bring an independent action. See id. Constitutional due process disallows the effectiveness of a summary judgment against unnamed class members with respect to their individual issues. See and

compare Hansberry v. Lee (1940) 31 U.S. 32; Richards v. Jefferson County Alabama (1996) 517 U.S. 793; Phillips Petroleum Co. v. Shutts (1985) 472 U.S. 797.

Also, full accounting discovery must first be allowed by the Court, so Plaintiffs can prove recovery for disgorgement. For example, zero document discovery of the Defendants' accounting records has been allowed in 'Phase One."

IV. MTC WAS NOT "EXEMPT" FROM THE STATUTORY LICENSING REQUIREMENT. MTC'S ARGUMENT IS EXPRESSLY BARRED BY STATUTE AND CANNOT BE URGED AS A DEFENSE IN THIS CIVIL ACTION, AS A MATTER OF LAW

Revealing the lack of merit in MTC's motion for summary judgment, MTC's first and foremost argument is specious, because the defense is expressly disallowed by statute. 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 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 transacting business in the State of Nevada and therefore MTC is exempt from all consumer-protection laws of the State of Nevada. Not so. According to the Nevada Supreme

Court, NRS 80.015 applies only to NRS Chapter 80. See RTTC Commons LLC v. The Saratoga Flyer, Inc. (2005) 121 Nev. 34, 40, 110 P.3d 24, 28.

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, supra, 121 Nev. at 40, 110 P.3d at 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).

N.R.S. Chapter 80 establishes the basic filing requirements for foreign corporations that operate a business in the State of Nevada. NRS 80.010 mandates the resident agent and corporate information requirements. Nevertheless, following the MTC 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 collection agencies and thus NRS 649 is void as to rogue foreign entities, like MTC. It makes no sense. See RTTC Communs., LLC, supra, 121 Nev. at 40, 110 P.3d at 28.

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.

A. <u>MTC Incorrectly Relies on NRS 80.015:</u>

> a. <u>For the purposes of this chapter</u>, the following activities do not constitute doing business in this State:
>
> . . .
>
> (h) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts;
>
> . . .
>
> b. <u>The fact that a person is not doing business in this State within the meaning of this section</u>:
>
> (a) Does 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) Except as otherwise provided in subsection 3, does not affect the applicability of any other provision of law with respect to the person and <u>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.</u>
>
> [emphasis added].

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. However, subsection (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 for MTC 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 MTC's contention here that "enforcing mortgages and security interests in property" based on defaulted debts owed to another (i.e., the MTC non-judicial foreclosure process) without a license under NRS 649 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 all other laws outside Chapter 80) 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. [emphasis added]. No other intended purpose of subsection (4)(b) is rational. It is dead on point, and applies directly to the business MTC conducts for its lender-clients.

MTC's 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 created or acquired mortgages and security interest on properly in Nevada, or if the lenders simply themselves enforced a security interest in Nevada (i.e. judicial foreclosure). However, expressly, under subsection (4)(b), foreign entities are subject to and held bound by all other Nevada laws, including the prohibition of conducting 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.

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 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 in Plaintiffs' Reply papers in support of their Motion, the first ground is premised on orders such as Bailin v. Select Portfolio Servicing, Inc. (D. Nev. Aug. 7, 2015) 2015 U.S. Dist. LEXIS 104655 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.

B. The Nevada Supreme Court Holds That The DTPA Applies to Real Estate Activities/Transactions

The Nevada Supreme Court holds that the DTPA applies to real estate activities/transactions; clearly, MTC violated the statute by executing unlicensed service activities in Nevada that targeted plaintiffs. See D.R. Horton v. Betsinger (2010) 126 Nev. 162.

C. 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, 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.

D. The Specific Statutes Involved Contain No "Exemption" For Foreclosure Actions/Trustees

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

NRS 649 or NRS 107.

1. <u>The Plain Language of NRS 649 Supports Plaintiffs Here</u>

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 collection agencies for purposes of NRS 649 unless "they are conducting collection agencies." NRS 649.020(2). (For instance, McCarthy Holthus admits to being a claim collection agency and always discloses this fact, as it conducts and owns, Defendant QLS). 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, Defendants have not qualified themselves under of any of these exceptions. See NAC 649.105.

Given this clear statutory scheme, Defendants' reading of NRS 649.020 is misleading at best. Despite Defendants' illogical suggestions to the contrary, the Nevada legislature would not have "explicitly identified" and stated that a trustee's enforcement of a security interest through non-judicial foreclosure was included as a collection agency business because doing so would undermine the broadly <u>inclusive</u> statutory scheme; rather, the Nevada legislature surely would have expressly

excepted such activity from the definition of collection agency only if the Nevada legislature did not intend for such conduct to fall within the statute. The Nevada legislature, however, did no such thing. Indeed, the statute's treatment of community managers, earlier relied on by Defendants, supports Plaintiffs' reading of the statute: the limited exception for certain types of community managers, earlier 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. See NRS 649.020(3)(a)-(b).

It is a maxim of statutory construction that generally the "expression of one thing [in a statute] is the exclusion of another." See Def.'s MTD, p. 11 [citing Cramer *v. State Dep't of Motor Vehicles* (2010) 126 Nev. Adv. Rep. 38, 240 P.3d 8, 12; *O'Callaghan* v. Eighth Judicial Dist. Court of the State of Nevada (1973) 89 Nev. 33, 35, 505 P.2d 1215, 1216; State v. Boerlin (1914) 38 Nev. 39, 45, 144 P. 738, 740]. Defendants wrongly believe this maxim assists them here. However, 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 here for businesses carrying out non-judicial foreclosures in order to collect claims.

2. <u>The Plain Language of NRS 107.028 Favors Plaintiffs Here</u>

The plain language of NRS 107.028, relied on by Defendants, 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 <u>licensed</u> collection agencies under NRS 649 could be such trustees. NRS 107.028(1)(i). (It seems significant that MTC, while contending it is not a collection agency, fails to state which entity among the ten

express categories listed in NRS 107.028 it is, if not the collection agency category) 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 Defendants here—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 Defendants seemingly would have it).

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

3. The Legislative History of NRS 107.028 Is Consistent With Plaintiffs' Interpretation Here

Although Defendants have not identified any ambiguity in the plain language of NRS 107.028, they seek to bolster their arguments by turning to what they take to be its legislative history. 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 created NRS 107.028 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.)

Although Defendants quote from a portion of the Nevada legislature's Journal of the Senate, the remarks by Senator Wiener on A.B. No. 273 are worth quoting more fully. 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. 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. Nothing in NRS 107.028 repeals or displaces or excludes NRS 649.020(1) et seq., when the business involved meets the statutory definition therein.

E. <u>MTC's Illicit Claim Collection Activity Went Far Beyond The Strict Parameters of NRS 107</u>

Essentially ignoring all of Plaintiffs' compelling evidence, MTC asserts it was "legally bound" to pursue all of its claim collection activities under NRS 107, and that MTC's conduct conformed strictly to the statutory scheme (and the related deed of trust). Based on the evidence, that contention is indeed a farce. MTC does not state what section of NRS 107 required it to collect millions of dollars on defaulted loans from borrowers on behalf of its lender clients, as testified to by its owner, Mrs. Johnsen. (SS#67.) The same applies to the millions of dollars MTC collected as agent for its clients on Nevada defaulted loans, as admitted in testimony of its accounting

senior vice-president, Ms. Juarez. (SS#73-74.) MTC does not identify what section of section NRS 107 required it to collect, deposit and pass on the money on defaulted loan collections reflected in the thousands of checks recited in the testimony of its former employee, Ms. Diaz. (SS#40-41.) MTC does not identify the section of NRS 107 which mandated that it negotiate, create and make a loan forbearance agreement on behalf of its client, with Plaintiff Laghaei, and collect about $19,000.00 from Mr. Laghaei in order to reinstate that defaulted loan. (SS#33-35.) MTC leaves absent any citation to the section of NRS 107 which mandated MTC's maintenance of a phone bank and elaborate communications with Nevada debtors in the effort to achieve claim collection on behalf of its lender clients, as testified by owner Mrs. Johnsen. (SS#22-29.) Plaintiff Raymond Sansota testified that he received collection calls from MTC asking for money on the defaulted debt, but MTC has not indicated the section of NRS 107 which required it to make those money collection phone calls. These are but a few examples shown by the evidence.

V. MTC WAS ENGAGED IN CLAIM COLLECTION ACTIVITIES AGAINST THE NAMED PLAINTIFFS, LAGHAEI AND THE SANSOTAS

The business of claim collection in Nevada is prohibited, and completely illicit, absent a license from the Nevada Financial Institutions Division. NRS 649.075. In Nevada, a business is a collection agency if it is engaging in, directly or indirectly, and as a primary or secondary object, a business or pursuit, in the collection of or in soliciting or obtaining in any matter the payment of a claim owed or due or asserted to the owed or due to another. NRS 649.020(1) [emphasis added]. "Claim" means "any obligation for the payment of money or its equivalent that is past due." NRS 649.010 [emphasis added]. Undoubtedly a claim to obtain the "equivalent" of money precisely fits the foreclosure process of taking the property securing the defaulted debt, for purposes of delivering equivalent value to the lender.

Will MTC contend that the legislature intended the "equivalent" of money to be limited to horses and pigs? Logic, reasoning and the most rational interpretation of the text and statutory scheme requires FID licensing for any business to pursue the collection and recovery of money or its property-equivalent, including real estate, in order to satisfy the past due debt owed to another entity. That is exactly the business of MTC.

The transcript of the deposition of MTC officer and witness Ms. Juarez is now available. She is the Senior Vice President of MTC in charge of accounting, and she has been with the company continuously since 2002. (SS#54, 73, **Ex. "1"**, at pp. 11-12.) As with the other MTC evidence, the testimony of Ms. Juarez is definitive proof that prior to 2012, when MTC capitulated and obtained its license from the FID, MTC was conducting unlicensed claim collection in the state of Nevada for at least a decade. The evidence of MTC's collection of cash money, among other illicit activities, is unequivocal.

With respect to the defaulted debts of its lender-clients, MTC has always maintained a reinstatement and pay-off department, which is under the jurisdiction of Ms. Juarez. By means of checks forwarded to MTC by borrowers and borrowers' family members, MTC collected large amounts of money on defaulted Nevada debt. The funds come into MTC by mail, USP, FedEx etc., and come to the desk of Ms. Juarez. 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 (SS#72.) MTC would get approval from the clients to process the funds, write out a deposit slip, input the funds into the accounting system and deposit the funds into MTC's trust account (when the check was payable to MTC), or forward the collected funds to the lender-client if the check was made payable to the lender. (SS#36-43, 48-49.) Ms. Juarez would endorse checks payable to MTC with a stamp. (SS#75.)

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. (SS#74.) About 30% of the checks, or at least 75 to 100 checks, were directly from Nevada borrowers. (Id.) In 2008-2011, MTC collected more than $100,000.00 dollars each month with respect to defaulted Nevada debts. (Id.) All of these checks were with respect to MTC's clients' defaulted loans (SS#74, Ex. "1", at pp. 35-39.)

A. Claim Collection Activities Regarding Laghaei

1. Over $19,000 Collected by MTC from Laghaei and Loan Forbearance Deal Made, Payments Collected

Acting as the claim collection agent of its lender-client Freddie Mac, MTC negotiated and created a forbearance agreement with respect to Plaintiff Laghaei's defaulted loan, and collected about $19,000.00 from Plaintiff Laghaei on the defaulted loan in connection with making the forbearance agreement. This was purely unlicensed claim collection work in the State of Nevada, and fell directly within NRS 649.020(1). (SS#32-35.)

2. Falsehoods in Rande Johnsen's Declaration

On two occasions in this case MTC's owner and CEO, Rande Johnsen, has submitted sworn statements to this Court declaring that MTC could not be an unlicensed claim collection agent in Nevada because, among other things, MTC never "makes nor negotiates, and has neither made nor negotiated, loans, trial loan modifications, permanent loan modifications, or agreements of forbearance." Johnsen Declaration, at p. 3, ¶ 5, lines 8-10. The evidence submitted herewith related to Plaintiff Laghaei indicates strongly that the sworn testimony given to the Court by Mr. Johnsen is untrue. (SS#33-35.)

B. Claim Collection Activities Regarding The Sansotas

1. Collection Calls

The deposition testimony of Plaintiff Raymond Sansota submitted herewith as **Ex. "3"** demonstrates that MTC was conducting business as an unlicensed claim collection agency by telephoning the Plaintiff Sansotas and asking for payments on the defaulted mortgage loan held by MTC's client, Wells Fargo Bank. (SS#79-80; **Ex. "3"**, at pp. 28-29, 34-38, 40, 43-44, 47-78.) See NRS 642.020(1). For this reason alone, even if none of the other voluminous evidence submitted here by Plaintiffs existed, MTC's summary judgment motion must be denied.

2. Claim Collection and Money Collected by MTC and Passed by MTC to Wells Fargo Bank

All the evidence—testimony, admissions and MTC's documents—shows that MTC fully handled all of its claim collection against the Sansotas on behalf of (i.e., agent) of its banking client, Wells Fargo Bank, on the defaulted note. Wells Fargo Bank had a past due claim to be pursued against the Sansotas for money or the money-equivalent, i.e., the property of the Sansotas. NRS 649.010. MTC handled everything to collect the claim as the agent of Wells Fargo. MTC received almost $2,000.00 for the work. (SS#30). MTC sold the Sansotas' home to a third-party buyer for $51,000.00 in cash money. MTC itself collected the money, $51,000.00 and deposited the money into its own account, before promptly passing on the remitted funds to Wells Fargo Bank. (SS#31, 49, 69-70.) NRS 649.020(1) applies, on all fours. (Id.)

C. Persuasive, Illegal Claim Collection Throughout Nevada

The evidence presented with these various motion papers, as against one Defendant (MTC) only, is but the tip of the iceberg. Collectively, all of the Defendants illegally prosecuted claim collection against thousands and thousands of Nevada homeowners and, collectively, they received approximately $300 million

dollars to $400 million dollars for doing so, for the period 2007-2012. Probably about $80 million of that is illicit profit from illegal conduct. The credibility, public policy and rule of law in Nevada, based on its consumer protection laws, are directly implicated by the outcome of this case, which is the only means available at this time to privately enforce Nevada's consumer protection laws.

VI. MTC "KNOWINGLY" CONDUCTED ITS BUSINESS ACTIVITIES IN NEVADA FOR AT LEAST 10 YEARS BEFORE OBTAINING ITS LICENSE IN 2012

MTC, as it has in the past, may mistakenly try to mischaracterize Plaintiffs' burden by claiming that Plaintiffs must show that MTC conducted business knowing that its conduct amounted to a violation of Nevada law. This is not what NRS 598.0923 states. Plaintiffs must only show that MTC knowingly conducted the business itself. After all, MTC cannot expect the Court to assume that MTC conducted its business in Nevada "inadvertently" 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.)

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.) This is "knowing" conduct, as a matter of law. Rande Johnsen took the Nevada Collection Agency Manager test in 2009. (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.[2] (SS#10, 12-17.) If MTC claims that such items were not done knowingly, then it must be that

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

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.)

Although bordering on frivolous, MTC therefore claims that it was ignorant of the Nevada law which 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.[3] 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.)

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. 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.) 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, MTC's owner and chief executive officer, Rande Johnsen took the Nevada test to become a collection agency manager on behalf of MTC, demonstrating his full knowledge years before

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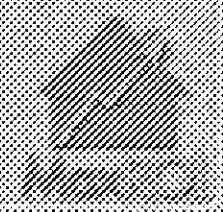
[3] In order to construe the proper definition of the word "knowingly," as used in NRS 598.0923, we should look to the definition assigned to that term by the Nevada legislature in NRS 281A.115 and NRS 624.024, both of which provide the following definition: "'Knowingly'" imports a knowledge that the 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."

FORECLOSURE

FRIEND OR FOE

fore·clo·sure
fôr'klōZHər/

noun: foreclosure;
plural noun: foreclosures
the process of taking possession of a mortgaged property as a result of the mortgagor's failure to keep up mortgage payments



AA003801
Docket 73484 Document 2018-08224

THE TOOLS OF FORECLOSURE

FRIEND OR FOE

FRIEND

- Gets the Homeowner's Attention
- Forces a limited timeframe
- Constructive knowledge and public record
- Property sold at public sale
- Most people give up...
- Easier, if well prepared

FOE

- Costs Money
- State and Federal compliance issues
- Litigation
- Some fight too long for nothing...

DIFFERENT KINDS OF FORECLOSURE

(DIFFERS BY STATE AND SITUATION)

NON-JUDICIAL FORECLOSURE

- Deed of Trust/Note
- Generally does not require court action
- Generally NO right to redeem
- "As is"
- Generally NO recourse

JUDICIAL FORECLOSURE

- Mortgage
- Always requires court action
- Generally right to redeem
- Often used to clean up messes
- Recourse

AA003804

COMPLIANCE

Be familiar with:

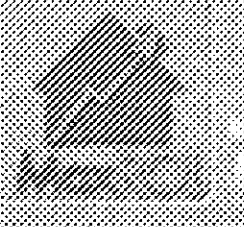
- Your Collateral Documents
- The foreclosure laws in the state where the Property is located
- State specific laws and requirements:
  - Homeowner's Bill of Rights
  - Mediation
  - Etc.
- CFPB
- FDCPA
- RESPA
- TILA

AA003805

WHAT WE DO...

ON OUR PERSONAL NOTES

- Know Before you Go...
- Title
- Payoff Quote From Sr. Lien
- The Wake-up
- 30 Day Demand Letter
- Statutory required notices with state specific language
- Foreclosure
- Calling the Homeowner(s)
- Door Knocker
- Additional Notices



EXIT STRATEGIES

- Reinstatement
- Payoff and Short Payoff
- Forbearance or Repayment Plan
- State and Local assistance programs
- Modification
- Deed in Lieu of Foreclosure
- Trustee Sale
- Assumption of Loan
- Sell your Note
- Deficiency Judgment
- Redemption Rights

AA003807

THE WORKOUT

You are only limited by your imagination...
and the law

- Permanent - Semi-permanent - Temporary
- New Principal Balance and Maturity Date
- Deferred Principal Balance
- Forgivable Principal Balance (Deferred Principal Reduction Amount)
- Step Up Interest Rates (Variable)
- Disclaimers - more is more
  - What they have to do
  - What will happen if they default
  - What is a default
  - Release of Claims
  - Miscellaneous Provisions

RESOURCES

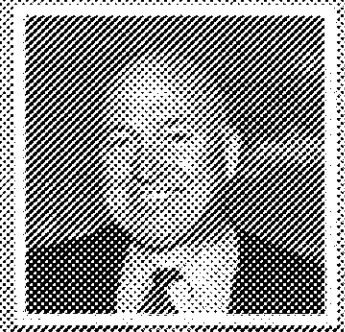
NetrOnline - Public Records	www.publicrecords.netronline.com
Consumer Financial Protection Bureau	www.consumerfinance.gov
Mortgage Banker's Association	www.mbaa.org
Nationwide Mortgage Licensing System	www.mortgage.nationwidelicensingsystem.org
AllRegs	www.allregs.com
United Trustees Association	www.unitedtrustees.com
California Mortgage Broker's Association	www.CMBA.com
USFN (United States Foreclosure Network)	www.USFN.org

Just to name a few...

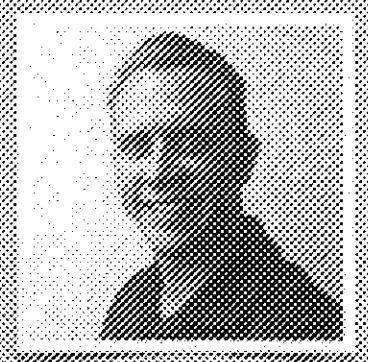
AA003809

TRUSTEE CORPS

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ANY QUESTIONS? PLEASE EMAIL US
AND WE WILL GET BACK TO YOU!

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Attorneys for Plaintiffs, except for Antoinette Gill

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

Plaintiffs,

v.

CASE NO: A-11-649857-C

Dept. 19

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**

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.

AGAINST DEFENDANT MTC

Jury Trial Demanded

Hearing Date: March 14, 2017

Hearing Time: 9:00 a.m.

Plaintiffs Raymond and Francine Sansota (collectively "Plaintiffs" here) respectfully submit the following Separate Statement in Support of their Motion for Partial Summary Judgment against Defendant MTC Financial Inc. dba Trustee Corps ("MTC" or "Defendant").

No.	Moving Party's Undisputed Material Facts	Supporting Evidence
1	MTC has been continuously conducting business in the State of Nevada since at least as early as 2000.	**Exhibit "D"** (Terry Johnsen Deposition), at 19:14-15.[1] Authenticated by Boylan Moving Declaration, at ¶7.
2	MTC did not obtain a collection agency license from the State of Nevada's Financial Institutions Division ("FID") until April 19, 2012.	*See* **Exhibit "I"**, at MTC000338. Authenticated by **Exhibit "B"** (Cathe Cole-Sherburn Deposition), at 74, 102.
3	MTC has continued to renew its collection	*See* **Exhibit "I"**, at

[1] After her deposition, Ms. Johnsen provided an errata sheet, dated August 11, 2016, making various "corrections" to her deposition testimony. *See* **Exhibit "E"** at 2. As pertinent here, Ms. Johnsen changed her testimony from "2000" to "2000, I believe." *See id.* The reason given for this change (as with all of her changes to her deposition testimony) was "Correction/recollection/completeness." *Id.* at 1.

	agency license with the FID from 2012 to the present.	MTC000338-MTC000353. Authenticated by **Exhibit "B"** (Cathe Cole-Sherburn Deposition), at 74, 102.
4	From before MTC obtained its Nevada license, the nature of MTC's business operations in the State of Nevada has not materially changed, i.e., it is the same Nevada operations as after MTC obtained its collection agency license from the FID on April 19, 2012. (Senior Vice-President Gloria Juarez swore on January 31, 2017, that there had been no material change since 2002.	**Exhibit "B"** (Cathe Cole-Sherburn Deposition), at 29, 99-101; Boylan Moving Declaration, at ¶16; Juarez Deposition, at _____ (pages to be submitted upon receipt of transcript). **Exhibit "B"** is authenticated by Boylan Moving Declaration, at ¶5.
5	At her deposition, Ms. Johnsen, a co-owner and vice-president of MTC, testified that MTC's "[t]rustee work" includes "[f]oreclosure" and "[w]hatever else goes with it." By way of example, she stated that MTC does "eviction work" as part of its "trustee work" in the State of Nevada.	**Exhibit "D"** (Terry Johnsen Deposition), at 20:24-21:11.[2]
6	It is and has been generally MTC's practice, policy, and procedure to hold its employees to the standards imposed on debt collectors by the federal Fair Debt Collection Practices Act ("FDCPA"), including in all communications with Nevada debtors.	*See, e.g.*, **Exhibit "I"**, at MTC000312. Authenticated by **Exhibit "B"** (Cathe Cole-Sherburn Deposition), at 73-74, 87-88, 93.
7	Between 2007 through 2012, MTC estimates that it received payments from its clients of $12,317,679 in fees and $34,772,022.71 in costs incurred on behalf of MTC's clients for MTC's services in the State of Nevada during that period.	*See* **Exhibit "L"**, at 2-3. Authenticated as described Boylan Moving Declaration, at ¶18.
8	As a general rule, MTC's fees and costs for its services are added to the loan balance of defaulted debtors in Nevada whose files MTC handles, and become a part of the homeowners' outstanding debt.	**Exhibit "B"** (Cathe Cole-Sherburn Deposition), at 107:18-23.

[2] After her deposition, Ms. Johnsen changed her testimony that "We do eviction work" to "Nonjudicial foreclosure work." *See* **Exhibit "E"** at 2.

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

AA003790

TRUSTEE CORPS

Experience. Trust. Integrity.

INSIDER SECRETS FROM A FORECLOSURE TRUSTEE INVESTING IN JUNIOR LIENS

THE DUE DILIGENCE CHECKLIST

WHAT WE DO AND WHY WE DO IT...

Docket 73484 Document 2018-08224

AA003791

RULES

- I am not an attorney and I do not provide legal advice
- You are responsible for your level of knowledge and education
- Take Notes! This presentation is an outline
- There will be a Q & A period at the end of this presentation so save your questions!

I AM AVAILABLE TO ANSWER QUESTIONS VIA EMAIL AND CONTACT INFORMATION WILL BE PROVIDED AT THE END OF THIS PRESENTATION

AA003792

WHAT WE WILL DISCUSS

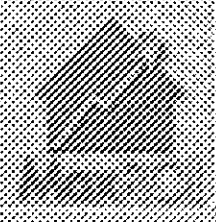
I have approximately 60 Minutes

- How to Succeed at Note Investing
- The Purchase and Due Diligence
- The Collateral
- Foreclosure and Pre-Foreclosure
- Exit Strategies
- What We do on our personal notes
- The Workout
- Additional Resources
- Question and Answers

AA003793

THREE WAYS TO SUCCEED AND HOW TO DO IT

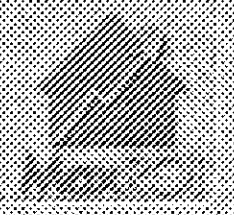
- Knowing the right people
  - Sellers
  - Vendors
  - Trustee/Attorney
  - Competition
- Be in the right place at the right time
  - Be ready!
  - Do as you say and say as you do...
- Knowing more than the Next Person
  - The more you know the better you will do
  - You get what you pay for...
  - Ask questions but you will learn the most by becoming involved



AA003794

EVALUATING A NOTE AND WHAT YOU ARE GETTING INTO...

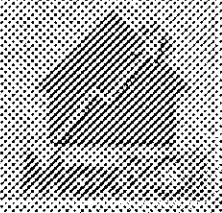
- Take off your Real Estate hat...
  - Real Estate vs. Notes
- Cost
  - No Bad Notes... only bad prices
  - Cost of Collections
- Time
  - Most of the work takes place before a note is purchased
  - Collection timelines
  - Risks of waiting



AA003795

HOW MUCH DOES IT COST?

- Ask yourself these questions
  - What type of note do I really want?
  - How many notes could I handle if they were free...
  - Yields and returns vs expectations
- Cost of the note depends on the seller and the type of note
  - Secured vs Unsecured
  - Commercial vs Residential
  - 1st position vs 2nd position
  - Performing vs Non-Performing
  - Foreclosure and Bankruptcy
  - State
  - How much information you are provided

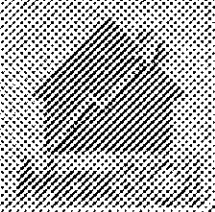


AA003796

RESEARCH, PLAN & BUDGET

DON'T BE AFRAID TO OUTSOURCE

- Don't plan on eating the elephant with one bite
- Don't blow your budget on the first transaction
- Research who you want to work with
- Assemble your team
  - Trustee Attorney
  - Title Company or abstractor
  - Skip Tracing
  - Door Knockers
  - Loan Servicer
  - Insurance and Real Estate Agents
  - Product Sources
  - Etc.

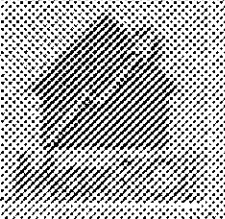


AA003797

TIME

ACTIVE VS. PASSIVE INVESTING

- Outsourcing
- Purchase
- Research
- Servicing
- Collections
- Foreclosure
- Legal



AA003798

THE CHECKLIST

EVALUATING THE PROPERTY

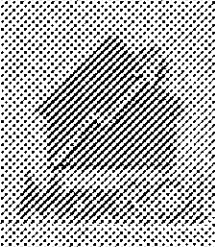
- Condition of Title and Collateral
  - Secured vs Unsecured
  - Lien position
  - Adverse liens
  - Taxes
  - Assistance or other Jr. Liens
  - Foreclosure
- Equity
  - True Equity
  - Positive Equity
  - Negative Equity
  - Emotional Equity

AA003799

THE CHECKLIST

EVALUATING THE HOMEOWNER

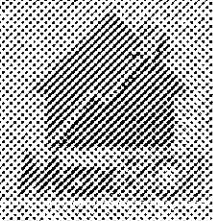
- Emotional Equity
  - Condition
  - Location
  - Community
- Bankruptcy
  - Have they filed?
  - Repeat Filings
  - Intent
  - Active, Dismissed and Discharged
  - Planned Default



THE COLLATERAL

AND WHAT YOU ACTUALLY HAVE...

- Deed of Trust/Mortgage
- Promissory Note
  - Fixed/Amortized vs. HELOC
  - Draw period vs. Repayment Period
  - WSJ Prime vs. Treasury Yield and the Margin
- Endorsed Note/Allonge
- Loan Application
- Title Policy and/or HUD-1
- Correspondence/Demands
- Payment History
- Credit Report



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

phase -- phase one. Also irrelevant.
BY MR. BOYLAN:
Q Are you going to follow those instructions and not answer the question, sir?
A Yes, sir. 03:47
Q What are insider secrets of a foreclosure trustee investing in junior liens?
A I don't know.
Q Does Trustee Corporation invest in junior liens that are secured by real estate? 03:48
A No.
Q Any other company associated or affiliated with MTC do that?
MR. CERAN: It's a yes-or-no question. You can answer it. 03:48
THE WITNESS: Can you repeat it again? I'm sorry.
MR. BOYLAN: Yeah, please.
(Record read).
THE WITNESS: No.
BY MR. BOYLAN: 03:48
Q Take a look, please, at what's been marked as Exhibit 6.
(Exhibit 6 was so marked.)
BY MR. BOYLAN:
Q On the face of it, it says, "Trustee" -- 03:48

A I have two of them.
Q Okay.
A Just one.
Q All right. On the face of it, it says, "Trustee Corps experience, trust and integrity. Insider secrets from a foreclosure trustee investing in junior liens. The due diligence checklist: What we do and why we do it."
Can you tell us what this is?
A No, I don't know.
Q Do you recognize the logo of Trustee Corps on the first page?
A Yes. Do you mind if I read through this first?
Q Sure.
MR. BOYLAN: While he's looking, Counsel, I'd just like to note for the record, again, that, I think of the 11,000 e-mails -- and I think there's probably more than that -- but my understanding is you've produced none of them. And I assume that includes e-mails regarding the subject matter of Exhibit 6 and referenced --
MR. CERAN: Well, since we --
MR. BOYLAN: -- on the last page of Exhibit 6.
MR. CERAN: Well, since we've had no testimony regarding what you've marked as Exhibit 6, I think it's kind of -- I -- I wouldn't even know what to say about this. I, personally, have never seen this document

before.

MR. BOYLAN: So you didn't know your client would --

MR. CERAN: One would have thought that -- I'm sorry. I was still talking.

One would have thought that this would be a part of your pretrial disclosures as -- as I would have thought several of the other documents that you produced today would have been, but... 03:52

MR. BOYLAN: You know, I'm sorry, but that is absurd. In fact, it's just the opposite. This is what should have been disclosed to us, in which we were only able to find through investigation recently on the Internet. 03:52

So you don't know your client gave these seminars? Well you sure as well should have.

MR. CERAN: Well, like I said, we haven't had any testimony about this yet. It's not apparent why this would be -- 03:52

MR. BOYLAN: Well, per- --

MR. CERAN: Pertinent -- excuse me -- pertinent to -- to your lawsuit in Nevada about debt collection. 03:52

But you have questions. Let's go for it.

BY MR. BOYLAN:

Q Is that your picture on the last page, Mr. Johnsen?

A Yes. 03:52

A I don't know, sir.
Q I understand that. But from looking at the content, is there anything that signals to you that it's fraudulent, or it was forged by some other entity?
MR. CERAN: Calls for opinion testimony. 03:56
THE WITNESS: I don't know, sir.
BY MR. BOYLAN:
Q In looking at the first page -- please correct me -- but it seems to indicate that MTC is a foreclosure trustee that invests in junior liens. 03:56
Is that an incorrect statement of fact?
MR. CERAN: Calls for speculation. The document speaks for itself.
You can answer.
THE WITNESS: No, it doesn't. 03:56
BY MR. BOYLAN:
Q Do you know what that heading of the page 1 means?
MR. CERAN: Calls for speculation.
You can answer. 03:56
THE WITNESS: It looks like it should -- there should have been a space or a period after that. And there are two separate subjects.
BY MR. BOYLAN:
Q So there should have been a period after the word 03:57

"trustee"?

A It's -- it looks like it's just giving them information from a foreclosure trustee's standpoint about how somebody should be -- should look for, with items they should look for when they're investing in junior liens 03:57
followed up by the statement underneath. And I --

Q Did MTC provide services including foreclosure services to invest junior lien investors?

A No.

Q Do you know why Trustee Corporation would have been providing them insider secrets? 03:57

A It's -- it's not -- it's not insider secrets as insider training. It's just what to look out for if -- when you're investing in junior liens. That's what it appears. 03:58

Q But why would -- if Trustee Corporation didn't represent junior lienholders and collection or foreclosure, do you know why they were sharing insider secrets with them at a presentation?

MR. CERAN: No foundation. 03:58

But you can answer.

THE WITNESS: We do represent junior lienholders.

BY MR. BOYLAN:

Q Okay. That's what I asked you. I thought you said, "no." I'm sorry. 03:58

MTC represents junior lienholders in foreclosure matters?

A Yes.

Q And what about also collection services?

A No. 03:58

Q The word "collection" never appears?

A No.

Q Okay. Can we --

THE WITNESS: Do you have one that's reversed out to the other side? 03:58

MR. CERAN: No.

BY MR. BOYLAN:

Q Can we turn to the page that refers to cost of collection and collection timelines?

A Where is that? Which page number, sir? 03:58

Q Why don't we just number them, because we're going to spend some time on this document. Let's each hand number them, please.

MR. BOYLAN: By the way, Counsel, while he's doing that, can I ask you, the commissioner referenced at the 03:59 last hearing, the issue about whether --

MR. CERAN: Do you have a question?

MR. BOYLAN: Yeah. Any of those defendants are going to be asserting the advice of counsel defense?

MR. CERAN: I don't -- I don't remember that. But 04:00

THE WITNESS: No. It sets a -- it sets the minimum time frame by statute that a property can be foreclosed upon.
BY MR. BOYLAN:
Q Meaning that the homeowner will lose their home, correct? 04:11
MR. CERAN: Objection. Argumentative.
THE WITNESS: No, the homeown- -- it gives the amount of time where the homeowner can cure the debt or allow the foreclosure to go forward. 04:11
BY MR. BOYLAN:
Q And by "cure the debt," you mean pay the money on the defaulted loan, correct?
A By bringing the loan current.
Q As reflected on page 15, MTC gave advice to its clients, including those who vested in junior liens, that they need to comply with state laws including debt collection laws, correct? 04:11
MR. CERAN: Objection. Misstates his testimony.
You can answer. 04:12
THE WITNESS: As -- as to what this -- as to what this form says? It says, they -- we did not give advice. We just -- we just suggested they be familiar with.
BY MR. BOYLAN:
Q And MTC suggested that they be familiar with debt 04:12

Q And the same is true with respect to what's shown on page 17 as payoff and short payoff, correct?

MR. CERAN: Objection. Unintelligible. No foundation.

THE WITNESS: This has to do with a beneficiary's exit strategy. Not a trustee -- not a service provided by the trustee. 04:17

BY MR. BOYLAN:

Q I'm sorry. I apologize. Let me try to clarify.

I thought we established this with you earlier as well as Kathy Cerborn Shole [verbatim] or -- and others. 04:17

But one of the services that MTC provided, in which it's promoting in Exhibit 6, is the process of paying off the loan, providing services to obtain paying off the loan, correct? 04:17

MR. CERAN: Assumes facts not in evidence. Misstates prior testimony.

THE WITNESS: No. What item No. 6, I -- what Exhibit 6 appears to be is not services that are provided, but recommend -- but options to an investor in junior liens. 04:18

MR. BOYLAN: Move to strike as nonresponsive.

BY MR. BOYLAN:

Q I see -- think I see the point here. You're not understanding my question. Let me try to clarify it for 04:18

you.

This document is a promotional document; right, it's a seminar given to potential clients or existing clients; is that true?

MR. CERAN: Objection. Calls for speculation. No foundation. You -- you can answer. 04:18

THE WITNESS: I don't know, sir. It's -- it's a -- it's -- I don't know. I really don't know.

BY MR. BOYLAN:

Q What do you think it is, then -- 04:18

A It --

Q -- just based on your 35 years of industry experience?

MR. CERAN: Calling for speculation.

You can answer. 04:18

THE WITNESS: It appears to be talking points on a -- on a seminar though it was given in order -- not to do -- I'm sorry.

Let me re- -- let me finish the sentence a little bit better. 04:18

It appears to be a seminar given on behalf of Max Roi, R-o-i, which I don't -- you know, I don't know what that means.

In order to provide information to people that invest in junior liens, on what some of the things they 04:19

should look out for, and some of the items -- some of their benefits or some of their problems they may incur when they are investing in junior liens.
BY MR. BOYLAN:
Q And those people in the audience are potential clients of Trustee Corporation, which is motivated Trustee Corporation to spend the time and energy to make the presentation, correct? 04:19
MR. CERAN: Objection. There's no foundation. Calls for speculation. 04:19
You can answer.
THE WITNESS: I don't know, sir.
BY MR. BOYLAN:
Q Did Matt Kelley have your permission to use your picture and your contact information on the last page of Exhibit 6? 04:19
A I don't recall, sir.
Q What's association foreclosure service?
A Association foreclosures? It's a d/b/a that we had filed at one time. 04:20
Q For what purpose? And when you say "we," you mean MTC?
A MTC, I'm sorry -- M- -- MTC.
Q And for what purpose?
A We were possibly thinking of doing foreclosure 04:20

EXHIBIT “4”

MR. BOYLAN: And it is understandable. People do it, spouses do it.

FRANCINE SANSOTA: Okay.

MR. BOYLAN: But it's better that we not.

FRANCINE SANSOTA: Okay.

BY MR. CERAN:

Q All right. Thank you.

A The lender. Okay.

Q I am just trying to -- you know, this is -- I am just going for your best memory. Do you remember ever being in on a conversation with a lender in which the subject was refinancing the mortgage, the first mortgage on your property?

A I can't recall if that happened. Like I said, I heard about it secondhand. She would tell me later on when this all occurred. But I can't remember, no, for myself, no.

Q Okay. All right. So at some point in time you became aware that your property was being foreclosed on; right?

A Yes.

Q Do you remember how you became aware of that?

A I believe we got a phone call from one company. Like I said, we got behind on payments.

And we had our mortgage rate decreased at a price we had to pay money up front to have it refinanced. And then after several months, then the interest rate went back up begin.

Q I appreciate receiving that information. But I am trying to get from you your best memory as to how you found out that your home was being foreclosed on?

A I think it had to be in the -- through the mail. We got a letter through the mail saying we were foreclosed and they couldn't help us.

Q Well, let's mark as Exhibit 2 a document entitled Notice of Breach and Default and Election to Cause Sale of Property Under Deed of Trust. It has control numbers TC39 through TC41.

(Exhibit 2 was marked.)

MR. BOYLAN: No clips or staples there, Counsel? I am going to have to talk to your secretary.

BY MR. CERAN

Q You wanted to have the deposition in here. You didn't tell me I needed to bring my own paperclips. Somehow I think you will manage to survive.

Okay. We have Exhibit 2. Have you ever

Veritext Legal Solutions
877-955-3855

MR. BOYLAN: You mean MTC, Counsel?

THE WITNESS: MTC.

BY MR. CERAN:

Q Yes? You are nodding your heading. You are not answering.

A Yes. Yes. Yes.

Q Remember the rules at the beginning?

A Yes.

Q Who have you spoken with at -- you want to call them MTC. Who have you spoken with at MTC, ever?

A I believe they called me a couple times on the phone. But I am not sure what time. They called me a couple times about the property.

Q Is that two times they called you?

A I would say two.

Q Okay. When was the first conversation?

A I don't know. It was, I believe, 2010, 2011.

Q So were you the only person on that telephone call besides the person from MTC?

A Yes.

Q And so what time of the day did this person from MTC call you?

A It had to have been -- had to have been in

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the late afternoon, Eastern Standard Time.

Q This is the first conversation we are talking about; right?

A I believe so, yes.

Q Okay. So was it a male or female?

A I don't know.

Q Did they -- did this person give you his or her name?

A I believe they did, yes. I believe they did.

Q And what was their name?

A The name, I don't know.

Q And what was your phone number at that time?

A I -- we still have our Nevada numbers to this day right now.

Q Can you answer my question?

A What's that again?

Q What was the phone number that MTC called you on in 2010 or 2011?

A My number is 702-249-7894.

Q How long was the conversation?

A Just -- not too long at all. I would say not too long.

Q And for us persons who rely more on

minutes to sort of estimate time, approximately how many minutes?

A Mostly five, five minutes.

Q And had you called MTC before you received this call from this man or woman from MTC?

A No.

Q And what did the person from MTC say in that first telephone call to you?

A They were talking about money, money for -- money for -- what do they call it? Collection, a collection fee or something, collection fee about the mortgage.

Q Right.

A I wasn't sure what they were talking about.

Q What were the words that they were saying to you during that telephone call?

A Saying that we need to get this -- some kind of collection for your -- you know, to save the -- to save the mortgage or save the house or something to that effect. They were talking -- talking fast, but I didn't know what they were trying to get at. I didn't.

Q Did you tell your wife about that call?

A Yes.

Q And what did she say?
A She couldn't believe they would be contacting us at that time, after we left Vegas and left the property.
Q Is that what she said?
A Uh-huh.
Q Yes?
A Yes.
Q And what is it that you told your wife about what they told you on that first telephone call?
A Well, just asked me for money, asked me for money for the mortgage.
Q How much did they ask for?
A I believe $1,000, $1,500.
Q Which? Which one, $1,000 or $1,500, did they ask you for?
A I would say $1,500.
Q That's what they said?
A Yeah.
Q That's what this man or woman told you?
A Uh-huh.
Q Yes?
A Yes.
Q And did you make any notes of that

conversation?

A No. No.

Q So at this point in time you had never spoken to anybody at MTC; right? Correct?

A Correct.

Q And out of the blue, after you leave Las Vegas, a man or a woman from MTC called you late in the afternoon; is that right?

MR. BOYLAN: Asked and answered.

THE WITNESS: Yes.

BY MR. CERAN:

Q I am just trying to understand his testimony.

A Yeah. Yeah.

Q And they asked you for $1,500 at that point; correct?

A Yes, they said they needed $1,500 to correct some kind of problem with the property. But I explained that we left the property. We assumed they already took it over. They already took it over. You know, it is after the fact. I said we are already in Ohio at a new residence and we assume they took the property back from us. We lost it, lost our down payment, lost money that we put into the property. And they weren't acting -- none of

about whether or not MTC actually contacted you?

A No. MTC, yeah, I remember the name.

Q That was the name that they told you when they -- tell me what the introduction was in that first phone call?

A Oh, I don't know. They said the whole name. They didn't say MTC. They said the whole legal name. But at that time I was very busy and I couldn't believe it. I thought it was for somebody else, but I can't remember the whole conversation.

Q No, I am not asking for the whole conversation.

A Yeah.

Q All I am asking for at this point, Mr. Sansota, is that the way the introduction was made by this person from MTC, the words that they used to introduce themself when they made that first phone call to you in 2010 or 2011?

A They have introduced themselves on behalf of such and such company, that we would like to save your property and this and that and figure amount, and please get back with us. That is it.

Q Did they leave you a message or were you actually talking to a person?

A I was talking to a person.

MTC? Were you holding down a job at that point?

A I believe -- I believe I just started. I just started at a job in Ohio when that happened. And I worked evenings. So they called me at work. I was working at the time when they called.

Q And that was a cell -- I mean the number that you gave me earlier was your cell number?

A Yes.

Q So you would have it with you?

A Yes.

Q So now you remembered that the call was in the evening as opposed to the late afternoon?

A All I know is I was working at that time because I worked -- you know, I worked from 2:00 in the afternoon until 12:00 midnight.

Q Okay. So have you now told me everything that you remember about this first phone call with MTC?

A I believe so, yes.

Q Okay.

A I think so.

Q Well, now we are going to talk about the second one. Okay? When was the second one?

A The second phone call?

Q Yeah.

talking about all day.

A No.

Q Oh, you had already left?

A Yes.

Q Okay. So I want to go back to Exhibit 2, which you don't have to look at it really.

A Oh, yes.

Q Because you said you never saw it before. But it indicates it was recorded in late July of 2010. Is it possible that you had already moved out of the property by late July, by July 28th of 2010?

MR. BOYLAN: Speculation. Also question lacks foundation.

BY MR. CERAN:

Q Let me rephrase it.

Do you remember whether you had moved out of the property by July 28 of 2010?

MR. BOYLAN: Asked and answered as to move out date, several times.

THE WITNESS: What's that again? The move out date or what?

BY MR. CERAN:

Q No. My question is do you remember whether you moved out of the property by July 28, 2010?

A Yes.
Q And did you?
A Yes.
Q Okay. Thank you.
So when you left for Ohio in 2010, did you have any understanding as to what was going to happen to your property?
A We knew it is going to be taken back.
Q Okay.
A Taken back by the company, yes.
Q Is that because you would stop making payments?
A Well, we didn't want to get behind on our payments and lose the house. Eventually it happened anyhow.
Q Well, why did you stop making payments?
A Because they said in order to get refinanced we would have to be behind on our payments, in order to -- instead of foreclosing on that house, they would want to renegotiate with a lower mortgage rate in order to keep the house, lower house payments.
Q Well, we went over those conversations already. And correct me if I am wrong, but you don't remember any particular conversation with

EXHIBIT “6”

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 16

Appeal from Eighth Judicial District Court
Clark County, Nevada

The Honorable William Kephart

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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

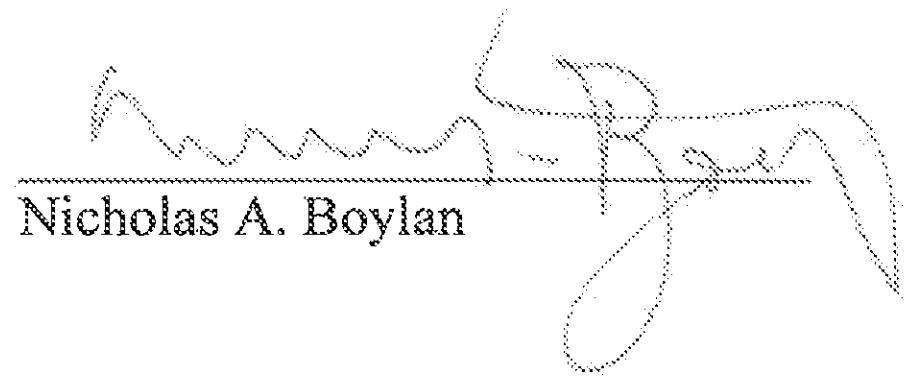
filed. When it is, the Third Amended Complaint will be filed.

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.



Nicholas A. Boylan

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

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FILE NO: AB016D9

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