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DISTRICT COURT

CLARK COUNTY, NEVADA

JEFFREY BENKO, a Nevada
resident; CAMILO MARTINEZ, a
California resident; ANA
MARTINEZ, a California
resident, et al.,

Plaintiffs,

vs.

QUALITY LOAN SERVICE
CORPORATION, a California
Corporation; APPLETON
PROPERTIES, LLC, a Nevada
Limited Liability Company, et
al.,

Defendants.

Case No. : A-11-649857-C
Dept. No. : 29

VIDEOTAPED DEPOSITION OF JEFFREY W. BENKO, II

LAS VEGAS, NEVADA

WEDNESDAY, NOVEMBER 30, 2016

Reported by: Amber M. McClane, NV CCR No. 914

Job No. : 355918-B

1 VIDEOTAPED DEPOSITION OF JEFFREY W. BENKO,
2 II, held at Litigation Services, located at 3770 Howard
3 Hughes Parkway, Suite 300, Las Vegas, Nevada, on
4 Wednesday, November 30, 2016, at 1:39 p.m., before
5 Amber M. McClane, Certified Court Reporter, in and for
6 the State of Nevada.

7

8 APPEARANCES:

9 For the Plaintiffs:

10 BY: NICHOLAS A. BOYLAN, ESQ.
11 LAW OFFICES OF NICHOLAS A. BOYLAN, A.P.C.
12 444 West "C" Street, Suite 405
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15 nablawfirm@gmail.com

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17 For the Defendant, Quality Loan Service Corporation:

18 BY: THOMAS N. BECKOM, ESQ.
19 MCCARTHY & HOLTHUS, LLP
20 9510 West Sahara Avenue, Suite 200
21 Las Vegas, Nevada 89117
22 (702) 685-0329
23 tbeckom@mccarthyholthus.com

24

25 Also present:

26 TERRELL HOLLOWAY, Legal Videographer
27 LITIGATION SERVICES
28 (702) 314-7200

29

30

* * * * *

31

32

1 condition.

2 Anything else that was, you know, upsetting
3 you at the time specifically that you can recall?

4 A Not that I can recall.

5 Q. Okay. And it was also during this time that
6 you started running into problems with making the
7 mortgage payments on Pursuit Court. Correct?

8 A Correct.

9 Q. Okay. Did you start getting a lot of phone
10 calls when you stopped making your mortgage payments?

11 A I did.

12 Q. Who called you?

13 A There was probably several different
14 companies calling me. Quite honestly, you know, at the
15 time, most of the calls that I received either through
16 my landline or -- or cell phone were blocked or -- or
17 from unknown numbers. And so, you know, I -- most of
18 the times I got the call were during work hours, which
19 I try not to answer personal calls at that time and try
20 to stay focused on my work. So a lot of them went
21 straight to voice mail.

22 So, you know, but I do know for a fact
23 that -- Emc I'm sure was part of it, but primarily I
24 want to say that Quality Loan was definitely involved
25 in those calls.

1 Q. How many times did Quality Loan Service call
2 you?

3 A. I can't recall. It was a long time ago. But
4 several. I can't put a number to it, but I know that
5 it's several times.

6 Q. Several times?

7 How do you know it was Quality Loan Service
8 Corporation?

9 A. I would -- just due to their -- it wasn't
10 just phone calls. It was letters. It was somehow, you
11 know, posted on the front door of my home. You know,
12 packages sent UPS.

13 Q. Well, let's -- let's just focus on phone
14 calls for a minute, though.

15 A. Okay.

16 Q. When you'd get a phone call from Quality Loan
17 Service Corporation, how would you know it was Quality
18 Loan Service Corporation?

19 A. If I did answer the phone, they identified
20 themselves as Quality Loan Service, a --

21 Q. So --

22 A. -- debt collection agency or company.

23 Q. Would they say they were a debt collection
24 company?

25 A. No. That's -- I'm not saying that they said

1 that, but I do know that they are a -- you know, a
2 company that is primarily hired specifically for
3 mortgages, to collect debts and fees, and, you know,
4 pursue or -- with the foreclosure processes.

5 MR. BECKOM: Mark this as Exhibit 3.

6 (Deposition Exhibit 3 was marked for
7 identification.)

8 Q. (By Mr. Beckom) This is Exhibit 3.

9 A. Are we going to refer back to Exhibit 2 at
10 all, or is that --

11 Q. If we do, I'll let you know, man.

12 A. Okay. All right. No, I just -- I'm trying
13 to make room here so --

14 Q. With the amount of unnecessary delays I've
15 generated, I can't really even begin to comment on
16 anything like that, man.

17 A. Okay.

18 Q. Okay. All right. So you said you don't
19 really recall how many times Quality Loan Service
20 called you?

21 A. I would say several. I don't know a exact
22 number.

23 Q. We're going to look at -- this is a
24 declaration. On Page 2 of the declaration it says
25 "Jeffrey W. Benko, II," and then there's a signature.

1 Is that your signature, sir?

2 A I'm sorry. What page was it? Oh, at the
3 last page? That is my signature.

4 MR. BOYLAN: You should read the document
5 before you answer questions about it.

6 THE WITNESS: Okay.

7 MR. BOYLAN: You don't need to read the
8 caption, but the --

9 THE WITNESS: Yeah.

10 MR. BOYLAN: -- substance of it in the
11 numbered paragraphs.

12 THE WITNESS: No, I got you.

13 (Witness reviewing document.)

14 Yes, that is my signature.

15 Q. (By Mr. Beckom) Okay. We're going to look at
16 paragraph two. It says, "My role" -- "My loan related
17 to my home went into default and therefore it was after
18 our lack of payment on that debt that Quality Loan
19 Service Corporation became involved. Between
20 approximately May of 2009 and October of 2012, I
21 received numerous and various harassing collection
22 phone calls from Quality Loan Service Corporation with
23 respect to collecting on the debt."

24 Why were -- like, what kind of harassing
25 phone calls were you getting?

1 A Well, during the workday I consider any call
2 to collect a debt -- and I realize that they're --
3 they're trying to do their job, but I consider that to
4 be harassing when it's -- when it's happening multiple
5 times in a day and you are trying to, you know, just go
6 about daily business activities.

7 So there were several times that they had
8 reached out via phone through my cell, through my home,
9 and work related -- obviously cell, work related, and
10 personal. And I did speak at -- on occasion to them,
11 and they identified themselves as Quality Loan
12 Servicing, a debt collector --

13 Q. Mm-hmm.

14 A -- and basically the -- the conversations
15 were very, very short and they had -- their reason for
16 calling was two things. It was to either collect debt
17 or collect the -- the fees that were owed to bring the
18 mortgage current or to leave the property. And that
19 followed up obviously with letters, letters and phone
20 calls at the same time, and they just, you know,
21 continued.

22 Q. All right. Let's -- let's kind of narrow --
23 narrow this down a little bit then.

24 A Okay.

25 Q. A typical Quality Loan Service call, as you

1 contend, you would pick up the phone -- well, I guess,
2 let me rephrase that for a minute.

3 Like, so you got multiple phone calls
4 throughout the workday, but they were always from
5 blocked numbers. Correct?

6 A From what I can recall a majority of them
7 were blocked numbers. Debt collectors are very, very
8 slick. They're not going to have a number pop up on
9 the ID because the chances of you answering the call is
10 very slim. So, you know, they either go unknown,
11 blank, or, you know, just --

12 Q. Do you attribute every single unknown call to
13 Quality Loan Service Corporation?

14 A I couldn't say every one that wasn't answered
15 was, but I do know that that was the primary -- because
16 this -- this happened after the Chapter 7 was -- was
17 filed. So, you know, a lot of the debt collection
18 activities from, you know, credit cards, things like
19 that, ceased as soon as that was, you know, discharged
20 or filed and discharged. Quality continued on. You
21 know, everything relating to my home continued on.

22 And I do know that -- I'd have to say a
23 majority of them. I can't say all of them. I can't
24 speak to every single -- but I would say a majority of
25 them were from Quality.

1 Q. The ones that you didn't answer?

2 A. It would -- it would -- yes, the ones that I
3 didn't answer because they -- it was repetition. You
4 know? It was almost like it was scheduled. As if, you
5 know, on my way to work I would get a call at -- I'm
6 just using random numbers -- at 8:30 I would get a
7 call, at -- you know, I don't know the exact times, but
8 it was almost like the same time daily.

9 So -- and the calls, the times that I did
10 answer, it would have been a -- you know, a
11 representative from Quality. Can I say every one of
12 them was Quality? No, I cannot say that. But I can
13 say that I believe that a majority of them were.

14 Q. Okay. How many times did you actually pick
15 up the phone and talk to Quality, do you recall?

16 A. I don't.

17 Q. More than five?

18 A. I couldn't tell you that.

19 Q. All right.

20 A. Like you said, last week I don't even
21 remember half the calls I took but --

22 Q. No, that's fair.

23 And so, like, you'd pick up the phone and
24 you'd talk to Quality Loan Service and then, like, you
25 know, what would -- how -- like, one -- you know, you'd

1 was my home. That wasn't just a house. That was my
2 home that I had purchased with my wife. The very first
3 home we lived in, had kids, started a life together; we
4 had no intentions of leaving that home. We made every
5 attempt to try to keep it.

6 Q. Okay. But you weren't -- were you -- but you
7 had -- like, you weren't paying on your -- I know this
8 stuff is really hard to talk about, man. I'm sorry.

9 A. Right.

10 Q. Like, but you weren't -- you weren't paying
11 on your mortgage payment during the time frame you were
12 getting these phone calls. Correct?

13 A. I was not. It was -- it was out -- yeah, the
14 mortgage payment was too high for me to -- to pay,
15 and -- and I did -- I do remember certain conversations
16 asking if -- if partial payments were made, you know,
17 things like that. But, you know, I was -- you know,
18 that's something that I -- I communicated through my --
19 my bankruptcy attorney and -- and advised, you know,
20 on -- on what I should do at that point, you know. You
21 know, so that's something that, being that long ago, is
22 hard for me to remember the exact, you know,
23 conversation that happened. I don't know exactly
24 what -- what took place. I mean, but I do know that I
25 had conversation. I do know the primary goal was to

1 CERTIFICATE OF REPORTER

2 STATE OF NEVADA)
3) SS:
4 COUNTY OF CLARK)

5 I, Amber M. McClane, a duly commissioned and
6 licensed court reporter, Clark County, state of Nevada,
do hereby certify: That I reported the taking of the
videotaped deposition of the witness, JEFFREY W. BENKO,
II, commencing on Wednesday, November 30, 2016, at 1:39
p. m. ;

7 That prior to being examined, the witness
was, by me, duly sworn to testify to the truth. That I
thereafter transcribed my said shorthand notes into
8 typewriting and that the typewritten transcript of said
deposition is a complete, true, and accurate
9 transcription of said shorthand notes.

10 I further certify that I am not a relative or
employee of an attorney or counsel or any of the
parties, nor a relative or employee of an attorney or
11 counsel involved in said action, nor a person
financially interested in the action; that a request
12 ([X] has) ([] has not) been made to review the
transcript.

13 IN WITNESS THEREOF, I have hereunto set my
hand in my office in the County of Clark, state of
14 Nevada, this 17th day of December, 2016.

15 *Amber M. McClane*

16 /s/ Amber M. McClane, NV CCR No. 914
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ERRATA SHEET

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I declare under penalty of perjury that I have read the

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foregoing 197 pages of my testimony, taken

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on 01/10/17 (date) at

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LAS VEGAS (city), NV (state),

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and that the same is a true record of the testimony given

11

by me at the time and place herein

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above set forth, with the following exceptions:

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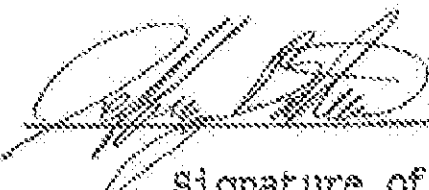
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EXHIBIT “C”

In the Matter Of:

Benko, et al. vs. Quality Loan Servicing Corporation, et al.

SUSAN HJORTH

November 30, 2016

Job Number: 355918-A

1 DISTRICT COURT
2 CLARK COUNTY, NEVADA
3 JEFFREY BENKO, a Nevada }
resident; CAMILO MARTINEZ, a }
4 California resident; ANA }
MARTINEZ, a California }
5 resident, et al., }
6 Plaintiffs, } Case No.: A-11-649857-C
Dept. No.: 29
7 vs. }
8 QUALITY LOAN SERVICE }
CORPORATION, a California }
9 Corporation; APPLETON }
PROPERTIES, LLC, a Nevada }
10 Limited Liability Company, et }
al., }
11 Defendants. }
12

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14
15 VIDEOTAPED DEPOSITION OF SUSAN HJORTH
16 LAS VEGAS, NEVADA
17 WEDNESDAY, NOVEMBER 30, 2016
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24 Reported by: Amber M. McClane, NV CCR No. 914
25 Job No.: 355918-A

1 VIDEOTAPED DEPOSITION OF SUSAN HJORTH, held
2 at Litigation Services, located at 3770 Howard Hughes
3 Parkway, Suite 300, Las Vegas, Nevada, on Wednesday,
4 November 30, 2016, at 10:57 a.m., before Amber M.
5 McClane, Certified Court Reporter, in and for the State
6 of Nevada.

7
8 APPEARANCES:

9 For the Plaintiffs:

10 BY: NICHOLAS A. BOYLAN, ESQ.
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13 San Diego, California 92101
14 (619) 696-6344
15 nablawfirm@gmail.com

16 For the Defendant, Quality Loan Service Corporation:

17 BY: THOMAS N. BECKOM, ESQ.
18 MCCARTHY & HOLTHUS, LLP
19 9510 West Sahara Avenue, Suite 200
20 Las Vegas, Nevada 89117
21 (702) 685-0329
22 tbeckom@mccarthyholthus.com

23 Also present:

24 TERRELL HOLLOWAY, Legal Videographer
25 LITIGATION SERVICES
(702) 314-7200

* * * * *

1 A Yes.

2 Q Okay. I believe we previously talked about
3 the Day Dawn property. So let's kind of focus back on
4 that, then.

5 You complete your bankruptcy. Correct?

6 A Correct, yes.

7 Q You're still not making mortgage payments at
8 that time. Correct?

9 A No, not at that time.

10 Q And then what happens after that to the Day
11 Dawn property?

12 A Quality -- Quality Loan Services kept --
13 they're the one that took over my mortgage, and they --
14 or took -- I don't know what the right terms are. They
15 kept contacting me with letters and phone calls, and I
16 tried to see if I could keep the property.

17 Q Okay. Did you call Quality Loan Service?

18 A As I recall, I called -- I called them, yes.
19 They called me, you know, but I called them to try to
20 work something out with them so I could keep it.

21 Q When was the first time that you called them?

22 A That I do not recall.

23 Q Okay. Why did you call Quality Loan Service
24 Corporation?

25 A Because I want to try to -- to work something

1 out with them so I could keep it.

2 Q. What did they tell you when you called them?

3 A. I don't remember exactly.

4 Q. Did they offer you any kind of loan
5 modification?

6 A. No.

7 Q. Did they demand any kind of monetary payment
8 from you?

9 A. Well, they were keep -- collecting the debt.

10 Q. Okay.

11 A. I mean, that's -- they kept sending letters
12 and letters, phone calls. So that's why I tried to
13 work something out with them.

14 Q. Okay. And what did you try to work out
15 exactly?

16 A. I guess, like, so I could keep the home.

17 Q. Were you employed at that time?

18 A. No. That was one of the issues. I was
19 looking for a job.

20 Q. Okay. I think your bankruptcy schedules say
21 you were still employed at Grandview. Correct?

22 MR. BOYLAN: Lacks foundation. Assumes facts
23 not in evidence as to the dates.

24 THE WITNESS: I don't recall if --

25 MR. BOYLAN: It's argumentative also.

1 remember that time, no.

2 Q. Okay.

3 A But I figure out how to -- calling around,
4 who to call. You know, I tried to figure out who to
5 get to, to work something out.

6 Q. Okay.

7 A But probably -- probably the phone numbers
8 from the mail, no, I would probably call first to --
9 but I don't recall exactly how I found out.

10 Q. Well, that makes sense to me.

11 And it sounds like you made a lot of phone
12 calls. Did you make a lot of phone calls?

13 A Well, they called me a lot too. You know?
14 But they were not --

15 Q. But you --

16 A -- friendly when they called me. You know?
17 So I tried to work something out when they called, but
18 I never got anything out of it.

19 Q. Well, the question -- I mean, like, how
20 many -- like, do you think that you called somebody
21 trying to work out your loan more than ten times?

22 A I don't remember that.

23 Q. Do you think it was less than ten times?

24 A I don't remember.

25 Q. Okay.

1 A. I don't -- I don't have a number for -- for
2 how many times.

3 Q. Was it -- did you personally try to call
4 someone a lot or a little? What would be a better
5 characterization of that?

6 MR. BOYLAN: It's vague. Asked and answered.

7 THE WITNESS: It's -- I don't -- I don't
8 remember how many times, sir. It would be -- I will
9 not tell the truth if I said it because I don't
10 remember it.

11 Q. (By Mr. Beckom) That's fair.

12 Did you ever leave a voice message with
13 anybody to tell them to call -- to get them to call you
14 back?

15 A. I don't remember that.

16 Q. Okay.

17 A. I would assume I did, but I don't remember.

18 Q. So you think it might have happened?

19 A. Maybe. I don't know.

20 Q. Did you ever receive a phone call in response
21 to any of these maybe, you know, voice messages you
22 left?

23 A. I don't remember that. I remember I got a
24 lot of phone calls from them, but I don't remember. It
25 was more for attempting to collect a debt. No?

1 Q. Okay.

2 A. I mean, that's why the letters were -- I got
3 a lot of letters and a lot of phone calls. It was the
4 same thing. No?

5 Q. Okay. Did you ever take -- so people were
6 trying to collect on a debt for the Day Dawn house?

7 A. Yes.

8 Q. Did you tell them you had filed bankruptcy?

9 A. I did that too sometimes, yes.

10 Q. And what did they say?

11 A. I don't remember.

12 Q. Okay.

13 A. But I also told them I would like to work
14 something out with them.

15 Q. Okay. And then what would they say when you
16 tried to work something out?

17 A. I don't remember exactly what they'd say, but
18 nothing got worked out.

19 Q. Do you have any specific recollection of ever
20 talking to Quality Loan Service Corporation?

21 A. Say that again?

22 Q. Do you have any specific recollection of
23 talking to Quality Loan Service Corporation?

24 MR. BOYLAN: Asked and answered. Vague.

25 THE WITNESS: I -- I don't -- if I -- if I

1 remember if I ever talked to them?

2 Q. (By Mr. Beckom) Mm-hmm.

3 A. Yeah.

4 Q. Okay. And what did you talk about?

5 A. What I have been saying.

6 Q. Oh. Just trying to work it out?

7 A. Work it out. And they -- they called me a
8 lot to do the payment.

9 Q. Is it -- now, you said you called a lot of
10 people. Correct?

11 A. I tried -- because I -- it's been taking over
12 over time. No?

13 Q. Mm-hmm.

14 A. I don't remember how many times because I got
15 so much by mail. No? So many phone calls. I don't
16 know. But I know the ending of -- of the whole thing
17 with the house was the Quality Loan Services.

18 Q. Well, the question, though, like, so you got
19 a lot of stuff over this. Correct? Correct?

20 You got a lot of mail over this. Correct?

21 A. Yes.

22 Q. And you're contending you got a lot of phone
23 calls. Correct?

24 A. Correct, yes.

25 Q. And you're also contending you made a lot of

1 phone calls. Correct?

2 A I don't know I make a lot because I try --
3 when they call me, I try to work something out with
4 them.

5 Q. Mm-hmm. Okay. Were all of these phone calls
6 from Quality Loan Service Corporation?

7 A In the end I would assume they were, yeah,
8 because they were the one that contacted me with --
9 through mail and phone so. . .

10 Q. So you -- well, you said you -- you would
11 assume that they were. Are you certain that they were?

12 MR. BOYLAN: It's argumentative. Asked and
13 answered about 14 different ways.

14 THE WITNESS: I mean, they -- they sent me by
15 mail a lot and they called me, and I don't remember if
16 other people called me at that time but I know before
17 that the other people did call me. So I would think it
18 was the -- the company, the mortgage company I was
19 paying first before it got transferred that called
20 me -- that started out calling me, and then they took
21 over and then they called me.

22 Q. (By Mr. Beckom) Okay.

23 MR. BOYLAN: Can we use this time to talk
24 about -- what's -- what are you thinking, Thomas, in
25 terms of planning? It's about 12:30.

[illegible]

and that the same is a true record of the testimony given
by me at the time and place herein
above set forth, with the following exceptions:

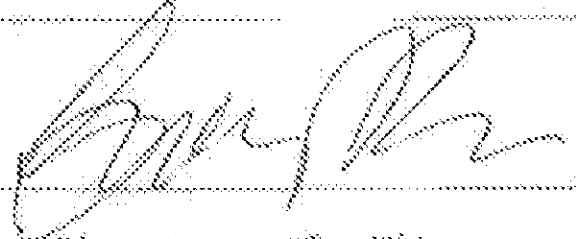
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* I bought the Day Dawn house in the
end of 2004

Date: 1-20-17



Signature of Witness

Susan Hjorth

Name Typed or Printed

EXHIBIT “D”

In The Matter Of:
Jeffrey Benko, et al. vs.
Quality Loan Service Corporation, et al.

Frank Scinta
February 21, 2017



Min-U-Script® with Word Index

Page 1		Page 3	
1	IN THE EIGHTH JUDICIAL DISTRICT COURT	1	APPEARANCES:
2	FOR THE STATE OF NEVADA	2	For FRANK and JACQUELINE SCINTA:
3	IN AND FOR THE COUNTY OF CLARK	3	LAW OFFICES OF NICHOLAS A. BOYLAN, A.P.C.
4	JEFFREY BENKO, a Nevada	4	BY: NICHOLAS A. BOYLAN, ESQ.
5	resident; CAMILO MARTINEZ, a	5	444 West "C" Street, Suite 405
6	California resident; ANA	6	San Diego, California 92101
7	MARTINEZ, a Nevada resident;	7	(619) 696-6344
8	JACQUELINE SCINTA, a Nevada	8	(619) 696-0478 (Facsimile)
9	resident; SUSAN HJORTH, a Nevada	9	nablawfirm@gmail.com
10	resident; RAYMOND SANSOTA, a	10	For QUALITY LOAN SERVICE, INC.:
11	Ohio resident; FRANCINE SANSOTA,	11	McCARTHY & HOLTHUS, LLP
12	a Ohio resident; SANDRA KUNEN, a	12	BY: THOMAS N. BECKOM, ESQ.
13	Nevada resident; JESUS GOMEZ, a	13	9510 West Sahara Avenue, Suite 200
14	Nevada resident; SILVIA GOMEZ, a	14	Las Vegas, Nevada 89117
15	Nevada resident; DONNA HERRERA,	15	(702) 685-0329
16	a Nevada resident; ANTOINETTE	16	(702) 339-5691 (Facsimile)
17	GILL, a Nevada resident; JESSE	17	tbeckom@mccarthyholthus.com
18	KENNIGAN, a Nevada resident; KIM	18	Also Present:
19	MOORE, a Nevada resident; THOMAS	19	Jacqueline Scinta
20	SCORE, a Nevada resident; SUSAN	20	
21	KALLEN, a Nevada resident;	21	
22	ROBERT MANDARICH, a Nevada	22	
23	resident; JAMES NICO, a Nevada	23	
24	resident; and PATRICIA	24	
25	TAGLIAMONTE, a Nevada resident,	25	
	Plaintiffs,		
	vs.		
	QUALITY LOAN SERVICE		
	CORPORATION, a California		
	Corporation; APPLETON		
	PROPERTIES, LLC, a Nevada		
	Limited Liability Company.		
		
		
	DEPOSITION OF FRANK SCINTA		
	Taken on Tuesday, February 21, 2017		
	At 11:15 a.m.		
	At 703 South Eighth Street		
	Las Vegas, Nevada		
	REPORTED BY: JEAN DAHLBERG, RPR, CCR 759, CSR 11715		
Page 2		Page 4	
1	1	I N D E X
2	MTC FINANCIAL, INC. dba	2	WITNESS:
3	TRUSTEE CORPS, a California	3	FRANK SCINTA
4	Corporation; MERIDIAN	4	Examination by Mr. Beckom
5	FORECLOSURE SERVICE, a	5	
6	California and Nevada	6	
7	Corporation dba MTD, INC.	7	
8	dba MERIDIAN TRUST DEED	8	E X H I B I T S
9	SERVICE; NATIONAL DEFAULT	9	EXHIBIT DESCRIPTION PAGE
10	SERVICING CORPORATION, an	10	Exhibit 1 United States Bankruptcy Court, 13
11	Arizona Corporation;	11	District of Nevada, Amendment
12	CALIFORNIA RECONVEYANCE	12	Cover Sheet with attachments
13	COMPANY, a California	13	(45 pages)
14	Corporation; and DOES 1	14	Exhibit 2 Clark County Real Property Parcel 42
15	through 100, inclusive.	15	Details for 9660 Brooks Lake Avenue
16	Defendants.	16	(1 page)
17		17	Exhibit 3 Deed of Trust recorded 10/17/2003 44
18		18	(15 pages)
19		19	Exhibit 4 Note dated October 8, 2003, for 44
20		20	9660 Brooks Lake Avenue (2 pages)
21		21	Exhibit 5 Notice of Breach and Default and 54
22		22	of Election to Cause Sale of Real
23		23	Property Under Deed of Trust,
24		24	Recorded 5/5/2010 (5 pages)
25		25	Exhibit 6 Notice of Trustee's Sale, recorded 64
			12/22/2011 (2 pages)
			Exhibit 7 Notice of Default and Election to 65
			Sell Real Property to Satisfy
			Delinquent Assessment Lien,
			recorded 12/5/2011 (4 pages)

1 Q. All right. So my name is Thomas Beckom and I
2 represent Quality Loan Service Corporation. And I guess
3 you have filed a class -- or you are attempting to
4 become a named representative in a class action against
5 my client, Quality Loan Service Corporation.

6 Can you give me your explanation as to what your
7 gripe is with Quality Loan Service Corporation?

8 A. I would say it was the harassment. Constant
9 harassment, phone calls, letters, a letter taped to my
10 door. Being an entertainer and traveling at the time,
11 it was kind of obtrusive to my wife to have somebody
12 show up at our door in a gated community. You know,
13 nobody ever came to our door unless they were invited to
14 my house.

15 And it was pretty -- they were very insistent on
16 how they tried to get ahold of us. Call us daily,
17 sometimes two, three calls a day. Some letters -- at
18 least two or three times a week, we'd get a letter or
19 something, and you've got to pay, you better do this,
20 you better do that.

21 And it was just -- it was very -- I'm trying to
22 think of the word. It was -- it was upsetting, for lack
23 of a better word. And that's the only reason I'm here
24 today, because of the consistent calls and letters.

25 Q. You said the Quality Loan Service was calling

1 you?

2 A. Yes.

3 Q. What were they calling you about?

4 A. About paying the mortgage. And I had lost my
5 job, as a lot of people did, and I had no money. We
6 tried, but we just couldn't make ends meet.

7 Q. Do you remember the address of the property they
8 were calling about?

9 A. 3030 American River Lane.

10 Q. Do you own property at 9660 Brooks Lake Avenue?

11 A. That was one of our properties. We owned a
12 rental property. In fact, we had three rental
13 properties.

14 Q. So were you current on any of those properties?

15 MR. BOYLAN: Vague as to time.

16 BY MR. BECKOM:

17 Q. When were you getting these harassing phone
18 calls?

19 A. I'm not sure of the actual time and date, but it
20 started about -- Jack? -- I don't recall the date. But
21 the calls were nonstop so much. And at that time, it --
22 it instills fear in you, like you're going to be out in
23 the street.

24 Q. What did you say the property was that Quality
25 Loan Service was calling you about again?

1 A. One of them was our house at 3030 American River
2 Lane, and then the other three properties that we owned.

3 Q. American River Lane?

4 A. Yep. 89135.

5 Q. One moment. I'm going to look something up.

6 A. That's all right. Is that not the address you
7 have in our --

8 MR. BOYLAN: Well, you have a lot of properties.
9 I can't testify for you, Frank --

10 THE WITNESS: No.

11 MR. BOYLAN: -- so I'll let you take your time.
12 But it doesn't matter if you were confused on which
13 one it is.

14 THE WITNESS: I don't remember which one. I
15 just remember the calls.

16 MR. BOYLAN: That's okay. Well, let him go
17 question by question.

18 THE WITNESS: That's fine.

19 If I'm not mistaken -- only because I'm the man
20 who paid for everything and my wife handled most of the
21 business -- those houses were all in the same vicinity.

22 BY MR. BECKOM:

23 Q. There's no west or east or anything like that on
24 the American River property, is there?

25 A. No.

1 Q. And you said it was in Las Vegas?

2 A. Yep. Yes.

3 Q. It wasn't North Las Vegas or anything like that?

4 A. No. No. Just Las Vegas proper. It's
5 considered Summerlin, but the address is Las Vegas, not
6 Summerlin.

7 Q. And you said it's just American River Lane?

8 A. Yes. That's where they were putting notes on
9 our door; that's where they were calling us.

10 Q. Do you still own the American River Lane
11 property?

12 A. Nope.

13 MR. BOYLAN: Do you need a break, Thomas?

14 MR. BECKOM: Yeah, I'd like to break real quick.

15 (Recess taken.)

16 BY MR. BECKOM:

17 Q. So, Mr. Scinta, you said you own multiple
18 properties?

19 A. Yes.

20 Q. How many did you own?

21 A. Three rentals and the house I lived in.

22 Q. So including your primary residence, you owned a
23 total of four homes?

24 A. Yes.

25 Q. And when did you purchase -- do you remember

1 A. Yeah. Of course, yes.
2 Q. Okay.
3 A. Yeah, we had to. There was no other way out for
4 us.
5 Q. Why?
6 A. No money. We were money broke. And the bottom
7 fell out, like everybody else in this country. And
8 going from making a lot of money to nothing in an eye
9 blink, after making money my whole life and then having
10 nothing, was pretty traumatic.
11 Q. Well, let's -- it sounds like that you -- what
12 do you do for a living, by the way?
13 A. I'm an entertainer.
14 Q. What do you do? What kind of entertainment do
15 you do?
16 A. I'm a male dancer. No. I'm -- well, I'm a
17 headliner here in Las Vegas.
18 Q. Okay.
19 A. But prior to that, I entertained all over the
20 country.
21 Q. Where do you headline at right now?
22 A. The Plaza Hotel.
23 Q. Where did you headline at previously?
24 A. The Rio Hotel; almost six years.
25 Q. Where are you headlining at in May of 2011?

1 BY MR. BECKOM:
2 Q. Okay.
3 A. And there were many of them.
4 Q. What were these calls like?
5 A. They were cold and calculated. There was no
6 warmth and -- they wanted their money, they wanted us to
7 pay, and we didn't have the money. I tried, but I
8 didn't have it.
9 Q. Okay. Let's keep going with the exhibits.
10 A. All right.
11 Q. On Page 7 of 45 --
12 A. Alrighty.
13 Q. -- I'm showing three properties listed on this
14 bankruptcy petition. Do you see what I'm talking about?
15 A. Uh-huh. Yes.
16 Q. Okay. There's the American River Lane property,
17 which you said you were living in; correct?
18 A. Yes.
19 Q. Okay. There's the Alexander Hill property.
20 What was what?
21 A. That was a rental.
22 Q. Did you have a tenant in that property at the
23 time?
24 A. Couldn't get one. Nobody had money. We
25 couldn't rent it if we paid them.

1 A. We were at -- I was out of work. Yeah, I didn't
2 have anyplace then. We were traveling to make ends
3 meet; you know, we would go to Ohio, Michigan, New York.
4 Q. Ohio, Michigan, and New York?
5 A. Uh-huh. Those were some of the places we would
6 travel to.
7 MRS. SCINTA: Cruise ships.
8 THE WITNESS: Oh, yeah. And cruise ships.
9 BY MR. BECKOM:
10 Q. Well, that sounds exciting.
11 A. Well, it was for the first ten of them. After
12 that -- you know, getting off in a country -- getting
13 off the boat in a country where guys have got M16s and
14 going through your luggage when you've got nothing to
15 hide was a little -- a little weird.
16 Q. I remember when I got off the plane in Tuscany
17 and you're surrounded by machine guns. It's very odd.
18 A. I know. And people think this country's tough.
19 Q. Okay. So you said the Quality Loan Service
20 Corporation was foreclosing on the American River Lane
21 property; correct?
22 MR. BOYLAN: Mischaracterization, lacks
23 foundation of any specific property.
24 THE WITNESS: I don't remember which property it
25 was. I just remember the calls.

1 Q. Did you receive any foreclosure calls from
2 anybody trying to foreclose on the Alexander Hill
3 property?
4 A. That would probably be QLS.
5 Q. So it's your testimony here today that QLS was
6 foreclosing on 7575 Alexander Hill?
7 A. I can't recall the address of -- now, looking
8 back, I wouldn't know which address they were calling
9 on. I just remember the calls.
10 Q. Okay. And then 7573 Alexander Hill, what was
11 that?
12 A. That was a rental, same block.
13 Q. Did you have a tenant in that property at the
14 time?
15 A. Nope. We did, I think, one of those; but they
16 wouldn't move out and they weren't paying, and we
17 couldn't get them out.
18 Q. Do you still own that property?
19 A. No.
20 Q. What's the current status of that property? Did
21 it end up getting foreclosed on?
22 A. Yeah. I lost everything.
23 Q. Do you recall who was foreclosing on that
24 property?
25 MR. BOYLAN: Vague.

1 A. Well, when we went to The D, which I think was
2 '13 and '14, maybe.
3 Q. Okay.
4 A. I'm not great on time frames, but I remember we
5 spent two years there.
6 Q. And that was after you filed for bankruptcy?
7 A. Oh, yeah.
8 Q. Okay. And so in 2013 and 2014, you were at
9 The D, and then somehow you ended up at the Plaza?
10 A. When that contract ended, we went back on tour;
11 you know, gigs here and there. And then I met with
12 Oscar Goodman. He said, Hey, Scinta, we need a show at
13 the Plaza. I said, Hey, Goodman, I need to work, I
14 said, but I won't four-wall. I won't buy the room. He
15 says, No. No. We'll work on getting you a contract
16 with the president of the hotel.
17 We met and we signed a residency for four
18 months, and that was January, a year and two months ago.
19 Q. You must like it then, if you're still there.
20 A. We're doing very well. We're bringing people
21 into the casino, our showroom packed, and everybody's
22 making money.
23 Q. Okay. Do you recall when the first time was
24 when you got a call from someone about any of your
25 mortgages on your four properties?

1 A. Do I recall the date?
2 Q. Yes.
3 A. No.
4 Q. Can you provide me an estimate?
5 A. Maybe about a year after we were -- eight months
6 or nine months after we were in that house at American
7 River Lane --
8 Q. Okay.
9 A. -- and bought those properties.
10 Q. And so you received multiple phone calls --
11 A. Many.
12 Q. -- regarding your American River Lane property?
13 MR. BOYLAN: Asked and answered.
14 THE WITNESS: I don't recall -- yeah, I don't
15 recall which address it was. I just remember it was
16 traumatic for me. I mean, it was -- I was under -- my
17 blood pressure had gone up; I had to go to doctors. I
18 never took blood pressure pills, and I was like -- I had
19 diverticulitis, which was from my nerves, stomach
20 problems. I had all these things go on with me because
21 I didn't ever intend to not pay anybody. I just -- it
22 was gone.
23 BY MR. BECKOM:
24 Q. You said you had diverticulitis? That is a
25 large word that I do not know what it means.

1 A. It's stomach issues from stress and -- pretty
2 ugly.
3 Q. And you said you had hypertension?
4 A. Yes. Never had it before then. It was just --
5 I was -- you know, I was the provider not only for my
6 household but for everybody that worked for me. I was
7 the guy. And without work, I worried about everybody.
8 I wasn't just worried about me. And then to get those
9 phone calls, man, it broke my heart.
10 Q. Okay. Let's go focus in on -- I'm going to ask
11 you a couple questions about the hypertension.
12 A. Sure.
13 Q. Do you have a family history of hypertension?
14 A. No.
15 Q. Have you ever had a member of your family die of
16 a heart attack, heart disease or anything like that?
17 A. Nope.
18 Q. You're on medication currently for hypertension?
19 A. Yep.
20 Q. I mean, you continue to be on medication for
21 hypertension?
22 A. Yeah. I thought they said, You've got to take
23 it, so I take it. I'm a good boy.
24 Q. Do you know the names of the medication you're
25 on for hypertension?

1 A. Irbesartan with an l. I-r-b-e-r- --
2 I-r-b-e-s-a-r-t-i-n (sic). Irbesartan.
3 Q. What's your diet like, or what was your diet
4 like around that time?
5 A. My wife cooks all healthy. I -- nothing. She
6 doesn't cook deep-fried foods. She cooks everything
7 healthy.
8 Q. What a typical -- what's your favorite dish your
9 wife cooks?
10 A. Chicken breast, broccoli with a white-wine
11 sauce, capers.
12 Q. What's your alcohol consumption on any given
13 week?
14 A. Not much at all, never. If somebody buys me a
15 drink after the show, I'll have one or two.
16 Q. How many nights a week do you perform?
17 A. Two. Not like the old days, six.
18 Q. Fair.
19 A. But no shows sell out six nights a week anymore
20 in this town.
21 Q. When did you first get diagnosed with
22 hypertension?
23 A. Right around the time that all the money and
24 everything was gone. I remember my head was pounding, I
25 couldn't sleep at night, my heart would pound through my

1 Q. America Honda Finance is the first creditor
2 listed. What is that?
3 A. I don't recall.
4 Q. Did you ever own a Honda at some point?
5 MRS. SCINTA: No.
6 THE WITNESS: No. I don't think I ever had a
7 Honda.
8 BY MR. BECKOM:
9 Q. It looks like the next one down is a Bank of
10 America credit card.
11 A. Probably.
12 Q. You owed \$42,000 on a Bank of America credit
13 card as of May 2011?
14 A. I owed? Probably.
15 Q. Prior to filing bankruptcy, did you ever receive
16 phone calls from Bank of America concerning your credit
17 cards?
18 A. I think letters; more letters than phone calls.
19 Q. It looks like you had a second Bank of America
20 credit card for the balance of \$14,078. Do you see what
21 I'm talking about?
22 A. Yeah. Yes.
23 Q. Did you ever receive a call from Bank of America
24 concerning that credit card?
25 A. I think most of those were all letters. I don't

1 remember phone calls from -- from these people, or from
2 any of them. BMW -- I know we had a BMW, and we just
3 didn't have the money to make the payments. Maxed out
4 our credit cards to eat, literally. Sometimes we had to
5 use a credit card just to put food on the table.
6 Q. Let's go over to Page 17 of 45. Chase,
7 P.O. Box 15298. It looks like a credit card with a
8 balance of \$25,000. Do you see what I'm talking about?
9 A. Yes.
10 Q. Did you receive phone calls from Chase?
11 A. No. I think in all these cases -- oh, Debry.
12 In all these cases it was letters. I don't recall phone
13 calls. The only ones I do recall was QLS. I do recall
14 those because they were really -- I mean, not only
15 hurtful, aggravating and -- because you just didn't have
16 the money. You had no answer for them. I'm trying.
17 I'm trying.
18 And then it got to a point where I put the
19 phone -- the calls were so frequent, I put the phone on
20 a fax machine so it would just are squeal and nobody
21 would have to answer.
22 Q. We'll get to the QLS phone calls momentarily.
23 A. All right.
24 Q. But you never received phone calls from any of
25 the Chase --

1 A. I don't recall phone calls from them. Most
2 letters from banks. That's what they do.
3 Q. Okay. Page 18 of 45, it looks like you had a
4 charge account for an Mcydsnb, \$884. What is that?
5 A. I have no -- no idea. I've never had one of
6 these. It doesn't even sound good. Mcydsnb. No idea.
7 Q. Do you know what the original one down here is,
8 the NCO -- then next one down, NCO-Med-cir?
9 A. Probably emergency room.
10 Q. Did you have to go to the emergency room for
11 some reason?
12 A. I must have, or my -- one of my children or my
13 wife. God only knows. I mean, that's a long time ago.
14 I don't recall.
15 Q. Did you ever receive phone calls from credit --
16 or people trying to get you to pay medical bills?
17 A. No.
18 Q. Okay. Plaza Associates, it looks like it's a
19 collection account for T-Mobile. Do you see what I'm
20 talking about?
21 A. Yes.
22 Q. Did they ever call you?
23 A. I don't have T-Mobile. I have AT&T.
24 Q. Okay.
25 A. It might have been one of my kids, but I don't

1 recall.
2 Q. Did you ever receive a phone call from an entity
3 named Hampton & Hampton?
4 A. I don't recall. Where's that?
5 Q. Nowhere on here.
6 A. Oh. Oh. No, I don't recall.
7 Q. So you don't recall an entity named Hampton &
8 Hampton calling you, saying they were going to foreclose
9 on your house?
10 A. I don't recall that, no.
11 Q. Are you certain?
12 A. As well as I can answer, yes, I'm pretty --
13 Q. Okay.
14 A. I don't remember that name. I mean, I might
15 have, but I don't recall that name.
16 Q. Okay. Question: You seem to be very certain
17 that, like, you either didn't receive phone calls or you
18 don't remember receiving phone calls. Why are you so
19 certain that you received phone calls from QLS on
20 your --
21 A. Because I just -- I remember seeing the QLS and
22 hearing when they would call. They'd say, "Quality Loan
23 Service." I remember that distinctively.
24 Q. And they were calling about your American River
25 Lane property --

1 A. I don't recall which property.
2 MR. BOYLAN: Asked and answered four times.
3 BY MR. BECKOM:
4 Q. And they would leave voice messages on your --
5 A. Sometimes on our voice -- what is it we call
6 them?
7 MRS. SCINTA: Answering machine.
8 THE WITNESS: Because we don't have them
9 anymore. They don't use them anymore. On a voice
10 recorder; you know, an answering machine.
11 BY MR. BECKOM:
12 Q. Who was your telephone provider at that time?
13 A. No clue.
14 Q. Okay. Would be you able to find out?
15 A. I don't think so at this point, no. Looking
16 back, I don't -- no, I doubt it.
17 You know what, if --
18 MR. BOYLAN: Wait for his question.
19 BY MR. BECKOM:
20 Q. What were you going to say?
21 A. I'm still wondering who Mey -- I'm really
22 shocked. I don't have a clue of what that is. It
23 doesn't even sound real.
24 Q. I'm going to flip over to Page 28 of 45.
25 A. Sure.

1 Q. It looks like you have a property listed as
2 5960 Brooks Lane. Do you see what I'm talking about?
3 A. I see it.
4 Q. Do you own property at 5960 Brooks Lane?
5 A. I think that's one of our rental properties.
6 Q. Okay.
7 A. Yeah, that's the one that's not on this block as
8 the other two.
9 Q. Did you ever receive phone calls about a
10 foreclosure on 5960 Brooks Lane?
11 A. I don't recall which address they were calling
12 about. I think I've answered that a couple times.
13 Q. Okay. Let's move on.
14 MR. BECKOM: Can you mark that as Exhibit 2.
15 (Exhibit 2 was marked for identification.)
16 THE WITNESS: Are we done with Exhibit 1?
17 MR. BECKOM: We might come back to it at some
18 point in time.
19 (Discussion held off the record.)
20 BY MR. BECKOM:
21 Q. All right. Have you seen this document before?
22 A. I don't recall seeing this.
23 Q. Okay. Question: Now, this document lists Frank
24 and Jacqueline Scinta at 3046 Lenoir Street. Do you see
25 where I'm talking about?

1 A. Yes.
2 Q. What is that?
3 A. That's where we lived prior to 3030 American
4 River Lane.
5 Q. What happened to that house? Did you sell it?
6 Did it get foreclosed on?
7 A. We sold it because -- no, I was -- at that time
8 I still had money. That's when we bought and built the
9 house at 3030 American River Lane, after we sold that.
10 Q. Now, below that, there lists a property at
11 9660 Brooks Lake Avenue. Do you see what I'm talking
12 about?
13 A. Yes.
14 Q. Did you own that property? Or is that one of
15 your properties?
16 A. I don't recall. I don't remember the exact
17 addresses. All I know is that I had three rental
18 properties.
19 Q. Okay.
20 A. Like I said, I didn't do a lot of the business.
21 I was the provider. So I really don't -- if you asked
22 me, I couldn't answer -- if I walked by the house, I
23 couldn't tell you which one it was.
24 Q. Okay.
25 A. But I know we had three rentals and the house we

1 lived in.
2 Q. Now, what do you mean you didn't do the
3 business? Were you not --
4 A. I didn't handle the paperwork and stuff like
5 that, other than when we had to sign when we bought them
6 and stuff like that.
7 Q. Who handled the paperwork?
8 A. Pardon?
9 Q. Who handled the paperwork?
10 A. My wife.
11 Q. So you don't recall owning property the
12 9660 Brooks Lake Avenue then?
13 A. Like I said, I don't know which -- I don't know
14 which addresses we owned. I just know we owned three
15 besides American River Lane.
16 Q. Fair enough.
17 (Exhibits 3 and 4 were marked for
18 identification.)
19 (Recess taken.)
20 BY MR. BECKOM:
21 Q. All right, Mr. Scinta, have you ever seen any of
22 these documents before? Or, let's start with Exhibit 3.
23 Have you seen Exhibit 3 before?
24 A. I must have. I signed it.
25 Q. Where did you sign it?

1 after -- so the Rio comes down and says, You've got to
2 rent the four walls, but you can keep all of your ticket
3 sales, and that stresses you out; correct?

4 A. Yes.

5 Q. And then you've got a huge -- it sounds like you
6 actually work with your family; correct?

7 A. Yes.

8 Q. Okay. And suddenly they are all unemployed?

9 A. Everybody under me is out of a job.

10 Q. Okay. And it sounds like, based on your earlier
11 testimony, that unemployment was for an extended period
12 of time; correct?

13 A. Yes.

14 MR. BOYLAN: Forgive me, Thomas, but there's so
15 much repetition here. Are we getting close to the end?

16 MR. BECKOM: We'll get there when we get there.
17 I'll get there as I get there. I'm just trying to make
18 sure that I fully develop his testimony, since it is
19 quite a, I guess, important matter that we're
20 litigating.

21 BY MR. BECKOM:

22 Q. Okay. And so after the Rio and the four-wall
23 policy, your health starts to decline; correct?

24 A. No. I don't think -- because I believed at the
25 time I was going to get other jobs. But as time went by

1 and the phone calls started coming in and the letters,
2 and not being able to book a job right away -- and even
3 when we did, it wasn't enough to pay for the future. It
4 was enough to pay for the food and whatever we could
5 keep the lights on. And it was really -- it was -- when
6 you're making so much money and then it's gone, man,
7 it's no catching up.

8 Q. Were you mad at the Rio at all?

9 A. Nah, it was business; it wasn't personal.

10 Q. Okay.

11 A. I was mad at the fact that it was -- you know,
12 that it was changing. But everybody -- I mean, other
13 headliners were being let go just like we were.

14 MR. BECKOM: Mark that as Exhibit 5.

15 (Exhibit 5 was marked for identification.)

16 BY MR. BECKOM:

17 Q. Have you seen this document before, Mr. Scinta?

18 A. Let me look through the whole thing before I
19 answer, but I --

20 Q. Or parts of this document at all? Because I
21 don't think you would have seen the affidavit of
22 mailing, but you probably would have seen -- well, you
23 tell me what you've seen.

24 A. I may have seen this. I don't recall. But I
25 don't see my signature anywhere.

1 Q. You said earlier that there were things taped to
2 your door. Do you recall saying that?

3 A. Yes.

4 Q. Okay. Did you ever see a document like this
5 taped to your door?

6 A. Possibly. I mean, I would probably remember the
7 envelope more than the letter itself, because as soon as
8 I would get those I would hand them to my wife and say,
9 What is this? But I can't say yes or no.

10 Q. Did you retain any of those envelopes at all?

11 A. No. I don't think so.

12 Q. Do you have any recollection about what you did
13 with them?

14 A. We lost a lot of stuff when we moved from
15 6,000 square feet to almost nothing. We had to throw a
16 lot of stuff out just -- we couldn't afford storage, so
17 we had to throw a lot of things away.

18 Q. When did you throw these things away?

19 A. When?

20 Q. Yes. Well, I guess, let me back -- let me come
21 at that a different way.

22 You state -- you said you moved to a smaller
23 house, correct, and you had to throw away a lot of
24 stuff?

25 A. Right. We had to rent.

1 Q. You had a rental -- you had a rental house?
2 When did that happen?

3 A. After we left 3030 American River Lane.

4 Q. Was that in 2011? 2012?

5 A. I don't recall that date.

6 Q. You were living in the American River house at
7 the time you filed for bankruptcy?

8 A. I don't believe so. I can't answer. My wife
9 would know better than me. I really -- I'm not great
10 with times, but I -- we left when we had to leave. I
11 don't remember that date.

12 Q. When did you have to leave?

13 A. When they said they sold the house.

14 Q. So you received a phone call on the American
15 River Lane house that the house --

16 A. Probably a letter.

17 Q. That said the house had been sold at a
18 foreclosure auction?

19 A. No. I can't answer that. The guy -- it was --
20 how do I explain this? It was a guy that -- we had a
21 fine for something in the bushes or something. And at
22 the time, the guy could pay the fine off and they'd give
23 him the house. That's how it was basically explained.
24 They gave him first right to the get the house.

25 I don't know how it worked. I just knew we were

1 told, You're out. We packed our stuff and started
2 looking for a rental property.
3 Q. Okay. So you had a fine on the house?
4 A. For the Association, for bushes, believe it or
5 not, that kept dying, that I kept putting in new ones,
6 re-watering them.
7 MR. BOYLAN: Just so you know, let me -- this
8 has absolutely nothing to do with this case, so I don't
9 know if he's going to waste time on it or spend time on
10 it, but it has nothing to do with it. So, I mean --
11 MR. BECKOM: I disagree, and I would like to
12 continue this line of questioning.
13 BY MR. BECKOM:
14 Q. Okay. So you received a phone call for a fine
15 on the house on the American River property --
16 A. I didn't say a phone call.
17 Q. Oh. You got a letter sent? You received a
18 letter?
19 A. Probably a letter.
20 Q. Okay. And it was at that time that you were
21 told to vacate. And now -- and when you moved to
22 vacate, when you went to -- all right, let me come at
23 this a different way.
24 So the house was sold and you received a letter
25 saying you're going to have to leave your property;

1 correct?
2 A. Yes.
3 Q. And at that time, you had had a collection of
4 many of the letters and other documents that were part
5 of the foreclosure process on all of your other
6 properties; is that correct?
7 A. I don't recall which property it was, but we
8 kept getting phone calls and letters from Quality Loan
9 Services.
10 Q. And when you were forced to vacate your property
11 at American River, it was at that time that you, I
12 guess, disposed of all of this material because you were
13 forced to downsize; is that correct?
14 A. Well, it was either throw our furniture away or
15 throw boxes of paper away.
16 Q. Okay.
17 A. So we may have some of it -- I doubt it -- but,
18 to my knowledge, we threw a lot of stuff away just
19 because we didn't have room. I mean, you're talking an
20 extra 2,000 square feet of stuff that had to go, so
21 paperwork was the least of my -- I wanted furniture and
22 a refrigerator and a stove. Those were the important
23 things to me.
24 Q. Okay. But it would have been at or around the
25 same time that your American River house was sold that

1 many of these documents were destroyed?
2 MR. BOYLAN: Speculation; asked and answered,
3 lacks foundation, argumentative.
4 THE WITNESS: I don't recall when that would
5 have been; probably when stuff didn't fit where we were
6 moving. It wasn't intentional; just we didn't have
7 room.
8 BY MR. BECKOM:
9 Q. Fair. Okay.
10 How often did you go by -- and I'm going to go
11 back and talk about the subject property now, and that's
12 9660 Brooks Lake Avenue -- how often did you visit that
13 property?
14 A. Probably never.
15 Q. Okay. So you --
16 A. Maybe once to see it when we bought it.
17 Q. So you've never actually been to the property?
18 A. I've seen it, but I've never, like, spent time
19 there.
20 Q. Okay.
21 A. You know, the walk-through, Oh, how nice this
22 is. Okay. Good luck. Let's rent it and make money,
23 and that never really happened.
24 Q. Okay. And you wouldn't -- I guess, if anyone
25 had received Exhibit 5 in the mail, it would have been

1 your wife and not you; you just were handed it off?
2 A. Well, it would have been us, but I didn't read a
3 lot of this stuff.
4 Q. That's fair.
5 A. I would, and it didn't mean anything to me. I
6 couldn't help it. You know, you've got to pay your
7 notice given. I mean, it didn't matter what they said
8 to me, I couldn't pay it. It was just like somebody
9 tapping you on the back, Hey, we're here. We're right
10 here.
11 And you're going, like, I can't help you. I
12 can't -- I'm trying but -- that's what it was like
13 getting the calls and the letters and -- especially
14 after, you know, worrying about who you're going to
15 provide for.
16 Most people have to worry about providing for a
17 wife and a kid. When you've got to provide for
18 everybody's wife and everybody's kid, it's a lot on your
19 plate.
20 Q. Hear you on that one, man.
21 I think at some point in time you said that it
22 didn't matter what was going to happen and that you were
23 going to lose this property anyway; correct?
24 MR. BOYLAN: Vague.
25 THE WITNESS: Yeah, I don't recall saying that

1 BY MR. BECKOM:
2 Q. Okay. And you have no recollection -- just so
3 I'm clear, you have no recollection of ever seeing this
4 document titled Notice of Trustee's Sale?
5 A. I don't recall.
6 Q. Okay.
7 (Exhibit 7 was marked for identification.)
8 BY MR. BECKOM:
9 Q. On a personal level, I am sorry for having
10 you -- make you relive all this stuff, man. It's not
11 my --
12 A. No, I know. You're doing your job. It's okay.
13 I have no personal bad feelings.
14 Q. I try to be a lot nicer in person.
15 Anyway, Exhibit 7. Have you ever seen this
16 document before, Mr. Scinta?
17 A. I don't recall, but it looks like it's
18 pertaining to the property in question.
19 Q. Okay. And that property was located in the
20 Southwest Ranch Homeowners Association?
21 A. That I don't recall.
22 Q. Okay.
23 A. There's so many associations here, who knows?
24 Q. Let's talk about the phone calls. Did you ever
25 pick up the phone and talk to anybody from Quality Loan

1 Service?
2 A. Yes.
3 Q. What did you say to them?
4 A. I don't have the money. I'm trying.
5 Q. And what would they say?
6 A. I don't recall the exact conversation. They
7 were just cold and calculated. They weren't very nice.
8 That's all I remember.
9 Q. Okay.
10 A. You know, when somebody's nice, their demeanor
11 is nice; and when their demeanor is not nice, that's --
12 they were never nice. They were very cold and
13 calculated. That's all I can -- how I would describe
14 it, the calls.
15 Q. Can you give me some -- it's a very illustrative
16 description, but I guess I'm looking for more specifics
17 about what caused you to develop that opinion. Like,
18 can you give me some example of why you think they were
19 cold and calculated in their phone calls?
20 A. After you tell somebody I'm going to try and
21 give me some time and then they were calling you the
22 next day or sometimes the same day -- somebody else from
23 that company would call you again -- I just talked to
24 somebody.
25 After a point, after a time, it got like, you

1 know, you wanted you throw an F bomb and hang up the
2 phone. It was just not, Well, what are you going to do
3 or whatever. I don't remember the exact conversation.
4 I just remember they weren't very nice.
5 You can tell when somebody's being nice. Sir,
6 we know you're trying and we understand. It was none of
7 that. It was just -- it was like a computer talking to
8 me. Very cold and calculated. That's all I remember.
9 Q. Okay. So did you receive a phone call on a
10 landline or --
11 A. Landline.
12 Q. Landline.
13 A. I know they have my cell number, but I never
14 received a call on my cell.
15 Q. It would have only been on a landline?
16 A. It was only on a landline, yeah.
17 Q. And you pick up the phone -- I'm assuming you'd
18 say something to the effect of, Hello, this is
19 Mr. Scinta? Or, I mean, what would you say?
20 A. Hello.
21 Q. Okay.
22 A. And they would say, Is Frank Scinta there, or
23 Mr. Scinta, whatever they would say.
24 This is me.
25 And then they'd say, We're calling from Quality

1 Loan Services, whatever they said. I just remember they
2 weren't nice phone calls.
3 Plus, you realize you're losing your home, you
4 realize you're trying to supply money for it, and then
5 these phone calls came out of nowhere just -- it was
6 almost like an aggravating -- when you knew it was them,
7 you wanted to go through the phone.
8 Q. Did you ever hear them -- did they ever tell you
9 to call your mortgage lender?
10 A. I don't recall that.
11 Q. Okay.
12 A. They were very insistent, though. That's one
13 thing they were. They were almost pushy. I would say
14 they were pushy.
15 Q. Insistent on what?
16 A. Money. Where's the -- how are you going to pay
17 this? When are you going to pay this? Whatever the
18 questions were, they were very -- they were just dry,
19 man. Cold and calculated is the only way I can think
20 about it. It was like having a light on you and you
21 don't have an answer for them.
22 Q. Did you tell them that you were going to pay on
23 the mortgage?
24 A. I told them -- I always told them I'm trying.
25 Listen, I'm really trying. I did. After a while, I

1 didn't answer anymore.
2 Q. Okay. But do you have any recollection of about
3 what they would say after you said you were trying?
4 A. I don't know. I probably -- sometimes I
5 probably just hung up; hung up on them when they started
6 ranting and -- Well, if you don't do this, we're going
7 to do this, whatever. Well, I don't recall. But I just
8 remember they were upsetting.
9 Q. So they would identify themselves -- well, is
10 there ever a time where you completed a phone call with
11 Quality Loan Service without hanging up on them?
12 A. I don't recall that. I really don't, man. It's
13 been so long. And I've tried to wipe it out of my mind
14 anyway.
15 Q. That's fair, man.
16 A. You know, like recalling it now, it seems a
17 little obtrusive.
18 Q. I'm sorry, man.
19 A. No, I know. It's your job. I understand it.
20 My intentions here are just because once I realized that
21 they weren't even supposed to be doing that, that's when
22 my blood boiled and I said, This is wrong.
23 Q. When's the first time you -- when you say that
24 they weren't even supposed to be doing that, what are
25 you referring to?

1 A. I realized they weren't really licensed to do --
2 to make those calls.
3 Q. Okay.
4 A. I don't recall the date. But once I did, I
5 was -- it went from being nervous and upset to very
6 angry, as any human being would be.
7 Q. So you don't recall when you actually found out
8 about the licensure --
9 A. No.
10 Q. -- of Quality Loan Service?
11 A. Let me -- let me parallel it to be pulling over
12 by a police officer, being interrogated, being given a
13 ticket or almost arrested, and find out the cop wasn't a
14 real cop.
15 Q. Did you file a complaint with the Financial
16 Institutions Division?
17 A. I didn't know I could. I didn't know. I'm an
18 entertainer, like I said. This has never happened to me
19 before. I'm not in the legal profession. So I really
20 never -- nothing like this ever happened to me before.
21 I really didn't know how to handle it or who to go to
22 or --
23 But once I realized that it was wrong, then I
24 said, Well, I want to do everything I can to right this.
25 Nobody should do that to anybody.

1 Q. Now, were you in any way involved in the
2 enforcement action against Quality Loan Service by the
3 Financial Institutions Division?
4 A. I don't know what that means.
5 Q. So you were completely unaware of that?
6 A. I don't know the question.
7 MR. BOYLAN: He doesn't even know what you're
8 talking about.
9 THE WITNESS: Yeah, I don't. I don't.
10 BY MR. BECKOM:
11 Q. That's fine.
12 A. Okay.
13 Q. If it doesn't make any sense, then that's your
14 answer and that's all I need.
15 Can you explain to me how you have been damaged
16 by the licensure status of Quality Loan Service
17 Corporation?
18 A. The addition of losing what you've waited your
19 whole life to own; on top of that, getting those phone
20 calls added a lot of stress and a lot of sleepless
21 nights, man. It just -- it was a beating. It was like
22 getting punched when you were down.
23 Q. Okay.
24 A. I mean, that's from my heart. That's like
25 everything I'm answering today, it's all coming from my

1 heart because I have no ill intentions for anybody. But
2 it was getting -- it was like be punched when you were
3 down.
4 Q. Okay. Could you give me an estimate of the
5 number of times that Quality Loan Service called you?
6 A. God, I can't even think of how many. It was a
7 lot. Dozens. I would say dozens of times, I mean,
8 throughout the period, until I put the phone on the --
9 on the fax machine so I didn't even hear it ring
10 anymore.
11 Q. Okay. But you don't -- I guess, just to be
12 clear -- and we're almost done -- like, you don't have
13 any specific recollection of what was said, other than
14 you remember hanging up the phone sometimes?
15 A. I really don't.
16 Q. Okay.
17 A. I just remember how upsetting it was. That's
18 all. I mean, isn't that enough for anybody when you
19 remember getting -- you know, like, really, the best
20 analogy is kicked when you're down.
21 MR. BOYLAN: I'm going to interpose an
22 objection; asked and answered.
23 BY MR. BECKOM:
24 Q. And I guess just probably one of the last
25 questions I'm going to ask: You have no recollection

1 being called by anyone else other than Quality Loan?
2 A. That's the one that stuck out in my head. I
3 don't have any recollection of anybody else in
4 particular, no.
5 Q. Is there any reason why it sticks out in your
6 head?
7 A. Just the name. Because it had the word "loan"
8 in it? I don't know. It just stuck in my head.
9 Q. Did you ever receive a phone call from CR Title
10 Services, Inc.?
11 A. I don't recall.
12 Q. Did you ever receive any phone calls from
13 CitiMortgage?
14 A. No. I remember letters, probably.
15 Q. Did you ever receive any phones calls from
16 Chase?
17 A. I said earlier -- I think I said those were
18 letters.
19 MR. BOYLAN: Again, asked and answered.
20 It's 12:48.
21 BY MR. BECKOM:
22 Q. Did you ever receive any phone calls from
23 Northwest Trustee Services?
24 A. I don't recall that, no.
25 MR. BECKOM: Well, I believe I've only taken up

1 about -- when did we start, 11:00? So it's been an hour
2 and 45 minutes of the seven hours I'm entitled to.
3 I will leave this open subject to concluding it
4 at a later date. However, as of today and now, I think
5 I'm finished with you, Mr. Scinta.
6 MR. BOYLAN: Thank you. And there's nothing
7 left open, as far as we're concerned.
8 And the Commissioner and I had a little
9 conversation on the record. I have the perception that,
10 based on her experience, which is consistent with mine,
11 that these depositions should take about an hour. But
12 we don't need to argue about that on this record.
13 MR. BECKOM: You're more than welcome to file a
14 protective order, if you want.
15 MR. BOYLAN: Did you want to take a short break
16 before we do Jacqueline?
17 MR. BECKOM: If you guys want to go get lunch, I
18 don't care. But if you've got somewhere to be --
19 MR. BOYLAN: I don't need lunch. How are you?
20 THE WITNESS: I'm good.
21 MR. BECKOM: Let's take a break.
22 (Discussion held off the record.)
23 (The deposition concluded at 12:57 p.m.)
24 -oOo-
25

1 CERTIFICATE OF DEPONENT
2 PAGE LINE CHANGE REASON
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19 * * * * *
20 I, FRANK SCINTA, deponent herein, do hereby certify
21 and declare that the within and foregoing transcription
22 to be my deposition in said action; that I have read,
23 corrected and do hereby affix my signature to said
24 deposition, under penalty of perjury.
25 FRANK SCINTA, Deponent Date

1 CERTIFICATE OF REPORTER
2 STATE OF NEVADA }
3 COUNTY OF CLARK } ss:
4 I, Jean M. Dahlberg, a duly commissioned and licensed
5 Court Reporter, Clark County, State of Nevada, do hereby
6 certify: That I reported the taking of the deposition
7 of the deponent, Frank Scinta, commencing on Tuesday,
8 February 21, 2017, at 11:16 a.m.
9 That prior to being examined, the deponent was, by
10 me, duly sworn to testify to the truth. That I
11 thereafter transcribed my said shorthand notes into
12 typewriting and that the typewritten transcript of said
13 deposition is a complete, true and accurate
14 transcription of said shorthand notes.
15 I further certify that I am not a relative or
16 employee of an attorney or counsel of any of the
17 parties, nor a relative or employee of an attorney or
18 counsel involved in said action, nor a person
19 financially interested in the action.
20 IN WITNESS WHEREOF, I have hereunto set my hand in my
21 office in the County of Clark, State of Nevada, this 5th
22 day of March, 2017.
23
24 JEAN M. DAHLBERG, RPR, CCR NO. 733, CCR 11715
25

	affect (3) 8:9,9,12	anymore (10) 26:13;27:4,20;28:7,23; 32:19;41:9,9;69:1;72:10	34:16
\$	affidavit (1) 54:21	anyplace (1) 18:2	backyard (1) 62:23
\$14,078 (1) 37:20	afford (2) 28:8;55:16	applicable (1) 5:9	bad (6) 7:4;45:14;50:24;52:11; 62:7;65:13
\$24,000 (2) 26:18;27:5	again (6) 10:25;36:2;48:5;49:10; 66:23;73:19	apply (1) 6:12	balance (2) 37:20;38:8
\$25,000 (1) 38:8	against (2) 9:4;71:2	approximately (1) 36:12	Bank (5) 37:9,12,16,19,23
\$42,000 (1) 37:12	aggravating (2) 38:15;68:6	argue (1) 74:12	bankruptcy (8) 13:17;14:20;16:24;19:14; 23:19;29:6;37:15;56:7
\$884 (1) 39:4	ago (4) 28:19;29:18;39:13;50:16	argumentative (1) 59:3	banks (1) 39:2
/	agree (1) 45:15	around (5) 28:17;32:4,23;34:4;58:24	based (2) 53:10;74:10
/s/ (3) 15:16,18;16:19	agreed (1) 5:6	arrested (1) 70:13	basically (2) 48:19;56:23
A	ahead (4) 21:5;46:23,24;49:1	Associates (1) 39:18	basis (1) 49:2
ability (4) 8:9,9,12;21:16	Ahhh (1) 25:4	Association (2) 57:4;65:20	bathroom (1) 34:15
able (4) 13:23;41:14;51:21;54:2	ahold (1) 9:16	associations (1) 65:23	beat (1) 51:12
above (1) 25:1	alcohol (2) 8:6;32:12	assuming (2) 33:6;67:17	beating (2) 51:22;71:21
Absolutely (2) 6:16;57:8	Alexander (7) 19:19;20:2,6,10;22:7,23,23	AT&T (1) 39:23	BECKOM (56) 5:16;9:1;10:16;11:22; 12:14,16;13:19,22;14:1,9,12; 16:2;18:9;19:1;21:10,20,24; 22:4,23;21:25;23;30:23;37:8; 41:3,11,19;42:14,17,20; 44:20;47:11,16;48:23;49:3; 53:16,21;54:14,16;57:11,13; 59:8;61:2,13;62:20;63:12,15; 64:17,19;65:1,8;71:10;72:23; 73:21,25;74:13,17,21
accept (1) 63:11	almost (6) 17:24;55:15;68:6,13;70:13; 72:12	attachment (1) 49:20	become (1) 9:4
accommodate (1) 21:16	Alrighty (1) 19:12	attack (1) 31:16	beginning (1) 50:23
account (2) 39:4,19	altered (2) 47:13,23	attempt (1) 64:4	below (5) 15:14,15;16:3;23:16;43:10
action (2) 9:4;71:2	always (3) 25:10;51:5;68:24	attempting (2) 9:3;64:3	besides (2) 44:15;63:17
actual (1) 10:19	America (6) 37:1,10,12,16,19,23	attorney (1) 6:25	best (5) 7:6;8:23;21:16;47:24;72:19
actually (7) 14:16;36:5;46:2;53:6; 59:17;63:24;70:7	American (22) 10:9;11:1,3,24;12:7,10; 18:20;19:16;22:22;23:12; 30:6,12;40:24;43:3,9;44:15; 56:3,6,14;57:15;58:11,25	auction (1) 56:18	better (4) 9:19,20,23;56:9
added (2) 51:7;71:20	analogy (1) 72:20	Avenue (11) 10:10;22:15,24;43:11; 44:12;46:4,9,17;48:1,16; 59:12	big (1) 46:16
addition (1) 71:18	angry (1) 70:6	avoid (1) 7:3	bill (1) 35:2
address (11) 10:7;11:6;12:5;20:7,8; 23:17;30:15;42:11;48:20; 49:8;63:9	annoying (1) 34:20	away (10) 6:21;23:5,6;54:2;55:17,18, 23:58;14,15,18	billboards (1) 26:15
addresses (4) 13:1;43:17;44:14;46:11	answered (6) 30:13;41:2;42:12;59:2; 72:22;73:19		bills (3) 35:5;39:16;52:22
admonished (1) 21:12	Anthony (3) 62:14,15;63:2		
admonishments (1) 15:13	antibiotics (1) 34:11		
advertisements (1) 26:15			
		B	
		back (13) 20:8;21:24;27:21;29:10; 33:21;35:21;41:16;42:17; 55:20;59:11;60:9;61:7,20	
		backs (1)	

EXHIBIT “E”

In The Matter Of:
Jeffrey Benko, et al. vs.
Quality Loan Service Corporation, et al.

Jacqueline Scinta
February 21, 2017



Min-U-Script® with Word Index

1 IN THE EIGHTH JUDICIAL DISTRICT COURT
2 FOR THE STATE OF NEVADA
3 IN AND FOR THE COUNTY OF CLARK

4 JEFFREY BENKO; a Nevada
5 resident; CAMILO MARTINEZ; a
6 California resident; ANA
7 MARTINEZ; a Nevada resident;
8 JACQUELINE SCINTA, a Nevada CASE NO.: A-11-649857-C
9 resident; SUSAN KJORTH, a Nevada DEPT NO.: 19
10 resident; RAYMOND SANSOTA, a
11 Ohio resident; FRANCINE SANSOTA,
12 a Ohio resident; SANDRA FUERN, a
13 Nevada resident; JESUS GOMEZ, a
14 Nevada resident; SILVIA GOMEZ, a
15 Nevada resident; DONNA HERRERA,
16 a Nevada resident; ANTOINETTE
17 GILL; a Nevada resident; JESSE
18 HERNIGAN, a Nevada resident; KIM
19 MOORE, a Nevada resident; THOMAS
20 MOORE, a Nevada resident; SUSAN
21 KALLEN, a Nevada resident;
22 ROBERT MANDARICK, a Nevada
23 resident; JAMES NICO, a Nevada
24 resident; and PATRICIA
25 TAGLIAMONTE, a Nevada resident,

26 Plaintiffs,

27 vs.

28 QUALITY LOAN SERVICE
29 CORPORATION, a California
30 Corporation; APPLETON
31 PROPERTIES, LLC, a Nevada
32 Limited Liability Company.
33
34

21 DEPOSITION OF JACQUELINE SCINTA
22 Taken on Tuesday, February 21, 2017
23 At 1:13 p.m.
24 At 703 South Eighth Street
25 Las Vegas, Nevada
26 REPORTED BY: JEAN DAXLBERG, SPR, CCR 759, CSR 11715

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16 Also Present:
17 Frank Scinta

1
2 MTC FINANCIAL, INC. dba
3 TRUSTEE CORPS, a California
4 Corporation; MERIDIAN
5 FORECLOSURE SERVICE, a
6 California and Nevada
7 Corporation dba MTPS, INC.
8 dba MERIDIAN TRUST DEED
9 SERVICE; NATIONAL DEFAULT
SERVICING CORPORATION, an
Arizona Corporation;
CALIFORNIA RECONVEYANCE
COMPANY, a California
Corporation; and DOCS 1
through 100, inclusive,
Defendants.

I N D E X		
WITNESS:		PAGE
JACQUELINE SCINTA		
Examination by Mr. Beckos		5
E X H I B I T S		
EXHIBIT	DESCRIPTION	PAGE
Exhibit 1	United States Bankruptcy Court, District of Nevada, Amendment Cover Sheet with attachments (45 pages)	9
Exhibit 2	Clark County Real Property Parcel Details for 9660 Brooks Lake Avenue (1 page)	55
Exhibit 3	Deed of Trust recorded 10/17/2003 (15 pages)	43
Exhibit 4	Note dated October 8, 2003, for 9660 Brooks Lake Avenue (2 pages)	43
Exhibit 5	Notice of Breach and Default and of Election to Cause Sale of Real Property Under Deed of Trust, Recorded 5/5/2010 (5 pages)	45
Exhibit 6	Notice of Trustee's Sale, recorded 12/23/2011 (2 pages)	48
Exhibit 7	Notice of Default and Election to Sell Real Property to Satisfy Delinquent Assessment Lien, recorded 12/5/2011 (4 pages)	49

1 was happening?
2 A. No.
3 Q. Okay. Do you know what ultimately happened to
4 the American River Lane house?
5 A. I -- it foreclosed, I assumed.
6 Q. What do you mean you "assumed"?
7 A. Well, that's what I thought why we lost it was
8 for the foreclosure. We were told to leave.
9 Q. And who told you to leave?
10 A. A letter from a company, I guess; one of them.
11 One of those companies.
12 Q. Which company?
13 A. I'm not really sure.
14 Q. What did the letter say?
15 A. That the house has been sold and we had so many
16 days to move out.
17 Q. Do you recall when you received this letter?
18 A. Sometime in 2012.
19 Q. Did you receive any phone calls leading up to
20 the property being sold?
21 A. I myself didn't answer the phone. My husband
22 was the only one who answered the phone. I never
23 answered it.
24 Q. Why did you not answer the phone?
25 A. Because I didn't know what to say, and so he

1 took care of that end of it.
2 Q. Okay. So you never actually answered any phone
3 calls at your house from any kind of company?
4 A. Maybe here or there once in a while if I forgot
5 not to answer.
6 Q. Were you told not to answer?
7 A. No. No. I just told him that I do
8 everything -- no, he took care of that. He's good on
9 the phone. I get all nervous.
10 Q. Okay. So you never received any formal
11 harassing phone calls because you didn't answer the
12 phone?
13 A. Just the annoying phone ringing.
14 Q. Okay. But you have no idea who was actually
15 calling?
16 A. Not all the time, no.
17 Q. And you would just refer that back to
18 Mr. Scinta?
19 A. Yes. And he listened to the answering machine
20 or just --
21 Q. Your answering machine, was it -- did it have a
22 dial-back number to it, or was it like an old-school,
23 like, tape recorder answering machine?
24 A. Yes, it recorded the message.
25 Q. Okay. So it was a physical -- you know, some

1 kind of electronic device --
2 A. Yes.
3 Q. -- that is separate from the phone system?
4 A. Right.
5 Q. Did it record messages on tapes, or did it
6 record electronically, or how did it record that?
7 A. I don't know.
8 Q. Okay. Did you typically keep your phone
9 messages?
10 A. No.
11 Q. Would you delete them immediately after
12 listening to them?
13 A. I didn't listen to them --
14 Q. Okay.
15 A. -- he did, if he did. We just erased them
16 because it was always the same thing.
17 Q. What do you mean?
18 A. It was always, you know, some people wanting
19 money.
20 Q. Do you have any recollection about who those
21 people were wanting money?
22 A. Not -- no. Like I said, I really didn't answer
23 the phone. I just -- I did the letters. I just put
24 them in our filing cabinet.
25 Q. Who did you get letters from?

1 A. I got them from debt collectors.
2 Q. Do you remember any of their names?
3 A. Not -- I don't really remember any of their
4 names.
5 Q. Okay. Does the name Quality Loan Service
6 Corporation ring a bell during that time at all?
7 A. Yes. That was the main one.
8 Q. What do you mean the "main one"?
9 A. The main letters and stuff we got.
10 Q. What would they mail you letters about?
11 A. About owing money, late payments.
12 Q. Did you keep copies of those letters?
13 A. No.
14 Q. So you threw them away as you received them?
15 A. Most of the time, yes.
16 Q. Just going back to Exhibit 1 on Page 7 of 45,
17 7579 Alexander Hill, Las Vegas, Nevada 89139, what is
18 that?
19 A. Pardon me? I'm sorry.
20 Q. The 7579 Alexander Hill, Las Vegas, Nevada
21 property, is that property that you own?
22 A. Yes. Those are rental properties.
23 Q. Okay. So both Alexander Hill properties are
24 rental properties?
25 A. Yes.

1 Q. Okay. Do you know what the status of -- we'll
2 start with 7579 Alexander Hill. Do you know what the
3 current status of that is?
4 A. They're all foreclosed, I would assume.
5 Q. Do you know for certain if they're foreclosed?
6 A. Yes. This one -- I don't own them anymore.
7 Q. Okay. Do you ever recall receiving phone calls
8 involving 7579 Alexander Hill?
9 A. No. I guess I didn't really answer the phone.
10 Q. Do you ever recall receiving letters involving
11 7579 Alexander Hill?
12 A. No.
13 Q. Do you recall receiving phone calls or letters
14 regarding 3030 American River Lane?
15 A. Yes.
16 Q. Who would call you?
17 A. The debt collectors.
18 Q. Okay. What would they say?
19 A. That we were late or we owed money or when were
20 we going to pay. We would just get letters.
21 Q. Is it the foreclosure on your house, the
22 American River Lane property, that brings you here
23 today?
24 A. Actually, the letters that we received is what
25 brings us here today; the letters and phone calls.

1 A. Yes, I'm here.
2 Q. Do you see where it says 5960 Brooks Lane?
3 A. Yes.
4 Q. Okay. Is this a property that you own?
5 A. Yes.
6 Q. Now, it looks like in your bankruptcy petition
7 that you stated you had already been foreclosed on in
8 2010; is that correct?
9 MR. BOYLAN: Foundation, speculation.
10 THE WITNESS: I don't remember what day it was
11 foreclosed on, what year; but it foreclosed, I know
12 that.
13 BY MR. BECKOM:
14 Q. Okay. Did you ever receive any phone calls
15 regarding the 5960 Brooks Lane property?
16 A. Yes, but I didn't take them.
17 Q. Okay. Did you ever receive any letters
18 regarding the 5960 Brooks Lane property?
19 A. Yes.
20 Q. Did you receive any letters from Wells Fargo
21 regarding that property?
22 A. Yes.
23 Q. Did you receive any phone calls from Wells Fargo
24 about that property?
25 A. I didn't take them, but, yeah, I'm sure we did.

1 Q. And were the letters and phone calls involving
2 American River Lane what brings you here today?
3 MR. BOYLAN: I'll object; it's
4 mischaracterization, intentionally misleading.
5 BY MR. BECKOM:
6 Q. Let's go down to 7573 Alexander Hill. Did you
7 ever receive any phone calls or letters regarding that
8 property?
9 A. No.
10 Q. Okay. Now, you've listed three properties. Do
11 you recall when you were receiving these letters
12 around -- the basic time, around the time frame when you
13 were receiving these letters and phone calls?
14 A. For which property are we talking about?
15 Q. Any of them.
16 A. Basically, when they stopped -- we couldn't pay
17 them. If there weren't renters, we couldn't pay them.
18 Q. Okay. Was it in 2011? 2012? When was it?
19 A. It was -- I don't know; probably started around
20 2010 or '11.
21 Q. Okay. Can you turn over to Page 28 of 45. See
22 where it says 5- -- well, let me know when you get
23 there.
24 A. 28 of 45?
25 Q. Yes, ma'am.

1 Q. No problem. Did you receive any phone
2 calls from Quality --
3 MR. BOYLAN: Foundation, speculation, move to
4 strike.
5 MR. BECKOM: We can figure that out later.
6 BY MR. BECKOM:
7 Q. Did you receive any -- is that the correct
8 address for the Brooks Lane property?
9 A. 9650 (sic)?
10 Q. Well, you've got listed here as 5960.
11 A. 5960, yes.
12 Q. There wouldn't be some other address associated
13 with it?
14 MR. BOYLAN: Vague.
15 THE WITNESS: No.
16 BY MR. BECKOM:
17 Q. Did you ever receive any phone calls from
18 Quality Loan Service Corporation regarding this
19 property?
20 A. Phone calls? Yeah, I'm sure. My husband
21 answered those.
22 Q. Did you receive any letters from Quality Loan
23 Service Corporation involving this property?
24 A. Yes.
25 Q. Okay. And also your American River Lane

Page 21

1 property; correct?
2 A. Yes.
3 Q. Okay. So just to make sure that I understand,
4 you received -- there was a bunch -- there was phone
5 calls coming in which you didn't answer, but you recall
6 receiving letters from Quality -- you recall receiving
7 letters on the American River Lane property and the
8 Brooks Lane property?
9 A. Yes.
10 Q. Okay. And what would these letters say?
11 A. Some of them were just that we were late; or
12 some of them were that they were going to foreclose in
13 so many months; or some of them were foreclosure
14 letters, dates that they were going to foreclose.
15 Q. Okay. Did you ever receive any letters from
16 Willow Creek Community Association?
17 A. Yes.
18 Q. What would those letters say?
19 A. They were --
20 MR. BOYLAN: Compound, vague.
21 THE WITNESS: They were just money that we owed
22 for fines or things that they wanted us to change around
23 the house.
24 BY MR. BECKOM:
25 Q. Okay. Did you ever receive any phone calls or

Page 22

1 letters from CR Title Services, Inc.?
2 A. I don't know.
3 Q. Did you ever receive any phone calls or letters
4 from Northwest Trustee Services, Inc.?
5 A. I don't know.
6 Q. Okay. But these four -- so you had three
7 properties that you still owned as of the date of the
8 bankruptcy, and one that you believed was foreclosed on;
9 correct?
10 A. Yes.
11 Q. And so you didn't receive any phone calls on the
12 Brooks Lane property after the filing of this bankruptcy
13 or any -- I'm sorry, let me rephrase that because you
14 said you didn't receive phone calls; correct?
15 A. Right.
16 Q. But you didn't receive any letters on the
17 Brooks Lane property after the filing of this
18 bankruptcy?
19 MR. BOYLAN: Asked and answered.
20 THE WITNESS: I'm not sure.
21 BY MR. BECKOM:
22 Q. You're not sure?
23 A. I'm unsure. If it was foreclosed, I don't see
24 why I would, but I'm not sure.
25 Q. Okay. So as of May of 2011, you thought

Page 23

1 Brooks Lane was just a done deal?
2 A. Uh-huh. Yes.
3 Q. Okay. And it's no longer a concern of yours;
4 you filed for bankruptcy and the house was gone?
5 A. Yes.
6 Q. Okay. Let's go over to Page 13 of 45 on
7 Exhibit 1.
8 A. Okay.
9 Q. It looks like on here, the second box down, do
10 you see where it says 3030 American River Lane?
11 A. Yes.
12 Q. And then it says "Surrender." Do you see that?
13 A. Yes.
14 Q. It also lists your creditor as CitiMortgage,
15 Inc. Do you see where I'm talking about?
16 A. Yes.
17 Q. Did you have a mortgage with -- did you have a
18 loan obligation for your house with CitiMortgage?
19 A. Yes.
20 Q. Okay. Did you receive harassing phone calls
21 from CitiMortgage?
22 A. I don't -- I didn't answer the phone, so I don't
23 know.
24 Q. Did you receive many letters or --
25 A. Yes.

Page 24

1 Q. Yes?
2 A. Yes.
3 Q. I think you said you answered the phone on
4 accident several times, if I recall; is that correct?
5 A. Yes.
6 Q. What did they say when you answered the phone?
7 MR. BOYLAN: Lacks foundation that those were
8 calls from collections as opposed to a laundromat. It's
9 confusing and misleading, lacks foundation, it's been
10 asked and answered.
11 BY MR. BECKOM:
12 Q. You can answer.
13 A. What was the question?
14 Q. You said you -- my understanding of your
15 testimony -- and I could be wrong, so go ahead and
16 correct me -- is that Mr. Scinta, your husband, had told
17 you, Don't worry about the phone calls, and you're
18 thinking he's better at it anyway; correct?
19 A. Yes.
20 Q. And he's very charismatic, so I will give him
21 that point. But I think you also said that there were a
22 few times where you just picked up the phone because you
23 forgot; is that correct?
24 A. Right. Yes.
25 Q. I mean, like, was it more than five that that

1 happened?
2 A. If it did happen, a lot of times I would just
3 hang up right away, though, because I didn't -- he knew
4 what was going on with that whole thing. I didn't -- I
5 didn't want to talk to them until he knew his money
6 situation.
7 Q. So you were not in charge of the finances for
8 your house?
9 A. I paid the bills; he made the money.
10 Q. Okay. And so you don't even remember when you
11 picked up the phone a few times on accident who it was?
12 A. No, I don't remember.
13 Q. You would just immediately hang up?
14 A. Yes.
15 Q. Before they were even were able to identify
16 themselves or --
17 A. Yes.
18 Q. Okay. How would you know that you weren't
19 hanging up on your mom or your kids?
20 A. As soon as they asked my name, is this
21 Jacqueline Scinta, I would say no and hang up.
22 Q. Fair enough. Fortunately, you answered my
23 question concerning your name, so I feel lucky.
24 So somebody would -- so somebody would call --
25 somebody would call your landline?

1 A. Yes.
2 Q. And they would ask for your name and you would
3 immediately hang up?
4 A. Yes.
5 Q. Do you remember -- you said you paid the bills;
6 correct?
7 A. Yes.
8 Q. Do you remember who your telephone service
9 provider was for your landline at the time?
10 MR. BOYLAN: What year, Counsel?
11 THE WITNESS: I --
12 MR. BECKOM: At any time she was receiving
13 phone --
14 BY MR. BECKOM:
15 Q. At the time that you were receiving these phone
16 calls that you would immediately hang up when they would
17 ask your name.
18 A. It was when we were living at American River. I
19 don't -- I don't recall the name of the company we had
20 back then.
21 Q. Okay. And you said it was only -- the phone
22 calls only related to American River, at least the ones
23 that you answered?
24 MR. BOYLAN: Mischaracterization, lacks
25 foundation, argumentative, misleading.

1 THE WITNESS: I don't know because I didn't
2 look -- I didn't hear what they had to say.
3 BY MR. BECKOM:
4 Q. What did you mean by it only related to American
5 River?
6 MR. BOYLAN: Mischaracterization, vague.
7 MR. BECKOM: Can you read back her testimony --
8 THE WITNESS: Yes.
9 MR. BECKOM: -- where she goes over that?
10 (Discussion held off the record.)
11 THE REPORTER: "It was when we were living at
12 American River. I don't -- I don't recall the name of
13 the company we had back then."
14 (Discussion held off the record.)
15 MR. BOYLAN: Yeah, that was it. I think you
16 misunderstood her.
17 BY MR. BECKOM:
18 Q. Did you ever receive any phone calls from
19 One West bank?
20 A. I don't know.
21 Q. Did you ever receive any letters from
22 One West Bank?
23 A. I could have. I don't know. I'm not sure.
24 Q. I think you said you were responsible for paying
25 the bills; is that correct?

1 A. Yes.
2 Q. Were you able to meet your, I guess, loan
3 obligations to CitiMortgage and One West during this
4 time?
5 A. What time?
6 Q. Well, let's say at the time you filed for
7 bankruptcy in May of 2011.
8 A. No, I couldn't. It had been a couple years.
9 Q. So when your husband became unemployed and he
10 was touring for work, you didn't have sufficient income
11 to meet the loan obligations; correct?
12 A. Yes.
13 Q. So just to clarify in my head, did you -- I
14 think you said when they asked you your name, you
15 immediately hung up the phone?
16 A. Uh-huh. Yes.
17 Q. Did that happen more than five times?
18 A. Yes.
19 Q. More than ten times?
20 A. No.
21 Q. Okay. So somewhere between five and ten times
22 you picked up the phone and answered, and they said, Is
23 this Jacqueline Scinta? and you'd just hang it up real
24 quick?
25 A. I'd say, "No," yeah.

1 CERTIFICATE OF REPORTER

2 STATE OF NEVADA }
3 COUNTY OF CLARK } ss:

4 I, Jean M. Dahlberg, a duly commissioned and licensed
5 Court Reporter, Clark County, State of Nevada, do hereby
6 certify: That I reported the taking of the deposition
7 of the deponent, Jacqueline Scinta, commencing on
8 Tuesday, February 21, 2017, at 1:13 p.m.

9 That prior to being examined, the deponent was, by
10 me, duly sworn to testify to the truth. That I
11 thereafter transcribed my said shorthand notes into
12 typewriting and that the typewritten transcript of said
13 deposition is a complete, true and accurate
14 transcription of said shorthand notes.

15 I further certify that I am not a relative or
16 employee of an attorney or counsel of any of the
17 parties, nor a relative or employee of an attorney or
18 counsel involved in said action, nor a person
19 financially interested in the action.

20 IN WITNESS WHEREOF, I have hereunto set my hand in my
21 office in the County of Clark, State of Nevada, this 5th
22 day of March, 2017.

23

24

25 JEAN M. DAHLBERG, RPR, CCR NO. 753, CSR 11715

EXHIBIT “F”

DISTRICT COURT

CLARK COUNTY, NEVADA

* * * * *

JEFFREY BENKO, a Nevada)
resident; CAMILO MARTINEZ,) Case No. A-11-649857-C
a California resident; ANA) Dept. No. 29
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,)
/////)

VIDEOTAPED DEPOSITION OF BOUNLET LOUVAN
VOLUME I

30(b)(6) REPRESENTATIVE OF QUALITY LOAN SERVICES CORPORATION

Taken on Thursday, October 20, 2016
At 10:02 a.m.
Taken at 2520 Saint Rose Parkway
Suite 316
Henderson, Nevada

Reported by: Sarah Safier, CCR No. 808

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

1 in. I never -- I didn't keep track of that.

2 Q When did she leave?

3 A That, I don't know either.

4 Q Best estimate of what year?

5 A After 2012.

6 Q And who replaced her?

7 A Who replaced who?

8 Q I thought Theresa Burton left?

9 A No. Theresa Burton is still with us.

10 Q Okay. Okay. Okay. Did QLS sometimes -- as
11 a result of the work of the home retention
12 department, did some -- did QLS sometime -- sometimes
13 receive and communicate funds that were provided by
14 the borrower for purposes of either a loan
15 modification or a forbearance agreement?

16 A No.

17 Q How much more time do you have, sir? I
18 don't want to trip you up at the airport.

19 MS. SCHULER-HINTZ: About a half an hour.

20 MR. BOYLAN: Okay.

21 MS. SCHULER-HINTZ: Maybe if I could have
22 five minutes, so if you could go for another, say,
23 20 minutes.

24 MR. BOYLAN: Sounds good.

25 ///

1 office. Their office is somewhere in California,
2 not connect- -- they're not in our office.

3 Q And I don't mean this in any negative way,
4 but why did you refer to him as the QLS IT manager?

5 A Because we use -- I mean, they're our
6 vendor, IDS. We use the IDS system, which he is
7 employed with Integrated Default Solutions. So he
8 manages the IT portion of IDS.

9 Q May I ask, to the best of your knowledge,
10 where is he located?

11 A All I know is San Diego.

12 Q Oh, okay.

13 MR. BOYLAN: Okay. Thank you very much.

14 So we're going to adjourn for now, and the
15 witness has to go to the airport. And to the extent
16 we need additional time with him after the second
17 witness, we'll work with your counsel and try to do
18 it at a mutually convenient time to finish up your
19 testimony.

20 THE WITNESS: Okay.

21 MR. BOYLAN: Thank you very much.

22 THE VIDEOGRAPHER: This concludes Volume I
23 of the videotaped deposition of Bounlet Louvan.

24 The original media of today's testimony will
25 remain in the custody of U.S. Legal Support.

CERTIFICATE OF REPORTER

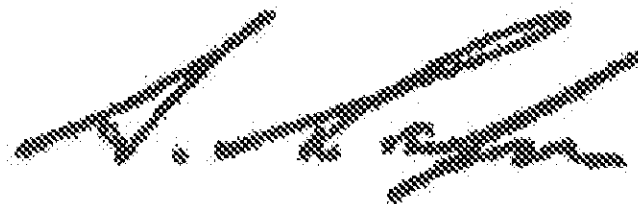
STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

I, Sarah Safier, CCR No. 808, do thereby
certify: That I reported the deposition of BOUNLET
LOUVAN, commencing on Thursday, October 20, 2016, at
10:02 a.m.

That prior to being deposed, the witness was
duly sworn by me to testify to the truth. That I
thereafter transcribed my said shorthand notes into
typewriting and that the typewritten transcript is a
complete, true, and accurate transcription of my said
shorthand notes. That prior to the conclusion of the
proceedings, pursuant to NRCP 30(e), the reading and
signing of the transcript was requested by the
witness or a party.

I further certify that I am not a relative
or employee of counsel of any of the parties, nor a
relative or employee of the parties involved in said
action, nor a person financially interested in the
action.

IN WITNESS WHEREOF, I have set my hand in my
office in the County of Clark, State of Nevada, this
29th day of October, 2016.



Sarah Safier, CCR No. 808

EXHIBIT “G”

DISTRICT COURT

CLARK COUNTY, NEVADA

* * * * *

JEFFREY BENKO, a Nevada)	
resident; CAMILO MARTINEZ,)	Case No. A-11-649857-C
a California resident; ANA)	Dept. No. 29
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,)	
/////)	

VIDEOTAPED DEPOSITION OF DAVID OWEN

VOLUME I

30(b)(6) REPRESENTATIVE OF QUALITY LOAN SERVICES CORPORATION

Taken on Thursday, October 20, 2016

At 1:13 p.m.

Taken at 2520 Saint Rose Parkway

Suite 316

Henderson, Nevada

Reported by: Sarah Safier, CCR No. 808

1 //

2 vs.

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

13 Defendants.

1 BY MR. BOYLAN:

2 Q Would you look at Exhibit 19, please. Could
3 you tell us what this document is?

4 MS. SCHULER-HINTZ: 19?

5 MR. BOYLAN: Yes.

6 THE WITNESS: These are comments out of IDS.

7 (Plaintiffs' Exhibit 20 was marked
8 for identification.)

9 BY MR. BOYLAN:

10 Q And once again, please, for what I'll mark
11 as No. 20, can you please tell us, what is Exhibit
12 No. 20?

13 A These are comments out of IDS.

14 MR. BOYLAN: What time do you have now? And
15 I'm inquiring because I've got one more stack here,
16 this stack right here. But if we're going -- if
17 we're going to have to come back for a little bit at
18 some later time, it's probably just as good for me
19 and you, if you've got to hustle to the airport, to
20 adjourn now, because this is a whole new stack.

21 How do you feel about that, Counsel?

22 MS. SCHULER-HINTZ: I'm fine with -- is it
23 more of the same of this, or based on what we learned
24 today, would you be better able to divide it up into
25 what you want Dave to speak to and what you want Boun

1 to speak to? Because I certainly -- if we were going
2 to do that, that would be way more productive than --

3 MR. BOYLAN: Yeah. I can do that. I can do
4 that.

5 MS. SCHULER-HINTZ: Then I would say we just
6 go ahead and adjourn now, and then you will know
7 better for next time how much time you need with Boun
8 and how much time you need with Dave.

9 MR. BOYLAN: Okay. I think that's fair.
10 And frankly, with you, Mr. Owen, I don't think I'm
11 going to have a lot more. So if we -- you know, it
12 could be just another hour. I think most of it is
13 going to be for Boun, frankly.

14 THE WITNESS: Okay.

15 MR. BOYLAN: Okay. All right. Very good.

16 Do we want to do any kind of stipulation,
17 Counsel, or . . .

18 MS. SCHULER-HINTZ: I think we have it on
19 the record that we have agreed that there's going to
20 be a continued depo. And we'll get a date set,
21 probably the first part -- the first two weeks of
22 November I'm pretty unavailable. The third week of
23 November I know I sent notices out for some of your
24 plaintiffs, but if there's some availability issues
25 on that, I blocked off those dates. So maybe we

1 could take one of those dates that I've saved for
2 plaintiffs' depositions and use it for finishing up the
3 30(b)(6).

4 MR. BOYLAN: Okay. I'm happy to work with
5 you totally on that. What I was asking you about
6 really is a stipulation for the transcript. Any
7 suggestions on that?

8 MS. SCHULER-HINTZ: Oh.

9 (Discussion off the record.)

10 MR. BOYLAN: All right. Then we're fine
11 then.

12 Okay. Then I have nothing further, and I
13 guess we will just close up the record.

14 And thank you again, sir.

15 THE WITNESS: You're welcome.

16 THE VIDEOGRAPHER: This concludes Volume 1
17 in the videotaped deposition of David Owen.

18 The original media of today's testimony will
19 remain in the custody of U.S. Legal Support.

20 The time is approximately 3:35 p.m. We are
21 going off the record.

22 THE REPORTER: Counsel, before I go off the
23 record, can I get your transcript orders on the
24 record?

25 MR. BOYLAN: Well, I engaged you, so

October 20, 2016

1 typically that means I get an original and one. So I
2 don't want anything more or different than that. If
3 I'm understanding you correctly?

4 THE REPORTER: Yes, that's correct.

5 MS. SCHULER-HINTZ: Sarah, I would like one
6 copy of each deposition today.

7 THE REPORTER: Would you like a regular,
8 mini, an ASCII, e-tran? What do you prefer?

9 MS. BROWN: We would prefer a mini.

10 MS. SCHULER-HINTZ: Mini also.

11 THE REPORTER: Thank you.

12 (Thereupon, the videotaped deposition
13 was concluded at 3:35 p.m.)

14

15 * * * * *

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CERTIFICATE OF REPORTER

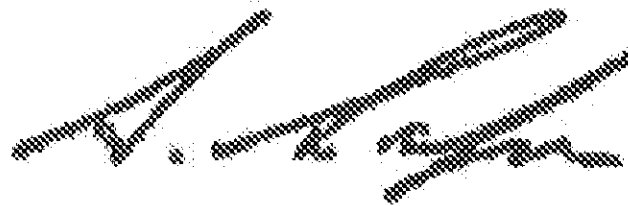
STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

I, Sarah Safier, CCR No. 808, do thereby
certify: That I reported the deposition of DAVID
OWEN, commencing on Thursday, October 20, 2016, at
1:13 p.m.

That prior to being deposed, the witness was
duly sworn by me to testify to the truth. That I
thereafter transcribed my said shorthand notes into
typewriting and that the typewritten transcript is a
complete, true, and accurate transcription of my said
shorthand notes. That prior to the conclusion of the
proceedings, pursuant to NRCP 30(e), the reading and
signing of the transcript was requested by the
witness or a party.

I further certify that I am not a relative
or employee of counsel of any of the parties, nor a
relative or employee of the parties involved in said
action, nor a person financially interested in the
action.

IN WITNESS WHEREOF, I have set my hand in my
office in the County of Clark, State of Nevada, this
29th day of October, 2016.



Sarah Safier, CCR No. 808

EXHIBIT “H”

McCARTHY & HOLTHUS, LLP
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Las Vegas, NV 89117
(702)685-0329(Phone)
(866)339-5691(Fax)
Attorneys for Defendant,
Quality Loan Service Corporation

DISTRICT COURT
CLARK COUNTY, NEVADA

JEFFREY BENKO, a Nevada resident,

Plaintiffs,

v.

QUALITY LOAN SERVICE
CORPORATION, a California Corporation, et.
al.,
Defendants.

CASE NO: A-11-649857-C

QUALITY LOAN SERVICE
CORPORATION'S SUPPLEMENTAL
RESPONSE TO JEFFREY BENKO'S
FIRST SET OF INTERROGATORIES.

PROPOUNDING PARTY: JEFFREY BENKO

RESPONDING PARTY: DEFENDANT QUALITY LOAN SERVICE CORPORATION

SET NUMBER: ONE (1)

COMES NOW Defendant, QUALITY LOAN SERVICE CORPORATION'S
("QUALITY") Supplemental Responses to Interrogatories, Set One propounded by Plaintiffs,
JEFFREY BENKO ("PLAINTIFFS") as follows:

PRELIMINARY STATEMENT AND GENERAL OBJECTIONS

Defendant's Response herein to Plaintiff's First Interrogatories (the "Responses") are
subject to the following general objections (the "General Objections"). The General Objections
may be specifically referred to in the Responses for the purpose of clarity. The failure to
specifically incorporate a General Objection, however, should not be construed as a waiver of the
General Objections.

1. Nothing herein shall be construed as an admission or waiver by Defendant of: (a) its rights respecting admissibility, competency, relevance, privilege, materiality, and authenticity of any information provided in the Responses, any documents identified therein, or the subject matter thereof; (b) its objections due to vagueness, ambiguity, or undue burden; and (c) its rights to object to the use of any information provided in the Responses, any document identified therein, or the subject matter contained in the Responses during a subsequent proceeding, including the trial of this or any other action.
2. The Responses are made solely for the purposes of, and in relation to, this litigation.
3. Defendant objects to the Interrogatories to the extent they seek documents and information protected by the attorney-client privilege and/or seek the work product of counsel.
4. Defendant had not completed: (a) its investigation of facts, witness, or documents relating to this case, (b) discovery in this action, (c) its analysis of available data, and (d) its preparations for trial. Thus, although a good faith effort has been made to supply pertinent information where the same has been requested, it is not possible in some instances for unqualified Responses to be made to the Discovery Requests. Further, the Responses are necessarily made without prejudice to Defendant's right to produce evidence of subsequently discovered fact, witnesses, or documents, as well as any new theories or contentions that Defendant may adopt. The Responses are further given without prejudice to Defendant's right to produce evidence of subsequently discovered fact, witness, or documents, as well as any new theories or contentions that Defendant may adopt. The Responses are further given without prejudice to Defendant's right to provide information concerning facts, good faith error, or mistake. Defendant has responded to the Interrogatories based on the information that is presently available to it and to the best of its knowledge to date. The Responses may include hearsay and other forms of evidence that may be neither reliable nor admissible.

5. Defendant objects to any discovery being sought outside of the Phase 1 Discovery outlined by the court at the September 21, 2016 hearing in this matter.

6. Defendant objects to the extent PLAINTIFFs allege that Quality (1) is a Collection Agent, Collection Agency, Foreign Collection Agency, Foreign Collection Agent, or debt-collector/debt collector; (2) performs collection agency services/collection related service(s), collection services, debt-related services, collection process, debt collection, or accepts payment of a debt; or (3) has a collection file(s). Quality is not and was not a debt collector. All actions taken by Quality were done in accordance with the processing of the non judicial foreclosure, not collection of a debt. Quality has already been adjudicated as not requiring a debt collection license by the FID (see 2013 WL 6911859; District of Nevada) and accordingly, is and was not a debt collector.

Without waiving its General Objections, Defendant supplements its responds to Plaintiff's First and Second Set of Interrogatories as follows:

RESPONSE TO INTERROGATORIES

INTERROGATORY NO. 7:

State the total number of phone calls made and/or received by YOU with respect to all Nevada citizens whose trustee, foreclosure related, and/or collection files YOU serviced, for the period 2008 to 2015.

RESPONSE TO INTERROGATORY NO. 7:

Objection, this request is overbroad, burdensome and oppressive and is not relevant. Quality specifically incorporates general objections 5 and 6 to the response herein.

Without waiving these objections this responding party states as follows: This responding party does not and has never serviced loans and has never been involved in any "collection" activity. Quality does not make outbound calls to borrowers when processing the non judicial foreclosure unless Quality is contacted and a response is requested. As to named Plaintiff Benko,

Quality did not make any calls to Mr. Benko. As to received calls, the only phone call that was received by Quality occurred on 1/21/11 at approximately 11:50 a.m. This call was from Jeffrey W. Benko who called Quality to advise of an HOA issue that had arisen and that he wanted addressed as he advised that he had surrendered the subject real property in his 2009 bankruptcy proceedings.

INTERROGATORY NO. 8:

With respect to each Nevada citizen whose trustee, foreclosure related, and/or collection file YOU serviced during the period 2008 to 2015, state the total number of phone calls made and/or received by YOU.

RESPONSE TO INTERROGATORY NO. 8:

Objection, this request is overbroad, burdensome and oppressive and is not relevant. Responding party also objects on the grounds that this request is unintelligible. Lastly, Quality specifically incorporates general objections 5 and 6 to the response herein.

Without waiving these objections this responding party states as follows: This responding party does not and has never serviced loans and as such there were no phone calls made or received by Quality for a loan serviced by Quality. With regards to Quality's foreclosure file, see Quality's response to Interrogatory No. 7.

INTERROGATORY NO. 9:

With respect to each Nevada citizen whose trustee, foreclosure related, and/or collection file YOU serviced during the period 2008 to 2015, state the total number of items of correspondence (of any type) sent and/or delivered by YOU to each Nevada citizen.

RESPONSE TO INTERROGATORY NO. 9:

Objection, this request is vague, ambiguous, unintelligible, overbroad, burdensome and oppressive and is not relevant. Quality specifically incorporates general objections 5 and 6 to the response herein.

Without waiving these objections this responding party states as follows: This responding party does not and has never serviced loans and as such there was no correspondence made or received by Quality for a loan serviced by Quality. Quality did not receive any correspondence from Mr. Benko during the processing of the non judicial foreclosure. As to sending correspondence, all communication was in compliance with NRS §107.080, et. seq. and is contained in Quality's 16.1 disclosures and Quality's response to Plaintiff's Request for Production of Documents.

INTERROGATORY NO. 10:

With respect to each Nevada citizen whose trustee, foreclosure related, and/or collection file YOU serviced during the period 2008 to 2013, state the total number of items written correspondence (of any type) received from each Nevada citizen and/or delivered or sent by YOU to each Nevada citizen.

RESPONSE TO INTERROGATORY NO. 10:

Objection, this request is vague, ambiguous, unintelligible, overbroad, burdensome and oppressive and is not relevant. Quality specifically incorporates general objections 5 and 6 to the response herein. Lastly, this responding party objects on the grounds that this request has been asked and answered in Interrogatory No.'s 7, 8, & 9.

Without waiving these objections this responding party states as follows: This responding party does not and has never serviced loans and as such there was no correspondence made or received by Quality for a loan serviced by Quality. Quality did not receive any correspondence from Mr. Benko during the processing of the non judicial foreclosure. As to sending correspondence, all communication was in compliance with NRS §107.080, et. seq. and is contained in Quality's 16.1 disclosures and Quality's response to Plaintiff's Request for Production of Documents.

1 accounts; QLS was collecting the money on behalf of the banks with
2 respect to the unpaid loans.

- 3 e. QLS engaged in extensive telephone communications with Nevada
4 debtors regarding the defaulted loans, and maintained phone records
5 not produced so far. As a matter of policy, including in letters and by
6 pre-recorded phone messages, QLS informed and admitted to
7 defaulted borrowers that QLS was a debt collector and that any
8 information obtained was for purposes of debt collection.
- 9 f. QLS's creditor-clients generally required that QLS tell the defaulted
10 debtors that QLS is a debt collector.
- 11 g. QLS held its own employees to the standards imposed on debt
12 collectors by the federal Fair Debt Collection Practices Act
13 ("FDCPA"), including with respect to all communications with
14 Nevada debtors.
- 15 h. QLS received, between 2007 and 2012, not less than about 105
16 million dollars in fees and costs for the various
17 foreclosures/collection services performed by QLS in Nevada during
18 that period.
- 19 i. QLS's fees and costs for the services it performed are added to the
20 loan balance of the defaulted debtors in Nevada, and became a part of
21 their outstanding debt.
- 22 j. QLS solicited its creditor-clients for consumption of the services
23 QLS provides in Nevada, including default services, and, distinctly,
24 foreclosure services, with respect to the defaulted Nevada loans.
- 25 k. In collecting money from Nevada debtors to reinstate or pay-off the
26 defaulted debts, and then passing the money received on to QLS's
27 creditor-clients, QLS acted as the "middle person."
- 28

1 6. Based on the evidence already uncovered by Plaintiffs, including that
2 submitted in support of Plaintiffs' opposition to QLS's motion for summary
3 judgment, I expect there is every probability that the discovery previously denied by
4 the Commissioner and Court would likely make Plaintiffs' response to QLS's motion
5 much stronger than it already is. For instance, after appropriate document production,
6 the continued deposition testimony of Mr. Owen and Mr. Louvan, sought by
7 Plaintiffs for months, will yield powerful evidence showing the content and
8 accessibility of the computer systems, including the IDS database, used by QLS
9 during the relevant period to conduct its collection activities in Nevada, which
10 systems will show, among other things, the actual communications between QLS and
11 Nevada debtors seeking collection of payment from the latter of their defaulted debts
12 and QLS's efforts to collect those payments, the actual amounts collected by QLS on
13 behalf of its creditor-clients on defaulted debts and remitted to those clients to apply
14 to the debts, including through payoff and reinstatement monies. I also expect the
15 discovery of QLS's contracts with its 60 clients to provide evidence showing QLS
16 was the tool or instrumentality of its client-Banks, during the relevant period, in
17 violation of QLS's duty of impartiality and good faith as a foreclosure trustee under
18 NRS 107. QLS contracts will show that it was never "neutral," but sided entirely with
19 its lender-clients, who paid QLS \$105 million from 2007-2012.

20 7. On December 9, 2016, my employee, Mr. Liam Vavasour, sent at my
21 direction, correspondence via e-mail to QLS counsel, Ms. Kristin Schuler-Hintz,
22 regarding status of our receipt of QLS's client contracts, per their recent past
23 discussion. On January 9, 2017, I sent an additional letter by e-mail to Mr. Thomas
24 Beckom, QLS counsel, regarding production of QLS's client contracts (for the period
25 2007 to 2012). I noted that delivery of such contracts had been previously promised
26 by QLS, and asked that QLS produce them by the end of the week (or inform
27 Plaintiffs if QLS was now refusing to produce them). As reflected in e-mails between
28

1 my office and Mr. Beckom on January 9, 2017, QLS promised to respond to my
2 letter by the end of the week and was "not refusing to provide anything." As reflected
3 in e-mail correspondence dated January 12, 2017, and January 17, 2017, Plaintiffs
4 agreed to give QLS additional time to respond to my January 9, 2017 letter regarding
5 production of contracts. On January 18, 2017, and for the first time, Mr. Beckom
6 advised me that QLS had serious reservations about disclosing the contracts. Mr.
7 Beckom proposed drafting a protective order to prevent co-Defendants from having
8 access to QLS's agreements. On January 20, 2017, Mr. Beckom, via e-mail, informed
9 me that QLS was not going to provide the contracts until a court ratified protective
10 order was in place. On the same day, I met and conferred with Mr. Beckom and
11 proposed a "limited non-disclosure agreement" while working with him regarding the
12 terms of a stipulated protective order. Mr. Beckom agreed that he would draft an
13 addendum to the current protective order (in lieu of a separate protective order) to
14 deal with this issue. On January 27, 2017, I wrote a letter to Mr. Beckom again
15 suggesting that we prepare a draft, short addendum to the existing protective order
16 that provides that some documents will be marked, using a different designation than
17 "CONFIDENTIAL". I asked that we try to reach an agreement on the terms of the
18 proposed stipulation. On February 13, 2017, I sent to Mr. Beckom for his review via
19 e-mail my suggested edits to the modification of or addendum to the protective order.
20 On March 2, 2017, I received via e-mail Mr. Beckom's supplemental protective
21 order. True and correct copies of all related letters, e-mails, etc., are attached hereto
22 as Exhibit "A".

23 8. Through depositions near the end of 2016, I learned that the IT
24 professional most knowledgeable regarding the contents, access, and reporting
25 capability of QLS's critical database was Michael Chipperfield; I will again be
26 seeking to conduct his deposition in due course if and when discovery is allowed by
27 the Court to resume. I believe his deposition will reveal, among other things, the total
28

1 amount of dollars collected from Nevadans by QLS for various purposes, including
2 for payments to reinstate and/or payoff defaulted loans, during the 2007-2012 period.
3 I expect the database will also provide reports showing problems with telephone
4 communications with Nevada borrowers in default for purposes of collection,
5 including collection by various means including cash payment, loan modifications,
6 forbearance, deed in lieu of foreclosure transactions, etc. The database will reveal
7 various other non-foreclosure collection services performed by QLS in Nevada, e.g.
8 deed-in-lieu. The depositions of other crucial witnesses, including that of QLS's
9 president and several of the named Plaintiffs, remain to be taken.

10 9. Attached hereto as **Exhibit "B"** are true and correct copies of supporting
11 pages 46–52, and 54 of the certified transcript from the November 30, 2016
12 deposition of Plaintiff Jeffrey Benko in this matter.

13 10. Attached hereto as **Exhibit "C"** are true and correct copies of
14 supporting pages 50–51, 66-70 of the certified transcript from the November 30,
15 2016 deposition of Plaintiff Susan Hjorth in this matter.

16 11. Attached hereto as **Exhibit "D"** are true and correct copies of
17 supporting pages 9-10, 18-20, 29-31, 38, 40-41, 53-54, 58, 65-73 of the certified
18 transcript from the February 21, 2017 deposition of Plaintiff Frank Scinta in this
19 matter.

20 12. Attached hereto as **Exhibit "E"** are true and correct copies of supporting
21 pages 13-14, 16-21, 28 of the certified transcript from the February 21, 2017
22 deposition of Plaintiff Jacqueline Scinta in this matter.

23 13. On October 20, 2016, I began the deposition of QLS pursuant to NRCP
24 30(b)(6) in this matter. QLS appeared through two representatives, Bounlet Louvan,
25 QLS foreclosure legal liaison, and David Owen, QLS's Chief Administrative Officer.
26 The depositions of Mr. Owen and Mr. Louvan began, but, by agreement of the
27 parties, were not finished as both witnesses—and QLS counsel--indicated that the
28

1 witnesses had limited availability and had to leave for the airport. Mr. Louvan's
2 deposition began at 10:02 a.m. and ended at 12:31 p.m. *See Exhibit "F"*, Deposition
3 of Bounlet Louvan, at pp. 66, 82. Mr. Owen's deposition in particular was very short
4 (started at about 1:13 p.m. and ended at 3:35 p.m.). Counsel agreed to reconvene the
5 deposition and proceed to conclusion at a later date. These depositions have not yet
6 been rescheduled (as Ms. Schuler-Hintz indicated at the depositions would occur).
7 *See Exhibit "G"*, Deposition of David Owen, at pp. 88-90.

8 14. Attached hereto as **Exhibit "H"** is a true and correct copy of Quality
9 Loan Service Corporation's Supplemental Response to Plaintiff Jeffrey Benko's First
10 Set of Interrogatories, including Interrogatory No. 18, in this matter. The document
11 was served by QLS on Plaintiffs in the course of discovery in this case, and verified
12 by QLS's counsel and an individual, Mr. Louvan, signing on behalf of QLS.

13 15. Attached hereto as **Exhibit "I"** is a true and correct copy of a
14 foreclosure referral letter from QLS's client, Ocwen Loan Servicing, LLC, regarding
15 QLS's services on behalf of its client. The document was marked by QLS with Bates
16 Nos. QLS9-QLS12. The document was produced by QLS in the course of discovery
17 in this matter and was authenticated by Mr. Owen when it was marked as Exhibit 18
18 at his deposition.

19 16. Attached hereto as **Exhibit "J"** are true and correct copies of documents
20 produced by QLS in discovery in this matter from its internal records and files
21 showing instructions received by QLS from its clients for bidding on behalf of the
22 clients at non-judicial foreclosure sales to be conducted by QLS. These documents
23 were stamped by QLS with Bates Nos. QLS2088-QLS2089 (relating to Plaintiff
24 Jeffrey Benko), Bates Nos. QLS1543-QLS1607 (pertaining to Plaintiffs Frank and
25 Jacqueline Scinta), Bates Nos. QLS1053-QLS1054 (pertaining to Plaintiff Susan
26 Hjorth), and Bates No. QLS805 (pertaining to Plaintiffs Camilo and Ana Martinez).

27 17. Attached hereto as **Exhibit "K"** are true and correct copies of
28

1 documents produced by QLS in discovery from its internal records, and marked by
2 QLS with Bates No. QLS.SECOND.SUPP.DISCLOSURE.008105, 006255-006256,
3 006039-006043, 006017-006022, 006011, 005907-005908, 005963, 005882, 005973-
4 005978, 00587-005872, 005910-005912, 001449, and 008871. The documents in this
5 exhibit were produced by QLS as generic documents or templates used by QLS as
6 part of its business activities in Nevada during the relevant period in this case.

7 18. Attached hereto as **Exhibit "L"** are true and correct copies of
8 documents produced by QLS in discovery from its internal records and marked by
9 QLS with Bates No. QLS97, 146, 307, 374, 472, and 484. These documents
10 constitute invoices from QLS to its client for QLS's services relating to Plaintiff
11 Tagliamonte (*i.e.*, Segura).

12 19. Attached hereto as **Exhibit "M"** is a true and correct copy of a
13 document produced by QLS in discovery from its internal records and marked by
14 QLS with Bates No. QLS816. The document constitutes an invoice from QLS to its
15 client for QLS's services relating to Plaintiffs Camilo and Ana Martinez.

16 20. Attached hereto as **Exhibit "N"** is a true and correct copy of a document
17 produced by QLS in discovery from its internal records and marked by QLS with
18 Bates No. QLS1281. The document constitutes an invoice from QLS to its client for
19 QLS's services relating to Plaintiff Jeffrey Benko.

20 21. Attached hereto as **Exhibit "O"** is a true and correct copy of a document
21 produced by QLS in discovery from its internal records and marked by QLS with
22 Bates No. QLS1624. The document constitutes an invoice from QLS to its client for
23 QLS's services relating to Plaintiffs Frank and Jacqueline Scinta.

24 22. Attached hereto as **Exhibit "P"** are true and correct copies of documents
25 produced by QLS in discovery from its internal records and marked by QLS with
26 Bates No. QLS980 and 1069. These documents constitute invoices from QLS to its
27 client for QLS's services relating to Plaintiff Susan Hjorth.

1 23. Attached hereto as **Exhibit "Q"** is a true and correct copy of a document
2 produced by QLS in discovery from its internal records and marked by QLS with
3 Bates No. QLS728 and 729. The document was authenticated by Mr. Owen when it
4 was offered as Exhibit 6 at his deposition.

5 24. Attached hereto as **Exhibit "R"** is a true and correct copy of a document
6 produced by QLS in discovery from its internal records and marked by QLS with
7 Bates No. QLS1233. The document constitutes a self-described "**DEBT**
8 **VALIDATION NOTICE**" dated May 21, 2009, from QLS to Plaintiff Jeffrey
9 Benko.

10 25. Attached hereto as **Exhibit "S"** is a true and correct copy of a document
11 from QLS's client, EMC Mortgage Corporation, to Plaintiff Susan Hjorth, dated
12 April 28, 2009. The document was authenticated by Mr. Owen when it was offered as
13 Exhibit 9 at his deposition in this matter.

14 26. Attached hereto as **Exhibit "T"** is a true and correct copy of a document
15 produced by QLS in discovery from its internal records and marked by QLS with
16 Bates No. QLS928. The document constitutes a self-described "**DEBT**
17 **VALIDATION NOTICE**" dated May 7, 2009, from QLS to Plaintiff Susan Hjorth.
18 The document was authenticated by Mr. Owen when it was offered as Exhibit 10 at
19 his deposition in this matter.

20 27. Attached hereto as **Exhibit "U"** is a true and correct copy of a document
21 produced by QLS in discovery from its internal records and marked by QLS with
22 Bates No. QLS607. The document constitutes a self-described "**DEBT**
23 **VALIDATION NOTICE**" dated September 9, 2008, from QLS to Plaintiffs Camilo
24 and Ana Martinez. The document was authenticated by Mr. Owen when it was
25 offered as Exhibit 12 at his deposition in this matter.

26 28. Attached hereto as **Exhibit "V"** is a true and correct copy of a document
27 constituting a self-described "**DEBT VALIDATION NOTICE**" dated May 12,
28

1 2010, from QLS to Plaintiffs Frank and Jacqueline Scinta. The document was
2 authenticated by Mr. Owen when it was offered as Exhibit 13 at his deposition in this
3 matter.

4 29. Attached hereto as Exhibit "W" is a true and correct copy of a
5 document constituting a self-described "DEBT VALIDATION NOTICE" dated
6 June 5, 2010, from QLS. The document was authenticated by Mr. Owen when it was
7 offered as Exhibit 14 at his deposition in this matter.

8 30. Attached hereto as Exhibit "X" are true and correct copies of
9 supporting pages 7-9, 10-13, 15-17, 22-25, 30-33, 34, 35, 36, 37-38, 39, 42-43, 44-
10 46, 47-48, 56-58, 60, 68-69, 70-72, 77-78, 79 of the certified transcript from the
11 October 20, 2016 deposition of Bounlet Louvan in this matter.

12 31. Attached hereto as Exhibit "Y" are true and correct copies of supporting
13 pages 7, 9-11, 15-16, 20, 22-25, 28-29, 30-32, 37, 42-43, 45, 48-49, 53, 55-60, 62-64,
14 67-77, 79-81, 83-85 of the certified transcript from the October 20, 2016 deposition of
15 David Owen in this matter.

16 32. Attached hereto as Exhibit "Z" are true and correct copies of supporting
17 pages 8-10, 12-14, 18-19, 20-21, 26-29, 30-46, 48-60, 65-68 of the certified transcript
18 from the February 3, 2017 deposition of Wes Andrews in this matter.

19 33. Attached hereto as Exhibit "AA" is a true and correct copy of a
20 document produced by QLS in discovery from its internal records and marked by
21 QLS with Bates No. QLS684. The document constitutes an invoice from QLS to its
22 client for QLS's services relating to Plaintiffs Camilo and Ana Martinez. The exhibit
23 was authenticated by Mr. Owen when it was offered as Exhibit 3 at his deposition in
24 this matter.

25 34. Attached hereto as Exhibit "BB" is a true and correct copy of a document
26 produced by QLS in discovery from its internal records and marked by QLS with Bates
27 No. QLS668. The exhibit was authenticated by Mr. Owen when it was offered as
28

1 Exhibit 4 at his deposition in this matter. Mr. Owen describes it as a screenshot from
2 the "Lenstar" system that is used by QLS for communications with lender-clients; the
3 system would also show all money collected from debtors by QLS.

4 35. Attached hereto as Exhibit "CC" is a true and correct copy of a document
5 produced by QLS in discovery from its internal records and marked by QLS with Bates
6 No. QLS688. The exhibit was authenticated by Mr. Owen when it was offered as
7 Exhibit 5 at his deposition in this matter. Mr. Owen describes it as a screenshot from
8 the "Lenstar" system that is used by QLS for communications with lender-clients; the
9 system would also show all money collected from debtors by QLS.

10 36. Attached hereto as Exhibit "DD" is a true and correct copy of a
11 document produced by QLS in discovery from its internal records and marked by
12 QLS with Bates No. QLS848-861. The exhibit was authenticated by Mr. Owen when
13 it was offered as Exhibit 8 at his deposition in this matter. The document reflects a
14 comments section entry for September 12, 2008, from QLS's internal system that
15 shows QLS communicated to Plaintiffs Camilo and Ana Martinez regarding their
16 debt in default: "You must pay the full amount of the default on this loan by 35th
17 day."

18 37. Attached hereto as Exhibit "EE" is a true and correct copy of a
19 document produced by QLS in discovery from its internal records and marked by
20 QLS with Bates No. QLS1668-1732. The exhibit was authenticated by Mr. Owen
21 when it was offered as Exhibit 11 at his deposition in this matter.

22 38. Attached hereto as Exhibit "FF" is a true and correct copy of Plaintiffs'
23 Notice of Taking the Deposition of Defendant Quality Loan Service Corporation
24 Pursuant to Nevada Rule of Civil Procedure 30(b)(6). The document was exhibit 1 to
25 the deposition of Mr. Louvan in this matter.

26 39. Attached hereto as Exhibit "GG" is true and correct copy of a print-out of
27 the LinkedIn profile of QLS employee Naike Lewis. The exhibit was authenticated by
28

1 Mr. Andrews when it was offered as Exhibit 2 at his deposition in this matter. The
2 document shows, among other things, that she/QLS had high volume of calls with
3 borrowers regarding reinstatement and payoff.

4 40. Attached hereto as Exhibit "HH" is a true and correct copy of QLS's
5 Supplemental Response to Plaintiffs Frank Scinta and Jacqueline Scinta's First Set of
6 Interrogatories to QLS in this matter. The document was authenticated by Mr. Owens
7 when it was offered as Exhibit 2 at his deposition (as well as previously by QLS
8 counsel and Mr. Louvan signing on behalf of QLS). The document was also Exhibit 3
9 to Mr. Andrews' deposition in this matter. The document shows that in response to
10 Plaintiffs' Interrogatory No. 18, for its various business activities and operations in
11 Nevada 2007-2012, QLS received payment of \$19 million in fees and \$86 million in
12 costs.

13 41. Attached hereto as Exhibit "II" is a true and correct copy of a letter
14 from QLS to Plaintiffs Camilo and Ana Martinez. The document was authenticated
15 by Mr. Andrews when offered as Exhibit 4 at his deposition in this matter. The
16 document shows, among other things, that QLS communicated regarding options to
17 avoid foreclosure to Nevada borrower on or about May 2010. No less than six non-
18 foreclosure options are presented in the letter itself. It also shows that QLS has a
19 separate department for loan modifications.

20 42. Attached hereto as Exhibit "JJ" is a true and correct copy of a page
21 from a document produced by QLS in discovery from its internal records and marked
22 by QLS with Bates No. QLS 0030. The document from which this page was taken
23 contained comments from QLS's internal records or file history relating to Plaintiff
24 Jeffrey Benko. The particular page attached hereto as an exhibit shows a telephone
25 call between Plaintiff Jeffrey Benko and QLS on or about January 21, 2011,
26 regarding the foreclosure of his property.

1 43. Attached hereto as Exhibit "KK" is a true and correct copy of a
2 document produced by QLS in discovery from its internal records and marked by
3 QLS with Bates No. QLS507-522. The document contains comments from QLS's
4 internal records or file history relating to Plaintiff Tagliamonte (*i.e.*, Segura). The
5 exhibit was authenticated by Mr. Owen when it was offered as Exhibit 16 at his
6 deposition in this matter.

7 44. I have been counsel of record in this matter since the date it was originally
8 filed in October 2011. I have reviewed all of the documents produced by Plaintiffs
9 Jeffrey Benko, Susan Hjorth, Camilo & Ana Martinez, Frank & Jacqueline Scinta and
10 Patricia Tagliamonte (Segura) in this case, including those disclosed and produced
11 pursuant to NRCP 16.1. I am not aware of any document evidencing or constituting a
12 contract between these Plaintiffs and QLS. The same is true with respect to all of
13 QLS's document productions related to these Plaintiffs in this case. No contact exists
14 with QLS.

15 I declare under penalty of perjury under the laws of the State of Nevada that
16 the foregoing is true and correct. Executed on April 28, 2017, at San Diego,
17 California.

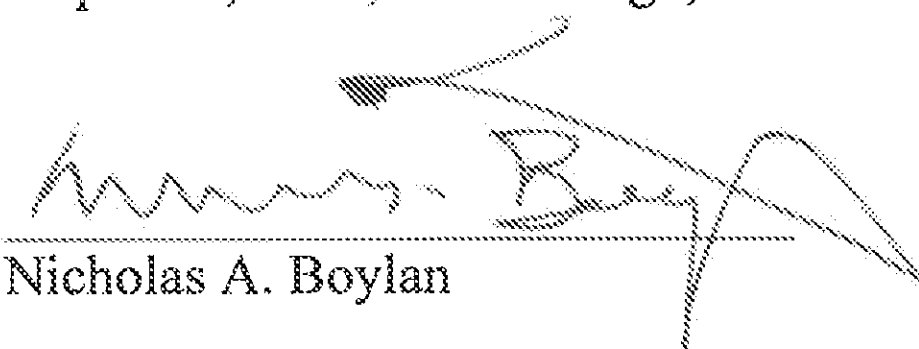
18
19 
20 Nicholas A. Boylan
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28

EXHIBIT “A”

NICHOLAS A. BOYLAN*
LIAM F. VAYASOUR**

*ADMITTED IN CALIFORNIA, NEVADA AND TEXAS
**ADMITTED IN CALIFORNIA

LAW OFFICE OF
NICHOLAS A. BOYLAN
A PROFESSIONAL CORPORATION
444 West "C" Street, Suite 405
San Diego, CA 92101
Telephone (619) 696-6344
Facsimile (619) 696-0478

December 9, 2016

Via E-Mail

Kristen Schuler-Hintz, Esq.
McCarthy & Holthus
9510 W. Sahara Ave., Suite 200
Las Vegas, NV 89117

Re: BENKO, et al. v. QUALITY LOAN SERVICE CORP., et al
Case No.: A-11-649857-C

Dear Ms. Schuler-Hintz:

Mr. Boylan received notice on December 7, 2016, that QLS had mailed additional documents on that date as part of its Second Supplemental Disclosures. Since we have not yet received the CD with these documents, Mr. Boylan asked that I write you to inquire whether the documents will include all of the complete QLS client contracts that the two of you have discussed in the recent past.

Thank you in advance for your assistance.

Very truly yours,

LAW OFFICE OF NICHOLAS A. BOYLAN
A Professional Corporation


Liam F. Vayasour

cc: Nicholas A. Boylan, Esq. (via e-mail)
Shawn Christopher, Esq. (via e-mail)

NICHOLAS A. BOYLAN*
LIAM F. VAVASOUR**

*ADMITTED IN CALIFORNIA, NEVADA AND TEXAS
**ADMITTED IN CALIFORNIA

LAW OFFICE OF
NICHOLAS A. BOYLAN
A PROFESSIONAL CORPORATION
444 West "C" Street, Suite 405
San Diego, CA 92101
Telephone (619) 696-6344
Facsimile (619) 696-0478

January 9, 2017

Via E-Mail

Thomas N. Beckom, Esq.
McCarthy & Holthus
9510 W. Sahara Ave., Suite 200
Las Vegas, NV 89117

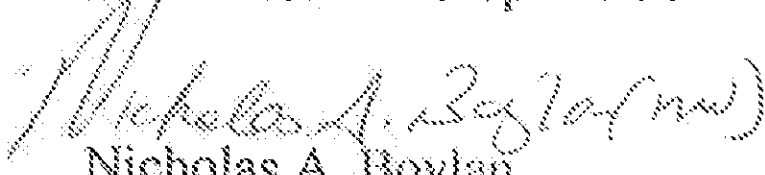
Re: BENKO, et al. v. QUALITY LOAN SERVICE CORP., et al
Case No.: A-11-649857-C

Dear Thomas:

Please provide to us by the end of this week all of the client contracts of QLS, for the period 2007 to 2012. My perception is that delivery of such contracts was previously promised to us, but still has not yet occurred. If, however, QLS is now refusing to provide the contracts, notwithstanding the entry of the existing protective order, please let us know immediately. Thank you.

Very truly yours,

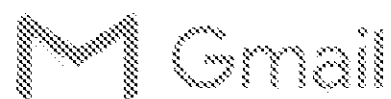
LAW OFFICE OF NICHOLAS A. BOYLAN
A Professional Corporation


Nicholas A. Boylan

NAB:mv

cc: Kristin A. Schuler-Hintz, Esq. (via e-mail)
Shawn Christopher, Esq. (via e-mail)
Liam F. Vavasour, Esq. (via e-mail)

AA005123



Liam Vavasour <lfv.nablawfirm@gmail.com>

Benko v. QLS - Please see letter from Mr. Boylan re contracts

7 messages


Marina Vaisman <mv.nablawfirm@gmail.com>

Mon, Jan 9, 2017 at 3:00 PM

To: tbeckom@mccarthyholthus.com, Kristin Schuler-Hintz <khintz@mccarthyholthus.com>, Shawn Christopher <sc@christopherlegal.com>, Liam Vavasour <lfv.nablawfirm@gmail.com>

Thank you.

Marina Vaisman
Legal Assistant to Nicholas A. Boylan, Esq.
Law Office of Nicholas A. Boylan, APC
444 West "C" Street, Suite 405
San Diego, CA 92101
(619)696-6344
(619)696-0478 Fax

 **20170109145842.pdf**
42K

Thomas Beckom <tbeckom@mccarthyholthus.com>

Mon, Jan 9, 2017 at 3:06 PM

To: Marina Vaisman <mv.nablawfirm@gmail.com>, Kristin Schuler-Hintz <khintz@mccarthyholthus.com>, Shawn Christopher <sc@christopherlegal.com>, Liam Vavasour <lfv.nablawfirm@gmail.com>

Tell Nick that he has my gratitude for giving us until the end of the week. We will finish that up by that time. We are not refusing to provide anything and will respond as appropriate at week's end per your correspondence. Enjoy your week guys. Tell Nick he owes me a beer when I'm in San Diego for all this motion work. :-)

Thanks!

Regards,

Thomas

Thomas N. Beckom Senior Litigation Attorney, Nevada | Member State Bar of NV
McCarthy ♦ Holthus LLP
m. 9510 West Sahara Avenue, Suite 200, Las Vegas, NV 89117
d. 702.685.0329|f. 866.339.5691|c.702.499.7175
e. TBeckom@mccarthyholthus.com

"Service Second to None"

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Federal law requires us to advise you that communication with our office could be interpreted as an attempt to collect a debt and that any information obtained will be used for that purpose.

Should escalation be required, please contact the following individual

Kristin Schuler-Hintz at (702) 685-0329 or khintz@mccarthyholthus.com

[Quoted text hidden]

Thomas Beckom <tbeckom@mccarthyholthus.com>

Thu, Jan 12, 2017 at 4:03 PM

To: Marina Vaisman <mv.nablawfirm@gmail.com>, Kristin Schuler-Hintz <khintz@mccarthyholthus.com>, Shawn Christopher <sc@christopherlegal.com>, Liam Vavasour <lfv.nablawfirm@gmail.com>

Hi Guys,

I just tried to call Nick on this, but give me a call at your earliest convenience. I have spoken with QLS regarding the search capacities for complaints as well as the XO Telephone Issues you were having and I believe I have uncovered information which will be useful to you in crafting your subpoena, but I want to make sure we were on the same page. I believe I should be able to assist you with your subpoena to XO for telephone records specifically but it is an awkward process and we need to talk it over. Please call me at your earliest convenience to discuss.

Regards,

Thomas

Thomas N. Beckom Senior Litigation Attorney, Nevada | Member State Bar of NV
McCarthy ♦ Holthus LLP
m. 9510 West Sahara Avenue, Suite 200, Las Vegas, NV 89117
d. 702.685.0329/f. 866.339.5691/c.702.499.7175
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Kristin Schuler-Hintz at (702) 685-0329 or khintz@mccarthyholthus.com

-----Original Message-----

From: Marina Vaisman [mailto:mv.nablawfirm@gmail.com]

Sent: Monday, January 09, 2017 3:01 PM

To: Thomas Beckom; Kristin Schuler-Hintz; Shawn Christopher; Liam Vavasour

Subject: Benko v. QLS - Please see letter from Mr. Boylan re contracts

[Quoted text hidden]

Thomas Beckom <tbeckom@mccarthyholthus.com>

Thu, Jan 12, 2017 at 4:30 PM

To: Marina Vaisman <mv.nablawfirm@gmail.com>, Kristin Schuler-Hintz <khintz@mccarthyholthus.com>, Shawn Christopher <sc@christopherlegal.com>, Liam Vavasour <lfv.nablawfirm@gmail.com>, "nablawfirm@gmail.com" <nablawfirm@gmail.com>

Hey Nick,

I was just speaking with Marina and she has informed me that you had gone home sick, which I am not surprised as I think everyone is getting sick (spent the weekend with a box of cold medicine and football) and that hearing was a marathon for you. I wanted to speak with you more in depth tomorrow about the contract request but it appears that you are unavailable today and possibly tomorrow. I know you requested that we respond by Friday, but would you be willing to extend your deadline out two days to Tuesday, January 17, 2017 so we can discuss this point further and you can get

some well needed rest? I spoke with Marina and we also need to talk about some of the other discovery points as well. Let me know, thank you, and I hope you feel better. Thank you for any courtesy you could provide.

Regards,

Thomas

Thomas N. Beckom Senior Litigation Attorney, Nevada | Member State Bar of NV
McCarthy + Holthus LLP
m. 9510 West Sahara Avenue, Suite 200, Las Vegas, NV 89117
d. 702.685.0329|f. 866.339.5691|c.702.499.7175
e. TBeckom@mccarthyholthus.com

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Kristin Schuler-Hintz at (702) 685-0329 or khintz@mccarthyholthus.com

-----Original Message-----

From: Marina Vaisman [mailto:mv.nablawfirm@gmail.com]
Sent: Monday, January 09, 2017 3:01 PM
To: Thomas Beckom; Kristin Schuler-Hintz; Shawn Christopher; Liam Vavasour
Subject: Benko v. QLS - Please see letter from Mr. Boylan re contracts

[Quoted text hidden]

Nicholas Boylan <nablawfirm@gmail.com>

Thu, Jan 12, 2017 at 4:46 PM

To: Thomas Beckom <tbeckom@mccarthyholthus.com>

Cc: Marina Vaisman <mv.nablawfirm@gmail.com>, Kristin Schuler-Hintz <khintz@mccarthyholthus.com>, Shawn Christopher <sc@christopherlegal.com>, Liam Vavasour <lfv.nablawfirm@gmail.com>

Sure;

Just home from doctor- can u write what we need to discuss n we can try that way first, or I can try to call tomorrow but I have laryngitis-- my voice is in and out n unreliable;

NAB, esq.

[Quoted text hidden]

Thomas Beckom <tbeckom@mccarthyholthus.com>

Thu, Jan 12, 2017 at 5:37 PM

To: Nicholas Boylan <nablawfirm@gmail.com>

Cc: Marina Vaisman <mv.nablawfirm@gmail.com>, Kristin Schuler-Hintz <khintz@mccarthyholthus.com>, Shawn Christopher <sc@christopherlegal.com>, Liam Vavasour <lfv.nablawfirm@gmail.com>

Nick,

Save your voice and lets talk on Tuesday after you get some rest as we all had a long day yesterday. Thank you for the extension for the response on the contract request to Tuesday, January 17, 2017. I am looking to conference on the following things on that day:

1. Pragmatics of Requesting Phone Records (it's fairly complicated and I have obtained an explanation for why XO kicked your subpoena back as well as instructions to help facilitate that request as well as your subpoena, but I need to discuss the pragmatics as well as provide some prefatory explanation as to the issue that are present/ you encountered. I can assure you however that XO is QLS's telephone provider)
2. "Complaints" I have a proposed resolution to that issue short of us going through all 40,000 foreclosures QLS has done which the commissioner did not seem inclined to allow but I need your input on that so that you are satisfied that you have what you need at this juncture in this phase and we can avoid another 7 hour discovery hearing.
3. Contracts.
4. We also need to set depositions for your remaining clients. I'm going to unilaterally set the remaining depositions tomorrow, with the understanding that we will work on the calendaring issue on Tuesday. I merely wish to preserve the depositions and I do not expect that these will be firm dates and that we will agree on dates Tuesday or a reasonable time thereafter. I am not trying to strong arm you in that regard and I assure you we can renote those depositions as necessary.

I truly believe we can work this out short of motion work and want to discuss coming to a consensus. Like I said at the hearing, I'm pretty easy to work with on discovery stuff. :-) Sleep well Nick and talk to you on Tuesday. Why don't we schedule it for noon, since I'm showing you have a deposition of CRC on that day and I'm assuming Mr. Scarborough and company will let you break for lunch.

Regards,

Thomas

Thomas N. Beckom Senior Litigation Attorney, Nevada | Member State Bar of NV
McCarthy ♦ Holthus LLP
m. 9510 West Sahara Avenue, Suite 200, Las Vegas, NV 89117
d. 702.685.0329/f. 866.339.5691/c. 702.499.7175
e. TBeckom@mccarthyholthus.com

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Should escalation be required, please contact the following individual

Kristin Schuler-Hintz at (702) 685-0329 or khintz@mccarthyholthus.com

-----Original Message-----

[Quoted text hidden]

Thomas Beckom <tbeckom@mccarthyholthus.com>

Tue, Jan 17, 2017 at 11:55 AM

To: Nicholas Boylan <nablawfirm@gmail.com>

Cc: Marina Vaisman <mv.nablawfirm@gmail.com>, Kristin Schuler-Hintz <khintz@mccarthyholthus.com>, Shawn Christopher <sc@christopherlegal.com>, Liam Vavasour <lv.nablawfirm@gmail.com>

Hey Nick,

That you for the extension on the disclosure of the contracts until tomorrow. We will circle up tomorrow at noon to discuss this matter.

Regards,

Thomas

Thomas N. Beckom Senior Litigation Attorney, Nevada | Member State Bar of NV
McCarthy ♦ Holthus LLP
m. 9510 West Sahara Avenue, Suite 200, Las Vegas, NV 89117
d. 702.685.0329|f. 866.339.5691|c. 702.499.7175
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Should escalation be required, please contact the following individual

Kristin Schuler-Hintz at (702) 685-0329 or khintz@mccarthyholthus.com

-----Original Message-----

From: Nicholas Boylan [mailto:nablawfirm@gmail.com]

Sent: Thursday, January 12, 2017 4:46 PM

To: Thomas Beckom

[Quoted text hidden]



Marina Vaisman <mv.nablawfirm@gmail.com>

Benko v. QLS et. al. // NV13-15321 message

Thomas Beckom <tbeckom@mccarthyholthus.com>

Wed, Jan 18, 2017 at 4:55 PM

To: nick boylan <nablawfirm@gmail.com>

Cc: marina <mv.nablawfirm@gmail.com>, Kristin Schuler-Hintz <khintz@mccarthyholthus.com>, IDSMH <IDSMH@mccarthyholthus.com>, Joni Rispalje <jrispalje@mccarthyholthus.com>

Nick,

Alright here is my understanding of our discussion today as well as potential dates a resolutions. My understanding is our disclosures, as they stand today, are good and we will supplement as necessary and appropriate by 1/25 as well as further circle up on 1/25 to provide a status on the remaining issues. We both have some work I need to perform in the interim in order to provide answers and further discussion on 1/25. The only thing that I will try to provide an answer on before that date is whether or not QLS would be willing to provide a limited bi-lateral disclosure on contracts between the Plaintiff and QLS by 1/20. Below is a summary:

1. Phone Records:

- a. As I explained, you will need to subpoena IDSolutions for incoming calls to QLS based on area code for codes 702 and 775. We do not have access to the incoming calls and would have to subpoena them ourselves (e.g. no possession, custody, or control from what I am told). You asked for a letter to facilitate your subpoena. I will confer with the managing partner and attempt to get you this letter no later than 1/25/17 in order to assist.
- b. As for outgoing calls, I am told that QLS is able to request that information based on area codes 702 and 775. I will follow up with QLS and try to get the ball rolling on that and will provide you an update on our progress on 1/25 as I have no idea how long that will take.

2. Complaints:

- a. As we have previously stated, QLS does not have a complaint log. My understanding is we can search for "letters" but that this serve would generate all letters for approximately 40,000 and given some of the AB300 requires, this will most likely generate a huge number of documents and we would be unable absent great burden shift through these documents in order to determine what the nature of the letter is.
- b. You requested information regarding QLS's paper files. As I explained to you, I do not know what QLS's policy is on that and will have to confer with them however I do have reservations about such a request being over broad and unduly burdensome. Notwithstanding, I will investigate this matter and provide a formal response to that point by 1/25.
- c. What we can do however is search our "comment" log which is internally maintained in QLS's data files for specific words or phrases to determine if QLS employees logged a complaint of the type you are looking for. My understanding is that QLS would comply within reason however it must be a reasonable list of terms (e.g. 10 is fine, but 100 will most likely be objected to as potentially burdensome). You stated that you would need additional time to consider this aspect and determine

your next steps. As stated however, I will supplement the cases the Commissioner ordered by January 25, 2017 and you can let me know at your earliest convenience how you would like to handle the remaining portion of the matter. Just let me know at your convenience.

3. Contracts:

a. As stated, QLS does have contracts however has serious reservations about disclosing these documents, not because of issues with the Plaintiff, but because of business concerns with the co-defendants as we do not want the terms and conditions of the services we provide being given to our direct competitors, such as NDSC. You will not require immediate disclosure of contracts at this time however have requested a limited non-disclosure agreement in the interim so you can at least review what we have as some type of bi-lateral *in camera* inspection. That I will have to run by my client, however I will try to have a response by Friday 1/20 one way or the other on the limited disclosure. What will agree to though is to begin drafting a proposed stipulated protective order to prevent co-defendants from having access to our agreements. I will draft this proposed protective order and have a copy to you by 1/25 so we can begin discussing mutual terms of the disclosure. We will absolutely disclose what we have if there is a stipulated protective order in place to address that issue.

b. You requested additional information about prospective contract addendums which may have been referred to QLS via email upon referral of a loan file through systems such as "loan sphere". I did not have immediate information on that point and do not know the complexity of what you are asking for however I will investigate and provide a firm position/ status by 1/25.

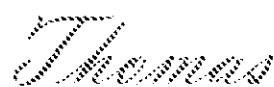
4. Depositions:

a. Marina will work with Joni on setting deposition dates for the remaining Plaintiffs.

b. Wes Andrews deposition will be moved to 2/3/2017 (I have confirmed Wes's availability).

Let me know if I missed anything and we can circle up on 1/25.

Regards,



Thomas N. Beckom *Senior Litigation Attorney, Nevada* | Member State Bar of NV

McCarthy ♦ Holthus LLP

m. 9510 West Sahara Avenue, Suite 200, Las Vegas, NV 89117

d. 702.685.0329 | f. 866.339.5691 | c. 702.499.7175

e. TBeckom@mccarthyholthus.com



Marina Vaisman <mv.nablawfirm@gmail.com>

RE: Benko v. QLS - Letter to Attorney Beckom re discovery items // NV13-1532

2 messages

Thomas Beckom <tbeckom@mccarthyholthus.com>

Fri, Jan 20, 2017 at 4:50 PM

To: Michele Cullen <mic.nablawfirm@gmail.com>

Cc: nick boylan <nablawfirm@gmail.com>, Marina Vaisman <mv.nablawfirm@gmail.com>, "lfv.nablawfirm@gmail.com" <lfv.nablawfirm@gmail.com>, Kristin Schuler-Hintz <khintz@mccarthyholthus.com>, Shawn Christopher <sc@christopherlegal.com>, IDSMH <IDSMH@mccarthyholthus.com>

Nick,

I have conferred with my higher ups as well as my client on this issue of the non disclosure agreement and have been told that QLS feels uneasy about submitting the contracts until a court ratified protective order is in place. Since I know this is important to you, I am going to try to expedite drafting of the stipulated protective order and get it to you for review. As I stated, QLS performs modifications of these documents in order to protect itself from specifically this type of law suit and we would prefer not to allow our competitors insight into how we do business. Please let me know if you are going to contest this manner of getting these documents (mainly as a professional courtesy) so I can prepare the appropriate motion for protective order, however I really don't think that would pragmatically make sense because ideally by the time that is resolved, we will have disclosed the documents. I will sit down first thing Monday morning and churn out the stipulation as well as the letter for your XO subpoena. Please let me know if I am missing something and we will circle back up Wednesday. Thanks.

Regards,

Thomas

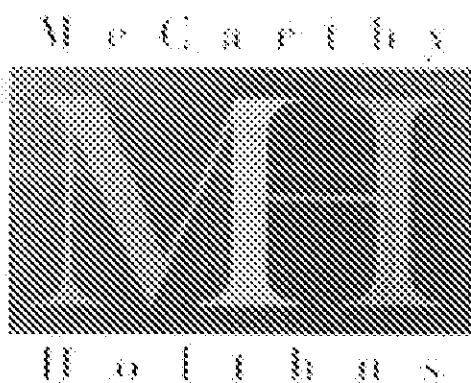
Thomas N. Beckom Senior Litigation Attorney, Nevada | Member State Bar of NV

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Kristin Schuler-Hintz at (702) 885-0329 or khintz@mccarthyholthus.com

From: Michele Cullen [mailto:mic.nablawfirm@gmail.com]
Sent: Friday, January 20, 2017 4:15 PM
To: Thomas Beckom
Cc: nick boylan; Marina Vaisman; lf.v.nablawfirm@gmail.com; Kristin Schuler-Hintz; Shawn Christopher
Subject: Benko v. QLS - Letter to Attorney Beckom re discovery items

Nicholas Boylan <nablawfirm@gmail.com> Mon, Jan 23, 2017 at 5:02 PM
To: Thomas Beckom <tbeckom@mccarthyholthus.com>
Cc: Michele Cullen <mic.nablawfirm@gmail.com>, Marina Vaisman <mv.nablawfirm@gmail.com>, "lf.v.nablawfirm@gmail.com" <lf.v.nablawfirm@gmail.com>, Kristin Schuler-Hintz <khintz@mccarthyholthus.com>, Shawn Christopher <sc@christopherlegal.com>, IDSMH <IDSMH@mccarthyholthus.com>

WE NEED TO TALK ABOUT THIS IN SEVERAL RESPECTS...BY PHONE TOMORROW----

IF U HAVE TO GO TO UR BOSS ON MOST OR MANY OF THE THINGS WE DISCUSS IT SEEMS A WASTE OF OUR TIME- AND CONTRARY TO OUR INTEREST, N THEN WE SHOULD JUST SPEAK TO HER? IT DOES NOT SEEM TO BE WORKING WELL FOR US...

WE ARE NOT GOING TO DOUBLE CONFER N "NEGOTIATE" IF SHE GIVES U NO REAL AUTHORITY- THIS IS SIMPLE STUFF N YOU ARE NOT A 1-3 YEAR LAWYER; UMUST HAVE REASONABLE AUTHORITY FOR THIS TO WORK;

IF IT IS EASY N CONVENIENT FOR LOCAL QLS PEOPLE TO BE DEPOSED IN SD WHY CANNOT IT ALSO BE RESPECTED FOR THE ONLY 2 LOCAL PLAINTIFFS- AS A MATTER OF CONVENIENCE AND RECIPROCITY AND NORMAL ACCOMMODATION?

NAB, esq.

NICHOLAS A. BOYLAN*
LIAM F. VAYASOUR**

*ADMITTED IN CALIFORNIA, NEVADA AND TEXAS
**ADMITTED IN CALIFORNIA

LAW OFFICE OF
NICHOLAS A. BOYLAN
A PROFESSIONAL CORPORATION
444 West "C" Street, Suite 405
San Diego, CA 92101
Telephone (619) 696-6344
Facsimile (619) 696-0478

January 20, 2017

Via E-Mail

Thomas N. Beckom, Esq.
McCarthy & Holthus
9510 W. Sahara Ave., Suite 200
Las Vegas, NV 89117

Re: BENKO, et al. v. QUALITY LOAN SERVICE CORP., et al
Case No.: A-11-649857-C

Dear Thomas:

Thank you for your e-mail of January 18, 2016, and for speaking with me by phone on that day. A few points of clarification are in order to avoid any confusion.

First, while we need not dispute the point at this time, our position is—and has been—that your client's NRCP 16.1 disclosures are not consistent with its obligations (and have not been for some time despite the Court's Order). We recognize that you are endeavoring to meet and confer with us as needed to correct these deficiencies.

Second, it was our understanding from our conversation that we would need to subpoena XO Communications for records reflecting incoming calls to IDSolutions from area codes 702 and 775 (as opposed to subpoenaing IDSolutions for records reflecting incoming calls to your client). Please clarify if we misunderstood. On a related note, it was also our understanding that your client would provide a letter to the effect that it did not object to the subpoena in order to expedite production of the records. Please let us know at your soonest convenience if your client is unable or unwilling to do this, so that we can avoid further delay in issuing our subpoena.

Third, as to your client's internal records (or data files) and complaints, we understood that you would investigate further and let us know if there would be any issue as to time frame and search capacity or capability for your client's data files.

January 20, 2017

Fourth, as to your client's contracts with its various clients during the pertinent period, we discussed that your client has referral documents that reflect items of service and some terms of agreements for particular files that would supplement any master agreements between your client and its clients. We asked that relevant master and referral agreements be disclosed, but raised the possibility that representative referral agreements for year as to each client in the State of Nevada during the relevant period might suffice for now if they would allow us to adequately evaluate the nature and scope of your client's practices, policies, and procedures in the State of Nevada.

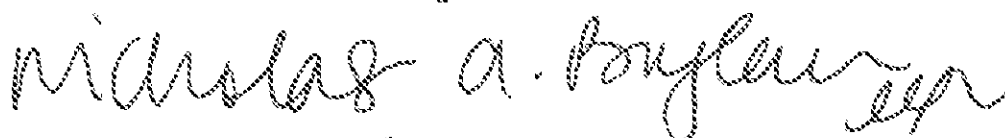
Fifth, as to these contracts, we also suggested that, pending a stipulated protective order, we could perhaps reach an agreement that there would be no disclosure to any other party of your client's contracts unless and until a protective order more specifically covering them could be entered or declined by the Court. (This seems to be what you describe as a "limited non-disclosure agreement" in your e-mail.) Such an agreement would allow us to evaluate such contracts now, while we continue to meet and confer regarding the terms of a stipulated protective order and determine whether the other Defendants will object.

Finally, as to the depositions of the remaining named Plaintiffs, we agreed, as you write, that we would continue to work with you on scheduling them as mutually convenient for us. We also noted, however, that it seemed likely that the Discovery Commissioner may further extend the deadline for Phase I of discovery (and represented that we would not hold your client to the current Phase I discovery deadline if it comes to that).

Thank you in advance for your prompt response and for providing further clarification as requested.

Very truly yours,

LAW OFFICE OF NICHOLAS A. BOYLAN
A Professional Corporation



Nicholas A. Boylan

NAB:lfv

cc: Kristin A. Schuler-Hintz, Esq. (via e-mail)
Shawn Christopher, Esq. (via e-mail)
Liam F. Vavasour, Esq. (via e-mail)

NICHOLAS A. BOYLAN*
LIAM YAVASOUR**

*ADMITTED IN CALIFORNIA, NEVADA AND TEXAS
**ADMITTED IN CALIFORNIA

LAW OFFICE OF
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444 West C Street, Suite 405
San Diego, CA 92101
Telephone (619) 696-6344
Facsimile (619) 696-0478

January 27, 2017

Via E-Mail

Thomas N. Beckom, Esq.
McCarthy & Holthus
9510 W. Sahara Ave., Suite 200
Las Vegas, NV 89117

Re: BENKO, et al. v. QUALITY LOAN SERVICE CORP., et al
Case No.: A-11-649857-C

Dear Mr. Beckom:

Thank you for your further correspondence by e-mail dated January 25, 2017, regarding our conference by phone on that date. I write to clarify several points raised in your e-mail.

We believe the letter to XO Communications, once revised by you as discussed, should be satisfactory. If we conclude that further revisions are needed after we have received your modified letter, we will let you know promptly so that we can discuss the matter further.

Regarding complaints, we will provide you with a list of words and phrases to be used by QLS in conducting an electronic search of its internal records. Once you receive our list, you will let us know if any of the words and phrases are objectionable to your client, and how long it should take your client to conduct the search and produce responsive documents.

Regarding QLS contracts, we proposed that you prepare a draft, short addendum to the existing protective order that provides that some documents will be marked, using a different designation than "CONFIDENTIAL," as not to be produced to other Defendants in this litigation. We asked that you share the draft addendum with us so that we can review it before it is shared with counsel for the other Defendants. If we are able to reach agreement on the terms of the proposed

stipulation, we could then present it to Judge Kephart when we are all before him on February 7, 2017, for the status conference and hearing on pending motions.

As to the number of QLS contracts to be produced, we indeed believe it to be unlikely that there would only be five responsive contracts from 2007 to 2012, including referral agreements, from the relevant period here in your client's custody, possession, or control. We asked that you further investigate this with your client and provide us with further information, including, if necessary, a sworn declaration from your client as to the number of such contracts in its custody, possession, or control. We raised the possibility that we will need to subpoena QLS' various clients directly for relevant contracts, in which case we would need a list of those clients, and may need to depose QLS witnesses to confirm that no other relevant contracts are in your client's possession, custody, or control. In order to avoid further unnecessary delay, we ask that you begin preparing a list of QLS clients from the relevant period to be produced if it proves necessary. We must remind you that we have been patient for many weeks—and now, indeed, months—while we waited for your client to produce its relevant contracts and have given your client repeated extensions on production at your request. We must also note that it has only been in roughly the past week that the issue of production of contracts to the other Defendants has been raised by your client, which has further delayed production unnecessarily. (Had this issue, which we have been working to accommodate, been raised from the outset weeks ago, we could have avoided the current delay in production of the five relevant contracts that your client admittedly has and intends to produce.)

Regarding the depositions of Plaintiffs Camilo and Ana Martinez, you indicated agreement to depose them, as we have requested, in San Diego, California, as we offered to pay a portion of the costs that would be incurred by your client in flying you out to San Diego for the deposition (specifically, we offered to pay roughly \$100 of your airfare).

In prior correspondence as well as during our meeting by phone on January 25, 2017, I have expressed my concern that you have apparently not been given sufficient authority to negotiate and agree on what appear to us to be fairly routine discovery matters (such as the location of depositions). As I have noted in the past, you are not an inexperienced attorney, and should be entrusted with reasonable authority to meet and confer with us on these issues. If not, as I noted in our last phone conference, we will need to have such meetings with the attorney with such authority (presumably, here, Ms. Schuler-Hintz), as it is unreasonable for us to have to effectively meet and confer twice on simple and routine discovery matters and wait for you to receive approval from your client and supervising attorneys. We do

January 27, 2017

Page 2

not mean this to be a reflection on you, but on the level of authority—or lack thereof—that you have apparently been given.

Very truly yours,

LAW OFFICES OF NICHOLAS A. BOYLAN


Nicholas A. Boylan
NAB:lfv

cc: Liam F. Vavasour, Esq. (via e-mail)



Marina Vaisman <mv.nablawfirm@gmail.com>

Benko et. al v. QLS et. al // A-11-649857-C // NV13-1532

4 messages

Thomas Beckom <tbeckom@mccarthyholthus.com>

Wed, Jan 25, 2017 at 2:21 PM

To: Nicholas Boylan <nablawfirm@gmail.com>

Cc: marina <mv.nablawfirm@gmail.com>, Liam Vavasour <lv.nablawfirm@gmail.com>, IDSMH <IDSMH@mccarthyholthus.com>

Alright so here is where we are. All of this is limited to January 1, 2007 to September 28, 2012

1. Phone Records: You have requested QLS is unable to go back more than 1 year in order to get phone records for XO however my understanding is that XO would be responsive to a subpoena. On that basis I will modify the prior letter to include both incoming and outgoing calls and reforward to you by Friday. From there I consider this portion of the matter resolved.

2. Complaints: You have requested "complaints" regarding QLS's FID licensure. We have agreed that you will provide a reasonable list of search terms so that QLS may go back and review it's comments and provide you with anything that is responsive. You will get us those search terms within a reasonable time. On this basis, I consider this portion resolved.

3. Contracts

a. You have requested contracts between QLS and Servicers. To date I have been able to locate five however they are heavily modified to avoid these types of law suits and we do not want other parties to this action to have access to our risk liability practices. We have agreed that in lieu of a separate protective order, I will draft an addendum to the current protective order to deal with this issue. We have agreed to attempt to have something to present to the judge by 2/6

b. You have expressed incredulity that QLS does not have additional contracts directly between itself and servicers. I explained to you that I will continue to investigate this issue and will have it resolved by February 6, 2017. By this date we will either provide some type of declaration/ affidavit or the totality of QLS's contracts in their possession/ custody/ control if they do indeed exist over and above the 5 we have identified over the phone (e.g. we do not think that they do, but I will check again). You briefly discussed wishing to obtain a customer list in order to verify this information. It is our position that a customer list will most definitely need to be sealed pursuant to a protective order however we will see if we can resolve this point by the 6th and I will not be pursuing a customer list at this time unless we are unable to resolve this issue. In the event these contracts generate an additional need for follow up discovery, we would be willing assist you either agreeing for reasonable discovery outside of the close of discovery or would agree to not oppose a motion for an extension, or a request thereof since you have provided additional time to resolve this issue.

4. Depositions: We discussed the location for the depositions of the Martinez's. Nick, I want you to know I had to fight with my boss over this as her initial response was again "no." However she has somewhat agreed (after heated discussion) that this may be an appropriate resolution however she requested additional time to evaluate staffing. The pragmatic reason behind this is I am also the firm's point person for the Nevada HOA foreclosure issue for all of our litigation servicer clients. Those matters have largely been stayed for the 6ish months because of the 9th Circuit declaring Nevada's HOA laws unconstitutional. Tomorrow, the Nevada Supreme Court is issuing two opinions on this issue and if it goes badly my servicer litigation clients will immediately need attention litigation wise and she is nervous about having me out of the office for any period of time during that time period if it goes poorly. We should have an answer on this by the time we are in front of Judge Kephart and the depositions will most likely be set towards the end of February.

Hey man, lawyer to lawyer, Bulla issues money sanctions against attorney's regularly for not submitting orders within 10 days. Just an FYI as I've seen it happen to some friends of mine. Best of luck and I will send you the letters most likely by Friday.

Regards,

Thomas

Thomas N. Beckom Senior Litigation Attorney, Nevada | Member State Bar of NV

McCarthy ♦ Holthus LLP
m. 9510 West Sahara Avenue, Suite 200, Las Vegas, NV 89117
d. 702.685.0329/f. 866.339.5691/c.702.499.7175
e. TBeckom@mccarthyholthus.com

"Service Second to None"

Please note: Our office will be closed December 26, 2016 for the Christmas Holiday. Normal Business hours will resume Tuesday, December 27, 2016.

CONFIDENTIALITY NOTICE: The information contained herein may be privileged and protected by the attorney/client and/or other privilege. It is confidential in nature and intended for use by the intended addressee only. If you are not the intended recipient, you are hereby expressly prohibited from dissemination distribution, copy or any use whatsoever of this transmission and its contents. If you receive this transmission in error, please reply or call the sender and arrangements will be made to retrieve the originals from you at no charge.

Federal law requires us to advise you that communication with our office could be interpreted as an attempt to collect a debt and that any information obtained will be used for that purpose.

Should escalation be required, please contact the following individual

Kristin Schuler-Hintz at (702) 685-0329 or khintz@mccarthyholthus.com

-----Original Message-----

From: Nicholas Boylan [mailto:nablawfirm@gmail.com]
Sent: Wednesday, January 25, 2017 9:58 AM
To: Thomas Beckom
Cc: marina; Liam Vavasour
Subject: Re: AMENDED NOTICE OF DEPOSITION RE WES ANDREWS

Can u call about 1pm?

NAB, esq.

> On Jan 24, 2017, at 10:28 AM, Thomas Beckom <tbeckom@McCarthyHolthus.com> wrote:

>

> Perfect. Thank you so much.

>

> Nick I have a deposition this afternoon in an unrelated matter but am available to talk anytime between now and noonish. Or late in the afternoon.

>

>

> -----Original Message-----

> From: Marina Vaisman [mailto:mv.nablawfirm@gmail.com]

> Sent: Tuesday, January 24, 2017 9:36 AM

> To: Thomas Beckom

> Cc: nablawfirm@gmail.com; Kristin Schuler-Hintz

> Subject: AMENDED NOTICE OF DEPOSITION RE WES ANDREWS

>

> Mr. Beckom,

>

> I just left you a detailed voicemail message as well. Please see attached Amended Notice which was served on Wiznet on 1/19/17. Thank you.

>

>> On Mon, Jan 23, 2017 at 4:38 PM, Thomas Beckom <tbeckom@mccarthyholthus.com> wrote:

>> Good Day.

>>

>> Attached please find the proposed protective order as well as the letter in support of your XO subpoena. Marina, I have also yet to see Mr. Andrews deposition be rescheduled. Please let me know if we are changing the time for the deposition to Friday, 2/3 as I am unable to be in San Diego on that date as I will have my daughter that weekend.

Thanks guys.

>>

>> Thomas

NICHOLAS A. BOYLAN*
LIAM F. VAVASOUR**

*ADMITTED IN CALIFORNIA, NEVADA AND TEXAS
**ADMITTED IN CALIFORNIA

LAW OFFICE OF
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444 West "C" Street, Suite 405
San Diego, CA 92101
Telephone (619) 696-6344
Facsimile (619) 696-0478

February 13, 2017

Sent Via E-Mail

Thomas N. Beckom, Esq.
McCarthy & Holthus
9510 W. Sahara Ave., Suite 200
Las Vegas, NV 89117

Re: BENKO, et al. v. QUALITY LOAN SERVICE CORP., et al
Case No.: A-11-649857-C

Dear Mr. Beckom:

Please review the attached reflecting my suggested edits to the modification of the protective order. I need to be able to use the documents with the QLS deponents and, although other lawyers generally do not attend they would have the right to do so and may possibly do so in the future. The restriction should apply to the client's, meaning the other Defendants, not their lawyers, because I must be able to use the documents in depositions. However, as you know, the other defense lawyers have generally not appeared at the QLS recent depositions. Please call me.

Very truly yours,

LAW OFFICE OF NICHOLAS A. BOYLAN
A Professional Corporation


Nicholas A. Boylan
NAB:mv

Enclosure

cc: Liam F. Vavasour, Esq.
Shawn Christopher, Esq.

AA005140

McCARTHY & HOLTHUS, LLP
 Kristin A. Schuler-Hintz (NSB# 7171)
 Thomas N. Beckom, Esq. (NSB# 12554)
 9510 West Sahara Avenue, Suite 200
 Las Vegas, NV 89117
 Telephone: (702) 685-0329
 Facsimile: (866) 339-5691

Attorneys for
 QUALITY LOAN SERVICE CORPORATION

IN THE EIGHTH JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA
 IN AND FOR THE COUNTY OF CLARK

JEFFREY BENKO; a Nevada resident;
 CAMILO MARTINEZ; a California resident;
 ANA MARTINEZ; a Nevada resident; FRANK
 SCINTA, a Nevada resident; JACQUELINE
 SCITA, a Nevada resident; SUSAN HORTH,
 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;
 ANOTOINETTE 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

Plaintiff,

v.

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

Case No. A-11-649857-C

Dept. No. 19

STIPULATION TO MODIFY
 PROTECTIVE ORDER REGARDING
 QLS'S BUSINESS CONTRACTS

1 Discovery in this action will require Defendant Quality Loan Service Corporation ("QLS")
2 to provide Plaintiff with information and documents that contain information that is confidential,
3 proprietary, and sensitive. The risk of these types of disclosures is magnified in this action by the
4 fact that several co-defendants in this action are direct competitors of QLS. Disclosure of this
5 information would expose QLS's risk management practices to its competitors and could result in
6 harm to said Defendant's business and practices in light of risk management being a critical
7 component of the business of a foreclosure trustee. Although this information may be subject to
8 conditional disclosure, QLS is entitled to the protections described below:

- 9 1. As used in this Protective Order, the term "confidential contracts" means any contract
10 QLS has between any servicer and itself
- 11 2. The term "disclosure" shall include the dissemination, communication, publication, or
12 reproduction of any confidential contracts or the specific contents of the information
13 contained therein, or the communication of any estimate or other information which
14 facilitates the discovery of the confidential contracts. Should any pleading with the Court
15 reference or attach of the confidential contract, the attachment shall be filed under Seal
16 pursuant to this Stipulation and Order as further defined below.
- 17 3. As used in this Protective Order, the term "qualified persons" mean (i) counsel of record
18 for the Plaintiffs in the litigation, including office associates, paralegals, and stenograph
19 and clerical employees to whom disclosures is reasonably necessary; (ii) experts retained
20 for the purpose of this litigation by the Plaintiffs to whom disclosure is reasonably
21 necessary and who reviewed and signed a copy of this Stipulation; and (iii) court
22 personnel, including stenographic reporters engaged in such proceedings as are necessarily
23 incident to this litigation.

and defendants

4. The parties hereby agree that no confidential contract shall be provided to any co-defendant in this action without an extreme showing of need and further without *in camera* review of the confidential contract by the discovery commissioner to evaluate the needs of the party requesting discovery versus the potential damage, burden, or prejudice that may be borne by QLS.

5. Confidential contracts shall be and remain confidential, and, except as allowed by this Protective Order, may not be disclosed or communicated, nor used for any purpose other than this litigation. *For example, the contracts may be used in depositions of QLS deponents.*

6. All prior terms of the previous protect order apply to confidential contracts, which the express expansion of protections in that no other defendant in this action shall be entitled to review the confidential contracts of QLS.

Approved as to form and content by:

SMITH LARSEN & WIXOM

MCCARTHY & HOLTHUS, LLP

By: _____

Kent F. Larsen
Nevada Bar No. 3463
Katie M. Weber
Nevada Bar No. 11736
1935 Village Center Circle
Las Vegas, Nevada 89134

By: _____

Kristin A. Schuler-Hintz
Nevada Bar No. 7171
9510 West Sahara Avenue, Suite 200
Las Vegas, Nevada 89117

Attorney for Defendant Quality Loan Service Corporation

Lawrence G. Scarborough
Admitted Pro Hac Vice
Jessica R. Maziarz
Admitted Pro Hac Vice
Kathryn E. Brown
Admitted Pro Hac Vice
BRYAN CAVE LLP
Two North Central Avenue, Suite 2200
Phoenix, Arizona 85004

Attorneys for Defendant California Reconveyance Company

BROOKS HUBLEY, LLP

By: _____

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Allan E. Ceran
Admitted Pro Hac Vice
BURKE, WILLIAMS & SORENSEN LLP
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Santa Ana, California 92705

TIFFANY & BOSCO P.A.

Attorneys for Defendant MTC Financial, Inc.

By: _____

Gregory L. Wilde
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Nevada Bar No. 10235
212 South Jones Boulevard
Las Vegas, Nevada 89107

LAW OFFICE OF NICHOLAS A.
BOYLAN, APC

Attorneys for Defendant National Default
Servicing Corporation

By: _____

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Nevada Bar No. 5878
444 West "C" Street, Suite 405
San Diego, California 92101

Shawn Christopher
Nevada Bar No. 6252
CHRISTOPHER LEGAL GROUP
2520 Saint Rose Parkway, Suite 316
Henderson, Nevada 89074

Attorneys for Plaintiffs (except Antoinette
Gill)

ORDER

IT IS SO ORDERED

1 DATED this _____ day of _____, 2017

DISCOVERY COMMISSIONER

McCARTHY & HOLLIS, LLP
ATTORNEYS AT LAW
950 WEST SARAH AVE., SUITE 200
LAS VEGAS, NV 89117
TELEPHONE (702) 462-0000 FAX (702) 339-6001

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McCARTHY & HOLTHUS, LLP
Kristin A. Schuler-Hintz (NSB# 7171)
Thomas N. Beckom, Esq (NSB# 12554)
9510 West Sahara Avenue, Suite 200
Las Vegas, NV 89117
Telephone: (702) 685-0329
Facsimile: (866) 339-5691

Attorneys for
QUALITY LOAN SERVICE CORPORATION

IN THE EIGHTH JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CLARK

JEFFREY BENKO; a Nevada resident;
CAMILO MARTINEZ; a California resident;
ANA MARTINEZ; a Nevada resident; FRANK
SCINTA, a Nevada resident; JACQUELINE
SCITA, 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;
ANOTOINETTE 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

Plaintiff,

v.

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

Case No. A-11-649857-C

Dept. No. 19

STIPULATION TO MODIFY
PROTECTIVE ORDER REGARDING
QLS'S BUSINESS CONTRACTS

1 Discovery in this action will require Defendant Quality Loan Service Corporation ("QLS")
2 to provide Plaintiff with information and documents that contain information that is confidential,
3 proprietary, and sensitive. The risk of these types of disclosures is magnified in this action by the
4 fact that several co-defendants in this action are direct competitors of QLS. Disclosure of this
5 information would expose QLS's risk management practices to its competitors and could result in
6 harm to said Defendant's business and practices in light of risk management being a critical
7 component of the business of a foreclosure trustee. Although this information may be subject to
8 conditional disclosure, QLS is entitled to the protections described below:

- 9 1. As used in this Protective Order, the term "confidential contracts" means any contract
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12 reproduction of any confidential contracts or the specific contents of the information
13 contained therein, or the communication of any estimate or other information which
14 facilitates the discovery of the confidential contracts. Should any pleading with the Court
15 reference or attach of the confidential contract, the attachment shall be filed under Seal
16 pursuant to this Stipulation and Order as further defined below.
- 17 3. As used in this Protective Order, the term "qualified persons" mean (i) counsel of record
18 for the Plaintiffs in the litigation, including office associates, paralegals, and stenograph
19 and clerical employees to whom disclosures is reasonably necessary; (ii) experts retained
20 for the purpose of this litigation by the Plaintiffs to whom disclosure is reasonably
21 necessary and who reviewed and signed a copy of this Stipulation; and (iii) court
22 personnel, including stenographic reporters engaged in such proceedings as are necessarily
23 incident to this litigation.

Comment [11]: Next, the point of the thing is to prevent the Co-Defendants from gaining access to our risk management, so I don't feel comfortable adding the "Defendants" language.

4. The parties hereby agree that no confidential contract shall be provided to any co-defendant in this action without an extreme showing of need and further without *in camera* review of the confidential contract by the discovery commissioner to evaluate the needs of the party requesting discovery versus the potential damage, burden, or prejudice that may be borne by QLS.

5. Confidential contracts shall be and remain confidential, and, except as allowed by this Protective Order, may not be disclosed or communicated, nor used for any purpose other than this litigation.

5.6. Confidential contracts may be used in depositions by the Plaintiffs in this matter, subject to certain protections. Any deposition transcript involving a confidential contract is subject to the same protections for confidential contracts as delineated in this deposition. Any deposition transcript involving a confidential contract must be filed under seal if it is filed with the Court. No deposition transcript may be used outside of the scope of this litigation. To the extent any Co-Defendant wishes to attend a deposition involving a confidential contract, the portion of the deposition involving said contract may only be attended by (1) a Court Reporter, (2) Counsel for QLS, and (3) Counsel for the Plaintiffs. Counsel for the co-defendants may only attend the portion of any deposition involving a confidential contract --based on a stipulation between the parties and/ or based on a showing of extreme need and *in camera* review by the discovery commissioner to evaluate the needs of the party requesting discovery versus the potential damage, burden, or prejudice that may be borne by QLS.

6.7. All prior terms of the previous protect order apply to confidential contracts, which the express expansion of protections in that no other defendant in this action shall be entitled to review the confidential contracts of QLS.

1 Approved as to form and content by:

2 SMITH LARSEN & WIXOM

3 By:_____

4 Kent P. Larsen
5 Nevada Bar No. 3463
6 Katie M. Weber
7 Nevada Bar No. 11736
8 1935 Village Center Circle
9 Las Vegas, Nevada 89134

10 Lawrence G. Scarborough
11 Admitted Pro Hac Vice
12 Jessica R. Maziarz
13 Admitted Pro Hac Vice
14 Kathryn E. Brown
15 Admitted Pro Hac Vice
16 BRYAN CAVE LLP
17 Two North Central Avenue, Suite 2200
18 Phoenix, Arizona 85004

19 Attorneys for Defendant California
20 Reconveyance Company

MCCARTHY & HOLTHUS, LLP

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Page | 4

NV-15-661880-CV

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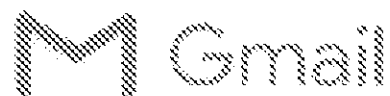
Attorneys for Plaintiffs (except Antoinette
Gill)

ORDER

IT IS SO ORDERED

DATED this _____ day of _____, 2017

.....
DISCOVERY COMMISSIONER



Marina Vaisman <mv.nablawfirm@gmail.com>

Third Times a Charm?

6 messages

Thomas Beckom <tbeckom@mccarthyholthus.com>

Thu, Mar 2, 2017 at 5:03 PM

To: Marina Vaisman <mv.nablawfirm@gmail.com>, Joni Rispalje <jrispalje@mccarthyholthus.com>

Cc: Liam Vavasour <lfv.nablawfirm@gmail.com>, Shawn Christopher <sc@christopherlegal.com>, nick boylan <nablawfirm@gmail.com>

Nick,

Here is that supplemental protective order with the "attorney's eyes only" language

Regards,

Thomas

Thomas N. Beckom Senior Litigation Attorney, Nevada | Member State Bar of NV
McCarthy ♦ Holthus LLP
m. 9510 West Sahara Avenue, Suite 200, Las Vegas, NV 89117
d. 702.685.0329/f. 866.339.5891/c.702.499.7175
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"Service Second to None"

CONFIDENTIALITY NOTICE: The information contained herein may be privileged and protected by the attorney/client and/or other privilege. It is confidential in nature and intended for use by the intended addressee only. If you are not the intended recipient, you are hereby expressly prohibited from dissemination distribution, copy or any use whatsoever of this transmission and its contents. If you receive this transmission in error, please reply or call the sender and arrangements will be made to retrieve the originals from you at no charge.

Federal law requires us to advise you that communication with our office could be interpreted as an attempt to collect a debt and that any information obtained will be used for that purpose.

Should escalation be required, please contact the following individual

Kristin Schuler-Hintz at (702) 685-0329 or khintz@mccarthyholthus.com

-----Original Message-----

From: Marina Vaisman [mailto:mv.nablawfirm@gmail.com]

Sent: Tuesday, February 28, 2017 10:57 AM

To: Thomas Beckom; Joni Rispalje

Cc: Liam Vavasour; Shawn Christopher

Subject: Benko v. QLS - This will confirm that the depositions of Anna and Camilo Martinez are set for Friday, March 31, 2017 to begin at 10:15 a.m. in our San Diego office - Please serve the notices accordingly - Thank you.

Marina Vaisman
Legal Assistant to Nicholas A. Boylan, Esq.
Law Office of Nicholas A. Boylan, APC
444 West "C" Street, Suite 405
San Diego, CA 92101
(619)696-6344
(619)696-0478 Fax

 V. 3 Addendum to Protective Order 3-2-2017.docx
40K

nick boylan <nablawfirm@gmail.com>

Thu, Mar 2, 2017 at 5:21 PM

To: Thomas Beckom <tbeckom@mccarthyholthus.com>

Cc: marina <mv.nablawfirm@gmail.com>, Liam Vavasour <lfv.nablawfirm@gmail.com>

We are close..

I will look further at it tomorrow but we cannot have an entire depo Tr confidential and all pages to be filed under seal-- only the contracts themselves and testimony about the express content of the contracts;

otherwise it is nightmare for me and a hassle to use the other contents of the depo

Nicholas A. Boylan, Esq.

619-696-6344

[Quoted text hidden]

Thomas Beckom <tbeckom@mccarthyholthus.com>

Thu, Mar 2, 2017 at 5:22 PM

To: nick boylan <nablawfirm@gmail.com>

Cc: marina <mv.nablawfirm@gmail.com>, Liam Vavasour <lfv.nablawfirm@gmail.com>

That's fine. Hold off on putting too much brain power into it and I will incorporate that. Thanks Nick.

Regards,

Thomas

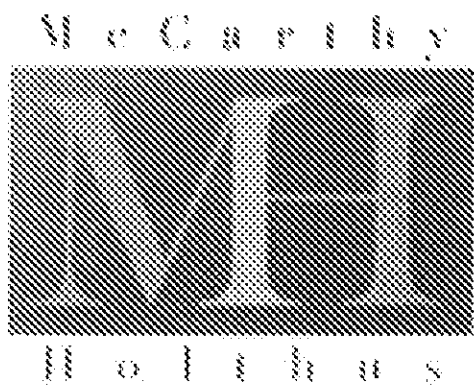
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Attorneys for
QUALITY LOAN SERVICE CORPORATION

IN THE EIGHTH JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CLARK

JEFFREY BENKO; a Nevada resident;
CAMILO MARTINEZ; a California resident;
ANA MARTINEZ; a Nevada resident; FRANK
SCINTA, a Nevada resident; JACQUELINE
SCITA, 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;
ANOTOINETTE 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

Plaintiff,

v.

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

Case No. A-11-649857-C

Dept. No. 19

STIPULATION TO MODIFY
PROTECTIVE ORDER REGARDING
QLS'S BUSINESS CONTRACTS

1 Discovery in this action will require Defendant Quality Loan Service Corporation ("QLS")
2 to provide Plaintiff with information and documents that contain information that is confidential,
3 proprietary, and sensitive. The risk of these types of disclosures is magnified in this action by the
4 fact that several co-defendants in this action are direct competitors of QLS. Disclosure of this
5 information would expose QLS's risk management practices to its competitors and could result in
6 harm to said Defendant's business and practices in light of risk management being a critical
7 component of the business of a foreclosure trustee. Although this information may be subject to
8 conditional disclosure, QLS is entitled to the protections described below:

- 9 1. As used in this Protective Order, the term "confidential contracts" means any contract
10 QLS has between any servicer and itself
- 11 2. The term "disclosure" shall include the dissemination, communication, publication, or
12 reproduction of any confidential contracts or the specific contents of the information
13 contained therein, or the communication of any estimate or other information which
14 facilitates the discovery of the confidential contracts. Should any pleading with the Court
15 reference or attach of the confidential contract, the attachment shall be filed under Seal
16 pursuant to this Stipulation and Order as further defined below.
- 17 3. As used in this Protective Order, the term "qualified persons" mean (i) counsel of record
18 for the Plaintiffs—parties in the litigation, including office associates, paralegals, and
19 stenograph and clerical employees to whom disclosures is reasonably necessary; (ii)
20 experts retained for the purpose of this litigation by the Plaintiffs to whom disclosure is
21 reasonably necessary and who reviewed and signed a copy of this Stipulation; and (iii)
22 court personnel, including stenographic reporters engaged in such proceedings as are
23 necessarily incident to this litigation.

4. The parties hereby agree that no confidential contract shall be provided to any co-defendant in this action without an extreme showing of need and further without *in camera* review of the confidential contract by the discovery commissioner to evaluate the needs of the party requesting discovery versus the potential damage, burden, or prejudice that may be borne by QLS.

5. Confidential contracts shall be and remain confidential, and, except as allowed by this Protective Order, may not be disclosed or communicated, nor used for any purpose other than this litigation.

5-6. Confidential contracts may be used in depositions by the Plaintiffs in this matter, subject to certain protections. Any deposition transcript involving a confidential contract is subject to the same protections for confidential contracts as delineated in this deposition. Any deposition transcript involving a confidential contract must be filed under seal if it is filed with the Court. No deposition transcript may be used outside of the scope of this litigation. To the extent the attorney for any Co-Defendant wishes to attend a deposition involving a confidential contract said the contracts used in the deposition will be marked "Confidential" and will be for attorney's eyes only and shall not be provided to any of the co-defendants in this matter directly.

6-7. All prior terms of the previous protect order apply to confidential contracts, which the express expansion of protections in that no other defendant in this action shall be entitled to review the confidential contracts of QLS.

Approved as to form and content by:

SMITH LARSEN & WIXOM

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Katie M. Weber

By: _____

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San Diego, California 92101

Shawn Christopher
Nevada Bar No. 6252
CHRISTOPHER LEGAL GROUP
2520 Saint Rose Parkway, Suite 316
Henderson, Nevada 89074

Attorneys for Plaintiffs (except Antoinette
Gill)

ORDER

IT IS SO ORDERED

DATED this _____ day of _____, 2017

DISCOVERY COMMISSIONER

EXHIBIT “B”

In the Matter Of:

Benko, et al. vs. Quality Loan Servicing Corporation, et al.

JEFFREY BENKO

November 30, 2016

Job Number: 355918-B

1 124 W. Va. 373]; *see also generally id.* § 51.

2 QLS's motion for summary judgment does not reference or address one of the
3 cornerstones of the Law of Restitution, as reflected in Section 3 of the Restatement of
4 Restitution, Third, which prohibits "Wrongful Gain." The first comment to Section 3
5 states: "The present section marks one of the cornerstones of the law of restitution
6 and unjust enrichment. The general principle it identifies is the one underlying the
7 'disgorgement' remedies in restitution, whereby a claimant potentially recovers more
8 than a provable loss so that the defendant may be stripped of a wrongful gain."
9 *Restatement of Restitution, Third*, § 3, and cmt. a [emphasis added]. In other words,
10 under Restitution, a knowing wrongdoer like QLS here cannot escape full liability
11 and the disgorgement of illicit profit simply because the cash was not taken directly
12 out of the hand of the plaintiff victim (although here, many of the Plaintiffs' homes
13 were taken and sold and the resulting cash delivered to Defendants, which forwarded
14 the cash to their creditor-clients and were paid fees therefor). *See Kossian v.*
15 *American Nat. Ins. Co.* (1967) 254 Cal.2d 647; *Guy Tel & Tel. Co., supra*. Comment
16 (c) to Section 3 of the Restatement of Restitution, Third, states as follows in pertinent
17 part:

18 (c) *Recovery Exceeding the Claimant's Loss*

19 When the defendant has acted in conscious disregard of the claimant's rights,
20 the whole of the resulting gain is treated as unjust enrichment, even though the
21 defendant's gain may exceed both (i) the measurable injury to the claimant,
22 and (ii) the reasonable value of a license authorizing the defendant's conduct.
23 Restitution from a conscious wrongdoer may therefore yield a recovery that is
24 profitable to the claimant plaintiff—a result that is generally not permitted
25 when the restitution claim is against an innocent recipient."

26 *Restatement of Restitution, Third*, § 3, and cmt. c.

27 Section 43 of the *Restatement of Restitution, Third* deals with the availability
28 of restitution in the context of fiduciary or confidential relationships. Section 43
makes clear that true fiduciaries and those—such as QLS—who are not technically
fiduciaries but occupy a relationship of trust or confidence may be required under the
law of restitution to disgorge illicit profits or benefits obtained by the fiduciary or

1 person in a position of trust and confidence. Thus, as Section 43 explains:

2 [g]ain resulting from breach of fiduciary duty is a prime example of the unjust
3 enrichment that the law of restitution condemns, and one function of the rule of
4 this section is to exclude the possibility of profit from this kind of wrongdoing.
5 An equally fundamental goal of liability under § 43, and one which may be
6 stated without reference to unjust enrichment, is to enforce by prophylaxis the
7 special duties of the fiduciary. Restitution offers a further safeguard, beyond
8 the fiduciary's liability to make good any injury, protecting the reliance of the
9 beneficiary on the fiduciary's disinterested conduct. To this end, a liability in
10 restitution by the rule of this section does not depend on proof either that the
11 claimant has sustained quantifiable economic injury or that the defendant has
12 earned a net profit from the transaction. It is enough that the fiduciary has
13 acquired some asset or opportunity by a transaction in which the fiduciary was
14 required to act solely in the interest of another.
15 [emphasis added].

16 Although, as explained below and in Plaintiffs' prior briefing, non-judicial
17 foreclosure trustees in Nevada are not true fiduciaries of the parties to a deed of trust,
18 they do owe a duty of impartiality and good faith to those parties, rendering them
19 fiduciaries for the purposes of Section 43. *See* NRS 107.028(6); *see also Restatement*
20 *of Restitution, Third*, § 43 [noting "[u]nless the context requires otherwise, the term
21 'fiduciary' is used in the following Comments to designate both technical fiduciaries
22 and others owing equivalent duties in a particular transaction; while the term
23 'beneficiary' designates a person to whom any such duties are owed" and describing
24 the consequences, including disgorgement, that may follow from such fiduciaries
25 breach of their duties to their beneficiaries].

26 QLS's continued reliance on *Unionamerica Mortgage & Equity Trust v.*
27 *McDonald* (1981) 97 Nev. 210, 626 P.2d 1272, is similarly misplaced. The per
28 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

1 governing lease provided for the removal of the sign upon breach of the lease. *Id.*
2 Furthermore, there was no evidence supporting a finding that there had been an
3 assumption of the lease, and the plaintiff had been informed that the sign was of no
4 interest to the defendant. *Id.* Under such circumstances, the plaintiff could not
5 recover damages for unjust enrichment, since no unjust enrichment had occurred. *Id.*

6
7 **B. The Deeds of Trust Are Irrelevant And Void As Authority To**
8 **Commit Illegal Acts, So Unjust Enrichment Applies**

9 QLS's continued reliance on the deeds of trust as authorization for its
10 misconduct is equally misplaced. For instance, QLS was unjustly enriched by its
11 receipt of money (no less than \$19,000,000.00 in fees from its clients and
12 \$86,000,000.00 in costs from 2007 through 2012 for its services in Nevada alone;
13 SS#6) for conducting unlicensed collection agency activities, which are illegal under
14 Nevada law. Neither the deeds of trust, nor any contract between private parties, can
15 authorize or otherwise justify the commission of illegal acts, and the receipt of illicit
16 compensation therefor. The issue is not simply the non-judicial foreclosure process
17 that may be referenced in a deed of trust. QLS needed a license as a collection agency
18 from the FID. And, the governing issue here concerns unlicensed claim collection
19 agency activities described in the evidence, which are illegal acts under applicable
20 Nevada law, as explained in Plaintiffs' previous papers and herein. QLS's argument
21 that some provision in a deed of trust—to which it was not a party or a beneficiary—
22 allowed it to conduct unlicensed claim collection agency activities in contravention
23 of Nevada law cannot stand; any such provision in a deed of trust is void as a matter
24 of public policy. *See Magill v. Lewis* (1958) 74 Nev. 381, 333 P.2d 717.

25 According to law, where the subject contract is unenforceable, the cause of
26 action for unjust enrichment is valid. *Id.* Under governing Nevada Supreme Court
27 authority, the deed of trust cannot authorize defendants to commit illegal acts, and
28 any such contract stipulation is unenforceable such that plaintiffs' unjust enrichment

1 cause of action must be sustained. *See Magill, supra*, 74 Nev. 381, 333 P.2d 717;
2 *Loomis v. Lange Fin. Corp* (1993) 109 Nev. 1121, 865 P.2d 1161. As a matter of
3 strong Nevada public policy, defendants collectively cannot be allowed to enrich
4 themselves with perhaps as much as \$80 million dollars in fees for conducting illegal
5 acts against the Plaintiffs, *i.e.*, unlicensed claim collection agency activities. *See*
6 *Loomis, supra*, 109 Nev. 1121, 865 P.2d 1161; *see also Webb v. Clark County School*
7 *Dist.* (2009) 125 Nev. 611, 218 P. 3d 1239; *Vincent v. Santa Cruz* (1982) 98 Nev.
8 338, 647 P. 2d 379.

9 **IX. WHETHER QLS'S CONDUCT WAS KNOWING IS A MATERIAL FACTUAL**
10 **DISPUTE**

11 **A. QLS Misinterprets the Language and Requirements of NRS**
12 **598.0923(1)**

13 QLS, as the Defendants have in the past, mistakenly tries to mischaracterize
14 Plaintiffs' burden by claiming that Plaintiffs must show that QLS conducted business
15 knowing that doing so amounted to a violation of Nevada law. This is not what NRS
16 598.0923 states. QLS recognizes in its opposition papers to Plaintiffs' Motion for
17 Partial Summary Judgment, some provisions of Nevada's DTPA do indeed impose
18 liability for negligence or knowingly violating the laws; others are effectively strict
19 liability provisions. *See* QLS Opposition, at 16 [discussing NRS 598.0918(1) and
20 NRS 598.092(9)]. QLS's suggestions to the contrary as to NRS 598.0923(1) are
21 simply wrong.

22 Turning to the provision of the DTPA at issue here, NRS 598.0923(1) states in
23 pertinent part that a "person engages in a 'deceptive trade practice' when in the
24 course of his or her business or occupation he or she knowingly . . . [c]onducts the
25 business or occupation without all required state, county or city licenses." [emphasis
26 added]. The plain language of this statute makes clear that "knowingly" modifies
27 "conducts" the business, such that Plaintiffs must only show that QLS knowingly
28 conducted the business itself (but not that QLS knew it was doing so in violation of

1 Nevada law). This is not, as QLS misleadingly suggests, Plaintiffs' attempt to read
2 the intent requirement reflected in "knowingly" out of the statute altogether, but
3 simply the interpretation required by the statute's words and grammatical structure.

4 In order to construe the proper definition of the word "knowingly," as used in
5 NRS 598.0923, the better practice is to look to the definition assigned to that term by
6 the Nevada legislature in NRS 281A.115 and NRS 624.024 instead of looking further
7 afield.⁵ In these provisions, the Nevada legislature gave the following definition:

8 "Knowingly" imports a knowledge that the facts exist which constitute the act or
9 omission, and does not require knowledge of the prohibition against the act or
10 omission. Knowledge of any particular fact may be inferred from the knowledge of
11 such other facts as should put an ordinary prudent person upon inquiry." NRS
12 281A.115, NRS 624.024 [emphasis added]. QLS's interpretation of NRS
13 598.0923(1) would not be consistent with this definition because QLS seemingly
14 would have NRS 598.0923(1) require proof of knowledge both of the facts that
15 constitute the act or omission as well as of the prohibition against the act or omission.
16 Had the Nevada legislature wished this to be the law, it could have revised the
17 language of NRS 598.0923(1) so that it prohibited knowingly violating Nevada law
18 by conducting the business or occupation while lacking the required licenses to do so.

19 The single trial court order from a federal district court in Nevada regarding
20 NRS 598.0923 also does not assist QLS here. There, the federal district court dealt
21

22 ⁵ Although QLS cites several decisions from other jurisdictions and Black's Law
23 Dictionary, it omits several pertinent provisions of Nevada law, including NRS
24 624.024 and NRS 218A.115, cited by Plaintiffs here and in the past. QLS's reliance
25 on a general definition of the term from the 1990 edition of Black's Law Dictionary
26 and references to deceptive trade practices laws from other jurisdictions are
27 unpersuasive, especially as QLS does not even attempt to show that Nevada statutory
28 scheme for its DTPA is similar to those in Texas, Alabama, or Colorado that are
discussed in the cases QLS cites. QLS does not demonstrate, for instance, that
Nevada's DTPA provides an "absolute defense" to actions which result from
negligence or an honest mistake" (even if Colorado's Consumer Protection Act
perhaps does). See QLS Motion, at 20 [quoting *Crowe v. Tull* (Colo. 2006) 126 P.3d
196]. These references are thus not much assistance in determining how Nevada
defines "knowingly" as used in NRS 598.0923.

1 with a different provision of NRS 598.0923, which states that a “person engages in a
2 ‘deceptive trade practice’ when in the course of his business or occupation he
3 knowingly: . . . [v]iolates a state or federal statute or regulation relating to the sale or
4 lease of good or services.” *Sobel v. Hertz Corp.* (D. Nev. 2010) 698 F.Supp.2d 1218,
5 1230 [quoting NRS 598.0923(3)][alterations in original], *affirmed in part, reversed*
6 *in part, and vacated in part by Sobel v. Hertz Corp.* (9th Cir. Jan. 5, 2017) 2017 U.S.
7 App. LEXIS 217. Although the trial court in *Sobel* did not address the definition of
8 “knowingly” as used in NRS 598.0923(3), it concluded that it required the plaintiff to
9 establish that the defendant “intentionally circumvented the requirements” of a
10 statute or “knowingly violated” a law. *Id.* Given the pertinent language of NRS
11 598.0923(3)—*i.e.*, the knowingly violated requirement—it was not unreasonable for
12 the trial court to reach that conclusion, although the better reasoned approach would
13 have been for the trial court to require only that the acts or omissions constituting the
14 violation of law be knowingly done or omitted (and not that the defendant also know
15 that it was thereby violating a law). *See* NRS 281A.115, NRS 624.024. In contrast, as
16 explained above, “knowingly” as used in NRS 598.0923(1) modifies “conducts the
17 business or occupation,” which does not require knowledge that all required licenses
18 were not obtained.

19 As noted above, QLS is wrong to seemingly suggest that the Nevada
20 legislature has always required some wrongful intent for there to be a violation of the
21 DTPA: some provisions of the DTPA do not require any wrongful intent at all by
22 expressly omitting the word “knowingly” from the statutory language. Moreover, the
23 Nevada Supreme Court has already ruled that “[s]tatutory offenses that sound in
24 fraud [such as Nevada’s NRS 598.0923(2) at issue there] are separate and distinct
25 from common law fraud.” *Betsinger v. D.R. Horton, Inc.* (2010), 232 P.3d 433, 436
26 [emphasis added]. In reaching this conclusion, the Nevada Supreme Court expressly
27 noted with approval a ruling from the Arizona Court of Appeals construing Arizona’s
28

1 consumer protection statute. *Id.* at 435-436. There, the Arizona Court of Appeals had
2 recognized that the “purpose of the consumer protection statute was to provide
3 consumers with a cause of action that was easier to establish than common law fraud,
4 and therefore, statutory fraud must only be proven by a preponderance of the
5 evidence. *Id.* [citing *Dunlap v. Jimmy GMC of Tucson, Inc.* (Ariz. Ct. App. 1983) 136
6 Ariz. 338, 666 P.2d 83, 88-89][emphasis added]. Although, as Plaintiffs recognize,
7 NRS 598.0923(1) by its language does have an intent requirement, it is improper for
8 QLS to assert, without adequate authority or analysis, that the intent required must be
9 akin to that demanded for common law fraud, because that would ignore the fact that
10 statutes such as the DTPA are intended to make it easier for victims of consumer
11 fraud to establish claims than if they were limited to causes of action for common law
12 fraud.

13 **B. Plaintiffs Have Demonstrated that QLS Knowingly Conducted**
14 **Business without Required State License**

15 **1. QLS Cannot Defeat Summary Judgment through Self-**
16 **Serving Testimony on Subjective Element**

17 When the only evidence presented of factual issues is self-serving and
18 uncorroborated testimony, the Court is not bound to find the issues or disputes to be
19 “genuine” for purposes of NRCPP 56. *See DuBois v. Ass’n of Apartment Owners of*
20 *2987 Kalakaua* (9th Cir. 2006) 453 F.3d 1175, 1180. Thus, while the “summary
21 judgment procedure is not available to test and resolve the credibility of opposing
22 witnesses to a fact issue, . . . it may appropriately be invoked to defeat a lie from the
23 mouth of a party against whom the judgment is sought, when that lie is claimed to be
24 the source of a ‘genuine’ issue of fact for trial.” *Aldabe v. Adams* (1965) 81 Nev. 280,
25 282, 402 P.2d 34, 35 [overruled on other grounds by *Siragusa v. Brown* (1998) 114
26 Nev. 1384, 1392-93, 971 P.2d 801, 806-07][citing *Short v. Hotel Riviera, Inc.* (1963)
27 79 Nev. 94, 374 P.2d 979 and *Schoener v. Waltman* (1954) 125 Cal.App.2d 182, 270
28 P.2d 543][emphasis added]; *see also Luciano v. St. Mary’s Preferred Health Ins. Co.*

(2016) 2016 Nev. Unpub. LEXIS 183, at *6-7 [“contradictory statements may be used against a party on a summary judgment motion when no reasonable justification exists to explain the contradiction”][citing *Aldabe, supra*, 81 Nev. at 282, 402 P.2d at 35 and *Nutton v. Sunset Station, Inc.* (Ct. App. 2015) 131 Nev. Adv. Op. 34, 357 P.3d 966, 976]; *Nutton, supra*, 131 Nev. Adv. Op. at 30-31, 357 P.3d at 976 [“The mere fact that a party seeks to proffer apparently inconsistent testimony or assert apparently inconsistent positions at some point during the course of litigation does not, by itself, justify the granting of summary judgment against that party. The general rule is that a party cannot defeat summary judgment by contradicting itself in response to an already-pending NRCP 56 motion.”][citing *Aldabe, supra*, 81 Nev. at 284-85, 402 P.2d at 36-37 and *Cleveland v. Policy Mgmt. Sys. Corp.* (1999) 526 U.S. 795, 806-07][emphasis added]; *Sawyer v. Sugarless Shops* (1990) 106 Nev. 265, 269, 792 P.2d 14, 16 [“The *Aldabe* court properly held that one cannot modify his or her own statements in an effort to create a genuine issue and to avoid summary judgment.”][citing *Aldabe, supra*, 81 Nev. at 282, 402 P.2d at 35].

Notably, QLS does not even attempt to show that QLS did not in fact know or believe that it was required to have a collection agency license under Nevada law. Instead, relying on decisions from federal trial court orders—that Plaintiffs have shown to be unpersuasive in Plaintiffs’ related prior prior—the decision of Judge Williams, and a recent decision of the Ninth Circuit, QLS asserts that Plaintiffs could not show that QLS knew that it was required to be licensed as a collection agency. Although that is, as explained herein, not what Plaintiffs are required to show, the evidence shows that QLS did in fact know that it was a debt collector, and therefore is presumed to have known that it was required to obtain a collection agency license.

2. The Evidence, including QLS’s Admissions, Shows QLS Knew It Was a Debt Collector

As shown above and in Plaintiffs’ prior briefing on this issue, Defendants “cherry-pick” and tweak and twist limited allegations of the claim collection acts

1 alleged in the Third Amended Complaint, while ignoring other key allegations AND
2 ALL THE EVIDENCE SUBMITTED IN THE RECORD. The Nevada Supreme
3 Court will not do that. QLS ignores all the written and sworn admissions by
4 Defendants, including QLS, saying and showing: "WE ARE DEBT COLLECTORS
5 AND SEEKING TO COLLECT A DEBT AND WILL USE ALL INFORMATION
6 FOR THAT PURPOSE," or words to that effect. (*See, e.g.*, SS#14-15, 24-25, 27-28,
7 50, 53.) The testimony of QLS's own employees and QLS's own documents show
8 that QLS admitted it was a debt collector in its communications with others,
9 including Nevada debtors. (*Id.*)

10 Judge Scann openly expressed her belief that this alone created a fact issue
11 precluding even summary judgment, and many appellate courts agree. Such
12 admissions are undoubtedly evidence that must be taken into account in determining
13 whether, under the circumstances, an entity is a debt collector under the FDCPA (or
14 collection agencies under Nevada law). *See, e.g., Gburek v. Litton Loan Servicing LP*
15 (7th Cir. 2010) 614 F.3d 380, 386 n. 3 [reversing dismissal in a class action and
16 noting that admission "does not automatically trigger the protections of the FDCPA,
17 just as the absence of such language does not have dispositive
18 significance."][emphasis added]; *Hart v. FCI Lender Servs.* (2d Cir. 2015) 797 F.3d
19 219, 226-227 [considering importance of including such language in a letter to a
20 debtor and noting that "[w]e see no reason why we should not take it [i.e., a letter
21 using such language] at its word"]; *McLaughlin v. Phelan Hallinan & Schmieg, LLP*
22 (3d Cir. 2014) 756 F.3d 240, 246 ["It is reasonable to infer that an entity that
23 identifies itself as a debt collector, lays out the amount of the debt, and explains how
24 to obtain current payoff quotes has engaged in a communication related to collecting
25 a debt."][emphasis added]; *Yeager v. Ocwen Loan Servicing, LLC*, 2015 U.S. Dist.
26 LEXIS 94149, at *25-27 n.19 (M.D. Ala. July 15, 2015) [denying motion to dismiss
27 and adopting *Tocco v. Real Time Resolutions, Inc.*, 48 F. Supp. 3d 535 (S.D.N.Y.

1 Aug. 13, 2014) approach in rejecting argument that admission was immaterial to
2 whether defendant was a debt collector under the FDCPA as alleged]; *Crippen v.*
3 *Stites*, 346 B.R. 115 (E.D. Bkr. Pa. July 25, 2006) [denying motion to dismiss where
4 allegations, including defendant's admission, "sufficiently plead[]" defendant is a
5 "'debt collector' as defined under the FDCPA"]; *Estes v. Love, Beal & Nixon, P.C.*,
6 2015 U.S. Dist. LEXIS 96715 (N.D. Okl. July 24, 2015) [denying summary
7 judgment on FDCPA claim in part because admission in connection with other
8 evidence supported inference that defendant was a debt collector under the FDCPA].
9 In *Crippen*, the court noted that "[s]ignificantly for present purposes, this warning
10 [*i.e.*, admission] is generally required only of 'debt collectors.'" *Crippen*, 346 B.R. at
11 120 [emphasis in original]. The court concluded that it was "reasonable to infer [from
12 the defendant's decision to make the admission] that [the defendant] is a 'debt
13 collector'" under the FDCPA. *Id.* The *Crippen* court, denying the motion to dismiss,
14 therefore ruled that the complaint adequately pled that the defendant was a debt
15 collector. *Id.* Use of such language is thus not dispositive standing alone, but it is not,
16 as Defendants have suggested in the past, immaterial either. It is simply evidence that
17 should be considered in determining whether the user of the language qualifies as a
18 debt collector under the FDCPA.

19 QLS knew at least as early as the date it received the cease-and-desist order
20 from the FID that it needed a collection agency license from the FID to continue its
21 collection agency activities in the State of Nevada (even if carried out under the guise
22 of being a foreclosure trustee). It is indisputable that QLS received this order prior to
23 the hearing before the Commissioner of the FID on December 13, 2010. *See Quality*
24 *Loan Service*, at *1-2. QLS was thus on notice—*i.e.*, knew—that the FID contended
25 it needed a collection agency license from the FID to conduct its business activities in
26 Nevada at least as early as before December 2010. QLS failed to obtain such a
27 license, however, until after the relevant period here. As explained above, Judge
28

1 Williams' erroneous-----and non-binding-----opinion in *Quality Loan Service* was not
2 issued until well after the relevant period here (in January 2013), so it cannot serve as
3 a basis for QLS to claim that it did not know it was required to be licensed as a
4 collection agency (even if QLS's incorrect interpretation of "knowingly" in NRS
5 598.0923(1) were adopted by the Court).

6 Moreover, QLS's own witnesses testified that QLS's own lawyers concluded
7 that QLS must comply with debt collection laws (*i.e.*, QLS is a debt collector).
8 (SS#15.) QLS legal counsel also determined that QLS must disclose and admit to
9 borrowers it is a debt collector, for many years. (SS#14.) That statement by QLS was
10 not a false statement. (*Id.*) QLS ultimately obtained its collection agency license from
11 the FID in 2012, and has maintained it ever since. (SS#16.) It was QLS's regular
12 practice, policy, and procedure in Nevada during the relevant period to send debt
13 validation notices to Nevadan debtors in which QLS admitted that it was a debt
14 collector; debt collectors are required to send these notices under the FDCPA. (SS#
15 SS#14-15, 24-25, 27-28, 50, 53.) QLS trains its employees for phone
16 communications with debtors. (SS#12.) This is evidence showing, both directly and
17 indirectly, that QLS knowingly operated its business in Nevada during the relevant
18 period, and was aware of—and ignored—the licensing requirement imposed on
19 collection agencies by Nevada law.

20 There is thus, at a minimum, a genuine and material dispute of fact as to
21 whether QLS knowingly conducted its collection agency business without the
22 required state License. Summary judgment must be denied on the merits for that
23 reason alone.

24
25 **X. QLS DID NOT ACT AS THE IMPARTIAL, NEUTRAL TRUSTEE REQUIRED BY**
26 **NEVADA LAW; QLS IS NOT "PROTECTED" BY NRS 107**
27
28

1 In their prior briefing, including their supplemental papers filed March 28, 2017,
2 Plaintiffs have addressed at length many of Defendants' misstatements regarding the
3 role of non-judicial foreclosure trustees under Nevada law, and what they are
4 authorized by the Nevada legislature to do in their capacity as trustees. Given QLS's
5 incorporation of its prior briefing by reference, Plaintiffs' related briefing, including
6 those filed on March 28, 2017, and April 11, 2017, and April 21, 2017, should be
7 considered by the Court in ruling on QLS's motion for summary judgment. For
8 reasons adequately explained and supported in Plaintiffs' prior briefing, QLS's
9 motion should be denied in its entirety.

10 The proof presented by Plaintiffs in support of this opposition brief also
11 demonstrates the ways in which QLS's business activities in the State of Nevada
12 during the relevant period went well beyond what is required—or even authorized—
13 for non-judicial foreclosure trustees. By way of example, QLS made telephone
14 calls—some of them harassing—to the named Plaintiffs during the relevant period.
15 (SS#1-3, 12-13, 41, 67.) QLS trains its employees for phone communications with
16 debtors, and regularly made such calls—including outgoing calls—to Nevada debtors
17 during the relevant period. (SS#12-13.) QLS would communicate with Nevada
18 debtors, including in writing, regarding alternatives to foreclosure available to them.
19 (SS#21, 60-63, 67.) These alternatives would include Nevada debtors paying money
20 to bring their defaulted loans current, (and also loan modification deals). (*Id.*) QLS
21 passed all money collected as part of these alternatives to its lender-clients. (SS#21.)
22 QLS's own witness admitted that the options presented in these solicitation letters are
23 non-foreclosure collection services performed by QLS. (SS#21.) QLS admits to
24 engaging in both collection and foreclosure activity (which was not a false statement,
25 according to QLS's own witness). (SS#24-25, 93.) QLS had contracts with various
26 lending clients that determined the scope of services to be provided by QLS,
27 including collection of money for pay-off or reinstatement of defaulted loans.

1 (SS#30-31.) As reflected in documents produced by QLS in discovery, it was the
2 practice, policy, and procedure of QLS during the relevant period in Nevada to send
3 Nevada debtors whose files QLS was handling reinstatement or payoff letters: the
4 amounts listed by QLS on its payoff or reinstatement letters—including anticipated
5 foreclosure costs or attorney or trustee fees—would have to be paid by borrowers to
6 reinstate or payoff their defaulted loans. (SS#50-51, 56-57.) These amounts would
7 include the trustee’s fees charged by QLS. (*Id.*)

8 As reflected in documents produced by QLS in discovery, it was the practice,
9 policy, and procedure of QLS during the relevant period in Nevada to negotiate,
10 document, and execute forbearance agreements with Nevada debtors on behalf of
11 QLS’ creditor-clients. (SS#58.) QLS had and used generic documents or templates
12 for this purpose, and generic letters enclosing the forbearance agreements. (*Id.*)
13 Pursuant to these forbearance agreements and cover letters, down payments under the
14 forbearance agreements were to be made to QLS (not the lender), and were to be
15 made by certified cashier’s check. (*Id.*) As reflected in documents produced by QLS
16 in discovery, it was the practice, policy, and procedure of QLS during the relevant
17 period in Nevada to send Nevada debtors self-entitled notices regarding alternatives
18 to foreclosure. (SS#60-63.) These notices would repeatedly request that Nevada
19 debtors call QLS (not the lender) so that QLS could provide information regarding
20 alternative to foreclosure. (*Id.*) As reflected in the notices, QLS had an entire
21 department (“The Home Retention Department”) dedicated to this service. (*Id.*)
22 These notices would also ask Nevada debtors to call QLS to obtain the “exact figures
23 as to the amounts needed to cure the default or pay the loan in full”; as reflected in
24 these notices, QLS had an entire department (“Payoff and Reinstatement
25 Department”) dedicated to this service. (*Id.*) The notices also specifically admitted in
26 bold type that **“THIS NOTICE IS SENT FOR THE PURPOSE OF**
27 **COLLECTING A DEBT. THIS FIRM IS ATTEMPTING TO COLLECT A**
28

1 DEBT ON BEHALF OF THE HOLDER AND OWNER OF THE NOTE. ANY
2 INFORMATION OBTAINED BY OR PROVIDED TO THIS FIRM OR THE
3 CREDITOR WILL BE USED FOR THAT PURPOSE.” (*Id.*)

4 As reflected in documents produced by QLS in discovery, it was the practice,
5 policy, and procedure of QLS during the relevant period in Nevada to receive
6 detailed instructions from its creditor-clients regarding bidding by QLS at the non-
7 judicial foreclosure sales that QLS conducted. (SS#65.) These instructions would
8 state, among other things, the market value of the properties, the total debt amount,
9 the final bid amount, and instructions regarding bidding. (*Id.*) As to Plaintiff Benko,
10 QLS was expressly instructed by its client to add its fees and costs to the total debt
11 amount and make a total debt bid at the non-judicial foreclosure sale (including QLS’
12 fees and costs). (*Id.*) Similar instructions were given to QLS as to the Plaintiff
13 Scintas. (*Id.*) As to Plaintiff Hjorth, QLS was instructed to bid a portion of the total
14 debt unless there was “competitive bidding” at the sale, in which case QLS was to
15 “continue bidding up to total debt amount” and was to add “all unpaid fees and costs
16 that will be billed” by QLS to the creditor-client. (*Id.*) Similar instructions were given
17 to QLS as to Plaintiffs Ana and Camillo Martinez. (*Id.*)

18 These are activities by QLS—supported by Plaintiffs’ proof—showing that QLS
19 did in fact far more than the narrow activities that it claimed it engaged in when
20 before Judge Williams, and described in QLS’s briefing regarding the purported
21 protections of NRS Chapter 107.

22 XI. QLS’S RELIANCE ON NRS 80.015 IS MISPLACED

23 NRS 80.015 provides, in pertinent part that, “[f]or the purposes of this chapter
24 [i.e., NRS 80], the following activities do not constitute doing business in this state . .
25 . [s]ecuring or collecting debts or enforcing mortgages and security interests in
26 property securing the debts.” [emphasis added]. NRS 80.015 goes on to further
27

1 expressly limit the application of NRS 80.015 for purposes other than NRS 80, by
2 stating:

3 [t]he fact that a person is not doing business in this state within the meaning of
4 this section . . . (a) [d]oes not affect the determination of whether any court,
5 administrative agency or regulatory body in this State may exercise personal
6 jurisdiction over the person in any civil action, criminal action, administrative
7 proceeding or regulatory proceeding; and (b) [e]xcept as otherwise provided in
8 subsection 3, does not affect the applicability of any other provision of law
9 with respect to the person and may not be offered as a defense or introduced in
10 evidence in any civil action, criminal action, administrative proceeding or
11 regulatory proceeding to prove that the person is not doing business in this
12 State, including, without limitation, any civil action, criminal action,
13 administrative proceeding or regulatory proceeding involving an alleged
14 violation of chapter 597, 598 or 598A of NRS.
15 [emphasis added].

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

27 Given the express language of NRS 80.015, any argument that Defendants are
28 exempt from being licensed as a collection agency by NRS 80.015 because they are
not doing business in the State of Nevada is simply wrong, because the defense is
expressly disallowed by Nevada law. The express language of NRS 80.015 limits this
definition of "doing business in the state" to the application of NRS Chapter 80 only.
NRS 80.015(4)(b) expressly prohibits Defendants from using NRS 80.015 as a

1 defense in any civil action, including specifically a civil action for the violation of
2 NRS Chapter 598, which is the cornerstone of this lawsuit. Given the explicit
3 provisions of NRS 80.015, it is improper and misguided for Defendants—and Judge
4 Williams—to rely on this statute as a defense or to even introduce such information
5 into the record.

6 The Nevada Supreme Court, in considering whether a party was doing
7 business in Nevada for purposes of Nevada’s employment agency licensure statutes
8 (found in NRS 611.030), expressly noted that Nevada’s “foreign corporations statutes
9 specifically disavow their applicability to ‘any other provision of law’” (such as NRS
10 611.030). *RTTC Communs., LLC v. The Saratoga Flier, Inc.* (2005) 121 Nev. 34, 40,
11 110 P.3d 24, 28 [quoting NRS 80.015(4)(b)][emphasis added]. The Court went on to
12 note that “the two-prong test utilized” by the Nevada Supreme Court in evaluating
13 “doing business” for purposes of NRS 80.015 “is instructive in determining whether
14 Pinsker was ‘doing business in this state’ for the employment agency statutes at
15 issue.” *Id.* [referring to *Sierra Glass & Mirror v. Viking Industries* (1991) 107 Nev.
16 119, 80 P.2d 512][emphasis added]. If Defendants’—and Judge Williams’—
17 interpretation of NRS 80.015’s application—in defiance of the express language of
18 NRS 80.015(4)(b)—were correct, however, the test used for “doing business” under
19 NRS 80.015 would be not only instructive, but conclusive (which the Nevada
20 Supreme Court expressly recognized it was not). According to the Nevada Supreme
21 Court, NRS 80.015 applies only to NRS Chapter 80.

22 Clearly, by any logic, NRS 80.015(4)(b) and the Nevada Supreme Court’s
23 interpretation of it disposes of Judge Williams’ misinterpretation of NRS 80.015. The
24 express language of subsection (4)(b) directly reflects the intent of the Nevada
25 legislature to apply the deceptive trade practices law (and all other laws outside NRS
26 Chapter 80) and remedies to unlicensed foreign collection agencies that are involved
27 in conducting a business “collecting debts or enforcing mortgages and security
28

1 interest in property securing the debts,” in Nevada. [emphasis added]. No other
2 intended purpose of subsection (4)(b) is rational. It is dead on point, and applies
3 directly to the business Defendants conduct for their lender-clients.

4 Otherwise, deceptive trade practices committed in Nevada by foreign, rogue
5 companies collecting debts and enforcing mortgages and security interests in
6 property, with or without a license, would be condoned and expressly authorized by
7 the Nevada legislature. That is an incomprehensible conclusion. Stated another way,
8 it is inconceivable that the Nevada legislature would have expressly “exempted” and
9 allowed fraud, deception, unlicensed activities, deceit, misappropriation and breach
10 of duty by foreign entities in connection with acquiring notes, indebtedness,
11 mortgages and security interest in real or personal property in Nevada, or in
12 employing such deceptive practices in the conduct of securing or collection debts or
13 enforcing mortgages and security interest in property securing the debts. Following
14 this misinterpretation of NRS 80.015, all foreign businesses “collecting debts and
15 enforcing mortgages,” which are excluded from the definition of transacting business
16 under NRS 80.015(1)(h), would also be exempt from the entirety of NRS Chapter
17 649 related to foreign collection agencies and thus NRS 649 would be void as to
18 rogue foreign entities, like Defendants here. It makes no sense.

19 As reflected in the Order, Judge Williams did not consider the application of NRS
20 80.015(4)(b) and its conclusive demolition of any NRS 80.015(1) defense. *See*
21 *Quality Loan Service, supra*, at *2. Moreover, two of the cases Judge Williams relied
22 on for the proposition that the exercise of the power of sale by a trustee under NRS
23 107 is “not doing business” in Nevada had nothing to do with whether trustees were
24 deemed to be doing business in Nevada or NRS 80.015 (but, instead, concerned
25 application of the “one-action rule”). *See id.*; *McMillan v. United Mortgage Co.*
26 (1966) 82 Nev. 117, 412 P.2d 604; *Bonicamp v. Vazquez* (2004) 120 Nev. 377, 91
27 P.3d 584. The federal trial order cited by Judge Williams did deal with NRS 80.015,
28

1 but reflected the same cursory analysis and incorrect conclusion of Nevada law
2 reflected in the federal trial orders cited by Defendants in the past and discussed in
3 Plaintiffs' briefs in support of their Motion for Partial Summary Judgment. *See*
4 *Quality Loan Service*, at *2; *Bruce v. Homefield Fin., Inc.* (D. Nev. Sept. 23, 2011)
5 2011 U.S. Dist. LEXIS 110243, at *6-7. It failed to consider or address NRS
6 80.015(4)(b) at all, rendering its conclusions unpersuasive.

7 The federal trial court in *Bruce* also did not, despite Judge Williams' suggestion to
8 the contrary, address whether the exercise of the power of sale under a deed of trust is
9 the collection or solicitation of payment of a claim. *See Bruce, supra*, 2011 U.S. Dist.
10 LEXIS 110243 [reflecting no discussion of whether exercise of the power of sale
11 under a deed of trust is collection or solicitation of payment of a claim]. Thus, as
12 reflected on the face of the Order itself, most of the various conclusory statements of
13 law therein are wholly unsupported by any authority—whether statutory or case law
14 or otherwise—at all; the few conclusions that are ostensibly supported by reference
15 to authority are, in fact, as discussed above, not actually supported by the handful of
16 cases cited.

17 18 XII. CONCLUSION

19 For the reasons stated above, Defendant QLS's Motion for Summary Judgment
20 should be denied in its entirety on the merits. Alternatively, pursuant to NRCP 56(f),
21 the Court should deny QLS's motion and allow a full range of discovery from QLS
22 to proceed, including, without limitation, the discovery necessary to defeat summary
23 judgment after the discovery needed to properly adjudicate Plaintiffs' motions for
24 class certification as to each Defendant.

1 DATED: April 28, 2017

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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
PLAINTIFFS' OPPOSITION TO
DEFENDANT QUALITY LOAN
SERVICE CORPORATION'S
MOTION FOR SUMMARY
JUDGMENT**

Jury Trial Demanded

Hearing Date: May 16, 2017

Hearing Time: 9:00 a.m.

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

15 Defendants.

16 Plaintiffs Jeffrey Benko, Susan Hjorth, Camilo & Ana Martinez, Frank &
17 Jacqueline Scinta and Patricia Tagliamonte (Segura) (collectively "Plaintiffs" here)
18 respectfully submits the following Separate Statement in Support of their Opposition
19 to Defendant QLS's (or "Defendant") Summary Judgment Motion.

No.	Moving Party's Undisputed Material Facts and Inferences For Plaintiffs	Supporting Evidence
1.	QLS made harassing collection phone calls to Plaintiff Jeffrey Benko.	Exhibit "B" (Jeffrey Benko Deposition), at pp. 46-52, 54.
2.	QLS made harassing collection phone calls to Plaintiff Susan Hjorth.	Exhibit "C" (Susan Hjorth Deposition), at pp. 50-51, 66-70.
3.	QLS made harassing collection phone calls to Plaintiffs Frank & Jacqueline Scinta.	Exhibit "D" (Frank Scinta Deposition), at pp. 9, 10, 18- 20, 29-31, 38, 40-41, 53-54, 58, 65-73. Exhibit "E" (Jacqueline Scinta Deposition), at pp. 13-14, 16-21, 28.

1		
2	4.	David Owen is QLS's Chief Administrative Officer. He was its CEO.
3		Exhibit "Y" (David Owen Deposition), at p. 7.
4	5.	QLS serviced about 41,000 Nevada files from 2007 to 2012.
5		Exhibit "Y" (Owen Deposition), at pp. 9-10.
6	6.	QLS has admitted that QLS received no less than \$19,000,000.00 in fees from its clients and \$86,000,000.00 in costs from 2007 through 2012 for its services in Nevada.
7		Exhibit "Y" (Owen Deposition), at p. 11. Exhibit "H", at p. 6; authenticated by Boylan Declaration, at ¶ 14. <i>See also</i> Exhibit "KK" (Ex. 2 to Owen Deposition), at p. 6; authenticated by Exhibit "Y", at pp. 12-13.
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12		
13	7.	The CFO over accounting reported to the owners, Holthus & McCarthy, of QLS.
14		Exhibit "Y" (Owen Deposition), at pp. 15-16.
15		
16	8.	The Accounting Program/System is MAS 500; QLS can use it with its IDS data system, in combination, to assemble all monies collected by QLS in Nevada for pay-off and reinstatement.
17		Exhibit "Y" (Owen Deposition), at p. 20.
18		
19		
20	9.	All money collected from borrowers by QLS was deposited, tracked and showed on its MAS 500 accounting system.
21		Exhibit "Y" (Owen Deposition), at p. 22.
22		
23	10.	Money collected that was payable to QLS is deposited and then sent to the lender-client; CFO has the most knowledge on that.
24		Exhibit "Y" (Owen Deposition), at p. 23.
25		
26		
27	11.	QLS's database can assemble and generate a report showing all Nevada files processed 2007 to 2012.
28		Exhibit "Y" (Owen Deposition), at pp. 23-24.

1		
2	12.	QLS trains its employees for phone communications with debtors.
3		Exhibit "Y" (Owen Deposition), at p. 25.
4	13.	QLS database shows phone contacts with debtors—including outgoing calls, and e-mails.
5		Exhibit "Y" (Owen Deposition), at pp. 28-29.
6	14.	QLS legal counsel determined that QLS must disclose and admit to borrowers that it is a debt collector, for many years. That statement of admission by QLS was not a false statement.
7		Exhibit "Y" (Owen Deposition), at pp. 30-32.
8	15.	QLS's own attorneys determined QLS must comply with debt collection laws (i.e., QLS is a debt collector).
9		Exhibit "Y" (Owen Deposition), at p. 32.
10	16.	The FID action against QLS was resolved by QLS agreeing to obtain its license from the FID!
11		Exhibit "Y" (Owen Deposition), at p. 37.
12	17.	The QLS IT group can determine the total money collected by QLS from Nevada debtors from 2007 to 2012.
13		Exhibit "Y" (Owen Deposition), at pp. 42-43.
14	18.	An invoice from QLS to its lender-client for QLS's services relating to Plaintiff Camilo and Ana Martinez shows QLS's fees were not less than \$540, and its total fees and costs were not less than \$2,044.26.
15		Exhibit "AA" (Ex. 3 to Owen Deposition); authenticated by Exhibit "Y" (Owen Deposition), at p. 45.
16	19.	As reflected in QLS's own internal records, "Lenstar" is the QLS-used system for communications with QLS's lender-clients; the system would also show all money collected from debtors by QLS.
17		Exhibit "Y" (Owen Deposition), at pp. 47-48. Exhibit "BB" (Ex. 4 to Owen Deposition); authenticated by Exhibit "Y" (Owen Deposition), at pp. 47-48. Exhibit "CC" (Ex.
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1		5 to Owen Deposition);
2		authenticated by
3		Exhibit "Y" (Owen
4	20.	Deposition), at pp. 52.
5		Exhibit "Y" (Owen
6		Deposition), at pp. 49-
7		53. Exhibit "BB" (Ex.
8		4 to Owen Deposition).
9		Exhibit "CC" (Ex. 5 to
10		Owen Deposition).
11	21.	Exhibit "Y" (Owen
12		Deposition), at pp. 53-
13		55. Exhibit "Q" (Ex. 6
14		to Owen Deposition);
15		authenticated by
16		Exhibit "Y" (Owen
17		Deposition), at p. 53.
18	22.	Exhibit "Y" (Owen
19		Deposition), at pp. 56-
20		58. Exhibit "Q" (Ex. 6
21		to Owen Deposition).
22	23.	Exhibit "Y" (Owen
23		Deposition), at pp. 59-
24		60. Exhibit "Q" (Ex. 6
25		to Owen Deposition).
26	24.	Exhibit "Y" (Owen
27		Deposition), at pp. 59-
28		60. Exhibit "Q" (Ex. 6

1	collector and any information will be	to Owen Deposition).
2	used for that purpose.” Owen admits that	
3	it is possible for a business in QLS’s	
4	industry to do both collection <u>and</u>	
	foreclosure work.	
5	25. In letters to borrowers in default, QLS	Exhibit “Y” (Owen
6	admits it was engaging in <u>both</u> collection	Deposition), at p. 62.
7	<u>and</u> foreclosure activity. That was <u>not</u> a	Exhibit “Q” (Ex. 6 to
	false statement, per Owen.	Owen Deposition).
8	26. According to a comments section entry	Exhibit “Y” (Owen
9	for September 12, 2008 from QLS’s own	Deposition), at pp. 63-
10	internal records, QLS communicated to	64; Exhibit “DD” (Ex.
11	Plaintiffs Camilo and Ana Martinez in	8 to Owen Deposition);
12	default: “You must pay the full amount	authenticated by
	of the default on this loan by 35th day.”	Exhibit “Y” (Owen
		Deposition), at p. 63.
13	27. As reflected by a letter from QLS’s	Exhibit “Y” (Owen
14	client, EMC, to Plaintiff Susan Hjorth,	Deposition), at pp. 67-
15	EMC admits that it is attempting to	69. Exhibit “S” (Ex. 9
16	collect a debt and says for the borrower	to Owen Deposition);
17	should <u>call QLS</u> (not lender), and	authenticated by
	provides the borrower with QLS’s phone	Exhibit “Y” (Owen
	number.	Deposition), at pp. 67-
		69.
18	28. As admitted by QLS, Exhibit 10 to the	Exhibit “Y” (Owen
19	Owen Deposition is a <u>debt validation</u>	Deposition), at pp. 69-
20	<u>notice</u> from QLS directed to Plaintiff	73. Exhibit “T” (Ex. 10
21	Susan Hjorth (dated May 2009). At his	to Owen Deposition);
22	deposition, Mr. <u>Owen admits: such</u>	authenticated by
23	<u>notices are required by the FDCPA if</u>	Exhibit “Y” (Owen
24	<u>you are a debt collector.</u> He also admits	Deposition), at pp. 69-
25	that the letter states that the total debt	73. <i>See also</i> Exhibit
26	has to be paid in full, <u>including QLS fees</u>	“U” (Ex. 12 to Owen
27	<u>and costs,</u> and invites the borrower-	Deposition);
28	recipient to call QLS, including	authenticated by
	regarding disputing the debt (<u>not</u> to call	Exhibit “Y” (Owen
	lender). QLS sent this letter to comply	Deposition), at pp. 75-
	with FDCPA.	76. Exhibit “W” (Ex.
		14 to Owen

1		Deposition);
2		authenticated by
3		Exhibit “Y” (Owen
4		Deposition), at p. 77.
5	29.	Both the form and content of QLS debt
6		validation notices are recommended by
7		QLS attorneys.
8	30.	QLS had <u>contracts</u> with various lending
9		clients that determined the scope of
10		services to be provided by QLS,
11		including collection of money for pay-
12		off or reinstatement. (These have not
13		been produced to Plaintiffs.)
14	31.	QLS had contracts with Chase, Wells
15		Fargo, MidFirst, and other clients.
16		(These have not been produced to
17		Plaintiffs.).
18	32.	According to QLS, Ex. 18 to the Owen
19		Deposition sets out some of the terms of
20		terms of QLS’s services for its client.
21		Exhibit “Y” (Owen
22		Deposition), at pp. 84-
23		85. Exhibit “I” (Ex. 18
24		to Owen Deposition);
25		authenticated by
26		Exhibit “Y” (Owen
27		Deposition), at pp .84-
28		85.
	33.	Mr. Bounlet Louvan started with QLS in
		Sept. 2006. He was a foreclosure trustee;
		now he is legal liaison, assisting the
		legal dept. and the foreclosure dept. with
		escalated matters. He appears as witness
		for QLS. He is the QLS designated
		person most knowledgeable since 2010.
		QLS has been sued about 100 times.
	34.	Mr. Louvan has done 100 declarations;
		they are kept in an electronic file in the
		“Integrated Default Solutions” (“IDS”)
		Exhibit “X” (Louvan
		Deposition), at pp. 10-
		13.

1	database used by QLS. The IDS	
2	foreclosure database includes	
3	documents, comments, etc. (including	
4	for Nevada). QLS has used IDS since he	
5	started in 2006.	
6	35. It only took Mr. Louvan 10-15 minutes	Exhibit "X" (Louvan
7	to look through all QLS files for all QLS	Deposition), at pp. 22-
8	named Plaintiffs and an additional 30	25.
9	minutes to review all included	
10	documents (about 40 minutes total). <u>This</u>	
11	<u>includes debt validation letters.</u>	
12	36. QLS had 300-350 employees in 2008-	Exhibit "X" (Louvan
13	2012. QLS had the following	Deposition), at pp. 30-
14	departments: Referral (80-100 people),	33.
15	Foreclosure (40-50 people), TSG review,	
16	Pay off and Reinstatement, Legal. The	
17	Foreclosure Department had 10 units of	
18	4-5 people each, divided up by groups of	
19	clients. Some clients had thousands of	
20	files.	
21	37. Total number of QLS clients in peak	Exhibit "X" (Louvan
22	period was 50-60. Each unit had some	Deposition), at p. 34.
23	Nevada files; the units were not divided	
24	by geography.	
25	38. QLS services included preparing the	Exhibit "X" (Louvan
26	substitution of trustee for the client to	Deposition), at p. 35.
27	sign, etc.	
28	39. QLS communicated with borrowers by	Exhibit "X" (Louvan
	phone if they contacted QLS. The 50	Deposition), at p. 36.
	people in the Foreclosure Department	
	communicated with borrowers regarding	
	the defaulted debt.	
	40. The QLS IDS system was to be updated	Exhibit "X" (Louvan
	for each call or email with borrowers.	Deposition), at pp. 37-
	But QLS had no written policy and	38.
	nothing in place to police compliance.	

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2	41.	According to the testimony of QLS's
3		own witness, in 2008-2012 each of the
4		50 people in QLS's foreclosure
5		department had at least 10 calls a day
6		with borrowers, and up to 20 calls a day
		(so that is 1000 calls a day or 20,000
		calls a month)!
7	42.	In 2008-2012, borrowers would send
8		correspondence to QLS offering to send
9		money or asking for delay or
10		forbearance. Mr. Louvan testified that 3-
11		5 such items a day were received by his
		Dept.
12	43.	In 2008-2012, QLS's Reinstatement and
13		Pay Off Department was also in Mr.
14		Louvan's building. There were between
15		10-15 people in that department at the
16		time, working on reinstatements and pay
		offs 8 hours a day. That department its
		own fax number and email address.
17	44.	QLS gave instructions to borrowers in
18		default on where to send the money: to
19		QLS's accounting department. It was
20		called the Disbursement Department by
21		QLS. Wes Andrews was in charge of it
		from 2008-2012.
22	45.	IT Department and QLS system could
23		tell Plaintiffs how many Nevada files
24		processed in each year in 2007-2012.
25		The head of IT is Mike Chipperfield.
26		The IT Department and QLS system can
27		also tell Plaintiffs how many files closed
28		by reinstatement or pay off of the
		defaulted debts. The files would include
		the amount paid to QLS by borrowers.

1	46.	QLS accounting department would deposit money received (collected) into its trust and then issue a check to the client (usually within twenty-four hours of receipt).	Exhibit "X" (Louvan Deposition), at p. 58.
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5	47.	For money from sales, QLS's contract vendor overnights money to QLS and then QLS overnights the money to its client lender.	Exhibit "X" (Louvan Deposition), at p. 60.
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8	48.	Several QLS departments communicated with debtors in default: Reinstatement and Pay Off, Home Retention, Foreclosure, and Accounting Departments each did so.	Exhibit "X" (Louvan Deposition), at pp. 67-68.
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12	49.	Regarding Exhibit 1 (NRCP 30(b)(6) deposition notice) No. 13 relating to money received, etc., Mr. Louvan testified that when money was received from a borrower, QLS would check system to match and see if it was enough money, then deposit into QLS trust account and then forward to lender.	Exhibit "X" (Louvan Deposition), at pp. 68-69. Exhibit "FF" (Ex. 1 to Louvan Deposition); authenticated by Boylan Declaration, at ¶ 38.
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18	50.	In 2007-2012, QLS forms and templates included debt validation letter. Since 2006, QLS wrote to borrowers that it was a debt collector and seeking to collect a debt and information used for that purpose. There has been no difference in QLS's Nevada activities before and after 2012 (except for 2009 mediation change).	Exhibit "X" (Louvan Deposition), at pp. 69-72.
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25	51.	QLS's fees and costs were added to the borrowers' debts for reinstatement and pay off and sometimes also if property sold fees and costs were added to the bid, per the lender's instructions.	Exhibit "X" (Louvan Deposition), at pp. 77-78. Exhibit "J"; authenticated by Boylan Declaration, at ¶ 16.
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52.	QLS handled the bid process for the lenders too.	Exhibit "X" (Louvan Deposition), at p. 79. <i>See also</i> Exhibit "J".
53.	As reflected in the debt validation notices sent to the named Plaintiffs and the generic debt validation notices produced by QLS in discovery, it was the practice, policy, and procedure of QLS during the relevant period to send debt validation notices to the Nevada debtors whose files QLS was handling. Such a notice would specifically refer to itself as a "DEBT VALIDATION NOTICE", state that it related to a debt owed to an identified person or entity, state the total delinquency purportedly owed as of a date certain, and requested that the debtor recipient contact QLS to receive information regarding the current amount owed. The notice would also state the "amount required to pay the entire debt in full" as of a date certain and specifically state that the amount would include "interest . . . late charges, negative escrow and attorney and/or trustee's fees and costs that may have been incurred." [emphasis added]. The notice would also state that the debtor recipient should write to QLS or contact it (<u>not</u> the lender) by telephone for "further information." The notice would also inform the debtor recipient that he or she may "dispute the validity of the debt, or any portion thereof," by contacting QLS (<u>not</u> the lender), in which case QLS would obtain and provide the debtor with "written verification of the debt. Otherwise, we will assume that the debt is valid."	Exhibit "R"; authenticated by Boylan Declaration, at ¶ 24. Exhibit "S" (Ex. 9 to Owen Deposition), Exhibit "T" (Ex. 10 to Owen Deposition), Exhibit "U" (Ex. 12 to Owen Deposition), Exhibit "V" (Ex. 13 to Owen Deposition); authenticated by Exhibit "Y" (Owen Deposition), at p. 76.

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	Finally, the notice would state, in large, bold type and in an separate box, that “WE ARE ATTEMPTING TO COLLECT A DEBT, AND ANY INFORMATION WE OBTAIN WILL BE USED FOR THAT PURPOSE.” QLS had generic or template debt validation notice documents that it was QLS’s practice, policy, and procedure to use as part of QLS’s collection agency activities during the relevant period in Nevada.	
54.	As reflected in the letter sent by QLS to Plaintiffs Ana and Camillo Martinez, QLS sent Nevada debtors whose files QLS handled letters asking the debtor recipients to contact QLS (<u>not</u> the lender) to obtain more information regarding “options available to help you avoid foreclosure.” These options expressly included deed in lieu of foreclosure transactions, loan modifications, reinstatement of the defaulted loans, and short sales of the property. QLS would expressly state that, “[p]ursuant to federal law, we are a debt collector and any information obtained will be used for that purpose.”	Exhibit “II” (Ex. 4 to Wes Andrews Deposition); authenticated by Exhibit “Z” (Wes Andrews Deposition), at pp. 54-55.
55.	As reflected in the invoices submitted by QLS to its creditor-clients for QLS’s services relating to the named Plaintiffs, QLS would regularly bill its creditor-clients for QLS’s fees and costs for its unlawful collection activities relating to the named Plaintiffs. As to Plaintiff Tagliamonte (Segura), QLS charged in fees and costs not less than \$690.09 on 11/22/06, \$555.00 on 5/2/07, \$1,225.54 on 12/18/07, \$649.81 on 8/22/08,	Exhibit “L”; authenticated by Boylan Declaration, at ¶ 18. Exhibit “M”; authenticated by Boylan Declaration, at ¶ 19. Exhibit “N”; authenticated by Boylan Declaration, at ¶ 20. Exhibit “O”; authenticated by Boylan

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	<p>\$1,315.33 on 8/10/09, and \$120 on 8/31/09. As to Plaintiffs Camilo and Ana Martinez, QLS charged in fees and costs not less than \$2,044.26 on 1/5/09, and \$2,184.65 on 5/3/11. As to Plaintiffs Frank and Jacqueline Scintas, QLS charged in fees and costs not less than \$1,020.66 on 2/29/12. As to Plaintiff Hjorth, QLS charged in fees and costs not less than \$1,573.77 on 6/3/09, and \$1,539.80 on 8/25/09.</p>	<p>Declaration, at ¶ 21. Exhibit “P”; authenticated by Boylan Declaration, at ¶ 22. Exhibit “AA” (Ex. 3 to Owen Deposition).</p>
56.	<p>As reflected in documents produced by QLS in discovery, it was the practice, policy, and procedure of QLS during the relevant period in Nevada to send Nevada debtors whose files QLS was handling reinstatement or payoff letters. The amounts listed by QLS on its payoff or reinstatement letters—including anticipated foreclosure costs or attorney or trustee fees—would have to be paid by borrowers to reinstate or payoff their defaulted loans. These amounts would include the trustee’s fees charged by QLS. If a borrower paid more (e.g., in fees or costs) than were actually incurred or charged by QLS, then the borrower would be refunded that amount by QLS or its creditor-client. Checks submitted to QLS to reinstate or pay off the defaulted debts were to be made payable to QLS (<u>not</u> the lender).</p>	<p>Exhibit “K”; authenticated by Boylan Declaration, at ¶ 17.</p>
57.	<p>As reflected in documents produced by QLS in discovery, it was the practice, policy, and procedure of QLS during the relevant period in Nevada to send Nevada debtors whose files QLS was handling detailed instructions regarding payments to QLS by wire along with</p>	<p>Exhibit “K”.</p>

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QLS's reinstatement and payoff letters. These instructions stated that the Nevada debtors seeking to reinstate or pay off their defaulted debts were to notify QLS prior to forwarding wired funds. The wires were to include the QLS's account information at a bank specified by QLS, the reference number, loan number, and name of the borrower to whose defaulted debt the funds were to be credited. The Nevada debtors making payment were also to confirm receipt and identification of electronic funds by QLS. The instructions also made clear that QLS would charge the Nevada debtors a \$35.00 "Wire Processing fee" for each incoming wire transaction.

58. As reflected in documents produced by QLS in discovery, it was the practice, policy, and procedure of QLS during the relevant period in Nevada to negotiate, document, and execute forbearance agreements with Nevada debtors on behalf of QLS's creditor-clients. QLS had and used generic documents or templates for this purpose, and generic letters enclosing the forbearance agreements. Pursuant to these forbearance agreements and cover letters, down payments under the forbearance agreements were to be made to QLS (not the lender), and were to be made by certified cashier's check. The forbearance agreements themselves would include a self-described notice stating in bold type: **"THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE."**

Exhibit "K".

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59.	As reflected in documents produced by QLS in discovery, it was the practice, policy, and procedure of QLS during the relevant period in Nevada to send the proceeds from non-judicial foreclosures conducted by QLS in Nevada to QLS's creditor-clients. QLS would specifically provide these creditor-clients with the amount of QLS's "outstanding fees and costs" for each file so that the creditor-clients could pay QLS for its services in collecting money on the defaulted debts.	Exhibit "K".
60.	As reflected in documents produced by QLS in discovery, it was the practice, policy, and procedure of QLS during the relevant period in Nevada to send Nevada debtors self-entitled notices regarding alternatives to foreclosure. These notices would repeatedly request that Nevada debtors call QLS (<u>not</u> the lender) so that QLS could provide information regarding alternative to foreclosure. As reflected in the notices, QLS had an entire department ("The Home Retention Department") dedicated to this service. These notices would also ask Nevada debtors to call QLS to obtain the "exact figures as to the amounts needed to cure the default or pay the loan in full"; as reflected in these notices, QLS had an entire department ("Payoff and Reinstatement Department") dedicated to this service. The notices also specifically admitted in bold type that "THIS NOTICE IS SENT FOR THE PURPOSE OF COLLECTING A DEBT. THIS FIRM IS ATTEMPTING TO COLLECT A DEBT ON BEHALF OF THE HOLDER AND OWNER	Exhibit "K".

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	OF THE NOTE. ANY INFORMATION OBTAINED BY OR PROVIDED TO THIS FIRM OR THE CREDITOR WILL BE USED FOR THAT PURPOSE.”	
61.	As reflected in documents produced by QLS in discovery, it was the practice, policy, and procedure of QLS during the relevant period in Nevada to send Nevada debtors letters regarding alternatives to foreclosure. These letters would admit in bold type that: “THIS OFFICE IS A DEBT COLLECTOR ATTEMPTING TO COLLECT A DEBT.” The letters would request that Nevada debtors call QLS directly (<u>not</u> the lender) to discuss alternatives to foreclosure, and stated that time was of the essence. QLS also represented in these letters that “if you contact us we will explain each [alternative to foreclosure] in more detail and discuss your circumstances in an attempt to find an alternative to foreclosure.” They also stated that QLS’s creditor-clients “has asked us to discuss your situation with you to determine what can be done to bring your loan current.” The alternatives to foreclosure expressly identified in these letters included forbearance plans, reinstatement of loans, repayment plans, modification, deed in lieu of foreclosure transactions, short payoffs, and assumption of the defaulted loans by another buyer. QLS enclosed a multi-page “Financial Worksheet” with these letters, requesting detailed financial information (income, expenses, and assets), the contact information of borrowers (both phone	Exhibit “K”. <i>See also</i> Exhibit “II”.

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	and address), and their social security numbers, which were to be certified as true by the Nevada debtors completing them. QLS specifically requested that Nevada debtors complete these forms and return them to its Home Retention Department so that QLS “can work with you to evaluate alternatives to the pending foreclosure of your property.”	
62.	As reflected in documents produced by QLS in discovery, it was the practice, policy, and procedure of QLS during the relevant period in Nevada to send Nevada debtors letters regarding deed in lieu of foreclosure transactions. As demonstrated in these letters, QLS played an essential role in communicating with Nevada debtors regarding these transactions, including sending these transaction documents to the Nevada debtors for execution and requesting that they be returned to QLS (<u>not</u> the lender), and requesting that Nevada debtors contact QLS (<u>not</u> the lender) if they had any questions. QLS had generic templates for deeds in lieu of foreclosure transactions, which QLS would complete and send to Nevada debtors along with these cover letters.	Exhibit “K”.
63.	As reflected in documents produced by QLS in discovery, it was the practice, policy, and procedure of QLS during the relevant period in Nevada to send Nevada debtors letters regarding possible loss mitigation options (i.e., alternatives to foreclosure). These letters admitted that QLS “performs a review of troubled files to indentify [<i>sic</i>] possible loss mitigation options” available to	Exhibit “K”.

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Nevada debtors, and that QLS's "review has determined that your property may qualify for a Deed in Lieu of Foreclosure." The letters would briefly describe what a deed in lieu of foreclosure transaction is, and ask that Nevada debtors contact the Home Retention Department of QLS (not the lender) by phone for more information. The letters would also enclose documents to be executed by Nevada debtors to complete a deed in lieu of foreclosure transaction, which were to be returned by the Nevada debtors to Home Retention Department of QLS (not the lender). In these letters, QLS would also describe additional actions QLS would take to complete the transaction (e.g., ordering a title report, reviewing the file for "confirmation that all Deed in Lieu requirements are meet [*sic*]", advising Nevada debtors whether a deed in lieu can be accepted, and, if acceptable, recording the necessary documents and sending Nevada debtors a check as payment for completing the transaction. The letters would also expressly request that Nevada debtors contact QLS by phone to discuss other options that might be available to the Nevada debtors.

64. As reflected in documents produced by QLS in discovery, it was the practice, policy, and procedure of QLS during the relevant period in Nevada to send Nevada debtors letters enclosing checks which "represent[] the refund due to you [*i.e.*, the Nevada debtors] from overage paid [by the Nevada debtors] on foreclosure fees and costs" when these Nevada debtors would reinstate or pay

Exhibit "K".

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	off their defaulted loans. QLS would also inform the Nevada debtors that “[a]t this time our foreclosure file is closed and all future communication in regards to your loan should be done with your lender” (rather than QLS).	
65.	As reflected in documents produced by QLS in discovery, it was the practice, policy, and procedure of QLS during the relevant period in Nevada to receive detailed instructions from its creditor-clients regarding bidding by QLS at the non-judicial foreclosure sales that QLS conducted. These instructions would state, among other things, the market value of the properties, the total debt amount, the final bid amount, and instructions regarding bidding. As to Plaintiff Benko, QLS was expressly instructed by its client to add its fees and costs to the total debt amount and make a total debt bid at the non-judicial foreclosure sale (including QLS’s fees and costs). Similar instructions were given to QLS as to the Plaintiff Scintas. As to Plaintiff Hjorth, QLS was instructed to bid a portion of the total debt <u>unless</u> there was “competitive bidding” at the sale, in which case QLS was to “continue bidding up to total debt amount” and was to add “all unpaid fees and costs that will be billed” by QLS to the creditor-client. Similar instructions were given to QLS as to Plaintiffs Ana and Camillo Martinez.	Exhibit “Y” (Owen Deposition), at pp. 49-53. Exhibit “BB” (Ex. 4 to Owen Deposition). Exhibit “CC” (Ex. 5 to Owen Deposition). Exhibit “J”.
66.	As reflected in documents produced by QLS in discovery, it was the practice, policy, and procedure of QLS during the relevant period in Nevada to receive	Exhibit “Y” (Owen Deposition), at pp. 84-85. Exhibit “I” (Ex. 18 to Owen Deposition).

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detailed referral instructions from its client, Ocwen Loan Servicing regarding the nature and scope of QLS's collection agency activities in Nevada during the relevant period for each file QLS handled. These instructions would provide that QLS was to inform Nevada debtors who contacted QLS that QLS's client wished to resolve the matter and refer the debtors to the client to discuss "resolution opportunities." The instructions also provide that QLS was to send all funds to the client if QLS received a payoff or reinstatement. QLS was not to "extract" its "fees and costs from the funds" but to submit a final bill for such fees and costs to the client for subsequent payment.

67. As reflected in documents produced by QLS in discovery, including pertinent pages from QLS's internal files relating to the named Plaintiffs, it was the practice, policy, and procedure of QLS during the relevant period in Nevada to request and receive detailed bidding instructions from its clients regarding QLS bidding on their behalf at the non-judicial foreclosure sales conducted by QLS, including whether to bid all or only a portion of the total debt amount, and whether to add QLS's fees and costs to the total debt amount and bid. QLS would also communicate by telephone with third parties (including a tenant of Plaintiffs Frank and Jacqueline Scinta) and the named Plaintiffs themselves regarding the status of the non-judicial foreclosure proceedings. These calls included one with Plaintiff Benko on January 21, 2011, and phone calls with

Exhibit "EE" (Ex. 11 to Owen Deposition); authenticated by Exhibit "Y" (Owen Deposition), at pp. 74-75. Exhibit "JJ"; authenticated by Boylan Declaration, at ¶ 42. Exhibit "DD" (Ex. 8 to Owen Deposition); authenticated by Exhibit "Y" (Owen Deposition), at p. 63. Exhibit "KK"; authenticated by Exhibit "Y" (Owen Deposition), at p. 83.

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	Plaintiff Taligamonte (<i>i.e.</i> , Segura) on September 29, 2007, November 29, 2007, and August 18, 2009. During the August 18, 2009 call, QLS attempted to transfer Plaintiff Tagliamonte to QLS's loss mitigation department to discuss alternatives to foreclosure with her.	
68.	Wes Andrews is the CFO of QLS; he is employed by McCarthy & Holthus	Exhibit "Z" (Andrews Deposition), at p. 8.
69.	Andrews has been at QLS since 2005.	Exhibit "Z" (Andrews Deposition), at p. 9.
70.	In 2007, Andrews was Accounting Manager for QLS (until 2010).	Exhibit "Z" (Andrews Deposition), at p. 10.
71.	Andrews is the QLS CFO over all financial and accounting work, billing, accounts receivable, cash management, management of accounting staff.	Exhibit "Z" (Andrews Deposition), at pp. 12-13.
72.	In 2008-2012, there were 30 people in QLS accounting department.	Exhibit "Z" (Andrews Deposition), at pp. 13-14.
73.	According to Andrews, Ex. 2 to his deposition (copy of the LinkedIn profile of Naike Lewis) accurately describes that she/QLS had a high volume of calls with borrowers regarding reinstatement and payoff.	Exhibit "Z" (Andrews Deposition), at pp. 18-19. Exhibit "GG" (Ex. 2 to Andrews Deposition); authenticated by Exhibit "Z" (Andrews Deposition), at p. 18.
74.	As Accounting Manager, Andrews managed the reinstatement and payoff department for QLS, <i>e.g.</i> , borrower sending funds for those purposes (he describes basic process).	Exhibit "Z" (Andrews Deposition), at pp. 20-21.
75.	Incoming funds from borrowers payable	Exhibit "Z" (Andrews

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	to QLS were put into trust and passed to the lenders.	Deposition), at p. 22.
76.	In 2007-2012, the process of Reinstatement and Payoff, as described by Andrews, was as follows: checks come in from Nevada borrowers and logged by the mailroom and validated by reception (usually came via Fedex). Log would indicate what kind of check; clerk would access IDS system and match to the file; check then delivered immediately to reinstatement and payoff department; quote pulled up and apply funds and see if money sent on time; call lender if needed; deposit check into QLS bank account electronically.	Exhibit "Z" (Andrews Deposition), at pp. 26-29.
77.	QLS collected funds from borrowers and passed to lender about 40 times per week (2007-2012).	Exhibit "Z" (Andrews Deposition), at pp. 30-31.
78.	According to Andrews, "all the money came in and we're pumping through it and looking for the date that is most relevant and trying to get the money out and disbursed [to the banks] as quickly as possible. We weren't too worried about which state it was."	Exhibit "Z" (Andrews Deposition), at p. 31.
79.	All QLS business activities in Nevada were the same from 2005 to present, including reinstatement department.	Exhibit "Z" (Andrews Deposition), at pp. 31-32.
80.	McCarthy & Holthus are partners of the firm and also owners of QLS.	Exhibit "Z" (Andrews Deposition), at p. 33.
81.	QLS uses Sage MAS 500 for all transactions; much higher level type of Quickbooks. It keeps QLS accounting records.	Exhibit "Z" (Andrews Deposition), at pp. 33-34.

1	82.	Regarding money received for reinstatement and payoff – QLS uses cash-management side of Sage MAS 500 to record the deposit and then different team deposits checks into the bank and then the system is used to cut a check to disburse the funds to the bank.	Exhibit “Z” (Andrews Deposition), at pp. 34-35.
2			
3	83.	Sage MAS 500 can generate report, showing all dollars collected from Nevada for reinstatement and payoff for each year, 2008-2012. There are at least 500 such checks a year.	Exhibit “Z” (Andrews Deposition), at pp. 35-38.
4			
5	84.	In 2008-2012, QLS also received about 20 checks a week or 1000 checks a year from third-parties; QLS used the same collection processing protocol for these checks.	Exhibit “Z” (Andrews Deposition), at pp. 39-40.
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7	85.	Sage MAS 500 could also generate reports of all checks/money collected from third-parties for each year, 2008-2012.	Exhibit “Z” (Andrews Deposition), at pp. 40-41.
8			
9	86.	Dollars collected from Nevada borrowers were deposited into QLS’s trust account, called the “Nevada Trust Account.” <u>David Owen</u> is on the bank signature card; all checks collected from Nevada borrowers were deposited into the Nevada trust account.	Exhibit “Z” (Andrews Deposition), at pp. 42-43.
10			
11	87.	QLS has the bank statements for the Nevada trust account showing all such historical deposits of funds collected from the Nevada borrowers in default. All checks received for Nevada debts had separate Nevada deposit slips. MAS 500 has a specific ledger that tracks all deposits into Nevada trust account,	Exhibit “Z” (Andrews Deposition), at p. 44.
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1		going back to at least 2007.	
2	88.	Regarding Ex. 3 (QLS response to	Exhibit "Z" (Andrews
3		Plaintiffs' Interrogatory No. 18) to his	Deposition), at pp. 44-
4		deposition, Andrews confirmed that, for	46. Exhibit "HH" (Ex.
5		its various business activities and	3 to Andrews
6		operations in Nevada 2007-2012, QLS	Deposition). <i>See also</i>
7		received payment of \$19 million in fees	Exhibit "H";
8		and \$86 million in costs.	authenticated by Boylan
9			Declaration, at ¶ 14.
10	89.	There are three outcomes Andrews	Exhibit "Z" (Andrews
11		knows: funds arrive to 1) reinstate or 2)	Deposition), at pp. 48-
12		pay-off, or 3) property sold.	50.
13	90.	Deed-in-lieu is <u>separate</u> type of file;	Exhibit "Z" (Andrews
14		Accounting bills the client for this	Deposition), at pp. 50-
15		service and it is a file in MAS 500, going	52.
16		back to 2007.	
17	91.	Andrews could use MAS 500 to generate	Exhibit "Z" (Andrews
18		report showing all Nevada deed-in-lieu	Deposition), at pp. 52-
19		files from 2008 to 2012, in a day's work.	53.
20	92.	Regarding Ex. 4 to Andrews Deposition	Exhibit "Z" (Andrews
21		(letter from QLS explaining options to	Deposition), at pp. 54-
22		avoid foreclosure to Nevada	58. Exhibit "II" (Ex. 4
23		borrower/client, 5/2010), six non-	to Andrews Deposition).
24		foreclosure options presented in the	
25		letter itself. QLS also has a separate	
26		department for loan modifications.	
27	93.	Regarding Ex. 4 to Andrews Deposition	Exhibit "Z" (Andrews
28		at p. 2—QLS says to borrowers that all its	Deposition), at pp. 59-
		collection and foreclosure activities will	60. Exhibit "II" (Ex. 4
		continue.	to Andrews Deposition).
	94.	<u>Separate from foreclosure, CFO admits</u>	Exhibit "Z" (Andrews
		<u>the QLS collection activity performed by</u>	Deposition), at pp. 59-
		<u>its accounting department was receiving</u>	60.
		<u>the funds to reinstate or pay off the</u>	
		<u>loans.</u>	

1	95.	MAS 500 has a general ledger to report all Nevada files where the property was “sold” to beneficiary, and the category would also include all those sold to a third-party.	Exhibit “Z” (Andrews Deposition), at p. 65.
2			
3	96.	Regarding Ex. 3 to Owen Deposition (Ex. 7 to Andrews Deposition), it is a QLS invoice to client for Martinez file work; MAS 500 can generate all Nevada invoices for services 2007 to 2012 (within a week or two). Thousands of invoices for reinstatement and pay off service.	Exhibit “Z” (Andrews Deposition), at pp. 66-68. Exhibit “AA” (Ex. 3 to Owen Deposition).
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5	97.	No contract between QLS and Plaintiffs Jeffrey Benko, Susan Hjorth, Camilo & Ana Martinez, Frank & Jacqueline Scinta and Patricia Tagliamonte (Segura) exists.	Boylan Declaration, at ¶ 44.
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Dated: April 28, 2017

LAW OFFICE OF NICHOLAS A. BOYLAN
A Professional Corporation

By: /s/ Nicholas A. Boylan
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15 **DISTRICT COURT**

16 **CLARK COUNTY, NEVADA**

17 JEFFREY BENKO, a Nevada resident;
18 CAMILO MARTINEZ, a California
19 resident; ANA MARTINEZ, a California
20 resident; FRANK SCINTA, a Nevada
21 resident; JACQUELINE SCINTA, a
22 Nevada resident; SUSAN HJORTH, a
23 Nevada resident; RAYMOND
24 SANSOTA, a Ohio resident; FRANCINE
25 SANSOTA, a Ohio resident;
26 SANDRA KUHN, a Nevada resident;
27 JESUS GOMEZ, a Nevada resident;
28 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
PLAINTIFFS' OPPOSITION TO
DEFENDANT QUALITY LOAN
SERVICE CORPORATION'S
MOTION FOR SUMMARY
JUDGMENT**

Date: May 16, 2017

Time: 9:00 a.m.

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

18 I, Nicholas A. Boylan, declare:

19 1. I am an attorney licensed to practice before all courts of the State of
20 Nevada. I have been the lead Plaintiffs' attorney in this case since it was filed in
21 2011. Matters set forth herein are true of my personal knowledge and, if called as a
22 witness and sworn, I would and could testify competently thereto.
23 2. As reflected in several Recommendation and Reports from the
24 Discovery Commissioner ("Commissioner"), adopted by the Court, Plaintiffs have
25 been completely barred from major discovery in this case from the beginning,
26 pursuant to the "Phase One" limitations imposed by the Commissioner and Court.
27 Plaintiffs have argued repeatedly and without success to the Commissioner that, at a
28 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

1 could fully investigate and obtain discovery from the other witnesses, who would
2 have personal knowledge of Defendants' broad variety of claim collection practices
3 in Nevada. Also, and perhaps even more critically, Plaintiffs have not been allowed
4 to conduct full and adequate discovery of Defendants' relevant files, information, and
5 data regarding these other witness victims and Defendants' policies, practices, and
6 procedures. The documents are always the most revealing. In addition, although QLS
7 makes arguments related to damages in its summary judgment motion, due to the
8 phasing limitations imposed in this case, Plaintiffs have had virtually no access to
9 discovery regarding the accounting necessary to show Defendants' illicit gain/profits
10 that should be disgorged. On this point, the Commissioner and Court have effectively
11 only allowed one interrogatory, modified by the Commissioner and known as
12 Interrogatory No. 18. However, Plaintiffs have not been able to pursue the underlying
13 discovery, including the accounting records, and Plaintiffs have good reason to
14 believe that Defendants' answer to Interrogatory No. 18 is suspect and unreliable!

15 3. Due to the severe limitation on Plaintiffs on Phase One discovery,
16 Plaintiffs have not been allowed to pursue the underlying source of accounting
17 records and data to prove and validate the dollar figures related to the disgorgement
18 remedy. Plaintiffs have also been effectively blocked or expressly barred from
19 pursuing discovery of, among other subjects relevant to Phase One and destroying
20 QLS's motion for summary judgment, the following categories of information: the
21 names and contact information of other Nevada debtors who were subject to
22 Defendants' collection agency activities (although these debtors would be members
23 of the putative class, they would also be crucial witnesses regarding the nature and
24 scope of Defendants' various collection activities in Nevada during the relevant
25 period); Defendants' trust account records showing the amounts of money collected
26 by Defendants for payment on defaulted debts on behalf of Defendants' creditor-
27 clients; copies of the actual checks from Nevada debtors (and others) showing
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1 collection by Defendants on behalf of their creditor-clients of money for payment on
2 defaulted debts; copies of the actual correspondence, including e-mails, showing
3 Defendants' communications with Nevada debtors to collect payment on defaulted
4 debts, stating the amounts necessary to reinstate or payoff the defaulted debts, and
5 providing instructions on how to make such payments, including by sending the
6 payments directly to Defendants for remitting to their creditor-clients; Defendants'
7 internal records and communications showing and documenting, among other
8 relevant facts, Defendants' business practices in dealing with Nevada debtors,
9 including the extent to which Defendants communicated with Nevada debtors by
10 telephone or in writing to solicit or demand payment on defaulted debts, to negotiate
11 and execute loan modification or forbearance agreements, or other loss mitigation
12 efforts by Defendants; and documents reflecting Defendants' policies, practices, and
13 procedures relating to the fees and costs they charged for their collection agency
14 activities in Nevada during the relevant period, and the telephone scripts or contact
15 guides or policies that Defendants followed in communicating with Nevada debtors
16 by phone. Although the Commissioner and Court required Defendants to produce
17 "generic" documents and those relating to the named Plaintiffs, the ruling effectively
18 relieved Defendants of the need to produce plainly relevant documents (on the
19 grounds that they were not generic), while also claiming that they did not have any
20 generic documents for certain categories (or only a handful of such documents).
21 Defendants were also relieved of the need to provide plainly relevant information
22 such as, the number of phone calls made or received by them with Nevada debtors
23 whose files Defendants serviced, the total number of items of correspondence (of any
24 type) sent or delivered by Defendants to Nevada debtors, and the total number of
25 items of written correspondence (of any type) received by Defendants from Nevada
26 debtors. For these categories, the Commissioner and Court ruled only that Defendants
27 need answer as to the named Plaintiffs, which limited Plaintiffs from uncovering
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1 evidence showing the full nature and scope of Defendants' business activities in
2 Nevada (which is crucial to showing that those activities qualified Defendants as
3 collection agencies who were required to be licensed by the FID).

4 4. Despite these serious limitations, Plaintiffs have diligently been seeking
5 to conduct discovery, including by seeking the depositions of critical witnesses.
6 Defendants have sought to delay and obstruct Plaintiffs' discovery at every turn even
7 to the extent that Commissioner and Court had ruled discovery should be allowed to
8 proceed. Plaintiffs have been proceeding expeditiously with discovery since it
9 effectively commenced in approximately (until the Court suspended discovery on
10 March 14, 2017). In that time, Plaintiffs have been forced by Defendants' obstruction
11 to file roughly 16 motions to compel so far, many of which have been granted by the
12 Commissioner and the Court at least in part. Indeed, Plaintiffs' most recent motion to
13 compel, directed to QLS, was pending at the time the Court stayed discovery on
14 March 14, 2017, and was thereafter taken off calendar by the Commissioner, to be
15 heard once the Court had ruled on whether discovery should resume in this matter.
16 Plaintiffs' repeated requests for information through depositions, requests for
17 production, and interrogatories, and Plaintiffs' repeated efforts to compel compliance
18 through motion work reflect Plaintiffs' diligence thus far in seeking discovery in this
19 matter.

20 5. Based on my experience in this case and the knowledge of QLS's
21 policies and practices gained so far, I expect forthcoming crucial witnesses and
22 documents to provide substantial and compelling evidence showing, among other
23 things and in addition to the items referenced in Paragraph 3 above, QLS's obligation
24 to have obtained a Nevada collection agency license for its Nevada activities from
25 2007 to 2012, under NRS 649.020(1), and the merit of the causes of action stated in
26 the Third Amended Complaint. In fact, by reference, so that greater specificity is
27 provided, I believe and expect that the deposition testimony of the additional QLS
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1 witnesses, and the related additional document productions that must come from QLS
2 will provide evidence equivalent to or greater, in all particulars, to the evidence
3 assembled and presented to the Court as to the business activities in Nevada
4 performed by Defendant MTC. That illustrative evidence is presented with Plaintiffs'
5 Motion for Partial Summary Judgment against MTC and in Opposition to MTC's
6 Summary Judgment Motion against Plaintiffs. Among other things, without
7 limitation, for example, I believe that the additional deposition testimony from
8 numerous QLS witnesses, and the additional documents and data yet to be collected
9 from QLS and Chase will show the following:

- 10 a. Acting for its lender-client, QLS collected money, millions of
11 dollars, from Nevada debtors to reinstate defaulted loans.
- 12 b. Acting for its lender-client, QLS collected money, millions of
13 dollars, from Nevada debtors to pay off defaulted loans.
- 14 c. The QLS databases, including MAS 500 and IDS, will show tens of
15 thousands of QLS collection communications with borrowers by
16 telephone regarding the defaulted debts (they were not calling or
17 speaking about a trip to Disneyland; They were seeking to collect
18 money, by one means or another); Millions of dollars collected by
19 QLS according to the records of its Nevada trust account at the bank;
20 The exact text of pre-recorded messages used by QLS for a decade or
21 more to inform and admit to borrowers that QLS was a debt collector
22 and that all information obtained and/or communicated was for
23 purposes of debt collection; All Nevada files were QLS billed for
24 various non-foreclosure collection services.
- 25 d. In a typical busy period, QLS clerks would collect funds on defaulted
26 debts of from not less than 40 checks per week, and they would write
27 deposit slips so that the collections were deposited in QLS's
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TABLE OF CONTENTS		PAGES
I.	INTRODUCTION	1
II.	THE RECORD REFLECTS THAT QLS WAS <u>NOT</u> HONEST WITH JUDGE WILLIAMS	2
III.	<u>RES JUDICATA DOES NOT APPLY HERE</u> A. It Is Improper for QLS to Raise Issue or Claim Preclusion by Motion to Dismiss B. The Requirements For Issue or Claim Preclusion Have Not Been Established 1. The Requirements for Claim Preclusion Have Not Been Met Here 2. The Issue Decided in Prior QLS Litigation Is Not Identical to Issues Presented Here 3. QLS Fails to Establish Privity Here a. Privity under <i>Restatement of Judgments</i> Section 41 Is Lacking b. The Section 42 Exceptions to Privity Apply Here i. The FID's Interests Substantially Diverged From Those of Plaintiffs Here ii. QLS Was on Notice that the FID Failed to Prosecute or Defend in the <i>Quality Loan Service</i> Matter with Due Diligence and Reasonable Prudence 4. Questions of Fact Bar Summary Judgment C. Even If Issue Preclusion Were Available Here, the Court Should Exercise Its Discretion and Decline to Apply Issue Preclusion 1. The FID Had Reasons Not to Appeal the Prior Erroneous <i>Quality Loan Service</i> Decision Because QLS Had Capitulated and Obtained a Certificate from the FID, and the Nevada Legislature Had Amended the Statutes Favorably to the FID	5 5 6 7 9 10 10 17 17 18 19 20 20
IV.	QLS'S ABSTENTION ARGUMENT IS MERITLESS	21

V.	NRS 598.0955 DOES NOT ASSIST QLS HERE	26
VI.	QLS'S MOTION FOR SUMMARY JUDGMENT IS PREMATURE AND UNTIMELY	28
	A. QLS's Motion Is Defective and Cannot Be Granted Because, Pursuant to the Discovery Commissioner's Recommendations, 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, and the Court Restricted Discovery to the Named Plaintiffs Only	28
	B. QLS's Motion Violates the Court's Scheduling Order and the Instructions (and Promises) of the Discovery Commissioner Here	31
	C. QLS's Motion Was Improper Given the Court's Instructions at the March 14, 2017 Hearing; The Court and Plaintiffs Cannot Be Sandbagged	37
VII.	PLAINTIFFS HAVE BEEN DENIED ADEQUATE OPPORTUNITY TO CONDUCT DISCOVERY AND OBTAIN THE PROOF NECESSARY TO FULLY DESTROY QLS'S MOTION	38
	A. Plaintiffs Have Been Diligent in Conducting Discovery regarding QLS, and Plaintiffs Have Met Their Burden of Showing How Further Discovery Would Lead to the Creation of a Genuine Issue of Material Fact	38
	B. It Would Be an Abuse of Discretion for the Court to Deny Plaintiffs' NRCp 56(f) Request Here	40
VIII.	QLS WAS UNJUSTLY ENRICHED, AND DISGORGEMENT OF ITS ILL- GOTTEN GAINS IS APPROPRIATE HERE	41
	A. Plaintiffs Did Not Enter Into a Contract With QLS	41
	B. The Deeds of Trust Are Irrelevant And Void As Authority To Commit Illegal Acts, So Unjust Enrichment Applies	44
IX.	WHETHER QLS'S CONDUCT WAS KNOWING IS A MATERIAL FACTUAL DISPUTE	46
	A. QLS Misinterprets the Language and Requirements of NRS 598.0923(1)	46

B. Plaintiffs Have Demonstrated that QLS Knowingly Conducted Business without Required State License	49
1. QLS Cannot Defeat Summary Judgment through Self-Serving Testimony on Subjective Element	49
2. The Evidence, including QLS's Admissions, Shows QLS Knew It Was a Debt Collector	50
X. QLS DID NOT ACT AS THE IMPARTIAL, NEUTRAL TRUSTEE REQUIRED BY NEVADA LAW; QLS IS NOT "PROTECTED" BY NRS 107	53
XI. QLS'S RELIANCE ON NRS 80.015 IS MISPLACED	56
XII. CONCLUSION	60

TABLE OF AUTHORITIES

<u>CASES</u>	<u>PAGES</u>
<i>Alaska Sport Fishing Ass'n v. Exxon Corp.</i> (9th Cir. 1994) 34 F.3d 769	5, 14-16
<i>Aldabe v. Adams</i> (1965) 81 Nev. 280, 402 P.2d 34	48-50
<i>Alcantara v. Wal-Mart Stores, Inc.</i> (2014) 130 Nev. Adv. Rep. 28, 321 P.3d 912	7, 10, 13
<i>Alvarado v. Selma Convalescent Hospital</i> (2007) 153 Cal.App.4th 1292	23
<i>Ameritrade, Inc. v. First Interstate Bank</i> (1989) 105 Nev. 696, 782 P.2d 1318	40
<i>Aronoff v. Levine</i> (1919) 190 A.D. 172	42
<i>Arduini v. Hart</i> (9th Cir. 2014) 774 F.3d 622, 636	19
<i>Aviation Ventures, Inc. v. Joan Morris, Inc.</i> (2005) 121 Nev. 113, 110 P.3d 59	38, 40
<i>Barket v. Hart</i> (2013) 2013 Nev. Unpub. LEXIS 1879	40
<i>Betsinger v. D.R. Horton, Inc.</i> (2010) 232 P.3d 433	48
<i>Bonicamp v. Vazquez</i> (2004) 120 Nev. 377, 91 P.3d 584	59
<i>Bower v. Harrah's Laughlin, Inc.</i> (2009) 125 Nev. 470, 215 P.3d 709	5, 7, 10, 20
<i>Bruce v. Homefield Fin., Inc.</i> (D. Nev. Sept. 23, 2011) 2011 U.S. Dist. LEXIS 110243	59
<i>Bumgardner v. Corey</i> (1942) 124 W. Va. 373	42
<i>Mohammed v. May Dep't Stores, Inc.</i> (U.S. Dist. Ct. D. Del. 2003) 273 F.Supp. 2d 531	12
<i>Cf. Rynsburger v. Dairymen's Fertilizer Cooperative, Inc.</i> (Cal. Ct. App. 1968) 266 Cal.App.2d 269	13-14
<i>Chandler v. Sanger</i> (1874) 114 Mass. 364	42
<i>Cleveland v. Policy Mgmt. Sys. Corp.</i> (1999) 526 U.S. 795, 806	50

<i>Crippen v. Stites</i> (E.D. Bkr. Pa July 25, 2006) 346 B.R. 115	51-52
<i>Crowe v. Tull</i> (Colo. 2006) 126 P.3d 196	47
<i>Democratic Cent. Comm. v. Washington Met. Area Transit Comm'n</i> (D.C. Cir. 1988) 842 F.2d 402	12, 18
<i>DuBois v. Ass'n of Apartment Owners of 2987 Kalakaua</i> (9th Cir. 2006) 453 F.3d 1175	48
<i>Dunlap v. Jimmy GMC of Tucson, Inc.</i> (Ariz. Ct. App. 1983) 136 Ariz. 338, 666 P.2d 83	48
<i>Estes v. Love, Beal & Nixon, P.C.</i> (N.D. Okl. July 24, 2015) 2015 U.S. Dist. LEXIS 96715	51
<i>Fairbanks v. Snow</i> (1887) 145 Mass. 153	42
<i>Falcon v. Beverly Hills Mortgage Corp.</i> (Ariz. 1991) 168 Ariz. 527, 815 P.2d 896	20
<i>Five Star Capital Corp. v. Ruby</i> (2008) 124 Nev. 1048, 194 P.3d 709	7, 9, 13
<i>Gburek v. Litton Loan Servicing LP</i> (7th Cir. 2010) 614 F.3d 380	51
<i>Hambrick v. Healthcare Partners Medical Group, Inc.</i> (2015) 238 Cal.App.4th 124	23
<i>Hansberry v. Lee</i> (1940) 31 U.S. 32	31
<i>Harrison v. Falcon Prods.</i> (1987) 103 Nev. 558, 746 P.2d 642	40-41
<i>Hart v. FCI Lender Servs.</i> (2d Cir. 2015) 797 F.3d 219	51
<i>Holt v. Reg'l Tr. Servs. Corp.</i> (2011) 127 Nev. Adv. Rep. 80, 266 P.3d 602	7, 10
<i>In re Sandoval</i> (2010) 126 Nev. Adv. Rep. 15, 232 P.3d 422	7
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<i>Leeper v. Beltrami</i> (1959) 53 Cal.2d 195	42
<i>Loomis v. Lange Fin. Corp</i>	45

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<i>McLaughlin v. Phelan Hallinan & Schmieg, LLP</i> (3d Cir. 2014) 756 F.3d 240	51
<i>McMillan v. United Mortgage Co.</i> (1966) 82 Nev. 117, 412 P.2d 604	59
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<i>Nevada v. Bank of Am. Corp.</i> (9th Cir. 2012) 672 F.3d 661	14
<i>Nutton v. Sunset Station, Inc.</i> (Ct. App. 2015) 131 Nev. Adv. Op. 34, 357 P.3d 966	49
<i>Ogle v. Freeman</i> (1939) 150 Kan. 864	42
<i>Pape' v. Knoll</i> (1984) 69 Ore. App. 372	42
<i>Phillips Petroleum Co. v. Shutts</i> (1985) 472 U.S. 797	31
<i>Redrock Valley Ranch, LLC v. Washoe County</i> (2011) 127 Nev. Adv. Rep. 38, 254 P.3d 641	6, 7, 20
<i>Richards v. Jefferson County Alabama</i> (1996) 517 U.S. 793	31
<i>RTTC Communs., LLC v. The Saratoga Flier, Inc.</i> (2005) 121 Nev. 34, 110 P.3d 24	58
<i>Sawyer v. Sugarless Shops</i> (1990) 106 Nev. 265, 269, 792 P.2d 14	50
<i>Schoener v. Waltman</i> (1954) 125 Cal.App.2d 182, 270 P.2d 543	48
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<i>Shuts v. Covenant Holdco LLC</i> (2012) 208 Cal.App.4th 609	23-24
<i>Sierra Glass & Mirror v. Viking Industries</i> (1991) 107 Nev. 119, 80 P.2d 512	58
<i>Siragusa v. Brown</i> (1998) 114 Nev. 1384, 971 P.2d 801	48
<i>Sobel v. Hertz Corp.</i> (D. Nev. 2010) 698 F.Supp.2d 1218	47
<i>S.O.V. v. People ex rel. M.C.</i> (Colo. 1996) 914 P.2d 355	18
<i>Tocco v. Real Time Resolutions, Inc.</i> (S.D.N.Y. Aug. 13, 2014) 48 F. Supp. 3d 535	51
<i>Unionamerica Mortgage & Equity Trust v. McDonald</i> (1981) 97 Nev. 210, 626 P.2d 1272	44
<i>Valenzuela v. Nev. Dep't of Corr.</i> (2012) 2012 Nev. Unpub. LEXIS 1568	41
<i>Vincent v. Santa Cruz</i> (1982) 98 Nev. 338, 647 P. 2d 379	45
<i>Wake Development Co. v. O'Leary</i> (1931) 118 Cal.App. 131	42
<i>Washoe County v. Otto</i> (2012) 128 Nev. 424, 282 P.3d 719	24
<i>Webb v. Clark County School Dist.</i> (2009) 125 Nev. 611, 218 P. 3d 1239	45
<i>Yeager v. Ocwen Loan Servicing, LLC</i> 2015 U.S. Dist. LEXIS 94149	51

RULES

5 Newberg & Conte, Newberg on Class Actions, § 1623	31
NRCP 8(c)	5
NRCP 12(b)	6, 36
NRCP 12(b)(5)	36, 37
NRCP 56(f)	<i>passim</i>
Restatement of Judgments, § 41(1)(d)	11, 12, 13, 17
Restatement of Judgments, § 42(d)	17
Restatement of Judgments, § 42(f)	19, 20

Restatement of Judgments, § 63	25, 26
Restatement of Restitution, Third § 3	43
Restatement of Restitution, Third § 14	42
Restatement of Restitution, Third § 43	43, 44

STATUTES

NRS 80.015	56, 57, 58
NRS 80.015(4)(b)	57, 58, 59
NRS 107	3
NRS 107.028	21
NRS 107.028(6)	44
NRS 281A.115	46, 48
NRS 598	57
NRS 598.0918(1)	46
NRS 598.092(9)	46
NRS 598.0923(1)	27, 46, 47, 48, 52
NRS 598.0923(3)	48
NRS 598.0955	27
NRS 624.024	46, 47, 48
NRS 649.220(4)(a)-(b)	12
NRS 649.390(2)	12
NRS 649.395(2)(a)	12
NRS 649.400	16

1 I. INTRODUCTION

2 Remarkably, notwithstanding erroneous orders greatly restricting, phasing, and
3 denying Plaintiffs critical discovery, and notwithstanding pervasive discovery
4 obstruction by all of the Defendants for over a year, as shown by Plaintiffs' Separate
5 Statement submitted herewith, Plaintiffs have assembled sufficient evidence to
6 compel denial of QLS's motion on the merits. However, if the Court were to think
7 otherwise, it is absolutely true that QLS's motion must nevertheless be denied under
8 NRCP 56(f) because Plaintiffs have been denied and/or obstructed from obtaining
9 voluminous and critical discovery from QLS (and all defendants), as described
10 below.

11 QLS cannot derive any benefit from the non-binding and erroneous decision
12 from Judge Williams' department years ago, whether by res judicata, abstention
13 (neither applies here) or any another theory. Judge Scann rejected those arguments.
14 She was correct.

15 Also, as shown below, the record reflects that QLS was not honest with Judge
16 Williams, and in fact misled Judge Williams extensively. The statements and gross
17 omissions by QLS to Judge Williams had the effect of concealing crucial facts from
18 Judge Williams. Moreover, as indicated by recent testimony obtained in this case
19 from QLS's then-CEO, Mr. Owen (with all inferences favorable to Plaintiffs), in
20 actual reality, QLS resolved the cease and desist dispute with the FID by making an
21 agreement with the FID that QLS would obtain its collection agency license (and
22 QLS did so). (SS#16).

23 QLS has maintained the license since 2012, but contemporaneously asserts
24 here that it is unnecessary, and that it performed no debt collection activities/services
25 in Nevada from 2007 to 2012, the relevant period for this lawsuit against QLS
26 (NDSC still has never obtained its license).

1 Plaintiffs respectfully request that the Court review Plaintiffs' evidence in
2 detail, review the applicable law, and quickly and easily deny QLS's motion on the
3 merits. The evidence submitted demonstrates the liability of QLS, and prohibits
4 summary judgment. Alternatively, pursuant to NRCP 56(f), the Court should deny
5 CRC's motion and allow a full range of discovery from QLS to proceed forward,
6 including, without limitation, the discovery necessary to defeat summary judgment
7 after the discovery needed to properly adjudicate Plaintiffs' motions for class
8 certification as to each Defendant.

9 The Court should begin its review by reading Plaintiffs' Separate Statement,
10 submitted herewith, and the evidence referenced therein.

11
12 **II. THE RECORD REFLECTS THAT QLS WAS NOT HONEST WITH**
13 **JUDGE WILLIAMS**

14 QLS recently submitted to this Court the memorandums that QLS (via Lionel,
15 Sawyer) submitted to Judge Williams in the previous QLS matter. From that record,
16 it is clear that QLS was not honest with Judge Williams, actively misled Judge
17 Williams, and/or utilized critical omissions to mislead Judge Williams. To confirm
18 this, this Court should review the "Notice of Appeal of Order to Cease and Desist . .
19 ." (including Mr. Owen's declaration) submitted by QLS and QLS's "Petitioner's
20 Opening Brief," submitted to Judge Williams on June 4, 2012, and then compare the
21 evidence gathered by Plaintiffs through limited discovery in this case. (SS#1-97.)

22 In its papers submitted to Judge Williams, QLS represented to Judge Williams,
23 directly and indirectly, that it did nothing more than file and serve a notice of default,
24 a notice of sale, a mediation notice and a danger notice. QLS represented to the Court
25 that it did not perform any type of debt collection, did not collect money, did not
26 contact borrowers by phone and would merely provide reinstatement or payoff
27 figures only if requested by the borrower. QLS represented to Judge Williams that it
28

1 never requested or demanded payment on the defaulted debts. Evidence shows this to
2 be false. (SS#1-97.)

3 Deceptively, QLS failed to disclose Judge Williams that QLS had collected
4 many millions of dollars over a period of years from borrowers in default, family
5 members of borrowers in default, other third parties, etc., and forwarded the collected
6 funds to its banking clients. The deception of Judge Williams included sworn
7 testimony submitted by QLS through the declaration of its Chief Operating Officer,
8 Mr. David Owen. Mr. Owen was deposed in this case (his deposition has not yet been
9 completed). Also deposed in this case (deposition not yet completed) was QLS's
10 "legal liaison," Mr. Bounlet Louvan. The testimony of Mr. Louvan shows that,
11 during the relevant period, in just one of many QLS departments, which had about
12 fifty employees (foreclosure department), QLS was having between 500 and 1,000
13 telephone communications with borrowers in default each day, regarding the
14 defaulted debts. They were not planning trips to Disneyland! It's all about collecting
15 on loans in default. With respect to reinstatement (*i.e.*, collection of payment to make
16 current) of loans that were in default, Mr. Louvan also confirmed that QLS directed
17 borrowers to deliver the collected funds to the QLS accounting department, during
18 the relevant period in 2008-2012 (SS#44.) This pure collection activity is not found
19 anywhere in the text of NRS 107, and it was concealed from Judge Williams.

20 QLS writings expressly admit it was performing both collection and, distinctly,
21 foreclosure services. (SS#93.) QLS had a collection department performing
22 collections of money to reinstate and pay off loans—with about 15 people doing this
23 work 8 hours a day, 2007-2012. (SS#43.) Louvan admitted under oath that QLS
24 collected the money from defaulted borrowers and deposited the cash into QLS's
25 trust account, and then issued a check to the banking client—usually sending the
26 money overnight to the lender. (SS#49.) Judge Williams was told none of this by
27 QLS and its lawyers. QLS also had a "retention" department that acted as agent and
28

1 middleman for the lender, obliged, directed and paid by its lender clients and under
2 their contracts, to facilitate and achieve collections by loan modification or
3 forbearance deals, according to the sworn testimony of Louvan and appropriate
4 inferences therefrom. (SS#23, 48, 60-61, 63.)

5 Owen, the QLS officer who swore to Judge Williams by declaration, also had
6 some revealing testimony, showing key facts QLS concealed from Judge Williams.
7 In his declaration to the Court, Mr. Owen did not tell Judge Williams that QLS,
8 acting expressly and admittedly as a debt collector (under the FDCPA) sent debt
9 validation notices to Nevada borrowers in default. (SS#28-29, 50, 53.) Mr. Owen did
10 not disclose or provide to Judge Williams the written admission, in the
11 correspondence of QLS to defaulted Nevada borrowers, that the business activities
12 QLS was conducting against the borrowers included both collection and foreclosure
13 activities. (SS#24-25, 93.) Regarding such work, Owen did not disclose to Judge
14 Williams that QLS processed forty-one thousand (41,000) Nevada files prior to
15 obtaining its license from the FID in 2012, and that QLS received at least \$19 million
16 in fees and \$86 million dollars in costs for that massive, illegal business operation in
17 Nevada (from 2007 to 2012 alone). (SS#5-6, 88.)

18 More importantly, Owen falsely swore to Judge Williams that the QLS
19 business operation did not include any collection activities. According to QLS's
20 testimony in this case, QLS did in fact collect money from Nevada borrowers in
21 default and QLS deposited the funds into a trust account, all of which was tracked by
22 QLS's accounting system, MAS 500. (SS#8-9, 49, 86-87.) Owen failed to inform
23 Judge Williams that he was personally a signatory on the trust account and his
24 signature was used to pass on the millions of dollars collected by QLS to the banking
25 clients of QLS, according to the testimony of QLS's Chief Financial Officer, Mr.
26 Wes Andrews. (SS#86.) Owen failed to disclose to Judge Williams that QLS's own
27 attorneys had determined that QLS was in fact a debt collector, as reflected by the
28

1 instruction of those attorneys to QLS that it must disclose itself as a debt collector to
2 borrowers, and that QLS was required to comply with the debt collection laws—
3 obviously because QLS was in fact a debt collector under the law (FDCPA). (SS#14-
4 15, 24, 28-29.) Neither Owen nor the QLS lawyers informed Judge Williams that
5 QLS had the database and technology capability to determine the total amount of
6 money collected from Nevada debtors during the years 2007 to 2012, as Owen has
7 now admitted in this case. (SS#8-9, 19.) This has been confirmed by the Chief
8 Financial Officer of QLS. (SS#83.) Also, in this case, by confirming the veracity of
9 QLS's written statement to borrowers that it performed both collection and
10 foreclosure services, Owen has effectively admitted that QLS was illegally operating
11 as an unlicensed collection agency in Nevada. (SS#24-25, 93.) Finally, Mr. Owen
12 and the QLS lawyers failed to disclose to Judge Williams that QLS issued debt
13 validation notices to the defaulted borrowers, including Plaintiffs, because it was
14 required to do so as a debt collector, under the FDCPA. (SS#28-29, 50, 53.) On this
15 evidence, Plaintiffs believe the outcome in the Nevada Supreme Court will be the
16 same as in the Alaska Supreme Court—slam dunk; *i.e.*, summary judgment for
17 Plaintiffs. *See Alaska Trustee LLC v. Ambridge* (Alas. 2016) 372 P.3d 207 [affirming
18 summary judgment in favor of Plaintiffs].

19 20 **III. RES JUDICATA DOES NOT APPLY HERE**

21 **A. It Is Improper for QLS to Raise Issue or Claim Preclusion by** 22 **Motion to Dismiss**

23 As a preliminary matter, it is generally procedurally improper under Nevada
24 law for defendants to raise issue or claim preclusion by way of a motion to dismiss
25 because these are affirmative defenses that must be both pled and proven by the party
26 asserting them. *See* N.R.C.P. 8(c) ["In pleading to a preceding pleading, a party shall
27 set forth affirmatively . . . estoppel, . . . res judicata, . . . and any other matter
28

1 constituting an avoidance or affirmative defense.”]; *Bower*, 125 Nev. at 481 [“The
2 party seeking to assert a judgment against another has the burden of proving the
3 preclusive effect of the judgment.”]; *Schwartz v. Schwartz*, 95 Nev. 202, 204, 591
4 P.2d 1137, 1139 (1979) [“Res judicata is an affirmative defense that must be
5 specifically pleaded.”]. Accordingly, it would be improper for the Court to adjudicate
6 in a motion to dismiss QLS’s affirmative defense of issue or claim preclusion. The
7 Court should expressly decline to do so, especially in order to avoid unfairly
8 prejudicing Plaintiffs by considering matters outside the pleadings, thereby
9 converting QLS’s motion to dismiss into a motion for summary judgment while
10 failing to give Plaintiffs discovery and a “reasonable opportunity to present all
11 material made pertinent to such a motion by Rule 56” of the Nevada Rules of Civil
12 Procedure. *See* NRCP 12(b) [“If . . . matters outside the pleading are presented to and
13 not excluded by the court, the motion shall be treated as one for summary judgment
14 and disposed of as provided in Rule 56, and all parties shall be given reasonable
15 opportunity to present all material made pertinent to such a motion by Rule 56.”]; *see*
16 *also Redrock Valley Ranch, supra*, 254 P.3d at 647.

17 As explained below, if the Court decides to consider QLS’s preclusion
18 arguments as a motion for summary judgment, the Court should deny the motion for
19 two reasons: (1) QLS fails to prove the preclusive effect of the prior proceeding here;
20 and (2) Plaintiffs have not had adequate opportunity to conduct discovery necessary
21 to destroy QLS’s motion, and are entitled to a continuance pursuant to NRCP 56(f).
22

23 **B. The Requirements For Issue or Claim Preclusion Have Not Been** 24 **Established**

25 Issue or claim preclusion do not apply unless specific requirements are met.
26 *Redrock Valley Ranch, LLC v. Washoe County* (2011) 127 Nev. Adv. Rep. 38, 254
27 P.3d 641, 646. The “following factors are necessary for application of issue
28

preclusion: (1) the issue decided in the prior litigation must be identical to the issue presented in the current action; (2) the initial ruling must have been on the merits and have become final; . . . (3) the party against whom the judgment is asserted must have been a party or in privity with a party to the prior litigation; and (4) the issue was actually and necessarily litigated.” *Five Star Capital Corp. v. Ruby* (2008) 124 Nev. 1048, 1055, 194 P.3d 709, 713 [internal quotation marks and citation omitted; second alteration in original]. The fourth requirement means that the issue in the prior case was “‘actually litigated and determined by a valid and final judgment, and the determination [was] essential to the judgment.’” *In re Sandoval* (2010) 126 Nev. Adv. Rep. 15, 232 P.3d 422, 424 [quoting *Restatement (Second) of Judgments* (“*Restatement of Judgments*”), §27 (1982)].

“Additionally, claim and issue preclusion cannot enlarge an order that the rendering judge expressly limited.” *Holt v. Reg’l Tr. Servs. Corp.* (2011) 127 Nev. Adv. Rep. 80, 266 P.3d 602, 605. “The availability of issue preclusion is a mixed question of law and fact, in which legal issues predominate”; moreover, even “[o]nce it is determined [to be] available, the actual decision to apply it is left to the discretion of the tribunal in which it is invoked.” *Redrock Valley Ranch*, 127 Nev. Adv. Rep. 38, 254 P.3d at 647 [internal quotation marks omitted; alterations in original]. “The party seeking to assert a judgment against another has the burden of proving the preclusive effect of the judgment.” *Bower v. Harrah’s Laughlin, Inc.* (2009) 125 Nev. 470, 481, 215 P.3d 709, 718.

1. The Requirements for Claim Preclusion Have Not Been Met Here

As QLS concedes, claim preclusion only “applies if (1) the same parties or their privies are involved in both cases, (2) a valid final judgment has been entered, and (3) ‘the subsequent action is based on the same claims or any part of them that were or could have been brought in the first case.’” *Alcantara v. Wal-Mart Stores, Inc.* (2014) 130 Nev. Adv. Rep. 28, 321 P.3d 912, 915 [quoting *Five Star Capital Corp.*,

1 *supra*, 124 Nev. at 1054, 194 P.3d at 713]. For reasons explained more fully below,
2 QLS cannot establish the first element here. Even assuming *arguendo*, however, that
3 the first element were not an issue here (which it is), QLS's claim preclusion
4 argument must fail because QLS has not—and, indeed, cannot—establish that the
5 same claims as Plaintiffs' causes of action in this lawsuit were or could have been
6 brought in the prior proceeding.

7 The only thing offered by QLS regarding this requirement is its wholly
8 unsupported assertion that "Plaintiffs assert that failure to hold a license is a
9 deceptive trade practice" which, according to QLS, is the "same claim that was
10 brought in the FID administrative review case." QLS Motion, at p. 12. Yet the
11 exhibits offered by QLS in support of its motion plainly show that the FID did not
12 assert that QLS's failure to hold a license is a deceptive trade practice. *See* QLS
13 Exhibits 1 through 9. Nor did the FID (or Judge Williams) consider or decide
14 whether QLS had engaged in a deceptive trade practice, whether by failing to hold a
15 license or generally. *Id.* QLS's unsupported assertion to the contrary is, as QLS's
16 own exhibits show, false. Moreover, although QLS seemingly ignores the issue
17 entirely, QLS does not even contend that Plaintiffs' second cause of action for unjust
18 enrichment was or could have been brought in the prior proceeding.

19 QLS also presents no evidence, argument, or authority at all to the effect that
20 the claims asserted by Plaintiffs here—*i.e.*, causes of action for statutory consumer
21 fraud and unjust enrichment—even could have been brought by the FID as part of its
22 administrative proceedings against QLS. Given the proceedings there—*i.e.*, the FID
23 issued a cease and desist order, an administrative hearing was held and a ruling
24 issued by the FID, which QLS then appealed to the Nevada trial court—the FID
25 seemingly could not have brought such claims against QLS in the prior matter even if
26 it had wished to.

1 Thus, QLS wholly fails to meet its burden to plead and prove that claim
2 preclusion is appropriate here on the third requirement alone. The motion should be
3 denied accordingly as to claim preclusion.

4
5 **2. The Issue Decided in Prior QLS Litigation Is Not Identical to Issues**
6 **Presented Here**

7 For issue preclusion to be available, the issue decided in the prior litigation
8 must be identical to the issue or issues presented in the current action. *See Five Star*
9 *Capital Corp., supra*, 124 Nev. at 1055, 194 P.3d at 713. QLS mistakenly suggests,
10 without evidentiary support, that the issue presented in the *Quality Loan Service*
11 matter is the same as the issues before the Court in this action. Not so.

12 According to his written order in the *Quality Loan Service* matter, the pertinent
13 issue decided by Judge Williams was whether a foreclosure trustee who is only
14 exercising the power of sale under a deed of trust and NRS 107 is, by that act alone,
15 collecting a debt or claim, or soliciting the payment of a debt as defined in NRS 649
16 such that the trustee is required to be licensed as a collection agency by the FID. *See,*
17 *e.g., QLS Exhibit 9 ("Quality Loan Service"),* at 2-3. QLS does not appear to dispute
18 this.

19 Plaintiffs here, however, do not allege that Defendants, including QLS, were
20 required to be licensed by the FID as collection agencies solely because they
21 recorded a notice of default as trustees. Rather, Plaintiffs have alleged in the TAC
22 that these Defendants were required to be licensed by the FID because they were in
23 fact collection agencies and simultaneously engaged in collection activity under
24 Nevada law, as alleged with specific details in the TAC. The powerful proof
25 presented by Plaintiffs in support of this opposition brief, and in support of related
26 briefing as to CRC and MTC, demonstrate that these allegations have merit. QLS's
27 activities as a collection agency are evidenced by—but certainly not limited to—the
28 various actions it took in carrying out its business. (*See* SS#1-96.) These actions

1 included but were not limited to soliciting the work from the banks, demanding
2 payment on past due debts, and collecting and forwarding payments. (*Id.*) These
3 issues are not identical to the content of Judge Williams' order in the *Quality Loan*
4 *Service* matter: whether a trustee of a deed of trust "who is only exercising the power
5 of sale under NRS chapter 107 . . . is required to obtain a license from the FID as a
6 collection agency" when "merely exercising the power of sale specifically granted"
7 under a deed of trust and NRS 107.¹ As noted above in discussing why QLS's claim
8 preclusion argument must fail, the issues of whether QLS engaged in a deceptive
9 trade practice or whether unjust enrichment would be appropriate were not raised or
10 considered at all in the prior proceeding.

11 To the extent that QLS may attempt to argue that Judge Williams decided
12 more than his written order in the *Quality Loan Service* matter expresses, Nevada law
13 is clear: issue preclusion cannot "enlarge an order that the rendering judge expressly
14 limited." *Holt v. Reg'l Tr. Servs. Corp.* (2011) 127 Nev. Adv. Rep. 80, 266 P.3d 602,
15 605. This Court must not entertain any arguments as to what issues Judge Williams
16 decided that would exceed or enlarge the text of his written order.

17 18 **3. QLS Fails to Establish Privity Here**

19 **a. Privity under *Restatement of Judgments* Section 41 Is Lacking**

20 "Issue preclusion can only be used against a party whose due process rights
21 have been met by virtue of that party having been a party or in privity with a party in
22 the prior litigation." *Alcantara, supra*, 130 Nev. Adv. Rep. 28, 321 P.3d at 917
23 [quoting *Bower v. Harrah's Laughlin, Inc.* (2009) 125 Nev. 470, 481, 215 P.3d 709,
24 718]. A similar privity requirement applies to claim preclusion as well. *Id.* at 915. For
25 this privity requirement, the Nevada Supreme Court has adopted the *Restatement of*

26
27 ¹ As explained in Plaintiffs' prior briefing, Plaintiffs do not allege that all trustees of
28 deeds of trust are also collection agencies by virtue of their being trustees. See NRS
107.028. It is clear, however, that some trustees—such as QLS here—are also
collection agencies, and must obtain licenses from the FID accordingly.

1 *Judgments*' Section 41's "examples of privity that arises when a plaintiff's interests
2 are being represented by someone else." *Id.* at 917-918 [citing *Restatement of*
3 *Judgments*, § 41(1982)].

4 QLS mistakenly contends that privity is established here under the *Restatement*
5 *of Judgments*' examples of a person who was represented by an "official or agency
6 invested by law with authority to represent the person's interests." *See Restatement of*
7 *Judgments*, § 41(1)(d). QLS fails to take into account the important guidance found
8 in the comments to section 41(1)(d), however. Comment *d* to Section 41 states that:

9
10 As an aspect of the powers and responsibilities of his office, a public official
11 may have authority to maintain or defend litigation on behalf of individuals or
12 of a collective public interest. That authority may be construed as *exclusive*, in
13 that maintaining an action to protect the interest, or defending the interest
14 when an action concerning it is brought by another, is treated as solely within
15 the authority of the official or agency involved. When the authority of the
16 official or agency is so construed, other persons correlatively are denied
17 judicially enforceable interest in the matter, or as it may be called 'standing to
18 sue,' and are thus unable to become parties to litigation concerning the interest.
19 In such circumstances, the question of their being precluded in subsequent
20 litigation by hypothesis cannot arise.

21 In other circumstances, the authority of the public official or agency is
22 coexistent with that of individuals or members of the public, such as citizens or
23 taxpayers, in that the latter are recognized as having a legally enforceable right
24 permitting them to bring or defend an action concerning an interest which the
25 official or agency may also seek to protect through litigation. Where this is so,
26 a further question presented is whether the exercise of the official or agency's
27 authority . . . should be construed as preempting the otherwise available
28 opportunity of the individual or members of the public to prosecute or defend
litigation in the matter. Where the exercise of that authority is regarding as
preemptive, the public official or agency represents such other persons for the
purposes of litigation concerning the interests in question and the judgment is
binding on them. On the other hand, the remedies that a public official is
empowered to pursue may be interpreted as being supplemental to those which
private persons may pursue themselves. In that circumstance, the official's
maintenance of an action does not preclude other litigation by the persons
affected. The opposing party, however, may be precluded from relitigating
issues determined in the first action . . .
[emphasis added].

Here, QLS has failed to even address—let alone establish—whether the
authority of the FID is exclusive, or, if not exclusive, preemptive such that the prior

1 litigation would be binding on Plaintiffs here.² That omission is fatal to QLS's
2 preclusion argument, especially as the very statutes cited by QLS show that the FID's
3 authority is exclusive (at least as to enforcement and regulatory actions). For
4 instance, the authority of the FID to suspend or revoke the license of a collection
5 agency, found in NRS 649.395(2)(a), and to revoke management of multiple
6 collection agencies, found in NRS 649.220(4)(a)-(b), is exclusive, insofar as it is
7 solely within the power of the FID rather than coexistent with the powers of
8 individuals or members of the public (such as Plaintiffs here). Similarly, the power of
9 the FID to issue cease and desist orders as part of its disciplinary powers—the very
10 power, indeed, whose exercise led to the *Quality Loan Service* decision—is vested by
11 the Nevada legislature exclusively in the FID Commissioner. *See* NRS 649.390(2)
12 (“If the Commissioner determines that an unlicensed person is engaging in an activity
13 for which a license is required pursuant to this chapter, the Commissioner shall issue
14 and serve on the person an order to cease and desist from engaging in the activity
15 until such time as the person obtains a license from the Commissioner.”). Because
16 members of the general public—such as Plaintiffs here—thus were and are unable to
17 become parties to such litigation, the question of their being precluded in subsequent
18 litigation cannot arise as a matter of law. *See Restatement of Judgments*, § 41, cmt. d;
19 *see also Democratic Cent. Comm. v. Washington Met. Area Transit Comm’n*, 842
20 F.2d 402, 409-410 n.52 (D.C. Cir. 1988) [“The American Law Institute distinguishes
21 between agencies granted exclusive authority to litigate on behalf of the public and
22 agencies whose legal authority coexists with that of private citizens. As to the former,
23 no question of preclusion can arise because individuals have no standing to sue. As to
24 the latter, one must determine whether the agency’s action preempts individual
25 action. Non-preemptive agency action does not prevent a later suit by an individual.”]
26

27 ² It would be unfair to allow QLS to attempt to rectify this failure through their reply
28 brief, since Plaintiffs would be deprived of the opportunity to respond insofar as
Defendants failed to raise these points in their moving papers.

1 [emphasis added; citations to *Restatement of Judgments*, § 41 omitted]. QLS has also
2 failed to show that the FID has been invested by law with authority to represent
3 individuals such as Plaintiffs in civil actions such as the one before Court here and
4 recover damages on their behalf. *Cf. Mohammed v. May Dep't Stores, Inc.* (U.S. Dist.
5 Ct. D. Del. 2003) 273 F.Supp. 2d 531, 535 ["The EEOC is invested by law with the
6 power to represent aggrieved individuals in civil actions against employers to recover
7 damages for discrimination."]. Even assuming that the FID has such authority, the
8 FID did not purport to do so in the prior proceeding, as reflected in QLS's own
9 exhibits. *See generally* QLS Exhibits 1-9.

10 To the extent that the FID's authority might not be exclusive, QLS has failed
11 to establish that exercise of that authority preempts subsequent individual action
12 (such as by Plaintiffs here) rather than being supplemental to the remedies that
13 private parties may pursue themselves. *See Restatement of Judgments*, § 41,
14 Comment *d.* Here, for instance, an action for remedies such as damages by Plaintiffs
15 would properly be supplemental to the remedies available to the FID in the prior
16 proceeding, which was prospectively concerned with enforcing compliance with
17 Nevada law rather than seeking damages for past harm suffered by failure to comply
18 with such law.

19 Two of the cases cited by QLS are not to the contrary. In the first, the question
20 of privity concerned an estate and its beneficiary, which does not implicate the same
21 exclusivity and preemption considerations that representation by public officials and
22 agencies does. *See Alcantara*, 130 Nev. Adv. Rep. 28, 321 P.3d at 917-918. The
23 second, a California case that predates by decades Nevada's substantial revisions to
24 its law of issue and claim preclusion, applied the doctrine of claim rather than issue
25 preclusion, which have distinct purposes and are not interchangeable. *Cf. Rynsbarger*
26 *v. Dairymen's Fertilizer Cooperative, Inc.*, 266 Cal.App.2d 269, 275-276 (Cal. Ct.
27 App. 1968), *with Five Star, supra*, 124 Nev. at 1054, 194 P.3d at 721-713 ["As a
28

1 result of this lack of clarity in our case law regarding the factors relevant to
2 determining whether claim or issue preclusion apply, we take this opportunity to
3 establish clear tests for making such determinations. We now specifically adopt the
4 terms of claim preclusion and issue preclusion as the proper terminology in referring
5 to these doctrines. This will help avoid confusion and interchanging use of the two
6 separate doctrines”]. For reasons explained above, QLS fails to prove that claim
7 preclusion is appropriate here.

8 In *Rynsburger*, moreover, the California appellate court concluded that privity
9 between three cities and private individuals existed there because the private
10 individuals were “so identified in interest” with the public parties from the first
11 proceeding that those individuals “although not before the court in person, [had been]
12 so far represented by others that [their] interest received actual and efficient
13 protection.” *Rynsburger, supra*, 266 Cal.App.2d at 277-278 [emphasis added]. It was
14 also significant that the private individuals had previously requested the public
15 parties to initiate the prior public nuisance action on their behalf, the prior lawsuit
16 had been “filed for the purpose of benefiting all property owners” (including the
17 private individuals) affected by the public nuisance, and many of the allegations in
18 the complaints in the two cases were “substantially the same.” *Id.* at 276. Here, in
19 contrast, the *Quality Loan Service* action was not carried out at Plaintiffs’ request,
20 was not expressly initiated on Plaintiffs’ behalf, did not contain substantially the
21 same allegations as those found in Plaintiffs’ TAC here, and did not seek damages for
22 Plaintiffs (or the other relief sought by Plaintiffs here). No cause of action for
23 statutory consumer fraud or unjust enrichment was brought by the FID on behalf of
24 Plaintiffs (or the citizens of Nevada more generally).

25 The two other cases cited by QLS in fact show why issue preclusion is not
26 appropriate here. *See Nevada v. Bank of Am. Corp.* (9th Cir. 2012) 672 F.3d 661;
27 *Alaska Sport Fishing Ass’n v. Exxon Corp.* (9th Cir. 1994) 34 F.3d 769 (“Exxon
28

1 *Corp.*”). In the first, which did not consider privity or preclusion at all, the State of
2 Nevada, through its Attorney General, filed a *parens patriae* lawsuit against Bank of
3 America Corporation and related entities in which Nevada asserted in pertinent part
4 that the defendants violated the Nevada DTPA by engaging in statutory consumer
5 fraud. *Nevada, supra*, 672 F.3d at 664. The Nevada DTPA expressly authorized the
6 Nevada Attorney General to bring such an action in the name of the State of Nevada,
7 which the lawsuit at issue did. *Id.* at 665. The lawsuit also expressly sought
8 “declaratory and injunctive relief, civil penalties, restitution for defrauded Nevada
9 consumers, attorney’s fees and the costs of investigation.” *Id.* at 666 [emphasis
10 added]. The Ninth Circuit ultimately concluded that Nevada was the real party at
11 issue in the lawsuit (as opposed to the Nevada citizens on whose behalf Nevada was
12 bringing the lawsuit) for purposes of ruling on the propriety of federal jurisdiction
13 (not privity or preclusion) and removal under the federal Class Action Fairness Act.
14 *Id.* at 669-671.

15 Although *Nevada* does not provide any real support for QLS’s arguments
16 regarding privity or preclusion more generally, it does illustrate the kinds of cases—
17 such as the one there—where a prior proceeding might be entitled to preclusive effect
18 because privity existed: unlike the administrative proceedings in the *Quality Loan*
19 *Service* matter, the lawsuit in *Nevada* was brought by the State of Nevada expressly
20 on behalf of its citizens, asserted claims on behalf of those citizens, and sought
21 recovery on their behalf. In contrast, in the *Quality Loan Service* matter, the Nevada
22 Attorney General did not purport to act on behalf of the citizens of Nevada in the
23 administrative proceedings before the FID or the petition for review before Judge
24 Williams, and did not assert claims—such as those asserted here—on behalf of
25 Nevada citizens or seek relief—such as the relief sought here—on their behalf for
26 injuries suffered from QLS’s misconduct.

1 The second case cited by QLS is similarly unhelpful to QLS here. There, a
2 sportfishing association and four individual sportfishers in Alaska sued Exxon
3 Corporation in a putative class action, “seeking damages for loss of use and
4 enjoyment of natural resources resulting from the 1989 *Exxon Valdez* oil spill.”
5 *Exxon Corp.*, *supra*, 34 F.3d at 770. The State of Alaska and the U.S. Government,
6 “in their capacities as ‘trustees for the public’ under the federal Clean Water Act,
7 subsequently filed a lawsuit against Exxon Corp., seeking “damages for restoration of
8 the environment and compensation for lost public uses of natural resources.” *Id.* at
9 771. The government parties and Exxon Corp. eventually entered into a settlement
10 agreement resolving the governments’ claims against Exxon Corp., as part of which
11 Exxon Corp. agreed to pay for natural resource damage. *Id.* This settlement was later
12 properly given res judicata effect in the sportfishers’ ongoing lawsuit, insofar as the
13 governments of the United States and Alaska had expressly acted on behalf of their
14 citizens in bringing and settling their claims against Exxon Corp. *Id.* at 772-773.
15 Moreover, the trial court there properly concluded that, unlike here, the two cases
16 involved essentially the same or similar claims: the sportfisher plaintiffs in the first
17 lawsuit sought the “same damages” as the governments had recovered as part of their
18 settlement with Exxon Corp. *Id.* at 773-774 [concluding that “the United States and
19 the state of Alaska, acting as government trustees, have already recovered for the
20 very same damages plaintiffs now seek here.”].

21 In discussing the *parens patriae* doctrine, the Ninth Circuit in *Exxon Corp.*
22 observed that “State governments may act in their *parens patriae* capacity as
23 representatives for all their citizens in a suit to recover damages for injury to a
24 sovereign interest.” *Id.* at 772. Indeed, bringing a suit to recover damages expressly
25 on behalf of their citizens is precisely what the governments in *Nevada* and *Exxon*
26 *Corp.* sought to do, but what Nevada never did in the prior *Quality Loan Service*
27 proceeding. As QLS notes, NRS 649.400 authorizes the Commissioner of the FID to
28

1 seek injunctive relief—either through the appropriate district attorney or directly by
2 itself bringing “suit in the name and on behalf of the State of Nevada”——against
3 collection agencies violating NRS Chapter 649 or those “engaging in the business of
4 a collection agency without being licensed” by the FID. That the FID Commissioner
5 could have done these things does not assist QLS, however, precisely because the
6 FID Commissioner declined to do so in the prior proceeding. Instead of a bringing a
7 lawsuit as *parens patriae* (or having the appropriate district attorney do so), the FID
8 merely issued a cease and desist order to QLS, which was then litigated by the FID
9 and QLS. *See* QLS Exhibits 1-9. Thus, given that Nevada was not acting as *parens*
10 *patriae* in that matter, it would be plainly inappropriate to conclude that the parties
11 there were somehow in privity with the Plaintiffs here, such that they should be
12 bound by that proceeding.

13
14 **b. The Section 42 Exceptions to Privity Apply Here**

15 Equally troubling is QLS’s failure to acknowledge or address the exceptions
16 found in Section 42 of the *Restatement of Judgments* to the privity rule of Section 41,
17 which exceptions are expressly referred to in and thus incorporated by Section 41
18 itself. QLS’s failure to address these exceptions is especially surprising as at least
19 two of the exceptions apply here: the exceptions for divergence of interest and lack of
20 diligence. *See Restatement of Judgments*, §42(1)(d)-(e), Comments *e* and *f*.

21
22 **i. The FID’s Interests Substantially Diverged From Those of Plaintiffs Here**

23 Here, there are ample grounds for this Court to find that the FID’s interests in
24 beginning and then defending the *Quality Loan Service* proceeding substantially
25 diverged from the interests of Plaintiffs here, such that the FID could not and did not
26 fairly represent Plaintiffs as to the matters for which the prior proceeding is invoked
27 now by QLS. *See Restatement of Judgments*, § 42(d). The FID simply wanted QLS to
28

1 get its license in Nevada, and QLS did so. (SS#16.) The FID's interest in bringing the
2 prior proceeding was to insure compliance by QLS with Nevada law and the FID's
3 regulations. *See* QLS Exhibits 1-9 (showing FID sought to make QLS comply with
4 Nevada licensing requirements). The FID in the prior proceeding had no interest—
5 and the prior proceeding could not have led to—obtaining damages or other relief for
6 Plaintiffs' here, for the injuries they have suffered, as alleged in the TAC. *See id.*
7 There was no deceptive trade practices claim for damages. *Id.* It is indisputable that
8 during the course of the prior proceeding, QLS obtained a certificate as a foreign
9 collection agency from the FID. Once that happened, the FID's interests in defending
10 the prior proceeding vastly diverged from those of Plaintiffs here, as the FID had
11 achieved its goals in initiating the prior action, whereas Plaintiffs, who had not and
12 still have yet to receive relief for the harm they suffered, had achieved nothing.
13 Similarly, as discussed throughout this brief, once the Nevada legislature amended
14 the relevant statutes to satisfy the FID's interests, the FID presumably had no reason
15 to continue to defend the prior action by appeal. These statutory revisions, however,
16 did not meet Plaintiffs' interests here, since they did nothing to provide Plaintiffs
17 relief for the damages they incurred.

18 Accordingly, the substantial divergence of interests between the FID and
19 Plaintiffs here establishes that privity does not exist between them as the FID could
20 not fairly represent Plaintiffs in the prior proceeding. *See S.O.V. v. People ex rel.*
21 *M.C.*, 914 P.2d 355, 359-361 (Colo. 1996) [State and non-party child deemed not to
22 be in privity in prior paternity suit because "child's interests in a paternity proceeding
23 are of a different and broader nature than those of the State"]; *see also Democratic*
24 *Cent. Comm.*, 842 F.2d at 409-410 [no privity because "Commission's representation
25 . . . was clearly less than the advocacy of private parties" and the "interests of PUC
26 and Transit's farepayers differed markedly"].

ii. **QLS Was on Notice that the FID Failed to Prosecute or Defend in the *Quality Loan Service* Matter with Due Diligence and Reasonable Prudence**

There are also good grounds here for this Court to conclude that the FID failed to prosecute the *Quality Loan Service* proceeding with due diligence and reasonable prudence, and that QLS was on notice of the facts making that failure apparent. *See Restatement of Judgments*, § 42(e). Despite serious errors of law in Judge Williams’ *Quality Loan Service* decision, the FID failed to appeal it, thereby demonstrating a lack of due diligence and reasonable prudence on the FID’s part in representing Plaintiffs’ interests. As the opposing party to the prior proceeding, QLS naturally was on notice of the FID’s failure to appeal—and thus on notice of the FID’s failure to defend the prior action adequately. Given QLS had by then obtained the certificate that the FID insisted it required, and the Nevada legislature had amended relevant statutes in ways favorable to the FID, the FID’s failure to appeal may have been sensible as to the FID’s regulatory interests, but, as noted above, certainly was not due diligence and reasonable prudence as to Plaintiffs’ different and broader interests (including the recovery of damages for harm suffered due to QLS’s unlicensed collection agency activities). Indeed, the evidence from QLS’s own witness, Mr. Owen, now shows that QLS and the FID was resolved by QLS agreeing to obtain its collection agency license from the FID (which QLS eventually did). (SS#22.) Thus, the FID’s failure to appeal was such “grossly deficient” management of the litigation as far as Plaintiffs’ interests were concerned that the inadequacy should have been apparent to QLS. *See Restatement of Judgments*, § 42, Comment f; *see also Arduini v. Hart*, 774 F.3d 622, 636 (9th Cir. 2014) [applying Nevada law on issue preclusion and concluding that insufficient showing of inadequate representation where plaintiffs in prior case “fully litigated the case through its dismissal . . . and then fully briefed and argued their appeal . . .”][emphasis added].

4. Questions of Fact Bar Summary Judgment

Accordingly, for these reasons, the Court should conclude that privity does not exist between the FID and Plaintiffs here, such that the preclusive effect cannot be given to the prior proceeding here. Indeed, Judge Scann previously did not entertain Defendants' previous efforts to have the *Quality Loan Service* proceeding given preclusive effect here when Defendants raised it in their largely unsuccessful NRCP 12(b)(5) motion. If the Court is inclined otherwise, however, the Court should not resolve this matter as a motion to dismiss because whether prior "representation has been inadequate is a question of fact." *Restatement of Judgments*, § 42, Comment f; *see also Falcon v. Beverly Hills Mortgage Corp.*, 168 Ariz. 527, 531, 815 P.2d 896, 899-900 (Ariz. 1991) ["[D]ue diligence is a question of fact."] Moreover, as explained above, QLS has the burden of pleading and proving its affirmative defense of issue preclusion where, as here, the record itself does not show it applies. *Bower*, 125 Nev. at 481, 215 P.3d at 718. Moreover, whether issue preclusion applies is a mixed question of law and fact. *Redrock Valley Ranch*, 254 P.3d at 647; *see also Falcon*, 168 Ariz. at 531, 815 P.2d at 899-900 ("[D]ue diligence is a question of fact."). For reasons explained above, QLS has not properly pled, let alone proven, issue preclusion as an affirmative defense. Due process nonetheless requires that the Court give Plaintiffs an opportunity to conduct further discovery and present evidence on this factual issue before the Court rules in QLS's favor on this issue.

Given the narrow scope of Phase One discovery imposed by the Commissioner and the Court thus far, and the Court's decision to stay Phase One discovery before it was set to be completed, Plaintiffs have not yet had adequate opportunity to conduct such discovery (as detailed below and in the supporting declaration of Plaintiffs' counsel). Accordingly, if the Court is inclined at this time to consider issue preclusion in this case, the Court should decline to do so until after the issue has been

1 properly presented to the Court and Plaintiffs have had an opportunity to discover
2 and litigate the issue fully and fairly. Due process of law requires no less.

3
4 **C. Even If Issue Preclusion Were Available Here, the Court Should**
5 **Exercise Its Discretion and Decline to Apply Issue Preclusion**

6 **1. The FID Had Reasons Not to Appeal the Prior**
7 **Erroneous *Quality Loan Service* Decision Because QLS Had**
8 **Capitulated and Obtained a Certificate from the FID, and the**
9 **Nevada Legislature Had Amended the Statutes Favorably to**
10 **the FID**

11 In the past, Defendants, including QLS, have suggested that the FID somehow
12 acquiesced in the result of the *Quality Loan Service* proceeding because FID chose
13 not to appeal the decision and, according to Defendants, has not pursued similar
14 enforcement against any other foreclosure trustees. As an initial matter, Defendants'
15 speculations as to the FID's reasons for not appealing the *Quality Loan Service*
16 decision are not properly before the Court at this stage (if any) and are *not* evidence.
17 Similarly, Defendants' past assertions or suggestions that the FID has not gone after
18 any other foreclosure trustees are improper because it is outside the pleadings, is not
19 evidence, and is not supported by any evidence or allegations properly before the
20 Court.

21 Moreover, as discussed above, the FID had its own good reasons not to appeal
22 the *Quality Loan* decision in January 2013: QLS had by that time obtained a
23 certificate as a foreign collection agency from the FID! (SS#16.) Moreover, by that
24 point, the Nevada legislature had amended the relevant statutes in ways that
25 confirmed the position of the FID. *See, e.g.*, NRS 107.028 [making clear that
26 collection agencies licensed under Nevada law can serve as trustees of deeds of
27 trust]. Thus, the FID's failure to appeal, under the circumstances, does not in any way
28 suggest that the FID agreed with the decision or believed it lacked solid grounds for
appealing it. Rather, the FID's decision is explicable given that by point in time the

1 FID had achieved its objectives (even if the FID had *not* satisfied the interests of
2 Plaintiffs here by obtaining redress for past wrongdoing by QLS). Under such
3 circumstances, the Court should, in an exercise of the discretion entrusted to it,
4 decline to apply issue preclusion here.

5 6 IV. QLS'S ABSTENTION ARGUMENT IS MERITLESS

7 QLS's argument that the Court should abstain from adjudicating the merits of
8 Plaintiffs' claims against QLS is riddled with several fundamental defects. Despite
9 QLS's assertions to the contrary, the FID is not prohibited—expressly or otherwise—
10 from requiring QLS to obtain a collection agency license. Judge Williams' narrowly
11 order in the *Quality Loan Service* matter only (1) reversed the FID's decision that
12 QLS must cease and desist from serving as a non-judicial foreclosure trustee unless
13 and until it obtained a collection agency license from the FID, and (2) ordered that
14 the FID's cease and desist order and subsequent administrative ruling were void *ab*
15 *initio* due to purported legal error by the FID. *See QLS Decision*, at 5 and 6. Notably,
16 the Court expressly noted that QLS, in the Court's view, was "merely exercising the
17 power of sale specifically granted" by the relevant deed of trust and NRS Chapter
18 107, and therefore, the Court mistakenly concluded, need not be licensed as a
19 collection agency by the FID. *Id.* at 4. Nothing in the Court's ruling, however, would
20 bar the FID from issuing a subsequent cease and desist order to QLS if the FID
21 concluded that QLS was doing more than only exercising the power of sale. It is
22 ludicrous for QLS to effectively suggest that it has carte blanche in perpetuity as to
23 the FID because of Judge Williams' order. The order itself does not say that.
24 Moreover, because QLS capitulated to the FID's demands and obtained a collection
25 agency license from the FID in 2012—which QLS, to date, has maintained—the FID,
26 naturally, has not had any reason or need to issue further cease and desist orders to
27
28

1 QLS.³ Thus, QLS's assertion that a ruling against QLS in this matter would
2 necessarily interfere with the FID's authority here is wrong insofar as QLS relies on a
3 profound misinterpretation of Judge Williams' ruling and its effect on the FID.

4 QLS wholly fails to show that the doctrine of judicial abstention that QLS relies
5 on from California has been adopted or followed by Nevada courts. QLS similarly
6 fails to show that the factors set forth in the case it relies on warrant abstention here.
7 *See Alvarado v. Selma Convalescent Hospital* (2007) 153 Cal.App.4th 1292, 1297-
8 1303 [discussing factors to be considered by courts in deciding whether abstention
9 would be appropriate]. By way of example, QLS does not even attempt to show that
10 abstention here would be appropriate because "other, more effective remedies" than
11 injunctive relief would be available to Plaintiffs. *Compare Alvarado, supra*, 153
12 Cal.App. at 1302-1303 ["Courts may abstain from adjudicating a lawsuit and issuing
13 injunctive relief when the injunctive relief would place an unnecessary burden on the
14 court because of the existence of other, more effective remedies."].

15 Even setting these failures aside, California decisions have made clear that
16 judicial abstention is only permitted in California where "the court has been asked
17 only to award some type of equitable relief, as opposed to a damages award." *Shuts v.*
18 *Covenant Holdco LLC* (2012) 208 Cal.App.4th 609, 624-625 [emphasis added].
19 Indeed, the "abstention doctrine does not apply to plaintiffs' legal claims, and the
20 court had no discretion to apply this doctrine in dismiss the first cause of action in its
21 entirety." *Id.* [emphasis added]. Notably, the California Court of Appeal in *Shuts*
22 specifically distinguished the facts in the case before it from those in *Alvarado* on the
23 ground that the first cause of action in *Shuts*—like Plaintiffs' first cause of action
24 here—"seeks monetary damages and attorney fees, as well as equitable relief"
25 (whereas the plaintiffs in *Alvarado* "solely sought equitable remedies" under

26 ³ If QLS truly believes that the FID is legally prohibited by requiring QLS to obtain a
27 collection agency license in Nevada (as QLS asserts in its motion), why has QLS
28 continued, for nearly 5 years, to maintain that very license, at not inconsiderable
expense to QLS?

1 California's Unfair Competition Law). *Id.* at 624-625 [emphasis added]
2 [distinguishing *Alvarado, supra*, 153 Cal.App.4th at 1297].

3 Thus, where, as here, more than equitable relief is sought, the doctrine of judicial
4 abstention is not appropriate. *Id.* at 625; *see also Hambrick v. Healthcare Partners*
5 *Medical Group, Inc.* (2015) 238 Cal.App.4th 124, 161 ["Hambrick correctly contends
6 that the trial court should not have relied upon the judicial abstention doctrine to
7 dismiss her second cause of action . . . because it included a claim for damages. Only
8 when equitable relief is the sole relief sought may the trial court invoke the doctrine
9 of judicial abstention."][citing *Shuts, supra*, 208 Cal.App.4th at 625].⁴ Notably, as
10 illustrated by these cases, whether abstention would be appropriate is determined by
11 looking to the relief sought, and not whether, on the merits, the relief should be
12 awarded. *See, .e.g., Shuts, supra*, 208 Cal.App.4th at 624-625 [abstention not
13 permitted where damages and attorney fees are sought]. Regardless, the evidence of
14 collection agency activities presented herewith is vastly different than anything found
15 in the text of Judge Williams' order. (SS#1-96.)

16 It is especially remarkable that QLS would suggest that the Court should defer to
17 the FID here and its regulatory authority given that QLS's position—albeit
18 mistaken—is that the FID has no authority to regulate QLS in the first place! QLS's
19 purported concern that a ruling by the Court favorable to Plaintiffs here would put the
20 FID in an untenable position is also unfounded. After all, it is undisputed that QLS
21 obtained its collection agency license in 2012 and has continued to maintain it since
22 then; there is nothing to suggest that this, which is arguably inconsistent with Judge

23 ⁴ QLS wrongly suggests that *Washoe County v. Otto* (2012) 128 Nev. 424, 282 P.3d
24 719, 724-725, somehow supports the proposition that Nevada's Administrative
25 Procedures Act ("APA") "prescribes the requirements and limitations of judicial
26 review of agency decisions" in order to avoid administrative agencies being put in the
27 untenable position of having inconsistent or conflicting orders from Nevada trial
28 courts. *Washoe County*, however, says nothing at all regarding why the APA
provides for limited judicial review of administrative rulings. *See Id.* at 724-725 and
generally. There is certainly nothing in *Washoe County* suggesting that the Nevada
legislature limited courts' power to review agency decisions so as to avoid agencies
being subject to conflicting orders from Nevada trial courts.

1 Williams' order, has put the FID in an untenable position or interfered with
2 enforcement of the FID's duties in any way. Thus, a ruling from the Court that
3 enjoined QLS from engaging in its collection agency activities in Nevada unless it
4 maintains its license from the FID would not seemingly change anything as far as the
5 FID is concerned. Similarly, a judgment in Plaintiffs' favor here and an appropriate
6 award of damages and attorney's fees would not affect the FID at all, but only
7 Plaintiffs and QLS.

8 QLS's reference to Section 63 of the *Restatement of Judgments* is especially
9 puzzling because it is so inapplicable here, despite QLS's assertions to the contrary.
10 Section 63 is not concerned with judicial abstention at all. Section 63 and the
11 comments and illustrations thereto make clear that it is concerned with extra-judicial
12 obstruction of judgments by third parties to proceedings, whether in concert with
13 those actually bound by the judgments or for a third party's independent reasons: *i.e.*,
14 the duty described in Section 63 is "that which is enforced under the law of contempt
15 of court as it applies to persons not parties to the action before the court, and under
16 the law of tortious interference with legal relationships between third persons."
17 *Restatement of Judgments*, § 63. The two illustrations found in Section 63 reveal how
18 inapplicable it is to the facts here: the first deals with a third party helping an
19 enjoined party violate an injunction by cutting down trees that the enjoined party was
20 restrained from cutting down. *Id.* at § 63, cmt. a. Under those circumstances, the third
21 party "may be liable for contempt of court or for damages for cutting the trees." *Id.*
22 The second illustration deals with a third party's liability for damages for assisting a
23 defendant in hindering a plaintiff's collection of a judgment against the defendant by
24 accepting a conveyance of property from the defendant. *Id.* Neither of these examples
25 is analogous to the situation here: Plaintiffs properly seek to litigate issues similar to
26 several of those raised in the unrelated *Quality Loan Service* matter, which, as
27 explained above, is not binding on Plaintiffs or the Court here. There can be no
28

1 serious suggestion that Plaintiffs or the Court here are in any way engaging in the sort
2 of inappropriate extra-judicial conduct seen in Section 63.

3 QLS quotes from the Section 63 at some length but notably omits the crucial
4 language showing that QLS's position is untenable. Section 63 specifically
5 recognizes that third parties such as Plaintiffs here are not barred from litigating
6 previously adjudicated matters if, as here, *res judicata* does not apply:

7 Where such a duty is imposed, it rests on the proposition that the law may
8 require a person to conduct himself in deference to obligations among other
9 persons already established by legal process. Observance of this litigation does
10 not necessarily preclude the third person from litigating the matters previously
11 adjudicated. By hypothesis the third person is not bound by the judgment
12 under the rules of privity and hence is not subject to the res judicata effects of
13 the judgment. Given that fact, if he had standing to dispute the matters that
14 were in controversy, he is free to raise them in new litigation, although he may
15 incur still further liability if such litigation is frivolous. The right of such a
16 person to bring new litigation concerning matters litigated between others,
17 however, does not also imply freedom to disregard the obligations that the
18 judgment imposed on the parties to the judgment [i.e., by disregarding those
19 obligations through extra-judicial conduct]."

20 *Restatement of Judgments*, § 63 [emphasizing language improperly omitted by
21 QLS].

22 Thus, under Section 63, those not bound by judgments—such as Plaintiffs here—are
23 not prohibited from litigating issues previously adjudicated; they simply may not
24 engage in extra-judicial conduct that would assist parties to disregard those
25 judgments or tortiously interfere with the legal relationships created by a prior
26 judgment.

27 The irony here is that, independent of this litigation, QLS and the FID
28 apparently have decided to disregard the order from the *Quality Loan Service* matter,
insofar as QLS has obtained and continues to maintain a collection agency license
from the FID, despite Judge Williams' ruling that the FID's cease and desist order
was legally void. (SS#16.) An award of damages and attorney's fees or disgorgement
of QLS's unlawful fees and costs would not affect the legal relationship between

1 QLS and the FID at all. An injunction from this Court requiring QLS to maintain its
2 collection agency license in order to continue carrying out its business activities in
3 Nevada also would not seemingly change that relationship, but would simply require
4 QLS not to change the status quo (so long as QLS's business activities in Nevada
5 remain effectively the same).

6 7 V. NRS 598.0955 DOES NOT ASSIST QLS HERE

8 Although it would be improper to give the *Quality Loan Service* proceeding
9 preclusive effect, QLS effectively seeks to obtain that result by relying on Judge
10 Williams' order as proof that QLS was in compliance with Nevada's collection
11 agency licensing requirements, and therefore, under NRS 598.0955, NRS
12 598.0923(1) would not apply to QLS's conduct. In short, QLS misinterprets Judge
13 Williams' order as a definitive ruling, binding in perpetuity, that QLS is in
14 compliance with the collection agency licensing laws of Nevada, no matter what
15 proof of QLS's subsequent violations of those laws might be proffered, as Plaintiffs
16 do here. As explained above, however, that is not what Judge Williams ruled: his
17 ruling only narrowly concluded that the FID's cease and desist order and related
18 ruling was legally flawed and void.

19 The sole case cited by QLS on this point is not helpful to QLS here for several
20 reasons. *See Mario's Butcher Shop & Food Center, Inc. v. Armour & Co.* (N.D. Ill.
21 1983) 574 F.Supp. 653. First, the case did not consider Nevada law, and the
22 consumer protection act violations alleged therein are not comparable to the
23 violations alleged by Plaintiffs here. *Id.* at 654 [alleging mislabeling of quantities of
24 meat in containers sold to plaintiffs]. Second, the defendants there successfully
25 contended that compliance with related federal law was to be "deemed sufficient
26 compliance with state law", and the plaintiffs there had not asserted noncompliance
27 with federal law. *Id.* at 655-656. The claims were therefore properly dismissed, but
28

1 with leave to amend to assert such noncompliance. *Id.* at 656. Here, however,
2 Plaintiffs clearly have asserted—and now proven—QLS’s noncompliance with
3 Nevada law, and QLS does not present any evidence (or argument) that it was
4 compliant with federal law (such that NRS 598.0955 would somehow insulate it from
5 liability).

6 Although QLS asserts that it is compliant with Nevada licensing laws, QLS
7 thereby begs the very question that must be decided in this lawsuit, on the merits and
8 the evidence presented by the parties hereto: whether in fact QLS’s conduct in
9 Nevada complied with Nevada’s collection agency licensing laws. Should QLS
10 ultimately be found here not to have violated Nevada’s collection agency licensing
11 laws, then Plaintiffs’ claims for statutory consumer fraud would fail, as QLS would
12 not have knowingly conducted its business without required licenses (as NRS
13 598.0923(1) requires). But it would be plainly inappropriate to foreclose a decision
14 on the merits on that question based on Judge Williams’ ruling, which did not
15 consider or address whether QLS’s conduct generally and for all time was compliant
16 with Nevada’s licensing laws.

17
18 **VI. QLS’S MOTION FOR SUMMARY JUDGMENT IS PREMATURE AND UNTIMELY**

19 **A. QLS’s Motion Is Defective and Cannot Be Granted Because,**
20 **Pursuant to the Discovery Commissioner’s Recommendations, the**
21 **Court Has Severely Limited Plaintiffs’ Discovery to the Phase One**
22 **“Issue”—Whether, as a General Matter, Defendants Conducted**
23 **Business Activities in Nevada that Constituted “Unlicensed” Claim**
Collection, under NRS 649.020(1), and the Court, and the Court
Restricted Discovery to the Named Plaintiffs Only

24 Unfortunately for the Plaintiffs, but important to QLS’s instant motion for
25 summary judgment, is the fact that this case has been upside down and backwards
26 from the very beginning. As addressed in Plaintiffs’ Clarification Motion, currently
27 set to be heard on May 4, 2017, this case was improperly “phased,” severely limiting
28 Plaintiffs’ discovery and their opportunity to develop key evidence, as a result of the

1 Discovery Commissioner's interpretation of some general comments made by Judge
2 Scann at the end of 12(b) motion hearing over a year ago. If there were any
3 contouring of discovery whatsoever utilized in this case, the immediate focus should
4 have been on discovery related to class certification, so that the class certification
5 motion could be heard first, and as promptly as possible, consistent with predominant
6 class action jurisprudence and practice. Indeed, the Court seemingly recognized as
7 much in its comments at the hearing before it on March 14, 2017. *See* March 14,
8 2017 Hearing Transcript, at 26:6-18.

9 As detailed in Plaintiffs' pending Motion for Clarification, the Commissioner
10 herself has expressed similar doubts as to the wisdom of phasing discovery as she
11 and the Court have done in this case, but the Commissioner felt bound by what she
12 believed to be Judge Scann's intentions and phased discovery accordingly. *See* July
13 20, 2016 Hearing Transcript, at 14:20-15:3. Indeed, at the July 20, 2016 hearing on
14 Defendants' motion to phase discovery, the Commissioner made the following
15 significant remarks:

16
17 Oh, I agree with you. Believe it or not, plaintiffs' counsel, I actually am
18 persuaded by your perspective of the case. Had I seen you all initially, I might
19 have done something a little bit differently. But having said that, I understand
20 where the court [*i.e.*, Judge Scann] was coming from and I want to be able to
21 make sure that we do this in a fashion that makes sense -- for your clients as
22 well.

23 *Id.* [emphasis added]

24 At the subsequent hearing before the Commissioner on September 21, 2016,
25 the Commissioner again made clear that she expected Defendants' dispositive
26 motions for summary judgment would be filed at the end of Phase One of discovery.
27 For instance, after making clear that Phase One of discovery would not include
28 Plaintiffs being allowed discovery of "specific names [of Nevada debtors],
identifications, and financial information" until Phase Two, the Commissioner noted:

I suspect at some point we'll be in Phase 2, but I don't know that for

1 certain because you'll [*i.e.*, Defendants] have to make your motions [for
2 summary judgment] after Phase 1.

September 21, 2016 Hearing Transcript, at 25:1-8 [emphasis added].

3 The Commissioner has also repeatedly promised Plaintiffs that they would
4 have adequate opportunity to conduct the discovery, both in Phase One and, later,
5 Phase Two, necessary to Plaintiffs' case. For instance, at the July 20, 2016 hearing,
6 the following exchange occurred:

7
8 [DISCOVERY COMMISSIONER:] I promise you, plaintiffs' counsel,
9 that when the time comes you'll have the discovery you need. Now you can't
10 obviously move to certify the class until you have that discovery and I'm going
11 to give that to you in Phase 2.

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

July 20, 2016 Hearing Transcript, at 41:19-24 [emphasis added].

15 Thus, the Commissioner (and the Court)'s expectation in phasing discovery has been
16 that Defendants' motions for summary judgment would not come until the end of
17 Phase One, so that Plaintiffs would have adequate time to conduct discovery and
18 gather evidence needed to defeat those motions. QLS's filing its motion now, before
19 the end of Phase One, not only defeats that expectation, but violates it.

20 Also, it is wrong to even consider, let alone grant, summary judgment against a
21 single named Plaintiff (*i.e.*, here, Plaintiffs Benko, Hjorth, Tagliamonte, and the
22 Scintas and Martinez) in the circumstances of this case. For example, Plaintiffs have
23 been absolutely prohibited by the Commissioner's recommendations and resulting
24 orders, from any discovery related to other Nevada victims as witnesses, potential
25 other Plaintiffs, potential other class representatives, and a wide body of evidence
26 held by them to show and present diverse unlicensed claim collection agency
27 practices by QLS and the other Defendants against citizens throughout the state of
28 Nevada. *See* Court's two Orders of November 9, 2016, and Court's Order of
December 7, 2016; *see also* Boylan Declaration, at ¶¶ 1-8. The evidence from these

1 witnesses is needed to fully oppose summary judgment. (Affidavits from these
2 witnesses cannot be obtained because the Orders prohibited Plaintiffs from obtaining
3 their contact names and information from Defendants). See NRCP 56(f); *see also*
4 Boylan Declaration, at ¶¶ 1-8. As a further, adverse and improper result, if summary
5 judgment were to occur in these circumstances as to the named Plaintiffs alone,
6 confusion, waste, and additional litigation would surely occur, because the thousands
7 of other class members would not be bound by the adjudication (and, because the
8 statute of limitations is tolled, new lawsuits by others would be quickly filed).
9 Nothing would be accomplished, and further burdensome litigation for the Court
10 would result.

11 There is good reason to determine class certification first. Even after certification,
12 absent class members can only be bound to a class judgment on common issues, for
13 which their interests were adequately represented. 5 Newberg & Conte, Newberg on
14 Class Actions, §1623. If their individual issues were not litigated or adequately
15 represented, *i.e.*, were not common, unnamed class members may ignore the
16 judgment, collaterally attack it, or bring an independent action. *See id.* Constitutional
17 due process disallows the effectiveness of a summary judgment against unnamed
18 class members with respect to their individual issues. *See and compare Hansberry v.*
19 *Lee* (1940) 31 U.S. 32; *Richards v. Jefferson County Alabama* (1996) 517 U.S. 793;
20 *Phillips Petroleum Co. v. Shutts* (1985) 472 U.S. 797.

21 Also, full accounting discovery must first be allowed by the Court, so Plaintiffs
22 can prove recovery for disgorgement from Defendants, including QLS. For example,
23 zero document discovery of the Defendants' accounting records has been allowed in
24 Phase One, even though such records would be plainly dispositive in a number of
25 ways, including by showing the amount of money QLS collected during the relevant
26 period, and the particular amounts QLS collected through each of its various
27
28

1 practices, and the amounts received by QLS in payment for its fees and costs relating
2 to its services in Nevada during the relevant period. Boylan Declaration, at ¶¶ 1-8.

3 **B. QLS's Motion Violates the Court's Scheduling Order and the**
4 **Instructions (and Promises) of the Discovery Commissioner Here**

5 Consistent with the phasing of discovery imposed by the Commissioner and
6 the Court here, the Commissioner and the Court have established the appropriate
7 timelines for discovery and the filing of dispositive motions here. Thus, the
8 Commissioner's original discovery scheduling order dated August 19, 2016 ("August
9 2016 Scheduling Order") provided that the parties would complete Phase One
10 discovery—which was to deal with the validity of the named Plaintiffs' claims
11 against Defendants—by November 1, 2016. *See* August 2016 Scheduling Order, at 2.
12 The parties were to file any dispositive motions—*i.e.*, QLS's motion for summary
13 judgment here—on or before November 30, 2016. *Id.*

14 Because of the unprecedented level of Defendants' discovery misconduct and
15 obstruction Plaintiffs had to battle, the Commissioner and the Court properly pushed
16 these deadlines back to give Plaintiffs adequate time and opportunity to conduct
17 discovery before being forced to respond to Defendants' anticipated motions for
18 summary judgment. Most recently, the Commissioner and the Court extended the
19 deadline for the close of Phase One discovery to June 9, 2017, with the deadlines for
20 Defendants' dispositive motions for summary judgment to follow by July 10, 2017.
21 *See* Court's Order of April 4, 2017 [adopting Commissioner's Report and
22 Recommendations of March 20, 2017].

23 In this last Order, the Commissioner and Court specifically noted that "Phase I
24 of discovery is limited to discovery needed in order to make the legal determination
25 as to the validity of Plaintiffs' claims." *Id.* at 2 [emphasis added].

26 Consistent with these Orders and NRCP 56(f), the Commissioner and the
27 Court, as discussed above, expected and intended that Defendants' anticipated
28 motions for summary judgment would not be filed until after the end of Phase One of

1 discovery, so that Plaintiffs would not be further prejudiced by having inadequate
2 time to conduct the discovery needed to defeat Defendants' motions. Thus, for
3 instance, as described above, the original scheduling order staggered the deadlines for
4 the close of Phase One discovery and the filing of Defendants' motions for summary
5 judgment, providing that the first deadline would be on November 1, 2016, while the
6 second deadline would be November 30, 2016. Similarly, as detailed above, the
7 Commissioner made it clear at the September 21, 2016 hearing that motions for
8 summary judgment were to be made after Phase One discovery had concluded.
9 September 21, 2016 Hearing Transcript, at 25:6-8.

10 Similarly, at the status hearing on discovery before the Commissioner on
11 March 8, 2017, Plaintiffs' counsel repeatedly emphasized that Plaintiffs had not been
12 given adequate time in Phase One to conduct the discovery needed to respond to the
13 motions for summary judgment anticipated from Defendants CRC, QLS, and NDSC.
14 *See, e.g.*, March 8, 2017 Hearing Transcript, at 4:7-21, 6:15-24. Plaintiffs' counsel,
15 without objection from defense counsel in attendance, repeatedly noted that it was
16 understood that motions for summary judgment from the defense were to be filed
17 after Phase One had concluded:

18
19 [Plaintiffs' Counsel:] MTC has kind of deviated from the schedule in terms of
20 defense summary judgments. The contemplation was that after Phase 1 the
21 Defendants would file summary judgment motions related to the Phase 1 issue,
22 but MTC has already filed a summary judgment motion, actually a
23 countermotion to ours, on that issue.
24 *Id.* at 4:18-21 [emphasis added].

25 Plaintiffs' counsel also specifically noted that Plaintiffs "have months of
26 additional Phase 1 discovery before we're going to be in the position to respond to
27 the other Defendants' summary judgment motions." *Id.* at 6:17-19; *see also id.* at
28 6:22-23 [noting that, because of the many motions to compel Plaintiffs were forced to
file already, Plaintiffs are "not close to being done on what we need in Phase 1 to

1 oppose the completed motions” for summary judgment]. In part for these reasons, the
2 Commissioner and the Court ultimately decided that the deadline for Phase One
3 discovery would be extended to, at a minimum, June 9, 2017. Court’s Order of April
4 4, 2017, at 2.

5 The Commissioner has made clear that she understands the reason for
6 staggering the deadlines in this case is at least in part to give Plaintiffs the
7 opportunity for discovery contemplated by NRCP 56(f). For instance, at the March 8,
8 2017 hearing before the Commissioner, the following revealing exchange occurred:

9
10 MR. BOYLAN: But my primary concern that I want to bring to your attention
11 again here is that we cannot face, given the Phase 1 limitations on discovery,
12 we cannot face summary judgment motions without having adequate
13 opportunity to gather the evidence.

14 DISCOVERY COMMISSIONER: Okay.

15 MR. BOYLAN: And –

16 DISCOVERY COMMISSIONER: I understand that. I know what [NRCP] 56F
17 is. I get it. I understand.

18 March 8, 2017 Hearing Transcript, at 11:11-17 [emphasis added].

19 CRC, through its counsel, has repeatedly agreed that Defendants’ motions for
20 summary judgment were to follow after the close of Phase One discovery. QLS
21 counsel at these hearings has not objected or indicated that QLS disagrees. For
22 instance, at the hearing before the Commissioner on March 8, 2017, CRC counsel’s
23 statements clearly reflected the common understanding that defense motions for
24 summary judgment were to be filed only after Phase 1 concluded:

25 [CRC Counsel:] On a number of different topics the motions for
26 summary judgment by all the Defendants contemplated at the end of Phase 1
27 have not been filed.

28 March 8, 2017 Hearing Transcript, at 7:3-4 [emphasis added].

Later in the hearing, CRC counsel again noted that defense motions for summary
judgment were to follow after Phase 1 discovery concluded (which, to date, has not
occurred yet): “we don’t know what the effect will be of not only what will happen

1 next week [at the hearing before the Court on March 14, 2017], but what the outcome
2 of every Defendants' motion for summary judgment will be, as contemplated at the
3 end of Phase 1." *Id.* at 9:7-9 [emphasis added].

4 At the hearing before the Court on March 14, 2017, CRC counsel again
5 admitted that Defendants' motions for summary judgment were only to be filed after
6 Phase One of discovery was completed. During the hearing, for instance, the
7 following exchange between CRC counsel and the Court occurred:

8
9 [CRC Counsel:] So we were going to get to the end of that [Phase One
10 of discovery] and we were going to do some summary judgment. We're
11 holding our summary judgment motion to get through the phase one of
discovery which --

12 THE COURT: Um-hum.

13 MR. SCARBOROUGH: -- the Discovery Commissioner now says is
14 going to be closing in June. I'm not anxious to do the additional discovery and
15 spend all the money. I'll be happy to bring these legal issues forward.

16 March 14, 2017 Hearing Transcript, at 34:4-12 [emphasis added].

17 Further discussion between the Court and counsel ensued, during which CRC counsel
18 raised CRC's desire to respond to the supplemental briefing Plaintiffs would be
19 providing the Court at its request. CRC counsel specifically noted that "I don't want
20 to flood the court with more paper, I know there's a lot of paper," but wished for an
21 opportunity to respond to Plaintiffs' supplemental briefing. *Id.* at 35:4-19. Notably,
22 neither CRC nor QLS sought permission to file a motion for summary judgment or
23 otherwise indicate that they intended to do so, in violation of the Court's scheduling
24 order and the expectations that have existed in this case since phasing was imposed.
25 *See id.* Indeed, CRC counsel acknowledged that additional filings would burden the
26 Court, but asked for permission to file a limited response to the supplemental briefing
27 the Court requested from Plaintiffs:
28

[CRC Counsel:] . . . And I would like to bring forward the law on that
argument that supports the notion that if one is within the ambit of 107, this

1 debt collector statute cannot, as a matter of law, apply.

2 So if Mr. Boylan gets two weeks, I don't want to flood the court with
3 more paper, I know there's a lot of paper. . . .

4 MR. SCARBOROUGH: I just want to do something which makes sense
5 for the Court. But if we're going to argue this in some way and end up with
6 some ruling —

7 THE COURT: Um-hum.

8 MR. SCARBOROUGH: — we would like a chance —

9 THE COURT: Okay.

10 MR. SCARBOROUGH: — to respond and then all come back here and
11 argue. And we want to do whatever the Court would find of assistance to it.
12 *Id.* at 4:7-25 [emphasis added].

13 The Court ultimately decided that Plaintiffs would submit supplemental briefing to
14 the Court by March 28, 2017, and Defendants, including QLS, would have an
15 opportunity to respond to that briefing, including by presenting Defendants' flawed
16 legal argument that those acting within the confines of NRS Chapter 107 were not
17 engaging in debt collection. *Id.* at 36:1-24. (The parties have since completed the
18 briefing requested by the Court.) At no point during the hearing did the Court agree
19 or otherwise suggest that Defendants could bring their motions for summary
20 judgment, which, according to the scheduling orders, were to be filed at the close of
21 Phase One of discovery, before the Court at this time.

22 Instead, the Court decided to suspend all discovery pending the Court's
23 resolution of Plaintiffs' Motion for Clarification (and related supplemental briefing).
24 *See id.* at 44:20-23 [staying discovery at that time]. The Court's statements at the
25 March 14, 2017 hearing also strongly suggest that the filing of additional motions—
26 such as the motions for summary judgment subsequently filed by CRC and QLS—
27 was not appropriate at this time. For instance, in discussing whether it would be
28 appropriate to stay discovery at that time, Plaintiffs' counsel specifically discussed
the "probability" that the Court would "effectively grant their [*i.e.*, Defendants']
[NRCPP] 12(b) motion" in ruling on Plaintiffs' Motion for Clarification, and observed
that that was what it "sounds like you're [*i.e.*, the Court] considering." *Id.* at 44:6-12.

1 Plaintiffs' counsel noted that in that case, it would likely not make sense for the
2 parties to continue discovery until the Court's ruling were made. *Id.* at 44:14-16. The
3 Court expressly agreed with the analysis by Plaintiffs' counsel, and decided to
4 suspend or stay all discovery at that point. *Id.* at 44:17-23. The Court's subsequent
5 statements at the hearing and colloquy with Plaintiffs' counsel similarly reflect the
6 apparent understanding that the Court would be considering whether to rule on
7 Plaintiffs' claims effectively under a NRCP 12(b)(5) standard (which, if granted,
8 would render any motion for summary judgment moot). *See id.* at 46:14-48:19.

9 **C. QLS's Motion Was Improper Given the Court's Instructions at the**
10 **March 14, 2017 Hearing; The Court and Plaintiffs Cannot Be**
11 **Sandbagged**

12 Thus, it has been the Order and clear understanding of all involved in this
13 case—the Commissioner, Court, and the parties—that defense motions for summary
14 judgment were only to be filed after the close of Phase One of discovery. The
15 scheduling orders adopted by the Commissioner and the Court have reflected this
16 understanding, and the comments of the Commissioner, Court, and the parties'
17 counsel at hearings have consistently done so as well. Nothing at the March 14, 2017
18 hearing changed this approach or invited or allowed QLS (or other Defendants) to
19 file motions for summary judgment. Indeed, the Court's rulings and statements at the
20 hearing strongly suggest that such motions would be especially inappropriate, as
21 those motions would only further flood the Court with papers, burdening both it and
22 Plaintiffs, and likely would be rendered moot if the Court decided to effectively grant
23 Defendants' NRCP 12(b)(5) challenge to Plaintiffs' claims. The Court's decision to
24 stay discovery until the Court ruled on Plaintiffs' pending Motion for Clarification
25 further demonstrates the impropriety of QLS moving for summary judgment at this
26 time, as Plaintiffs have been denied the opportunity to conduct any discovery since
27 the March 14, 2017 hearing, and, indeed, had their then-pending motion to compel
28 CRC taken off calendar by the Commissioner until the Court's decision on the

1 Motion for Clarification was made.

2 Under these circumstances, QLS's decision to file a motion for summary
3 judgment was nothing short of an improper attempt to sandbag Plaintiffs (and the
4 Court), especially as it has forced Plaintiffs to respond to a motion that may in all
5 likelihood effectively be rendered moot if the Court decides to dismiss Plaintiffs'
6 claims on a NRCP 12(b)(5) standard (as the Court strongly suggested at the March
7 14, 2017 hearing it was inclined to do). Plaintiffs have therefore requested that QLS
8 withdraw its motion for summary judgment pending the May 4, 2017 hearing on
9 Plaintiffs' Motion for Clarification, but QLS has thus far declined to do so. Rather
10 than reward QLS for filing its motion prematurely in violation of the Court's
11 applicable scheduling orders, the Court should deny QLS's motion for summary
12 judgment at this time.

13 **VII. PLAINTIFFS HAVE BEEN DENIED ADEQUATE OPPORTUNITY TO CONDUCT**
14 **DISCOVERY AND OBTAIN THE PROOF NECESSARY TO FULLY DESTROY QLS'S**
15 **MOTION**

16 The party requesting a continuance pursuant to NRCP 56(f) has the burden of
17 showing by affidavit or declaration that "further discovery will lead to the creation of
18 a genuine issue of material fact," and, early in a case, that the party has been diligent
19 in conducting discovery. *Aviation Ventures, Inc. v. Joan Morris, Inc.* (2005) 121 Nev.
20 113, 117-118, 110 P.3d 59, 62-63 [A "motion for a continuance under NRCP 56(f) is
21 appropriate only when the movant expresses how further discovery will lead to the
22 creation of a genuine issue of material fact."]. For reasons explained herein and as
23 supported in the attached declaration of Plaintiffs' counsel, Plaintiffs have met their
24 burden here: the Court should grant Plaintiffs a continuance pursuant to NRCP 56(f)
25 so that they can conduct additional discovery to comprehensively destroy QLS's
26 motion for summary judgment.

1 **A. Plaintiffs Have Been Diligent in Conducting Discovery regarding**
2 **QLS, and Plaintiffs Have Met Their Burden of Showing How**
3 **Further Discovery Would Lead to the Creation of a Genuine Issue**
4 **of Material Fact**

5 The Declaration of Nicholas A. Boylan submitted herewith addresses this issue
6 at length, providing detailed examples of Plaintiffs' diligence in conducting
7 discovery, the specific discovery sought by Plaintiffs, and the ways in which this
8 discovery would likely lead to the creation of a genuine issue of material fact. Boylan
9 Declaration, as ¶¶ 1-8. Also, the record, the evidence obtained so far from QLS and
10 the other Defendants, the business model and market basket of default services
11 offered by QLS and the other Defendants, and the limited witness statements
12 obtained so far, all indicate that much more evidence of QLS's liability will be
13 forthcoming with proper and full discovery. *Id.* QLS's own witness has testified that
14 QLS's records and data systems, including its IDS system, could easily produce
15 reports showing the amounts collected by QLS, including the particular amounts
16 received as part of QLS's reinstatement and payoff activities, non-judicial foreclosure
17 sales, and the number of deed in lieu of foreclosure transactions QLS handled during
18 the relevant period. (SS#11, 83, 85, 91, 95.) None of this crucial evidence has been
19 received by Plaintiffs to date, because it has been either blocked and/or not produced
20 by QLS thus far. Boylan Declaration, at ¶¶ 1-8. The evidence is available, however,
21 and, with further discovery, would assist Plaintiffs in comprehensively defeating
22 QLS's motion for summary judgment.

23 By analogy, perhaps the best specific indication of the types of evidence that
24 will be obtained is reflected by the evidence obtained so far from Defendant MTC
25 and itemized in Plaintiffs' Separate Statement in Opposition to MTC's supposed
26 summary judgment counter-motion. With proper discovery, all that same evidence
27 and more will come from QLS. There is no doubt that QLS has been obstructing,
28 evading and hiding appropriate discovery for over a year. For example, ¶¶ 1-8 of the
29 Boylan Declaration is indicative of important QLS witnesses whose depositions have

1 been requested for many months, but have been continuously delayed and evaded by
2 QLS. Keep in mind that highly restrictive “phasing” was ordered over objection and
3 even then Plaintiffs had to file 16 motions to compel—all of which were erroneously
4 denied at least in part. *Id.* at ¶¶ 1-8. Even as to several of the crucial QLS witnesses
5 deposed thus far—*i.e.*, Mr. Owen and Mr. Louvan—Plaintiffs have not yet finished
6 those depositions, as, for the convenience of the parties and the witnesses, Plaintiffs
7 agreed to resume those depositions at a future date (which has not yet occurred due to
8 the Court’s staying discovery). *Id.* The depositions of other crucial witnesses,
9 including that of QLS’s president and several of the named Plaintiffs, remain to be
10 taken. Boylan Declaration, at ¶ 8.

11
12 **B. It Would Be an Abuse of Discretion for the Court to Deny Plaintiffs’**
13 **NRCP 56(f) Request Here**

14 As demonstrated above and in the supporting declaration of Plaintiffs’ counsel,
15 limited and phased discovery in this matter has been underway for only
16 approximately a year, and Plaintiffs have been diligent in conducting discovery and
17 gathering necessary evidence (despite the severe limitations imposed on discovery by
18 the Commissioner and the Court and QLS’s ongoing discovery obstruction). Boylan
19 Declaration, at ¶¶ 1-8. Under these circumstances, it would be an abuse of discretion,
20 warranting reversal, for the Court to deny Plaintiffs’ NRCP 56(f) request and grant
21 QLS’s motion for summary judgment. *See Aviation Ventures, Inc, supra*, 121 Nev. at
22 117-118, 110 P.3d at 62-63 [summary judgment reversed where only 8 months had
23 passed between filing of complaint and granting of motion and there was no evidence
24 that the party opposing summary judgment had not been diligent in conducting
25 discovery]; *Montag v. Venetian Casino Resort, LLC* (2015) 2015 Nev. Unpub.
26 LEXIS 647, *2-3 [trial court abused its discretion by not permitting further discovery
27 under NRCP 56(f) at an “early state of the proceedings” when request for additional
28 discovery complied with the rule, there was no indication the request was intended to

1 cause delay, and the further discovery requested might create a genuine issue of
2 material fact]; *Harrison v. Falcon Prods.* (1987) 103 Nev. 558, 746 P.2d 642
3 [reversing summary judgment granted within less than two years of filing of
4 complaint given opposing party's diligence in pursuing the action, including through
5 request for additional time to take depositions and seek admissions from moving
6 party]; *Ameritrade, Inc. v. First Interstate Bank* (1989) 105 Nev. 696, 782 P.2d 1318
7 [reversing partial grant of summary judgment where less than 8 months had passed
8 between filing of complaint and grant of summary judgment, the opposing party "had
9 not been dilatory in pursuing discovery and has demonstrated its diligence by
10 requesting additional time to obtain depositions"]; *Barket v. Hart* (2013) 2013 Nev.
11 Unpub. LEXIS 1879, at *1-3 [reversing grant of summary judgment where opposing
12 party submitted affidavit required by NRCP 56(f), "explained why further discovery
13 was necessary, and showed that depositions of respondents had already been set and
14 would be completed before the deadline established for conducting discovery"];
15 *Valenzuela v. Nev. Dep't of Corr.* (2012) 2012 Nev. Unpub. LEXIS 1568, at *1-3
16 [reversing grant of summary judgment where opposing party submitted affidavit
17 required by NRCP 56(f), "explaining the factual evidence he expected to learn by
18 deposing additional witnesses" and noting that "proceedings were still at a relatively
19 early stage, as the summary judgment order was filed just over two years after the
20 initiation of the action and less than a year after appellant had properly filed a second
21 amended complaint"].

22 Paraphrasing the Nevada Supreme Court in *Harrison*, "[u]nder these
23 circumstances, granting summary judgment in this early stage of the proceedings"
24 would be "an abuse of discretion." *Harrison, supra*, 103 Nev. at 560, 746 P.2d at
25 643.

26
27 **VIII. QLS WAS UNJUSTLY ENRICHED, AND DISGORGEMENT OF ITS ILL-GOTTEN**
28 **GAINS IS APPROPRIATE HERE**

1 **A. Plaintiffs Did Not Enter Into a Contract With QLS**

2 As a matter of fact, Plaintiffs never entered into a contract with QLS, and QLS
3 has not presented any evidence to the contrary, as QLS was not a party to the deeds
4 of trust at issue here. (See Boylan Declaration, at ¶ 44.) The analogous Nevada
5 authority is the decision by the Supreme Court of Nevada in *Leasepartners Corp. v.*
6 *The Robert L. Brooks Trust* (1997) 113 Nev. 747, 942 P.2d 182. In Nevada, unjust
7 enrichment occurs whenever “a person has and retains a benefit which is equity and
8 good conscience belongs to another.” *Id.* at 756, 187-188. In *Leasepartners Corp.*,
9 many related contracts existed between and among the entities involved in the
10 transactions at issue, but no contract existed between Leasepartners and the Brooks
11 Trust. *Id.* Summary Judgment was therefore reversed. *Id.* As stated here, there is no
12 contract between Plaintiffs and the Defendant collection agencies, QLS and Plaintiffs
13 specifically here. (See Boylan Declaration, at ¶ 44.) QLS seemingly does not contend
14 that it was a party or a beneficiary to the deeds of trust at issue here (or any other
15 contract with the named Plaintiffs), which disposes of QLS’s assertion that the deed
16 of trust somehow governs QLS’s relationship with the named Plaintiffs here.

17 Under restitution, *i.e.*, unjust enrichment, the wrongdoer who obtains a benefit,
18 gain, and/or illicit profit is required to disgorge all of that benefit, gain and/or profit
19 to the victim if the conscious wrongdoing involved any type of fraud or undue
20 pressure or coercion against a victim (here, we have statutory fraud in the form of a
21 deceptive trade practice, as a matter of law, and illicit coercion against the victims by
22 pursuing a foreclosure-styled collection process without a license, in order to
23 intimidate the Nevada victims). *See Restatement of Restitution, Third*, § 14, at 199
24 [citing *Leeper v. Beltrami* (1959) 53 Cal.2d 195; *Wake Development Co. v. O’Leary*
25 (1931) 118 Cal.App. 131; *McRae v. Pope* (1942) 311 Mass. 500; *Chandler v. Sanger*
26 (1874) 114 Mass. 364; *Aronoff v. Levine* (1919) 190 A.D. 172; *Pape’ v. Knoll* (1984)
27 69 Ore. App. 372]; *id.* at 202-203 [citing *Leeper, supra*; *Ogle v. Freeman* (1939) 150
28 Kan. 864; *Fairbanks v. Snow* (1887) 145 Mass. 153; *Bumgardner v. Corey* (1942)

IN THE SUPREME COURT OF THE STATE OF NEVADA

JEFFREY BENKO, A NEVADA
RESIDENT; ET AL.,
Appellants,
v.
QUALITY LOAN SERVICE
CORPORATION, A CALIFORNIA
CORPORATION; ET AL.,
Respondents

Supreme Court No. 73484

District Court Case No. A-11-619857
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Clerk of Supreme Court

APPELLANTS' APPENDIX

VOLUME 21

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

The Honorable William Kephart

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ALPHABETICAL INDEX

DATE	TITLE	VOLUME	PAGES
03/28/17	ANSWER OF DEFENDANT MTC FINANCIAL INC. dba TRUSTEE CORPS TO THIRD AMENDED COMPLAINT OF PLAINTIFFS	18	AA004237- AA004249
10/12/11	COMPLAINT FOR DAMAGES	1	AA000001- AA00013
01/03/17	DECLARATION OF KEIKO J. KOJIMA IN SUPPORT OF DEFENDANT MTC FINANCIAL INC. dba TRUSTEE CORPS' OPPOSITION TO PLAINTIFFS' MOTION FOR LEAVE TO FILE THIRD AMENDED COMPLAINT	10	AA002307- AA002322
09/28/16	DEFENDANT CALIFORNIA RECONVEYANCE COMPANY'S ANSWER TO SECOND AMENDED COMPLAINT OF PLAINTIFFS JEFFREY BENKO, CAMILO MARTINEZ, ANA MARTINEZ, FRANK SCINTA, JACQUELINE SCINTA, SUSAN HJORTH, RAYMOND SANSOTA, FRANCINE SANSOTA, SANDRA KUHN, JESUS GOMEZ, SIL VIA GOMEZ, DONNA HERRERA, JESSE HENNIGAN, KIM MOORE, THOMAS MOORE, SUSAN KALLEN, ROBERT MANDARICH AND JAMES NICO	5	AA001032- AA001045
01/03/17	DEFENDANT CALIFORNIA RECONVEYANCE COMPANY'S RESPONSE TO PLAINTIFFS' MOTION TO LEAVE TO FILE THIRD AMENDED COMPLAINT	9	AA002199- AA002206
04/04/17	DEFENDANT CALIFORNIA RECONVEYANCE COMPANY'S RESPONSE TO PLAINTIFFS' "MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS	18, 19	AA004561- AA004583

	THE THIRD AMENDED COMPLAINT”		
01/03/17	DEFENDANT CALIFORNIA RECONVEYANCE COMPANY’S RESPONSE TO PLAINTIFFS’ MOTION FOR LEAVE TO FILE THIRD AMENDED COMPLAINT	9	AA002199- AA002206
12/18/15	DEFENDANTS’ JOINT MOTION TO DISMISS SECOND AMENDED COMPLAINT	1,2, & 3	AA000229- AA000628
10/24/16	DEFENDANTS’ JOINT MOTION TO STRIKE AND, IN THE ALTERNATIVE, OPPOSITION TO PLAINTIFFS’ MOTION FOR CLARIFICATION AND ENTRY OF ORDER RE FEBRUARY 2016 HEARING ON DEFENDANTS’ JOINT NRCP 12(B)(5) MOTIONS	6, 7, 8	AA001713- AA001769
02/05/16	DEFENDANTS’ JOINT REPLY IN SUPPORT OF DEFENDANTS’ JOINT MOTION TO DISMISS PLAINTIFFS’ SECOND AMENDED COMPLAINT	4	AA000757- AA000782
12/18/15	DEFENDANT MTC FINANCIAL INC. dba TRUSTEE CORPS’ JOINDER IN DEFENDANTS’ JOINT MOTION TO DISMISS PLAINTIFFS’ SECOND AMENDED COMPLAINT; SUPPLEMENTAL MEMORANDUM OF POINT AND AUTHORITIES IN SUPPORT THEREOF	1,2, & 3	AA000629- AA000637
01/03/17	DEFENDANT MTC FINANCIAL INC. dba TRUSTEE CORPS’ OPPOSITION TO PLAINTIFFS’ MOTION FOR LEAVE TO FILE THIRD AMENDED COMPLAINT	9	AA002207- AA002230
12/18/15	DEFENDANT MTC FINANCIAL INC. dba TRUSTEE CORPS’ REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF JOINDER IN AND TO THE FOLLOWING: DEFENDANTS’ JOINT MOTION TO DISMISS PLAINTIFFS’		AA000638- AA000647

	SECOND AMENDED COMPLAINT		
12/19/11	FIRST AMENDED COMPLAINT FOR DAMAGES; PROOF OF SERVICE	1	AA00014-AA00031
07/20/16	HEARING BEFORE THE HONORABLE BONNIE BULLA, DISCOVERY COMMISSIONER	4	AA000846-AA000906
09/21/16	HEARING BEFORE THE HONORABLE BONNIE BULLA, DISCOVERY COMMISSIONER	4, 5	AA000907-AA001031
10/26/16	HEARING BEFORE THE HONORABLE BONNIE BULLA, DISCOVERY COMMISSIONER	8	AA001770-AA001782
01/11/17	HEARING BEFORE THE HONORABLE BONNIE BULLA, DISCOVERY COMMISSIONER	10, 11	AA002376-AA002508
02/17/17	HEARING BEFORE THE HONORABLE BONNIE BULLA, DISCOVERY COMMISSIONER	15	AA003507-AA003536
03/08/17	HEARING BEFORE THE HONORABLE BONNIE BULLA, DISCOVERY COMMISSIONER	16, 17	AA003979-AA003997
02/22/16	HEARING BEFORE THE HONORABLE SUSAN SCANN, DISTRICT COURT JUDGE	4	AA000783-AA000826
02/07/17	HEARING BEFORE THE HONORABLE WILLIAM D. KEPHART, DISTRICT COURT JUDGE	11	AA002509-AA002524
03/14/17	HEARING BEFORE THE HONORABLE WILLIAM D. KEPHART, DISTRICT COURT JUDGE	17	AA004010-AA004060
05/04/17	HEARING BEFORE THE HONORABLE WILLIAM D. KEPHART, DISTRICT COURT JUDGE	23	AA005600-AA005638
03/29/16	MTC FINANCIAL INC. DBA TRUSTEE	4	AA000835-

	CORPS' ANSWER TO SECOND AMENDED COMPLAINT		AA000845
04/04/17	NATIONAL DEFAULT SERVICING CORPORATION'S JOINDER TO DEFENDANT CALIFORNIA RECONVEYANCE COMPANY'S RESPONSE TO PLAINTIFFS' "MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS THE THIRD AMENDED COMPLAINT"	19	AA004584-AA004586
06/08/17	NOTICE OF ENTRY OF ORDER DISMISSING CASE AS A MATTER OF LAW AND DIRECTING JUDGMENT IN DEFENDANTS' FAVOR IN CONNECTION WITH PLAINTIFFS' THIRD AMENDED COMPLAINT WITH PREJUDICE	23	AA005642-AA005658
03/15/17	NOTICE OF ENTRY OF ORDER GRANTING PLAINTIFFS' MOTION FOR LEAVE TO FILE THIRD AMENDED COMPLAINT	17, 18	AA004225-AA004236
12/14/16	NOTICE OF PLAINTIFFS' MOTION FOR LEAVE TO FILE THIRD AMENDED COMPLAINT	8, 9	AA001790-AA002096
03/29/17	NOTICE OF PLAINTIFFS' SUBMISSION OF EVIDENCE FOR PURPOSES OF MAY 4, 2017 HEARING	18	AA004553-AA004560
02/13/12	NOTICE OF REMOVAL	1	AA00032-AA00037
02/13/12	OPINION FROM THE NINTH CIRCUIT COURT OF APPEALS IN <i>BENKO V. QUALITY LOAN SERVICE CORP.</i>	1	AA00038-AA00068
06/07/17	ORDER DISMISSING CASE AS A	23	AA005642-

	MATTER OF LAW AND DIRECTING JUDGMENT IN DEFENDANTS' FAVOR IN CONNECTION WITH PLAINTIFFS' THIRD AMENDED COMPLAINT WITH PREJUDICE		AA005658
03/14/17	ORDER RE PLAINTIFFS' MOTION FOR LEAVE TO FILE THIRD AMENDED COMPLAINT	17	AA004061- AA004064
10/21/15	ORDER OF REMAND FROM FEDERAL COURT	1	AA00088- AA00087
05/23/17	PLAINTIFFS' MAY 23, 2017 LETTER BRIEF TO COURT REGARDING PROPOSED ORDER	23	AA005639- AA005641
03/28/17	PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS THE TAC	18	AA004250- AA004552
10/07/16	PLAINTIFFS' MOTION FOR CLARIFICATION AND ENTRY OF ORDER RE FEBRUARY 2016 HEARING ON DEFENDANTS' JOINT NRCP 12(B)(5) MOTIONS	5, 6, 7	AA001046- AA001712
07/05/17	PLAINTIFFS' NOTICE OF APPEAL OF COURT'S ORDER OF JUNE 7, 2017	23	AA005659- AA005665
04/24/17	PLAINTIFFS' NOTICE OF FILING DOCUMENTS UNDER SEAL IN SUPPORT OF PLAINTIFFS' OPPOSITION TO DEFENDANT CALIFORNIA RECONVEYANCE COMPANY'S MOTION FOR SUMMARY JUDGMENT	21	AA004999- AA005007
03/07/17	PLAINTIFFS' OBJECTION AND RESPONSE TO QUALITY LOAN SERVICE CORPORATION'S OPPOSITION TO THE MOTION FOR PARTIAL SUMMARY JUDGMENT	15, 16	AA003686- AA003834
04/21/17	PLAINTIFFS' OPPOSITION TO	19, 20, 21	AA004659-

	DEFENDANT CALIFORNIA RECONVEYANCE COMPANY'S MOTION FOR SUMMARY JUDGMENT		AA004998
01/18/16	PLAINTIFFS' OPPOSITION TO DEFENDANTS' JOINT MOTION TO DISMISS PLAINTIFFS' SECOND AMENDED COMPLAINT; PLAINTIFFS' REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF PLAINTIFFS' OPPOSITION TO DEFENDANTS' JOINT MOTION TO DISMISS PLAINTIFFS' SECOND AMENDED COMPLAINT	3, 4	AA000648- AA000756
04/28/17	PLAINTIFFS' OPPOSITION TO DEFENDANT QUALITY LOAN SERVICE CORPORATION'S MOTION FOR SUMMARY JUDGMENT	21, 22, 23	AA005008- AA005599
03/07/17	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 ANDFRANCINE SANSOTA; DECLARATION OF RAYMOND SANSOTA IN SUPPORT OF PLAINTIFFS' PRELIMINARY OPPOSITION TO MTC'S MOTION FOR SUMMARY JUDGMENT; PLAINTIFF REPLY MEMORANDUM IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT	16	AA003835- AA003978
03/10/17	PLAINTIFFS' PRELIMINARY RESPONSE TO MTC FINANCIAL INC. DBA TRUSTEE CORPS'OBJECTIONS TO SANSOTAS' SEPARATE STATEMENT IN SUPPORT OF SANSOTAS' MOTION FOR PARTIAL SUMMARY JUDGMENT	17	AA003998- AA004009

12/21/16	PLAINTIFFS' REPLY BRIEF IN SUPPORT OF MOTION FOR CLARIFICATION AND ENTRY OF ORDER RE FEBRUARY 2016 HEARING ON DEFENDANTS' JOINT NRCP 12(B)(5) MOTIONS	9	AA002097-AA002196
03/07/17	PLAINTIFFS' REPLY MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT AGAINST DEFENDANT MTC	15	AA003537-AA003685
01/10/17	PLAINTIFFS' REPLY BRIEF RE PLAINTIFFS' MOTION FOR LEAVE TO FILE THIRD AMENDED COMPLAINT	10	AA002323-AA002375
04/11/17	PLAINTIFFS' REPLY TO DEFENDANT CALIFORNIA RECONVEYANCE COMPANY'S REQUEST TO DISMISS THE THIRD AMENDED COMPLAINT (AND JOINDERS)	19	AA004610-AA004658
04/06/17	PLAINTIFFS' REPLY TO MTC'S OBJECTION, FOR MAY 4, 2017 HEARING	19	AA004660-AA004609
02/06/17	PLAINTIFFS' (SANSOTAS) MOTION FOR PARTIAL SUMMARY JUDGMENT AGAINST MTC FINANCIAL, INC.; PLAINTIFFS' SEPARATE STATEMENT IN SUPPORT OF PLAINTIFFS' (SANSOTAS) MOTION FOR PARTIAL SUMMARY JUDGMENT AGAINST MTC FINANCIAL, INC.; DECLARATION OF NICHOLAS A. BOYLAN IN SUPPORT OF PLAINTIFFS' (SANSOTAS) MOTION FOR PARTIAL SUMMARY JUDGMENT AGAINST MTC FINANCIAL, INC.	11, 12, 13, 14, 15	AA002525-AA003506
03/15/16	QUALITY LOAN SERVICE CORPORATION'S ANSWER TO COMPLAINT	4	AA000827-AA000834
12/29/16	QUALITY LOAN SERVICE	9	AA002197-

	CORPORATION'S LIMITED OPPOSITION TO MOTION TO AMEND		AA002198
04/04/17	QUALITY LOAN SERVICE CORPORATIONS' SUBSTANTIVE JOINDER TO DEFENDANT CALIFORNIA RECONVEYANCE COMPANY'S RESPONSE TO PLAINTIFFS' "MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS THE THIRD AMENDED COMPLAINT"	19	AA004587- AA004650
01/03/17	REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF DEFENDANT MTC FINANCIAL INC. dba TRUSTEE CORPS' OPPOSITION TO PLAINTIFFS' MOTION FOR LEAVE TO FILE THIRD AMENDED COMPLAINT	9, 10	AA002231- AA002306
11/25/15	SECOND AMENDED COMPLAINT OF PLAINTIFFS JEFFREY BENKO, CAMILO ARTINEZ, ANA MARTINEZ, FRANK SCINTA, JACQUELINE SCINTA, SUSAN HJORTH, RAYMOND SANSOTA, FRANCINE SANSOTA, SANDRA KUHN, JESUS GOMEZ, SILVIA GOMEZ, DONNA HERRERA, JESSE HENNIGAN, KIM MOORE, THOMAS MOORE, SUSAN KALLEN, ROBERT MANDARICH AND JAMES NICO	1	AA00088- AA000228
12/05/16	NOTICE OF ENTRY OF STIPULATION AND ORDER TO DISMISS PLAINTIFFS KIM MOORE AND THOMAS MOORE WITH PREJUDICE	8	AA001783- AA001789
03/15/17	THIRD AMENDED COMPLAINT OF PLAINTIFFS JEFFREY BENKO, CAMILO MARTINEZ, ANA MARTINEZ, FRANK SCINTA, JACQUELINE SCINTA, SUSAN HJORTH, RAYMOND SANSOTA,	17	AA004065- AA004224

	FRANCINE SANSOTA, SANDRA KUHN, JESUS GOMEZ, SILVIA GOMEZ, DONNA HERRERA, JESSE HENNIGAN, SUSAN KALLEN, ROBERT MANDARICH, JAMES NICO, AND BIJAN LAGHAEI		
--	---	--	--

CHRONOLOGICAL INDEX

DATE	TITLE	VOLUME	PAGES
10/12/11	COMPLAINT FOR DAMAGES	1	AA000001- AA00013
12/19/11	FIRST AMENDED COMPLAINT FOR DAMAGES; PROOF OF SERVICE	1	AA00014- AA00031
02/13/12	NOTICE OF REMOVAL	1	AA00032- AA00037
02/13/12	OPINION FROM THE NINTH CIRCUIT COURT OF APPEALS IN <i>BENKO V. QUALITY LOAN SERVICE CORP.</i>	1	AA00038- AA00068
10/21/15	ORDER OF REMAND FROM FEDERAL COURT	1	AA00088- AA00087
11/25/15	SECOND AMENDED COMPLAINT OF PLAINTIFFS JEFFREY BENKO, CAMILO ARTINEZ, ANA MARTINEZ, FRANK SCINTA, JACQUELINE SCINTA, SUSAN HJORTH, RAYMOND SANSOTA, FRANCINE SANSOTA, SANDRA KUHN, JESUS GOMEZ, SILVIA GOMEZ, DONNA HERRERA, JESSE HENNIGAN, KIM MOORE, THOMAS MOORE, SUSAN KALLEN, ROBERT MANDARICH AND JAMES NICO	1	AA00088- AA000228
12/18/15	DEFENDANTS' JOINT MOTION TO DISMISS SECOND AMENDED COMPLAINT	1,2, & 3	AA000229- AA000628
12/18/15	DEFENDANT MTC FINANCIAL INC. dba TRUSTEE CORPS' JOINDER IN DEFENDANTS' JOINT MOTION TO DISMISS PLAINTIFFS' SECOND AMENDED COMPLAINT; SUPPLEMENTAL MEMORANDUM OF POINT AND AUTHORITIES IN SUPPORT THEREOF	1,2, & 3	AA000629- AA000637
12/18/15	DEFENDANT MTC FINANCIAL INC. dba TRUSTEE CORPS' REQUEST	3	AA000638- AA000647

CHRONOLOGICAL INDEX

	FOR JUDICIAL NOTICE IN SUPPORT OF JOINDER IN AND TO THE FOLLOWING: DEFENDANTS' JOINT MOTION TO DISMISS PLAINTIFFS' SECOND AMENDED COMPLAINT		
01/18/16	PLAINTIFFS' OPPOSITION TO DEFENDANTS' JOINT MOTION TO DISMISS PLAINTIFFS' SECOND AMENDED COMPLAINT; PLAINTIFFS' REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF PLAINTIFFS' OPPOSITION TO DEFENDANTS' JOINT MOTION TO DISMISS PLAINTIFFS' SECOND AMENDED COMPLAINT	3, 4	AA000648- AA000756
02/05/16	DEFENDANTS' JOINT REPLY IN SUPPORT OF DEFENDANTS' JOINT MOTION TO DISMISS PLAINTIFFS' SECOND AMENDED COMPLAINT	4	AA000757- AA000782
02/22/16	HEARING BEFORE THE HONORABLE SUSAN SCANN, DISTRICT COURT JUDGE	4	AA000783- AA000826
03/15/16	QUALITY LOAN SERVICE CORPORATION'S ANSWER TO COMPLAINT	4	AA000827- AA000834
03/29/16	MTC FINANCIAL INC. DBA TRUSTEE CORPS' ANSWER TO SECOND AMENDED COMPLAINT	4	AA000835- AA000845
07/20/16	HEARING BEFORE THE HONORABLE BONNIE BULLA, DISCOVERY COMMISSIONER	4	AA000846- AA000906
09/21/16	HEARING BEFORE THE HONORABLE BONNIE BULLA, DISCOVERY COMMISSIONER	4, 5	AA000907- AA001031
09/28/16	DEFENDANT CALIFORNIA RECONVEYANCE COMPANY'S ANSWER TO SECOND AMENDED COMPLAINT OF PLAINTIFFS	5	AA001032- AA001045

CHRONOLOGICAL INDEX

	JEFFREY BENKO, CAMILO MARTINEZ, ANA MARTINEZ, FRANK SCINTA, JACQUELINE SCINTA, SUSAN HJORTH, RAYMOND SANSOTA, FRANCINE SANSOTA, SANDRA KUHN, JESUS GOMEZ, SIL VIA GOMEZ, DONNA HERRERA, JESSE HENNIGAN, KIM MOORE, THOMAS MOORE, SUSAN KALLEN, ROBERT MANDARICH AND JAMES NICO		
10/07/16	PLAINTIFFS' MOTION FOR CLARIFICATION AND ENTRY OF ORDER RE FEBRUARY 2016 HEARING ON DEFENDANTS' JOINT NRCP 12(B)(5) MOTIONS	5, 6, 7	AA001046- AA001712
10/24/16	DEFENDANTS' JOINT MOTION TO STRIKE AND, IN THE ALTERNATIVE, OPPOSITION TO PLAINTIFFS' MOTION FOR CLARIFICATION AND ENTRY OF ORDER RE FEBRUARY 2016 HEARING ON DEFENDANTS' JOINT NRCP 12(B)(5) MOTIONS	6, 7, 8	AA001713- AA001769
10/26/16	HEARING BEFORE THE HONORABLE BONNIE BULLA, DISCOVERY COMMISSIONER	8	AA001770- AA001782
12/05/16	NOTICE OF ENTRY OF STIPULATION AND ORDER TO DISMISS PLAINTIFFS KIM MOORE AND THOMAS MOORE WITH PREJUDICE	8	AA001783- AA001789
12/14/16	NOTICE OF PLAINTIFFS' MOTION FOR LEAVE TO FILE THIRD AMENDED COMPLAINT	8, 9	AA001790- AA002096
12/21/16	PLAINTIFFS' REPLY BRIEF IN SUPPORT OF MOTION FOR CLARIFICATION AND ENTRY OF ORDER RE FEBRUARY 2016 HEARING ON DEFENDANTS' JOINT	9	AA002097- AA002196

CHRONOLOGICAL INDEX

	NRCP 12(B)(5) MOTIONS		
12/29/16	QUALITY LOAN SERVICE CORPORATION'S LIMITED OPPOSITION TO MOTION TO AMEND	9	AA002197- AA002198
01/03/17	DEFENDANT CALIFORNIA RECONVEYANCE COMPANY'S RESPONSE TO PLAINTIFFS' MOTION FOR LEAVE TO FILE THIRD AMENDED COMPLAINT	9	AA002199- AA002206
01/03/17	DEFENDANT MTC FINANCIAL INC. dba TRUSTEE CORPS' OPPOSITION TO PLAINTIFFS' MOTION FOR LEAVE TO FILE THIRD AMENDED COMPLAINT	9	AA002207- AA002230
01/03/17	REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF DEFENDANT MTC FINANCIAL INC. dba TRUSTEE CORPS' OPPOSITION TO PLAINTIFFS' MOTION FOR LEAVE TO FILE THIRD AMENDED COMPLAINT	9, 10	AA002231- AA002306
01/03/17	DECLARATION OF KEIKO J. KOJIMA IN SUPPORT OF DEFENDANT MTC FINANCIAL INC. dba TRUSTEE CORPS' OPPOSITION TO PLAINTIFFS' MOTION FOR LEAVE TO FILE THIRD AMENDED COMPLAINT	10	AA002307- AA002322
01/10/17	PLAINTIFFS' REPLY BRIEF RE PLAINTIFFS' MOTION FOR LEAVE TO FILE THIRD AMENDED COMPLAINT	10	AA002323- AA002375
01/11/17	HEARING BEFORE THE HONORABLE BONNIE BULLA, DISCOVERY COMMISSIONER	10, 11	AA002376- AA002508
02/07/17	HEARING BEFORE THE HONORABLE WILLIAM D.	11	AA002509- AA002524

CHRONOLOGICAL INDEX

	KEPHART, DISTRICT COURT JUDGE		
02/06/17	PLAINTIFFS' (SANSOTAS) MOTION FOR PARTIAL SUMMARY JUDGMENT AGAINST MTC FINANCIAL, INC.; PLAINTIFFS' SEPARATE STATEMENT IN SUPPORT OF PLAINTIFFS' (SANSOTAS) MOTION FOR PARTIAL SUMMARY JUDGMENT AGAINST MTC FINANCIAL, INC.; DECLARATION OF NICHOLAS A. BOYLAN IN SUPPORT OF PLAINTIFFS' (SANSOTAS) MOTION FOR PARTIAL SUMMARY JUDGMENT AGAINST MTC FINANCIAL, INC.	11, 12, 13, 14, 15	AA002525-AA003506
02/17/17	HEARING BEFORE THE HONORABLE BONNIE BULLA, DISCOVERY COMMISSIONER	15	AA003507-AA003536
03/07/17	PLAINTIFFS' REPLY MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT AGAINST DEFENDANT MTC	15	AA003537-AA003685
03/07/17	PLAINTIFFS' OBJECTION AND RESPONSE TO QUALITY LOAN SERVICE CORPORATION'S OPPOSITION TO THE MOTION FOR PARTIAL SUMMARY JUDGMENT	15, 16	AA003686-AA003834
03/07/17	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; DECLARATION OF RAYMOND SANSOTA IN SUPPORT OF	16	AA003835-AA003978

CHRONOLOGICAL INDEX

	PLAINTIFFS' PRELIMINARY OPPOSITION TO MTC'S MOTION FOR SUMMARY JUDGMENT; PLAINTIFFS' REPLY MEMORANDUM IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT		
03/08/17	HEARING BEFORE THE HONORABLE BONNIE BULLA, DISCOVERY COMMISSIONER	16, 17	AA003979- AA003997
03/10/17	PLAINTIFFS' PRELIMINARY RESPONSE TO MTC FINANCIAL INC. DBA TRUSTEE CORPS' OBJECTIONS TO SANSOTAS' SEPARATE STATEMENT IN SUPPORT OF SANSOTAS' MOTION FOR PARTIAL SUMMARY JUDGMENT	17	AA003998- AA004009
03/14/17	HEARING BEFORE THE HONORABLE WILLIAM D. KEPHART, DISTRICT COURT JUDGE	17	AA004010- AA004060
03/14/17	ORDER RE PLAINTIFFS' MOTION FOR LEAVE TO FILE THIRD AMENDED COMPLAINT	17	AA004061- AA004064
03/15/17	THIRD AMENDED COMPLAINT OF PLAINTIFFS JEFFREY BENKO, CAMILO MARTINEZ, ANA MARTINEZ, FRANK SCINTA, JACQUELINE SCINTA, SUSAN HJORTH, RAYMOND SANSOTA, FRANCINE SANSOTA, SANDRA KUHN, JESUS GOMEZ, SILVIA GOMEZ, DONNA HERRERA, JESSE HENNIGAN, SUSAN KALLEN, ROBERT MANDARICH, JAMES NICO, AND BIJAN LAGHAEI	17	AA004065- AA004224
03/15/17	NOTICE OF ENTRY OF ORDER GRANTING PLAINTIFFS' MOTION FOR LEAVE TO FILE THIRD AMENDED COMPLAINT	17, 18	AA004225- AA004236

CHRONOLOGICAL INDEX

03/28/17	ANSWER OF DEFENDANT MTC FINANCIAL INC. dba TRUSTEE CORPS TO THIRD AMENDED COMPLAINT OF PLAINTIFFS	18	AA004237- AA004249
03/28/17	PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS THE TAC	18	AA004250- AA004552
03/29/17	NOTICE OF PLAINTIFFS' SUBMISSION OF EVIDENCE FOR PURPOSES OF MAY 4, 2017 HEARING	18	AA004553- AA004560
04/04/17	DEFENDANT CALIFORNIA RECONVEYANCE COMPANY'S RESPONSE TO PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS THE THIRD AMENDED COMPLAINT"	18, 19	AA004561- AA004583
04/04/17	NATIONAL DEFAULT SERVICING CORPORATION'S JOINDER TO DEFENDANT CALIFORNIA RECONVEYANCE COMPANY'S RESPONSE TO PLAINTIFFS' "MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS THE THIRD AMENDED COMPLAINT"	19	AA004584- AA004586
04/04/17	QUALITY LOAN SERVICE CORPORATIONS' SUBSTANTIVE JOINDER TO DEFENDANT CALIFORNIA RECONVEYANCE COMPANY'S RESPONSE TO PLAINTIFFS' "MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS THE THIRD AMENDED COMPLAINT"	19	AA004587- AA004650

CHRONOLOGICAL INDEX

04/06/17	PLAINTIFFS' REPLY TO MTC'S OBJECTION, FOR MAY 4, 2017 HEARING	19	AA004660-AA004609
04/11/17	PLAINTIFFS' REPLY TO DEFENDANT CALIFORNIA RECONVEYANCE COMPANY'S REQUEST TO DISMISS THE THIRD AMENDED COMPLAINT (AND JOINDERS)	19	AA004610-AA004658
04/21/17	PLAINTIFFS' OPPOSITION TO DEFENDANT CALIFORNIA RECONVEYANCE COMPANY'S MOTION FOR SUMMARY JUDGMENT	19, 20, 21	AA004659-AA004998
04/24/17	PLAINTIFFS' NOTICE OF FILING DOCUMENTS UNDER SEAL IN SUPPORT OF PLAINTIFFS' OPPOSITION TO DEFENDANT CALIFORNIA RECONVEYANCE COMPANY'S MOTION FOR SUMMARY JUDGMENT	21	AA004999-AA005007
04/28/17	PLAINTIFFS' OPPOSITION TO DEFENDANT QUALITY LOAN SERVICE CORPORATION'S MOTION FOR SUMMARY JUDGMENT	21, 22, 23	AA005008-AA005599
05/04/17	HEARING BEFORE THE HONORABLE WILLIAM D. KEPHART, DISTRICT COURT JUDGE	23	AA005600-AA005638
05/23/17	PLAINTIFFS' MAY 23, 2017 LETTER BRIEF TO COURT REGARDING PROPOSED ORDER	23	AA005639-AA005641
06/08/17	NOTICE OF ENTRY OF ORDER DISMISSING CASE AS A MATTER OF LAW AND DIRECTING JUDGMENT IN DEFENDANTS' FAVOR IN CONNECTION WITH PLAINTIFFS' THIRD AMENDED COMPLAINT WITH PREJUDICE	23	AA005642-AA005658

CHRONOLOGICAL INDEX

07/05/17	PLAINTIFFS' NOTICE OF APPEAL OF COURT'S ORDER OF JUNE 7, 2017	23	AA005659- AA005665
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1 Lacks foundation.

2 And I don't think that -- to the extent that you
3 know any information only from talking to a lawyer, I think it
4 would be privileged.

5 Q BY MR. BOYLAN: Your answer.

6 A I don't have an answer.

7 Q Let me ask it this way.

8 The lawyer that's here today with you sitting to
9 your left as far as you know is being paid for by Chase Bank;
10 correct?

11 MS. STERN: Same objections.

12 If you don't know other than through information,
13 communications with the lawyer, then the information is
14 privileged.

15 MR. BOYLAN: That's completely wrong.

16 MS. STERN: That's completely right.

17 MR. BOYLAN: Knowledge regarding payment is not
18 privileged. It doesn't go to the content of any confidential
19 communication. It's a matter of money and it shows bias and
20 it shows Chase's involvement. So --

21 MS. STERN: I object to your speech making.

22 MR. BOYLAN: I'm trying to explain an erroneous
23 objection; so you don't get sanctioned.

24 MS. STERN: I think that I don't agree with your
25 statements of the law, and if -- if the only way that the

1 witness knows information is through speaking with counsel,
2 then it's privileged.

3 MR. BOYLAN: All right. Let's ask it this way.

4 Q You are not paying for any lawyer to be with you
5 here today; correct, Ma'am?

6 MS. STERN: And objection. Relevance.

7 And objection. Privilege.

8 You --

9 Q BY MR. BOYLAN: What is your answer, Ma'am?

10 MS. STERN: What is the relevance of --

11 MR. BOYLAN: It's called bias.

12 MS. STERN: Okay.

13 MR. BOYLAN: It's called bias.

14 MS. STERN: What -- is that an exception to privilege,
15 bias?

16 MR. BOYLAN: What I asked is not privileged. Who is
17 paying is not privileged. There is legions of case authority
18 on that.

19 MS. STERN: Okay. Well, why don't we take a break and
20 you can give me the cases.

21 MR. BOYLAN: I'm not going to do legal research in the
22 middle of a deposition. It's -- it's -- it's routine. It's
23 fundamental. It's basic.

24 MS. STERN: It's never done. I've never had a
25 deposition where my opposing counsel wants to know who is

1 paying for my services at the deposition. It's never done.

2 Q BY MR. BOYLAN: Are you refusing to answer the
3 question, Ma'am?

4 A Yes. For right now.

5 Q Do you recall being named a defendant in a lawsuit
6 related to your work while you were at CRC?

7 A Can you tell me the date or --

8 Q Let's start with any time in your life. Yeah.

9 A Not up until a couple days ago when --

10 MS. STERN: To the extent you know anything from
11 speaking with your lawyer --

12 THE WITNESS: Lawyer.

13 MS. STERN: -- you should --

14 THE WITNESS: That's the only time that I realized I --

15 MS. STERN: -- refrain from talking about the content of
16 our communications.

17 THE WITNESS: Okay. So, yeah. I don't recall.

18 MR. BOYLAN: The fact that you talked to her about
19 something doesn't make it privileged.

20 MS. STERN: Yes. It does.

21 MR. BOYLAN: No. It doesn't.

22 MS. STERN: When there is an attorney-client privilege.
23 Yes. There is.

24 MR. BOYLAN: You talk to her about an article in the New
25 York Times that's privileged? You are just so far out on a

1 limb.

2 MS. STERN: Sir, you are asking her about a lawsuit she
3 was named in and she spoke to her lawyer about it. Are you
4 really saying that's not privileged?

5 MR. BOYLAN: I didn't ask her about the content of a
6 communication with a lawyer.

7 MS. STERN: Sir, to the extent --

8 Q BY MR. BOYLAN: Have you ever been sued?

9 MR. BOYLAN: You would know, wouldn't you?

10 MS. STERN: Sir --

11 Q BY MR. BOYLAN: You wouldn't have to talk to a
12 lawyer to find that out?

13 MS. STERN: Sir, to the extent --

14 Q BY MR. BOYLAN: Maybe you will be.

15 MS. STERN: -- she is asked about any information -- is
16 that a threat?

17 MR. BOYLAN: No. It's not a threat. It's an attempt at
18 humor based on dealing with really a juvenile position and you
19 are obstructing the deposition and --

20 MS. STERN: And you are calling names and I don't think
21 that that's productive to anything in this process. So I
22 would ask that you please not call names. Be a name caller.

23 And why don't we just -- if you want to rephrase the
24 question, you can rephrase the question, but to use your
25 phrase, legions of case law, that if -- if the only reason a

1 witness knows something is through communications with
2 counsel, then that's not something that's a proper subject of
3 questioning. That's privileged.

4 Q BY MR. BOYLAN: Do you have any knowledge of being
5 sued, named as a defendant in a lawsuit, Ma'am? Start with a
6 yes or no.

7 MS. STERN: Why don't you start with apart from what you
8 may have learned from speaking with counsel and then you can
9 get an answer from the witness. Otherwise --

10 MR. BOYLAN: The fact of a lawsuit --

11 MS. STERN: -- I object on the ground of privilege.

12 MR. BOYLAN: The fact of being sued is not privileged
13 simply because you discussed it with her.

14 MS. STERN: We're going around in circles. We're going
15 around in circles.

16 I will repeat. The law is very clear. To the
17 extent that the witness knows about something only through
18 communications with the lawyer, then it's privileged.

19 MR. BOYLAN: Are you instructing her not to answer?

20 MS. STERN: Yes.

21 Q BY MR. BOYLAN: And you are following that
22 instruction?

23 A I feel comfortable saying up until this week I had
24 no idea I was involved in a lawsuit or named in a lawsuit.

25 Q Did you ever -- this is a yes or no question.

1 Did you ever hire a lawyer to defend in you in a
2 lawsuit where you were named as a party?

3 MS. STERN: At any time?

4 MR. BOYLAN: At any time.

5 MS. STERN: Having to do with anything?

6 MR. BOYLAN: Anytime related to CRC.

7 MS. STERN: It has to be related to CRC. Okay.

8 THE WITNESS: Any time related to CRC?

9 MR. BOYLAN: Let me state it again. Please let me
10 finish.

11 Q Please try to focus on the question, not
12 withstanding the objections.

13 MS. STERN: Please don't badger my witness.

14 MR. BOYLAN: It's not badgering, Ma'am.

15 MS. STERN: It is.

16 MR. BOYLAN: You are clearly distracting her. She is
17 losing the question repeatedly.

18 MS. STERN: Sir, you are the one asking the questions
19 and the questions are oftentimes not complete.

20 Q BY MR. BOYLAN: Did you at any time in your life but
21 related to your work at CRC ever hire a lawyer to represent
22 you in a lawsuit?

23 A No.

24 MS. STERN: And I assume that's where she was named as a
25 party. And that was the assumption of your question but -- it

1 right-hand corner.

2 MS. STERN: Okay. So this was previously marked
3 Exhibit 5 to the D. Brignac deposition and now you're marking
4 it as Exhibit 3 to this deposition? Is that what's going on?

5 MR. BOYLAN: Yeah.

6 MS. STERN: Okay. Sorry. I just wanted to make sure it
7 was Exhibit 3 because you skipped Exhibit 2.

8 MR. BOYLAN: Two is being photocopied.

9 MS. STERN: Okay.

10 (Whereupon Plaintiffs' Exhibit No. 3
11 was marked for Identification.)

12 Q BY MR. BOYLAN: All right.

13 Do you recognize this as a California Reconveyance
14 letterhead on the document, Ma'am?

15 A Yes.

16 Q And you were working at CRC around the date of this
17 document, November 1st, 2011; correct?

18 A Yes.

19 Q What do you understand this document to be?

20 MS. STERN: Objection. Lacks foundation.

21 Objection. Calls for a narrative.

22 MS. TALBOT: Objection. Calls for speculation.

23 THE WITNESS: It was an amount that the borrower owed.
24 And would remove them from foreclosure or pay off their loan.
25 It's the payoff statement. So it would be to pay off their

1 entire loan.

2 Q BY MR. BOYLAN: So if the borrower responded by
3 making a payoff, it would remove them from the foreclosure
4 process; correct?

5 A Given those conditions provided the time period.

6 Q Yes?

7 A Correct.

8 Q Have you seen this form before, in other words,
9 while you were working at CRC?

10 A Yes.

11 Q And how -- how did it come to be in the course of
12 your work or duties that you would have seen this form before?

13 MS. TALBOT: Objection. Vague as to form.

14 THE WITNESS: So the -- this form I took over shortly
15 before I became A Law. Or actually right when we became A Law
16 of this department. So I saw this form afterwards.

17 Q BY MR. BOYLAN: And you understood it to be the same
18 form that CRC had been using in the payoff and reinstatement
19 department previously?

20 MS. STERN: Objection. Lacks foundation.

21 MS. TALBOT: Same objection.

22 THE WITNESS: Correct. Yeah. All of our forms were the
23 same forms and we had corrected them or updated them based off
24 of what the servicer required of us.

25 Q BY MR. BOYLAN: For example, if you had a different

March 09, 2017

1 A Yes.

2 Q Okay. So your understanding was that that set of
3 fees there, the fees and costs charged by the foreclosure
4 entity, A Law or CRC, was included in the amount that the
5 borrower had to pay in order to reinstate the loan --

6 MS. STERN: Objection. Compound.

7 Q BY MR. BOYLAN: -- or payoff the loan; correct?

8 MS. STERN: Compound.

9 Vague and ambiguous.

10 Misstates testimony.

11 Lacks foundation.

12 Incomplete hypothetical.

13 MS. TALBOT: Same objection.

14 THE WITNESS: So those anticipated fees covered if it
15 was an actual reality. And so it was included in the quote.

16 But if for any reason the borrower paid more, then
17 they would be refunded that amount. But they can always call
18 and inquire whether or not that particular fee was included or
19 not.

20 Q BY MR. BOYLAN: Is that yes or no to my question?
21 Because I don't understand that in response to my question.

22 MS. STERN: Sir, she's answered your question and --

23 MR. BOYLAN: I don't think she did, Ma'am.

24 MS. STERN: -- your question apparently could not be
25 answered in a yes or no fashion because of the way it was

1 phrased.

2 Q BY MR. BOYLAN: Well, let me ask you.

3 MS. STERN: So I object again to the form of the
4 question.

5 MR. BOYLAN: All right. Very good.

6 Q Are you able to answer it yes or no or would you
7 like to hear it again?

8 A I would like to hear it again.

9 Q Please.

10 (Whereupon the record

11 was read as follows:

12 "Question: Okay. So your
13 understanding was that that set of
14 fees there, the fees and costs
15 charged by the foreclosure entity,
16 A Law or CRC, was included in the
17 amount that the borrower had to
18 pay in order to reinstate the loan
19 or payoff the loan; correct?")

20 MS. STERN: Same objections. Compound.

21 Vague and ambiguous.

22 Argumentative.

23 Misstates testimony.

24 Lacks foundation.

25 Incomplete hypothetical.

1 THE WITNESS: My answer would be no.

2 Q BY MR. BOYLAN: So the borrower could effectively
3 reinstate or pay off the loan without any of these additional
4 line items on here or just that particular one, Ma'am?

5 MS. STERN: Compound.

6 Incomplete.

7 Vague and ambiguous.

8 Q BY MR. BOYLAN: Let me back up and explain.

9 My understanding from reading this -- and you're the
10 expert. This was your business, not me.

11 My understanding from reading this is you are
12 telling the borrower all the different amounts that have to be
13 put together in order to pay off the loan. It's a payoff
14 statement.

15 A Correct.

16 Q Okay. So all the numbers that would be filled in on
17 this template have to be included in the payoff amount;
18 correct?

19 A Correct.

20 Q And that includes the trustee's fees such as CRC or
21 A Law; correct?

22 A Correct.

23 MS. STERN: Objection. Compound.

24 And lacks foundation too.

25 Q BY MR. BOYLAN: In terms of obtaining a payoff, is

1 it correct that the purpose of this template, the purpose of
2 this template communication, is to -- to the extent the
3 borrower is able to do so, to have that borrower pay the
4 amount overdue and in default on the loan plus related
5 expenses in order to pay off or reinstate the loan; correct?

6 A Yes.

7 MS. STERN: Objection. Compound.

8 THE WITNESS: Yes.

9 Q BY MR. BOYLAN: When were you at CRC -- and we'll
10 talk about your entire tenure there.

11 A Uh-huh.

12 Q Okay.

13 How often would you talk to borrowers or their
14 family members about the loans that were in default?

15 MS. STERN: Asked and answered.

16 THE WITNESS: So under CRC, I had very little
17 interaction with borrowers. Very, very little. Especially my
18 first few years. Maybe 2013, a little bit more. But, yeah.
19 I -- I would say very miniscule amount of interaction I've had
20 with borrowers.

21 Q BY MR. BOYLAN: My question was how often. So let's
22 focus you in a little bit more and see if you can give me a
23 direct answer to the question.

24 For example, 2009 to 2011, how often would you have
25 telephone communications with borrowers? Your answer might be

1 twice a week. Twice a month. Twice a year. I don't know,
2 Ma'am, but my question is how often would you estimate?

3 A It could be a handful of times throughout the entire
4 year if -- that might be just way too much too.

5 Q When you did have these calls --

6 A Uh-huh.

7 Q -- can you remember any examples of what you would
8 discuss with the borrowers?

9 MS. STERN: Same time frame?

10 MR. BOYLAN: Yes.

11 THE WITNESS: I can't recall why they were calling me to
12 be truthful.

13 Q BY MR. BOYLAN: Can you recall any topics, just
14 general topics of discussion, with borrowers calling to CRC?

15 MS. TALBOT: Objection. Vague and ambiguous.

16 MS. STERN: Calls for a narrative.

17 THE WITNESS: It was such a long time ago that I can't
18 under CRC. I had a few calls throughout the year and it
19 wasn't one topic in particular.

20 Q But all --

21 A I can't recall why.

22 Q Right. Well, let's do it this way then.

23 All the calls were related to the fact that their
24 loan was in default?

25 A Correct. Yes.

1 Q And all of the calls related in one way or another
2 to what CRC was trying to accomplish, which is either
3 reinstatement or payoff by collecting the money on the loan or
4 going through with the foreclosure of the home; correct?

5 MS. STERN: Objection. Compound.

6 Objection. Vague and ambiguous.

7 Objection. Incomplete hypothetical.

8 MS. TALBOT: Objection. Assumes facts.

9 THE WITNESS: I would say if I -- like the calls that
10 I -- I'm remembering a little bit about had to deal with them
11 understanding why they're in foreclosure.

12 But in most cases I referred them to the lender
13 because it was individuals looking for a loan modification. I
14 would say that was the biggest concern or question regards to
15 like a loan or modification.

16 Q BY MR. BOYLAN: At any time while you were with CRC,
17 did it have a loss mitigation department?

18 A We did not have a loss mitigation department from my
19 knowledge at CRC. But the lenders did. And we had their
20 numbers or the people who were on the phone team had loss
21 mitigation's telephone number for that servicer.

22 Q When were you at CRC, what department, if any,
23 handled deeds in lieu as opposed to foreclosure?

24 A The deed in lieu, I believe was under the same
25 departments that I gave you the correspondence.

1 Q How long were you in that department?

2 A I wasn't in the deed in lieu department for
3 correspondence.

4 Q I'm sorry. I thought you said at one time you were
5 in the correspondence department?

6 A Under A Law. Yes.

7 Q Oh. I see. Thank you.

8 A You're welcome.

9 Q As to CRC, your understanding was the folks that did
10 deed in lieu were under the correspondence department?

11 A Correct. Yes.

12 Q Approximately how many folks were there between 2009
13 and 2011?

14 A I think it was just one to two people, and I'm
15 pretty sure it's the same three managers that can provide more
16 insight.

17 Q Meaning Huey Chiu, Steve Darden, and Dana Lemay?

18 A Correct. Yeah.

19 Q What is your understanding, if you had one, from
20 your years there of what the people did in the deed in lieu
21 group?

22 A Released the liens.

23 Q Can you explain further, please?

24 A I was --

25 MS. STERN: Calls for a narrative.

1 A Yes.

2 Q At any time while you were at CRC, to your
3 knowledge, understanding it may not have been your department,
4 to your knowledge did CRC help Chase with loan modifications
5 that had to be approved by Chase?

6 MS. TALBOT: Objection. Lacks foundation.

7 MS. STERN: Compound.

8 THE WITNESS: (Inaudible.)

9 THE COURT REPORTER: I didn't hear you.

10 THE WITNESS: No. I don't believe CRC handled any loan
11 modifications in regards to the lender. That's my knowledge.
12 I just knew that was a servicer function and CRC did not help
13 with loan modifications other than send over the inquiry to
14 the lender.

15 Q BY MR. BOYLAN: Was it in your manual, this -- this
16 document, that you refer to?

17 A This manual?

18 MS. STERN: Asked and answered.

19 Q BY MR. BOYLAN: Yes.

20 A Yes. I think I mentioned I was aware that all of
21 our contracts from the servicers were in our manual. But I
22 never saw this particular contract.

23 Q Can you tell me what manual you are referring to?

24 A The servicer guidelines. The contracts along with
25 procedures that they would like us to implement with our

1 foreclosure process.

2 Q While you were at CRC?

3 A Correct. While we were at CRC.

4 Q Was that a one -- was that a binder? Was it one
5 volume? Several volumes? How would you describe it?

6 A What date are you referring to?

7 Q At the end your last -- well, let's say 2011.

8 A 2011. I can't recall what we had for 2011.

9 Q What do you recall regardless of the year? What did
10 it look like? How big was it? Was it in a binder? Was in a
11 shelf? Was it paper? Electronic? All of the above?

12 A I do remember Deborah Brignac having all these
13 contracts in her office. I know at the end of 2013 we had a
14 shared -- shared drive and everything was in our shared drive.

15 So it was either in Deborah's office or at the end
16 of 2013 -- by the end of 2013 we had it on a shared drive.

17 Q What's your best estimate of the number of
18 contracts, the greatest number of contracts, that was in there
19 at any time?

20 A Oh, well, I think we discussed from 2009, when I was
21 employed, to 2013, the majority of our loans were serviced by
22 Chase. So the contracts were just Chase.

23 Once we became A Law, we acquired a few other
24 servicers, and so we had some contracts with the other
25 servicers.

1 Reviewed the documents to execute an assignment,
2 substitution and notice of default.

3 Q And what department handled the activity after that
4 specifically, for example, processing the sale and collecting
5 the proceeds from the sale?

6 A That would be the sales team or the after-sales
7 team.

8 Q Did you ever work in those departments?

9 A No. I didn't work in the sales or after-sales team.

10 Q What's your general understanding of the scope of
11 responsibility of that team, what they did, if you have one?

12 A Kind of what you just highlighted. So the sales
13 team will review the file on the sale date.

14 Proceed if able to or not proceed.

15 Place it on hold if they received instructions from
16 the lender or another party.

17 The after-sales will handle the results of the
18 sales.

19 So my knowledge is a bit vague just because I never
20 worked in those departments.

21 Q From 2009 to 2011 who was the top people in each of
22 those departments?

23 A Sure. It was Delilah Ochoa for the sales team.

24 And it was Kareem Arias for the after-sales team.

25 Now, again, they had numerous employees but those

1 were the two supervisors for that duration.

2 Q So as far as you know, the team which handled the
3 money, the cash, that was paid to make a purchase of
4 property --

5 A Uh-huh.

6 Q -- that was handled by the after-sales team?

7 A To my knowledge, yes, which was Kareem Arias.

8 Q What knowledge, if any, do you have about what they
9 would do with that cash?

10 A Oh, I have no knowledge.

11 MS. TALBOT: Lacks foundation.

12 Q BY MR. BOYLAN: You have no knowledge whatsoever?

13 A No. I -- I did not sit near them or I wasn't
14 familiar with their process at all.

15 Q What's your understanding of how the FANDS system
16 was transitioned from CRC to A Law or otherwise how it was
17 handled if you know?

18 A The transition, so it remained the same system, and
19 all of our files remained on the FANDS system when we
20 transitioned.

21 I don't know how that transition occurred. I know
22 Deborah Brignac probably has more information on that or Huey
23 Chiu. They worked with -- more than having that transition as
24 seamless as possible and bringing over all of our files on to
25 the same system.

1 STATE OF CALIFORNIA)
)
2 COUNTY OF LOS ANGELES)

3

4 I, Julee Sokol, Certified Shorthand Reporter, do
5 hereby certify:

6 That prior to being examined, the witness in the
7 foregoing proceedings was by me duly sworn to testify to the
8 truth, the whole truth, and nothing but the truth;

9 That said proceedings were taken before me at the
10 time and place therein set forth and were taken down by me in
11 shorthand and thereafter transcribed into typewriting under my
12 direction and supervision;

13 I further certify that I am neither counsel for,
14 nor related to, any party to said proceedings, not in anywise
15 interested in the outcome thereof.

16 In witness whereof, I have hereunto subscribed my
17 name.

18

19 Dated: Sunday, March 26, 2017.

20

21

22

23 Julee Sokol
24 CSR No. 11319

25

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19 **DISTRICT COURT**

20 **CLARK COUNTY, NEVADA**

21 JEFFREY BENKO, a Nevada resident;

22 CAMILO MARTINEZ, a California

23 resident; ANA MARTINEZ, a California

24 resident; FRANK SCINTA, a Nevada

25 resident; JACQUELINE SCINTA, a

26 Nevada resident; SUSAN HJORTH, a

27 Nevada resident; RAYMOND

28 SANSOTA, a Ohio resident; FRANCINE

SANSOTA, a Ohio resident; SANDRA

KUHN, a Nevada resident; JESUS

GOMEZ, a Nevada resident; SILVIA

GOMEZ, a Nevada resident; DONNA

HERRERA, a Nevada resident;

ANTOINETTE GILL, a Nevada resident;

JESSE HENNIGAN, a Nevada resident;

KIM MOORE, a Nevada resident;

THOMAS MOORE, a Nevada resident;

SUSAN KALLEN, a Nevada resident;

ROBERT MANDARICH, a Nevada

resident, JAMES NICO, a Nevada resident

and PATRICIA TAGLIAMONTE, a

Nevada resident

CASE NO: A-11-649857-C

Dept. 19

**PLAINTIFFS' NOTICE OF FILING
DOCUMENTS UNDER SEAL IN
SUPPORT OF PLAINTIFFS'
OPPOSITION TO DEFENDANT
CALIFORNIA RECONVEYANCE
COMPANY'S MOTION FOR
SUMMARY JUDGMENT**

Date: May 9, 2017

Time: 9:00 a.m.

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

18 PLEASE TAKE NOTICE THAT PLAINTIFFS, pursuant to the Court's Order
19 of December 1, 2016, hereby file under seal the following documents (referenced as
20 exhibits in Declaration of Nicholas A. Boylan in Support of Plaintiffs' Opposition to
21 Defendant California Reconveyance Company's Motion for Summary Judgment,
22 which allegedly contain confidential information. These documents are submitted
23 herewith in an attached envelope pursuant to EDCR 8.09.

24 1. Exhibit "O" is true and correct copies of documents from CRC's
25 internal records, produced by CRC in discovery and relied on by CRC by express
26 reference in its relevant discovery responses, regarding the amounts in fees and costs
27 incurred and/or charged by CRC for its services relating to Plaintiff Kallen. They
28 show that the fees and costs incurred and/or charged by CRC for its services relating
29 to Plaintiff Kallen totaled not less than \$1,799.11.

30 2. Exhibit "Q" is a true and correct copy of a letter from CRC (Bates No.
31 CRC00365, Ex. 2 to the Brignac deposition) to Thomas and Kimberly Moore dated

1 November 1, 2011. The exhibit was produced by CRC from its internal records in the
2 course of discovery, and was authenticated by Ms. Brignac at her deposition.

3 3. Exhibit "R" is a true and correct copy of a document from CRC (Bates
4 Nos. CRC000369–CRC000371, Ex. 5 to the Brignac deposition) to Thomas and
5 Kimberly Moore dated November 1, 2011. The exhibit was produced by CRC from
6 its internal records in the course of discovery, and was authenticated by Ms. Brignac
7 at her deposition.

8 4. Exhibit "S" is a true and correct copy of CRC's File History (Bates
9 Nos. CRC000468–CRC000471, Ex. 6 to Brignac deposition). The exhibit was
10 produced by CRC from its internal records in the course of discovery, and was
11 authenticated by Ms. Brignac at her deposition.

12 5. Exhibit "T" is a true and correct copy of a page from CRC's Contract
13 ID NO. CW283891, (Bate No. CRC000612, Ex. 8 to the Brignac deposition)
14 regarding Bankruptcy/Foreclosure Reinstatement/Payoffs and 3rd Party Foreclosure
15 Proceeds. The exhibit was produced by CRC from its internal records in the course of
16 discovery, and was authenticated by Ms. Brignac at her deposition.

17 6. Exhibit "U" is a true and correct copy of CRC's Annex I – Home
18 Lending Foreclosure and Bankruptcy Manual, (Bates Nos. CRC000688–
19 CRC000757, Ex. 11 to the Brignac deposition). The exhibit was produced by CRC
20 from its internal records in the course of discovery, and was authenticated by Ms.
21 Brignac at her deposition.

22 7. Exhibit "V" is a true and correct copy of an engagement letter CRC
23 received from JP Morgan Chase, dated March 25, 2011 (Bates Nos. CRC000758–
24 CRC000760, Ex. 12 to the Brignac deposition). The exhibit was produced by CRC
25 from its internal records in the course of discovery, and was authenticated by Ms.
26 Brignac at her deposition.

27 8. Exhibit "W" is a true and correct copy of a Master Services Agreement
28

1 between JPMorgan Chase Bank, National Association and California Reconveyance
2 Company Dated April 20, 2009, (Bates Nos. CRC000573--CRC000605, Ex. 13 to the
3 Brignac deposition). The exhibit was produced by CRC from its internal records in
4 the course of discovery, and was authenticated by Ms. Brignac at her deposition.

5 9. Exhibit "X" is a true and correct copy of CRC's Check No. 003633,
6 dated March 1, 2011, in the amount of \$200.00. (Bates No. CRC00139, Ex. 14 to the
7 Brignac deposition). The exhibit was produced by CRC from its internal records in
8 the course of discovery, and was authenticated by Ms. Brignac at her deposition.

9 10. Exhibit "Y" is a true and correct copy of pages from CRC's Contract
10 ID NO. CW283891, (Bates Nos. CRC000624--CRC000629, Ex. 16 to the Brignac
11 deposition). The exhibit was produced by CRC from its internal records in the course
12 of discovery, and was authenticated by Ms. Brignac at her deposition.

13 11. Exhibit "Z" is a true and correct copy of internal documents (Bates
14 Nos. CRC001276--CRC001287, Ex. 5 to the Irby deposition) produced by CRC in
15 the course of discovery in this case. The exhibit was produced by CRC as generic
16 documents or templates used by CRC as part of its business activities in Nevada
17 during the relevant period in this case.

18
19 Respectfully submitted this 24th day of April, 2017.

20
21 /s/ Nicholas A. Boylan
22 Nicholas A. Boylan, Esq.
23 Attorney for Plaintiffs
24
25
26
27
28

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 April 24, 2017, I served a true and correct copy of the foregoing:

- **PLAINTIFFS' NOTICE OF FILING DOCUMENTS UNDER SEAL IN SUPPORT OF PLAINTIFFS' OPPOSITION TO DEFENDANT CALIFORNIA RECONVEYANCE COMPANY'S MOTION FOR SUMMARY JUDGMENT**

via Hand-Delivery to Court and

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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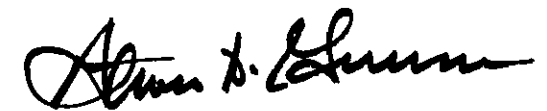
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/s/ Marina Vaisman
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DISTRICT COURT

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' OPPOSITION TO
DEFENDANT QUALITY LOAN
SERVICE CORPORATION'S
MOTION FOR SUMMARY
JUDGMENT**

Jury Trial Demanded

Hearing Date: May 16, 2017

Hearing Time: 9:00 a.m.

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

15
16 Defendants.