

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

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Elizabeth A. Brown  
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JEFFREY BENKO, a Nevada  
resident, et al.,

Appellants,

vs.

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

Respondents.

Supreme Court Case No. 73484

Eighth Judicial District Court  
Case No. A-11-6498757-C

**RESPONDENT MTC FINANCIAL INC. DBA TRUSTEE CORPS'  
ANSWERING BRIEF**

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## NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

1. Respondent MTC Financial Inc. dba Trustee Corps (“MTC”) is a privately held California corporation, with no parent corporations.

2. The names of all law firms whose partners or associates have appeared for MTC or are expected to appear in this court are:

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Dated: May 9, 2018

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## **ISSUES PRESENTED FOR REVIEW**

In addition to the issues stated in Respondent California Reconveyance Company's Answering Brief, in which respondent MTC Financial Inc. dba Trustee Corps ("MTC") joins in accordance with Nevada Rules of Appellate Procedure, Rule 28(i), the following issues are presented for review:

1. Whether non-judicial trustees are exempt from the licensing requirement of N.R.S. 649.075.
2. Whether a non-judicial trustee's actions during the foreclosure process can validly serve as the exclusive basis for a cause of action for statutory consumer fraud.
3. Whether Plaintiffs stated a claim for consumer fraud under Nevada Revised Statutes § 41.600 where they failed to adequately allege scienter.
4. Whether Plaintiffs stated a claim for unjust enrichment under Nevada law where they failed to adequately allege that Plaintiffs bestowed a benefit upon Defendants.

## **COMBINED STATEMENT OF THE CASE AND FACTS**

In accordance with Nevada Rules of Appellate Procedure, Rule 28(i), MTC joins in and adopts Respondent California Reconveyance Company's Combined Statement of the Case and Facts set forth in its Answering Brief.



## **SUMMARY OF ARGUMENT**

In accordance with Nevada Rules of Appellate Procedure, Rule 28(i), MTC joins in and adopts the arguments set forth in Sections I through V of Respondent California Reconveyance Company's Answering Brief. It submits this Answering Brief to address the following additional arguments.

The judgment of the District Court should be affirmed. Plaintiffs' cause of action for consumer fraud fails because non-judicial foreclosures, such as Defendants here, are exempt from the licensing requirements of N.R.S. 649.075, and the actions taken by non-judicial trustees during the foreclosure process cannot validly serve as the exclusive basis for a cause of action for statutory consumer fraud. Plaintiffs' failure to adequately allege that Defendants knowingly violated N.R.S. 41.600 is yet another reason to affirm the dismissal of Plaintiff's consumer fraud claim.

Plaintiff's cause of action for common law unjust enrichment also fails. The dismissal of that claim should be affirmed on the additional ground that Plaintiffs did not adequately allege that Defendants bestowed a benefit upon Plaintiffs, which is an essential element of the claim. For the reasons set forth herein and in the Answering Brief of Respondent California Reconveyance Company, the District Court's judgment should be affirmed.

## **ARGUMENT**

### **I. STANDARD OF REVIEW**

In accordance with Nevada Rules of Appellate Procedure, Rule 28(i), MTC joins in and adopts the arguments regard to the appropriate Standard of Review set forth in Section I of Respondent California Reconveyance Company's Answering Brief.

### **II. A NON-JUDICIAL FORECLOSURE TRUSTEE IS EXEMPT FROM THE LICENSING REQUIREMENT OF N.R.S. 649.075**

Plaintiffs' claim for consumer fraud alleges that: each of the Defendants acted as a "collection agency" and did not hold the requisite license to act as a collection agency in Nevada; each of the Defendants allegedly pursued various collection agency activities against Plaintiffs, including such actions as sending debt-related notices, demands, and collections communications, conducting foreclosure sales and processes, and collecting monies to apply to Plaintiffs' accounts; these activities allegedly were illegal because they were unlicensed; Defendants' conduct allegedly violated N.R.S. 649.075 or N.R.S. 649.171 and, therefore, constituted a deceptive trade practice under N.R.S. Chapter 598 and statutory consumer fraud, as defined by N.R.S. 41.600; Plaintiffs seeks damages

that they allegedly incurred as a result of these acts; and, Plaintiffs request an award of attorney's fees and punitive damages. AA004088-89.<sup>1</sup>

The statutory consumer fraud cause of action is based upon the private right of action afforded to consumers by N.R.S. 41.600, which provides in pertinent part that an action may be brought by any person who is a victim of "consumer fraud." N.R.S. 41.600(1). "Consumer fraud" means a "deceptive trade practice" as defined in N.R.S. 598.0915 to 598.0925 of the Nevada Deceptive Trade Practices Act ("NDTPA"). N.R.S. 41.600(2)(e). Further, if the claimant is the prevailing party, the claimant is entitled to any damages that he or she has sustained, any equitable relief that the Court deems appropriate, and the claimant's costs in the action and reasonable attorney's fees. N.R.S. 41.600(3)(a)-(c).

The alleged deceptive trade practice that forms the substantive basis of Plaintiffs' statutory consumer fraud claim arises from N.R.S. 598.0923 of the NDTPA, which states that a person engages in a "deceptive trade practice" when, in the course of his or her business or occupation, he or she knowingly conducts the business or occupation without all required state, county, or city licenses. N.R.S. 598.0923(1).

The licenses that Defendants allegedly were required to obtain are "collection agency" licenses. "Collection agency means all persons engaging,

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<sup>1</sup> References to the record will be to the page(s) of Appellant's Appendix in the form of "AA\_\_\_\_," or to the Respondents' Appendix in the form of "RA\_\_\_\_."

directly or indirectly, and as a primary or secondary object, business or pursuit, in the collection of or in soliciting or obtaining in any manner the payment of a claim owed or due or asserted to be owed or due to another.” N.R.S. 649.020(1). N.R.S. 649.075, in turn, provides that a person shall not engage in the business of a collection agency without first having obtained a license. N.R.S. 649.075.

Plaintiffs’ consumer fraud claim fails as a matter of law because non-judicial foreclosure trustees are exempt from the licensing requirement of N.R.S. 649.075 and, therefore, cannot be held liable under N.R.S. 41.600, for the deceptive trade practice, as defined in N.R.S. 598.0923, of conducting a business without a collection agency license. As the Court recently noted in *Bailin v. Select Portfolio Servicing, Inc.*, 2015 WL 4711113, at \*3 (D. Nev. 2015): “[T]he Courts of this District have routinely held that the NDTPA does not apply to most real estate loan transactions,” citing *Morris v. Green Tree Servicing, LLC*, 2015 WL 4113212, at \*15 (D. Nev. 2015); *Kawahara v. Kennedy*, 2015 WL 789744, at \*5 (D. Nev. 2015); *Dowers v. Nationstar Mortgage LLC*, 2014 WL 7409513, at \*4 (D. Nev. 2014); *Bartello v. CitiMortgage, Inc.*, 2014 WL 1514174, at \*7 (D. Nev. 2014); *Tello v. Bank of Am. N.A.*, 2014 WL 99299, at \*5 (D. Nev. 2014); *Reyna v. Wells Fargo Bank, N.A.*, 2011 WL 2690087, at \*9 (D. Nev. 2011).

*Wensley v. First National Bank of Nevada*, 874 F. Supp. 2d 957 (D. Nev. 2012), is illustrative of the legion of cases decided in Nevada by United States

District Court Judges applying Nevada law to resolve this issue adversely to Plaintiffs. In *Wensley*, the trustor under a deed of trust brought an action against the beneficiary, trustee, and substitute trustee alleging a predatory lending scheme and asserting a variety of claims, including a claim for violation of the NDTPA. In granting defendants' motion to dismiss plaintiff's deceptive trade practices claim, the Court stated:

Plaintiff's second cause of action for violation of the Nevada Unfair and Deceptive Trade Practices Act, Nev. Rev. Stat. § 598.0923, . . . fails as a matter of law. The statute provides that a person engages in deceptive trade practices when he or she knowingly conducts his or her business or occupation without all required state, county, or city licenses. NEV. REV. STAT. § 598.0923(1). However, the statutes explicitly state that the following activities do not constitute doing business in Nevada: (1) maintaining, defending or settling any proceeding; (2) creating or acquiring indebtedness, mortgages and security interests in real or personal property; and (3) securing or collecting debts or enforcing mortgages and security interests in property securing the debts. NEV. REV. STAT. § 80.015(1)(a), (g), (h). Because Defendants are explicitly exempted from the need to acquire licenses, the Court dismisses Plaintiff's second cause of action without leave to amend.

*Id.* at 963. See also *Marley v. Greater Nevada Mortgage Services*, 2012 WL 1883476, at \*3 (D. Nev. 2012) (same); *James v. Countrywide Home Loans, Inc.*, 2012 WL 607564, at \*3 (D. Nev. 2012) (same); *Marin v. Wells Fargo Bank*, 2012 WL 424564, at \*3 (D. Nev. 2012) (same); *March v. Pinnacle Mortgage of Nevada, LLC*, 2011 WL 4809198, at \*6 (D. Nev. 2011) (same); *Fitzgerald v. Clarion Mortgage Capital*, 2011 WL 2633502, at \*5 (D. Nev. 2011) (same); *Quality Loan*

*Service Corp. v. State of Nevada*, 2013 WL 6911859 (Nev. Dist. Ct. 2013) (trial order).

The foregoing, voluminous case authorities make clear that a foreclosure trustee, such as MTC, cannot be held liable for deceptive trade practices on the sole ground that it failed to obtain a collection agency license because, under Nevada law, it is explicitly exempted from the need to acquire such a license. MTC has been unable to find a single holding to the contrary.

Plaintiffs argue that N.R.S. 80.015(4)(b) – providing that “[t]he fact that a person is not doing business in this State within the meaning of this section . . . [d]oes not affect the applicability of any other provision of law with respect to the person and may not be offered as a defense . . . in any civil action . . . *to prove that the person is not doing business in this State . . .*” (emphasis added) – should be interpreted to read N.R.S. 80.015(1) out of existence. Plaintiffs are incorrect. MTC is not attempting to prove that it was not doing business in Nevada, but, rather, that it has been exempted from obtaining a license that it otherwise may have had to acquire. Thus, subsection (4)(b) of N.R.S. 80.015 is inapplicable to the issue before the Court. Plaintiffs’ claim for statutory consumer fraud fails.

### **III. A NON-JUDICIAL TRUSTEE'S ACTIONS DURING THE FORECLOSURE PROCESS CANNOT VALIDLY SERVE AS THE EXCLUSIVE BASIS FOR A CAUSE OF ACTION FOR STATUTORY CONSUMER FRAUD**

The common law does not impose any additional obligations on a foreclosure trustee other than those specifically stated in the deed of trust or governing statutes. *See Weingartner v. Chase Home Finance, LLC*, 702 F. Supp. 2d 1276, 1291 (D. Nev. 2010), *quoting Pro Value Properties, Inc. v. Quality Loan Service Corp.*, 170 Cal. App. 4th 579, 583, 88 Cal. Rptr. 3d 381 (2009) (finding no general duty of care, but holding only duty as defined by Nevada foreclosure statutes).

Thus, the scope and nature of a trustee's duties are exclusively defined by the deed of trust and the governing statutes. *Bank of America Leasing & Capital, LLC v. Arch. Trustee Services, Inc.*, 180 Cal. App. 4th 1090, 1097-1098, 103 Cal. Rptr. 3d 397, 400-402 (2009) (trustee's rights, powers, and duties regarding notice of default and sale strictly defined and limited by statutory scheme; Legislature intended to protect trustees from costly litigation, and trustee's statutory duties cannot be expanded by courts). No common law duties exist. *Hendrickson v. Popular Mortgage Servicing, Inc.*, 2009 WL 1455491, at \*7 (N.D. Cal. 2009); *Gomez v. Countrywide Bank, FSB*, 2009 WL 3617650, at \*8 (D. Nev. 2009) (*accord, citing Hendrickson*); *Pro Value Properties, Inc.*, *supra*, 170 Cal. App. 4th at 583; *Orzoff v. Bank of America, N.A.*, 2011 WL 1539897, at \*3 (D. Nev. 2011);

*Residential Capital LLC v. Cal-Western Reconveyance Corp.*, 108 Cal. App. 4th 807, 827-829, 134 Cal Rptr. 2d 162 (2003) (no common law expansion of tort obligations).

The trustee's limited duties are twofold: (1) to "reconvey" the deed of trust to the trustor upon satisfaction of the debt owed to the beneficiary, resulting in a release of the lien created by the deed of trust, or (2) to initiate non-judicial foreclosure on the property upon the trustor's default, resulting in a sale of the property. *Vournas v. Fidelity Nat. Title Ins. Co.*, 73 Cal. App. 4th 668, 677, 86 Cal. Rptr. 2d 490 (1999). The non-judicial foreclosure trustee is not a true trustee with fiduciary duties, but, rather, a common agent of the trustor and beneficiary. *Pro Value Properties, Inc.*, *supra*, 170 Cal. App. 4th at 583. *See also Orzoff*, *supra*, 2011 WL 1539897, at \*3.

Because the non-judicial foreclosure trustee's foreclosure sale duties are defined and limited by the Deed of Trust and by statute (N.R.S. 107.080 *et seq.*), no claim against a non-judicial foreclosure trustee arising solely from its actions taken during the foreclosure can validly serve as the exclusive basis for Plaintiffs' claim for statutory consumer fraud. This is precisely what the Nevada District Court found in *Quality Loan Service Corp. v. State of Nevada*, 2013 WL 6911859 (Nev. Dist. Ct. 2013). There, Quality Loan Service Corporation ("Quality") petitioned the Nevada District Court for review of the decision of the Department



of Business and Industry, Financial Institutions Division (the “FID”), in which the FID concluded that a trustee’s exercise of the power of sale pursuant to the procedure set forth under N.R.S. Chapter 107 constituted the collection of, or solicitation of payment of, a claim and, therefore, found that Quality was required to be licensed as a collection agency by the FID in order to exercise the power of sale under a deed of trust. *Id.* at \*2. On appeal, the Court, after scrutinizing the legislative history of the various pertinent Nevada statutes, reversed the decision of the FID, finding that “a Trustee’s exercise of the power of sale under NRS Chapter 107 is not the collection of a debt or claim under NRS Chapter 649, and therefore a Trustee who is only exercising the power of sale under NRS chapter 107 is not required to obtain a license from the FID as a collection agency.” *Id.* at \*3. It further ruled that the Cease and Desist Order issued by the FID and the decision of the FID were void *ab initio* due to legal error by the FID. *Id.* In so ruling, the Court made numerous findings that are contrary to Plaintiffs’ contentions in this case, including (a) the notices required by N.R.S. Chapter 107 in the event of default by the borrower are not the solicitation of payment of a debt or claim, (b) the exercise of the power of sale by a Trustee pursuant to the procedures set forth in N.R.S. Chapter 107 is not the collection of a debt or claim, (c) only the Judiciary, pursuant to a duly filed claim in District Court, has authority to review a Trustee’s exercise of the power of sale and its requisite notices, under N.R.S.

Chapter 107, and (d) N.R.S. Chapter 649 gives the FID authority to regulate debt collection and collection agencies, but grants to the FID no authority to regulate, license, or oversee a Trustee's exercise of the power of sale under N.R.S. Chapter 107. *Id.*

The Quality Loan Service Corp. Court's opinion is consistent with a slew of case authorities issued by the United States District Court for the District of Nevada. *See, e.g., Wittrig v. First National Bank of Nevada*, 2011 WL 5598321 (D. Nev. 2011) (dismissing claim under the NDTPA); *Mayes v. First Horizon Home Loans*, 2010 WL 3724264, at \*3 (D. Nev. 2010) (claim under the NDTPA dismissed; foreclosure trustee not required to be licensed to record notice of default); *Rinehold v. Indymac Bank, FSB*, 2011 WL 13856, at \*2 (D. Nev. 2011) (same); *Kenneweg v. Indymac Bank, FSB*, 2011 WL 13853, at \*2 (D. Nev. 2011) (same); *Regas v. Fremont Investments & Loan*, 2010 WL 5178029, at \*2 (D. Nev. 2010) (same).

The Ninth Circuit recently held that actions taken to facilitate non-judicial foreclosure, such as sending the notice of default and notice of sale, are not attempts to collect debt under the Fair Debt Collection Practices Act ("FDCPA"). *Ho v. ReconTrust Co., NA*, 858 F.3d 568 (9th Cir. 2017). In *Ho*, the Court affirmed the dismissal of an action against the trustee on a deed of trust against the plaintiff's property in which plaintiff alleged that the trustee sent her a notice and

default and notice of sale that misrepresented the amount of debt owed in violation of the FDCPA. In so holding, the Court stated:

An entity does not become a general “debt collector” if its “only role in the debt collection process is the enforcement of a security interest.” . . . We view all of ReconTrust’s activities as falling under the umbrella of “enforcement of a security interest.” Under California’s non-judicial foreclosure statutes, ReconTrust could not conduct the trustee’s sale until it sent the notice of default and the notice of sale. If ReconTrust can administer a trustee’s sale without collecting a debt, it must be able to maintain that status when it takes the statutorily required steps to conduct the trustee’s sale. The right to “enforce” the security interest necessarily implies the right to send the required notices; to hold otherwise would divorce the notices from their context.

*Ho v. ReconTrust Co., NA, supra*, 858 F.3d at 573 (internal citations omitted). The Court further explained:

Enforcement of a security interest will often involve communications between the forecloser and the consumer. When these communications are limited to the foreclosure process, they do not transform foreclosure into debt collection.

The notices at issue in our case didn’t request payment from Ho. They merely informed Ho that the foreclosure process had begun, explained the foreclosure timeline, apprised her of her rights and stated that she could contact Countrywide (not ReconTrust) if she wished to make a payment. These notices were designed to *protect* the debtor. They are entirely different from the harassing communications that the FDCPA was meant to stamp out. Thus, we agree with the California Courts of Appeal that “giving notice of a foreclosure sale to a consumer as required by the [California] Civil Code does not constitute debt collection activity under the FDCPA.

*Id.* at 574 (emphasis on original). *Accord Evalobo v. Aldridge Pite, LLP*, 2016 WL 7379021, at \*5 (D. Nev. 2016) (non-judicial foreclosure is not debt collection under the FDCPA).

Plaintiffs argue that the scores of decisions by the United States District Courts in Nevada rejecting the same argument that they makes here and the decision by the Ninth Circuit in *Ho* are wrongly decided, relying on by the Ninth Circuit's decision in *Mashiri v. Epsten Grinnell & Howell*, 845 F.3d 984 (9th Cir. 2017). Plaintiffs, however, cannot explain why the unanimity of opinions in Nevada is decidedly against them. And *Mashiri*, decided before *Ho*, presents facts far different than the facts presented by Plaintiffs. In that case, there was no existing security interest, and the defendant law firm sent a letter to Mashiri that threatened to record a lien against Mashiri's property if she failed to pay her homeowner's association assessment. Rather than merely seeking to enforce an existing security interest or lien as in *Ho*, the defendant in *Mashiri* sought to collect an assessment. Accordingly, *Mashiri* is distinguishable on its facts and has no application here.

**IV. PLAINTIFFS FAILED TO STATE A CLAIM FOR CONSUMER FRAUD UNDER NEVADA REVISED STATUTES § 41.600 BECAUSE THEY FAILED TO ADEQUATELY ALLEGE SCIENTER**

Plaintiffs' consumer fraud claim is a creature of statute, and the NDTPA is not a strict liability statute. It is not even a statute that imposes liability upon a person for a negligent act. Rather, it imposes liability for intentional actions and inactions, stating that a person engages in a deceptive trade practice under the NDTPA only when "in the course of his or her business or occupation he or she

*knowingly . . . conducts the business or occupation without all required state, county or city licenses.” N.R.S. 598.0923 (emphasis added).<sup>2</sup>*

In *Sobel v. Hertz Corp.*, 698 F. Supp. 2d 1218 (D. Nev. 2010), *affirmed in part, vacated in part, and reversed in part*, 2017 WL 56310 (9<sup>th</sup> Cir. 2017), the Court, in granting defendant’s cross-motion for summary judgment, expressly rejected the contention, identical to Plaintiffs’ contention in this case, that a violation of the underlying statute automatically requires a finding that the NDTPA was violated:

At this time, the parties appear to dispute only whether Hertz engaged in an unfair or deceptive act or practice. As a preliminary matter, the court rejects Plaintiffs’ contention that because Hertz violated section 482.31575, Hertz has per se violated the DPTA. Plaintiffs rely on Nevada Revised Statutes section 598.0923(3) which provides, “A person engages in a ‘deceptive trade practice’ when in the course of his business or occupation he *knowingly*: . . . [v]iolates a state or federal statute or regulation relating to the sale or lease of goods or services.” Nev. Rev. Stat. § 598.0923(3). In light of the substantial uncertainty surrounding section 482.31575’s requirements, it would be difficult to establish that Hertz intentionally circumvented the requirements of the statute. Indeed, Plaintiffs have failed to present evidence suggesting that Hertz knowingly violated section 482.31575.

*Id.* at 1230 (emphasis added).

It is not surprising, and indeed makes sense, that the Legislature required scienter as a precondition to finding a person liable for what Plaintiffs call

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<sup>2</sup> Some of the other actions that trigger liability for a deceptive trade practice under N.R.S. 598.0923 include *knowingly* failing to disclose a material fact in connection with the sale or lease of goods or services, *knowingly* violating a state or federal statute or regulation relating to the sale or lease of goods or services, and *knowingly* using coercion, duress or intimidation in a transaction.

“statutory consumer fraud.” Fraud is a serious charge, and it is always the case at common law that, to hold someone liable for fraud, a finding of intent to defraud (or at least of recklessness) is required. There is no reason to find that the NDTPA is any different, that the Legislature intended to hold a person without scienter liable for fraud.

Plaintiffs would have the Court read the NDTPA as if the word “knowingly” did not appear at all. They apparently believe that there is no such element of a claim under the NDTPA inasmuch as the Third Amended Complaint conspicuously omits an allegation that Trustee Corps *knowingly* violated N.R.S. 649.075 or N.R.S. 649.171. *See* AA004088-89.

The Court “must give [a statute's] terms their plain meaning, considering its provisions as a whole so as to read them in a way that would not render words or phrases superfluous or make a provision nugatory.” *Southern Nev. Homebuilders v. Clark County*, 121 Nev. 446, 449, 117 P.3d 171, 173 (2005) (internal quotation omitted). A statute's express definitions are controlling because “[t]o read [them] otherwise would lead to the absurd result of rendering [such provisions] ... mere surplusage.” *Boulder Oaks Cmty. Ass'n v. B & J Andrews*, 125 Nev. 397, 406, 215 P.3d 27, 32–33 (2009).

Under Plaintiffs’ incorrect view of the NDTPA, the conduct of a business without a required license *ipso facto* renders that business guilty of intentional

consumer fraud. Plaintiffs' argument is without supporting case authority and, contrary to the basic canons of statutory interpretation, would render the word "knowingly" in the NDTPA mere surplusage. Plaintiffs' attempt to override the plain intention of the Legislature should be rejected.

Here, the Third Amended Complaint fails to allege that Defendants *knowingly* violated N.R.S. 649.075 or N.R.S. 649.171. *See* AA004088-89. Moreover, in light of the numerous authorities discussed above, holding that non-judicial foreclosure trustees are exempt from the licensing requirement of N.R.S. 649.075, it will not be possible for Plaintiffs to establish that Defendants intentionally circumvented the requirements of the statute. This failure is yet an additional, independent reason to affirm the District Court's dismissal of the claim for statutory consumer fraud.

**V. PLAINTIFFS FAILED TO STATE CLAIM FOR UNJUST ENRICHMENT BECAUSE THEY FAILED TO ADEQUATELY ALLEGE THAT PLAINTIFFS BESTOWED A BENEFIT UPON DEFENDANTS**

The bestowal of a benefit of money or property by plaintiff upon defendant is a required element of an unjust enrichment claim. *Unionamerica Morg. v. McDonald*, 97 Nev. 210, 212, 626 P.2d 1272, 1273 (1981). Here, Plaintiffs failed to allege in the Third Amended Complaint that they bestowed any benefits upon Defendants. *See* AA004089-91. Rather, they allege that Defendants received substantial payments for their alleged illegal collection activities (they do not

allege the source of these payments) and were unjustly enriched by collecting these “fees.” AA004090. Plaintiff allege that such fees should be disgorged. AA004090.

That Plaintiffs do not allege that Defendants received any payments from Plaintiffs themselves is another reason to affirm the dismissal of the claim for unjust enrichment. Plaintiffs’ contention that Defendants as non-judicial foreclosure trustees should have to disgorge the fees that they received from beneficiaries for conducting foreclosures is unsupported by Nevada law. The NDTPA does not provide for the remedy of disgorgement, and there is no basis under Nevada law upon which to grant an economic windfall to Plaintiffs.<sup>3</sup> The District Court’s judgment dismissing the unjust enrichment cause of action should be affirmed for this reason as well.

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<sup>3</sup> Below, in opposition to MTC’s cross-motion for summary judgment, Plaintiffs argued that they sought disgorgement and cited to a California decision in support of that argument. AA003867-68. However, California law does not apply here, and, in any event, the California decision upon which it relied permitted disgorgement only in the specific context of a cause of action for aiding and abetting a breach of fiduciary duty. *American Master Lease LLC v. Idanta Partners, LTD.*, 225 Cal. App. 4th 1451, 171 Cal. Rptr. 3d 548 (2014). Subsequent decisions emanating out of California and applying California law have held that disgorgement is not a remedy available under California consumer protection statutes (e.g., California’s unfair competition law and California’s Consumer Remedies Act) that are analogous to the NDTPA. *Ivie v. Kraft Foods Global, Inc.*, 2015 WL 183910 at \*2 (N.D. Cal. 2015); *Samet v. Procter & Gamble Co.*, 2015 WL 5012828, at \*2 (N.D. Cal. 2015); *Rahman v. Mott’s LLP*, 2014 6815779, at \*8 (N.D. Cal. 2014).



## **RELIEF REQUESTED**

For the reasons stated herein and in the Respondent California Reconveyance Company's Answering Brief, the District Court's judgment in favor of Defendants should be affirmed.

Dated: May 9, 2018

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## CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 Word Processing Program.

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of Times Roman 14 points or more, and contains 4,258 words.

3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to

sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated: May 9, 2018

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