IN THE SUPREME COURT OF THE STATE OF NEVADA

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

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APPELLANTS' PETITION FOR REHEARING

Appeal from a Decision of the Eighth Judicial District Court of the State of Nevada
Clark County, Nevada

The Honorable William Kephart

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NRAP 26.1 DISCLOSURE

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

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, Patricia Tagliamonte, and Bijan Laghaei are individuals. They are referred to herein as "Plaintiffs" or "Appellants."

Nicholas A. Boylan of the Law Office of Nicholas A. Boylan, APC, and Shawn Christopher of the Christopher Legal Group have appeared for the foregoing parties and intend to do so before this Court.

Dated this 10th day of January 2020.

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I. INTRODUCTION

The individual Plaintiffs have been litigating this case since it was filed in 2011, and are now at risk of dismissal on a 12(b)(5) motion eight years later, without an opportunity to amend, notwithstanding that this Court issued a decision of first impression on a divisive issue across the entire nation.[1] Great injustice is thus threatened for these people (and the thousands of Nevadans that they seek to represent). In addition, there are major and critical fallacies in the Opinion that compel rehearing, including the erroneous factual assumption that the operative complaint only concerns conduct ending in 2011. (*See, e.g.*, AA004065-AA004224.)

In the footnote on the last page of its Opinion, the Court indicated that Plaintiffs did not raise the issue ("point") of leave to amend in the district court, and therefore waived it. That is factually incorrect, as discussed and demonstrated below. (*See, e.g.*, Appellants' Reply Brief to the Answering Brief of Respondent California Reconveyance Company ("CRC Reply"), at 21-23; AA004280-AA004281; AA005616-AA005617.) And, because unequivocal statements of law from this Court ordain that justice requires the opportunity to amend, rehearing should be granted and the case disposition altered to allow amendment of the

[1] In their Briefs, Plaintiffs relied on decisions by the Supreme Courts of Alaska and Colorado. (*Alaska Trustee, LLC v. Ambridge* (Alas. 2016) 372 P.3d 207; *Shapiro & Meinhold v. Zartman* (Colo. 1992) 823 P.2d 120.) Those decisions were not analyzed, or discussed, in this Court's Opinion.

complaint on remand. (*See, e.g.*, *Cohen v. Mirage Resorts, Inc.* (2003) 119 Nev. 1, 62 P.3d 720, 734 ["When considering a motion to dismiss made under NRCP 12(b)(5), a district court must construe the complaint liberally and draw every inference in favor of the plaintiff. A complaint should not be dismissed unless it appears to a certainty that the plaintiff could prove no set of facts that would entitle him or her to relief. Leave to amend should be freely given when justice requires, and a request to amend should not be denied simply because it was made in open court rather than by formal motion."][footnotes omitted; emphasis added]; *Lennox Indus. v. Aspen Mfg.* (2018) 416 P.3d 205, 2018 Nev. Unpub. LEXIS 346 ["'The liberality embodied in NRCP 15(a) requires courts to err on the side of caution and permit amendments that appear arguable or even borderline, because denial of a proposed pleading amendment amounts to denial of the opportunity to explore any potential merit it might have had.'"][quoting *Nutton v. Sunset Station, Inc.* (Ct. App. 2015) 131 Nev. 279, 292, 357 P.3d 966, 975]; *Weiler v. Ross* (1964) 80 Nev. 380, 382, 395 P.2d 323, 324 ["A motion to amend may be made orally in open court in the presence of counsel for the adverse party . . . and leave to amend should be freely given when justice requires."].)

At a minimum, because the disposition should be altered to allow amendment on remand, this Court, upon rehearing, should also articulate necessary and reasonably specific guidance to the Plaintiffs, the public, and the State of

Nevada, including the Financial Institutions Division, reflecting the types of collection agency activities that fall outside "the bounds of NRS Chapter 107."[2]

II. REHEARING IS APPROPRIATE

(1) Rehearing is appropriate when the appellate court has "overlooked or misapprehended a material fact in the record or a material question of law in the case;" (2) the appellate court has "overlooked, misapplied or failed to consider a statute, procedural rule, regulation or decision directly controlling a dispositive issue in the case;" or (3) as required to promote substantial justice. (NRAP 40(c); *Bahena v. Goodyear Tire & Rubber* (2010) 126 Nevada 606, 608-609, 245 P.3d 1182, 1184. Here, at a minimum, rehearing is appropriate under the applicable standard because the Court overlooked or misapprehended the material fact regarding Plaintiffs' raising the point of amendment of the complaint in the district court, and because an order upon rehearing that allows Plaintiffs to amend the complaint on remand is required to promote substantial justice.

III. PLAINTIFFS RAISED THE POINT OF AMENDMENT IN THE DISTRICT COURT

Repeatedly, in various ways both orally and in writing, Plaintiffs raised the point of amendment in the district court. (*See, e.g.*, AA004280-AA004281;

[2] At p. 15 of its Opinion, the Court indicated that, "Benko's allegations fall within the bounds of NRS Chapter 107." No statement of factual examples (or illustrative court decisions) was provided to identify conduct outside the bounds of NRS Chapter 107.

AA005616-AA005617; *see also* CRC Reply, at 21-23 [citing same].) This was done despite some level of difficulty, based on the trial court's indication that only criminal conduct by the defendants would take them out of the protection of NRS Chapter 107 (and the trial court's erroneous conclusion that non-judicial foreclosure through a deed of trust was somehow not claim collection under NRS Chapter 649).[3] In discussion regarding amendment with the trial court, Plaintiffs respectfully asked the trial judge to articulate examples of what debt collection conduct would fall outside of NRS Chapter 107, so that Plaintiffs could determine what amendments might be possible in light of the trial court's interpretations of applicable law.

Regarding potential facts for amendment at the hearing on March 14, 2017, the following exchange occurred:

> MR. BOYLAN: What can they not do without having to get a collection agency license from the FID. If they had -- what can they not do? I respectfully –
> THE COURT: Well, I don't think that –
> MR. BOYLAN: -- it seems that the Court –
> THE COURT: -- they can -- I don't think that they –
> MR. BOYLAN: -- believes they can do anything.
> THE COURT: -- can foreclosure on the person's vehicle. I don't think that they could take the person's house -- I mean, take the person's clothing. I don't think that they can arrest the individuals. I mean, you're asking me just to give you an idea of what they can't do. But when it comes to the house

[3] Given the trial court's extreme position, Plaintiffs made clear that although they could amend the complaint based on a variety of additional facts, including the facts taken from the summary judgment evidence filed with the court, Plaintiffs could not allege criminal acts. (*See, e.g.*, AA004280-AA004281; AA005616-AA005617.)

itself they can say, hey, you know, you owe me $100,000 on this. How are you going to pay it? Are you going to pay it? If you're not going to pay it I'm going to come get it.
MR. BOYLAN: All right. What about –
THE COURT: You know?
MR. BOYLAN: -- so, okay, I -- if that's the Court's view then we're –
THE COURT: I'm not – I'm just –
MR. BOYLAN: -- well but doorknocker.
THE COURT: Okay.
MR. BOYLAN: Can they go knock on the door and say, hey, money, money. Knock on the door and say, money. Can they do that without a collection agency license?
THE COURT: If –
MR. BOYLAN: I think the answer is obviously no. Can they call the person –
THE COURT: Well, that's the position –
MR. BOYLAN: -- four or five times?
THE COURT: -- you're taking. And I'm here – I'm here, I'm the trustee in this, on behalf of the trustee I'm here. You owe $100,000. Are you going to be able to pay this, you know? And so I –
MR. BOYLAN: All right. Again, if the Court – if
That's the Court's conclusion –
THE COURT: Um-hum. Well, I don't know yet.
MR. BOYLAN: -- then -- then we lose.
THE COURT: That's where I'm at.
(AA004037-AA004038.)

When, as here, the point of amendment is raised orally in the trial court, amendment must be allowed as a matter of law. (*Cohen*, *supra*, 119 Nev. at 22-23, 62 P.3d at 734.)

In their subsequent brief filed with the trial court on March 28, 2017, although Plaintiffs made clear that they could not allege crimes by defendants in an amended pleading, Plaintiffs made direct reference to the massive summary judgment evidence filed with the Court that detailed numerous, diverse and

excessive collection activities by the Defendants, which could be and should be considered by the trial court and/or put forth by amendment of the Complaint. (*See* AA004280-AA004281.) Plaintiffs stated to the trial court that the "evidence is spread across the docket filings in this Court."[4] (*Id.*)

In that same brief, Plaintiffs indicated a potential and specific amendment related to the application of NRS Chapter 107, and the evidence gathered by Plaintiffs showing that the Defendants in fact were in violation of the express provisions of NRS Chapter 107 by their actions. (*See* AA004281-AA004294; *see also* AA004635- AA004639.) At the subsequent hearing before the trial court on May 4, 2017, Plaintiffs stated specifically, on that subject, that Plaintiffs could plead estoppel if that was necessary. (AA005616-AA005617.) Defendants can be estopped or otherwise barred from any protection by NRS Chapter 107 by their material and extensive violations of NRS Chapter 107 provisions. (*See, e.g.*, Opening Brief, at 44-60 [describing in detail the ways in which Defendants here violated their duties as non-judicial foreclosure trustees under NRS Chapter 107]; *see also* CRC Reply, at 3-11, 14-16 [describing facts shown by Plaintiffs' allegations and evidence of collection activities by Defendant CRC]; Appellants' Reply to Respondent MTC Financial Inc. dba Trustee Corps' Answering Brief, at

[4] This Court's Opinion contains no text indicating that the Court considered all the additional facts shown by the voluminous summary judgment evidence, either for purposes of its decision or with respect to amendment on remand. Plaintiffs do not interpret the Opinion as a "blank check" for collection abuse or harassment, or an invitation for QLS or MTC to surrender their collection agency licenses and go on a rampage in Nevada.

1-9 [describing facts shown by Plaintiffs' allegations and evidence of collection activities by Defendant MTC]; *see also, e.g.*, AA004281-AA004294 [showing in detail the ways in which Defendants here violated their duties as trustees under NRS Chapter 107].) **In short, on remand, Plaintiffs can allege facts sufficient to show that whether by the label of unclean hands, estoppel, or other legal name, the Defendants, by their own breaches and violations of NRS Chapter 107, are prohibited from using that same statutory scheme, NRS Chapter 107, to fully inoculate and insulate them from liability in this case.[5] "As applied here, estoppel is, therefore, essentially a defense to a defense, rather than a claim for relief."** (*Mahban*, *supra*, 100 Nev. at 597, 691 P.2d at 424.)

Also in the trial court, the point of potential amendment was brought to the trial court's attention in connection with how additional facts from an amendment could occur through additional class representative plaintiffs. In their first 12(b)(5) brief submitted to the trial court on October 7, 2016, Plaintiffs raised the issue of amendment to add new representative Plaintiffs who would have additional factual experiences (including those that fall outside of NRS Chapter 107), and Plaintiffs contended that appropriate discovery was necessary in order to identify such

[5] Estoppel (and unclean hands) is an equitable principle of law, not necessarily a cause of action, and it is used to prohibit defenses or claims asserted inequitably by the opposing party. (*See Mahban v. MGM Grand Hotels* (1984) 100 Nev. 593, 597, 691 P.2d 421, 424.) Accordingly, footnote 3 of the Court's Opinion is inaccurate and/or inapplicable here, and should be omitted upon rehearing. However, if deemed necessary by this Court, Plaintiffs can, on remand, add an additional cause of action against the Defendants for breach of their duty of impartiality under NRS Chapter 107, and/or estoppel.

additional representatives and proceed with amendment. (*See, e.g.*, AA001072-AA001073, AA001096-AA001098.) On pages 42-43 of that same initial brief to the trial court, Plaintiffs even gave examples of how collection phone calls from Defendants may have been received by one borrower but perhaps not by another borrower.[6] (*See* AA001097-AA001098.) In their reply brief to the trial court dated December 21, 2016, at pages 17-18, Plaintiffs provided authorities and reasoning with respect to amendment by the addition of class representatives who present additional facts. (*See* AA002122-AA002123.)

IV. FOOTNOTE 8 IN THE COURT'S OPINION, IF UNALTERED UPON REHEARING, WOULD CREATE A DAMAGING AND ERRONEOUS PRECEDENT

Particularly in this case involving an issue of first impression and the Court's first articulation regarding the relevant statutory interpretation, the Court should not promulgate a precedent holding that amending a complaint in response to a 12(b)(5) motion is waived if not raised in the trial court. First, the case cited by the Court did not involve amendment of the complaint in response to a 12(b)(5) motion submitted eight years after the lawsuit was filed, or a case of first

[6] This Court's Opinion does not indicate that traditional misconduct by unlicensed collection agents such as harassing phone calls "fall within the bounds of NRS Chapter 107." And nothing is stated in the Opinion regarding harassing calls for collection while at work, harassing collection calls to the debtors' employer or children, harassing collection calls at 9:00 p.m. or midnight, collection visits to the home by 300 pound bouncer-type individuals hired to request payment on the homeowner's doorstep etc.

impression. (*See Old Aztec Mine, Inc. v. Brown* (1981) 97 Nev. 49, 52-53, 623 P.2d 981, 983-984.) The case did not even involve the issue of amending a complaint. (*Id.*) Certainly on this record, the more analogous authority from this Court is *Cohen*. (*Compare id. with Cohen*, *supra*, 119 Nev. at 22-23, 62 P.3d at 734.) For the sanctity of this Court's precedent, and application of *stare decisis*, *Cohen* should be respected and applied here.

Moreover, when the appropriate rule is thoroughly considered, as reflected in the decisions of the Supreme Court of California, the more superior, more just, more fair rule, which provides due process to plaintiff-litigants, is that waiver of the opportunity to amend the complaint, does not occur, even if the point of amendment is not raised in the trial court. (*See, e.g., Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 970-971, 831 P.2d 317, 323; *Scott v. Indian Wells* (1972) 6 Cal.3d 541, 549-550, 492 P.2d 1137, 1142; *see also, e.g., Jensen v. The Home Depot, Inc.* (2018) 24 Cal.App.5th 92, 97 ["A request for leave to amend may be made for the first time on appeal."]; *Thompson v. City of Petaluma* (2014) 231 Cal.App.4th 101, 109 & n.5; *Blonder-Tongue Labs. v. University of Illinois Found.* (1971) 402 U.S. 313, 350 [remanding to trial court to allow party to amend its pleading in light of Supreme Court's clarification of applicable law]; *Pac. Bell Tel. Co. v. linkLine Communs., Inc.* (2009) 555 U.S. 438, 456-457 [on remand, trial court should consider whether leave to amend should be granted and whether

amended complaint states valid claim for relief in light of new pleading standard]; *Thorpe Insultation, Co. v. J.T. Thorpe Settlement Trust (In re J.T. Thorpe, Inc.)* (9th Cir. 2017) 870 F.3d 1121, 1124-1125 [remanding to trial court to permit it to rule on issue in light of earlier appellate ruling not considered by the trial court]; *United States ex rel. Lee v. Corinthian Colleges* (9th Cir. 2011) 655 F.3d 984, 995 [point of amendment not waived even though no request for leave to amend made to trial court, because trial court "expressly contemplated whether amendment was appropriate" and denied leave to amend][citing *Kimes v. Stone* (9th Cir. 1996) 84 F.3d 1121, 1126; *Balistreri v. Pacifica Police Dept*. (9th Cir. 1990) 901 F.2d 696, 701]; *Mankes v. Vivid Seats Ltd.* (Fed.Cir. 2016) 822 F.3d 1302, 1311 [on remand, trial court should permit party to amend complaints in light of newly articulated applicable legal standards].) Even when waiver of a point has occurred, this Court always has the "prerogative" to address such issues "if consideration of them is in the interests of justice." (*Powell v. Liberty Mut. Fire Ins. Co.* (2011) 127 Nev. 156, 161, fn. 3, 252 P.3d 668, 672 fn. 3.)

For this reason, rehearing and alteration of the disposition in this case is necessary to promote substantial justice in the State of Nevada (and this case). (NRAP 40(c).)

V. REHEARING IS APPROPRIATE INSOFAR AS THE COURT OVERLOOKED OR MISAPPREHENDED OTHER APPLICABLE LAW

Rehearing and alteration of the disposition in this case is also necessary and appropriate to the extent that the Court has materially overlooked or misapprehended Plaintiffs' position regarding licensing of collection agencies such as Defendants here that carry out their collection activities under the cover of 'non-judicial foreclosure proceedings.' The Opinion appears to assume that Plaintiffs contend that every non-judicial foreclosure trustee must be licensed by the FID under NRS Chapter 649 if the trustee is involved in a non-judicial foreclosure under NRS Chapter 107. Not so. Plaintiffs' more modest—and reasonable—contention is merely that collection agencies such as Defendants here are not somehow insulated from licensure by the FID under NRS Chapter 649 simply because they purport to carry out some of their activities as non-judicial foreclosure trustees. (*See, e.g.*, AA000685-AA000688, AA004273-AA004275, AA004296-AA004301; Opening Brief, at 42-44; CRC Reply, at 1, 11-13.)

Plaintiffs' interpretation would also not, as the Opinion suggests, render the other nine categories in NRS 107.028(1) somehow "meaningless" or redundant. (*See* Opinion, at 12 n. 6.) For instance, at least several of those categories—including attorneys licensed to practice law in this State or banks—would not need

to be licensed under NRS Chapter 649, because they are expressly exempt from licensure under NRS 649.020. (*See* NRS 107.028(1)(a) & (e), NRS 649.020(2)(b) & (g).) Others might not need to be licensed as collection agencies under NRS Chapter 649, because their collection activities are so infrequent or sporadic that they do not rise to the level of being "a primary or a secondary object, business or pursuit," and therefore do not qualify them as a 'collection agency' under NRS 649.020(1). To the extent the Opinion overlooked or misapprehended this correct reading of the law, rehearing is appropriate and should be granted here.

VI. THE COURT'S OPINION IS BASED ON A MAJOR FACTUAL FALLACY, AND THE CASE MUST BE REHEARD

In the current Opinion the Court overlooked or misapprehended a major, material fact which serves as an erroneous foundation for the entire decision, as currently written. Footnote one on page three of the Opinion directly states that the allegations in the operative complaint are limited to the time period between 2008 and 2011 (thus, prior to the enactment of NRS 107.028 in 2011; the original effective date of NRS 107.028 was July 2011). The Court said: "this opinion concerns the governing law applicable during that time period." As with all statements in the Opinion regarding Plaintiffs' allegations, there is no citation to any paragraph in the operative complaint and nothing in the content of the

complaint is actually quoted by the Court. Correctly apprehended, the complaint alleges violations of law continuing well beyond 2011. For example, the critical class definition stated in Paragraph 33 of the operative complaint states: "All Nevada citizens who were subject to debt collection agency activity by defendants in the states of Nevada, while defendants did not hold a Nevada license to engage in collection agency activities in Nevada." (AA004084.) It is undisputed that Defendant NDSC never obtained its collection agency license. It is undisputed that Defendant Meridian never obtained its collection agency license. It is undisputed that Defendants QLS and MTC did not obtain their collection agency licenses until 2012. (*See, e.g.*, AA002913, AA005351, AA004240.) Paragraph 23 of the complaint specifically alleges that NDSC never did hold a collection agency license and that it did not register as a foreign collection agency. (AA004081.) Paragraph 25 makes clear that the allegations against QLS include 2012. (*Id.*) Paragraphs 26-28, for example, make clear that the allegations against Defendant MTC similarly include 2012. (*Id.*) As a matter of law, the allegations stated in the operative complaint must be taken as true, for purposes of 12(b)(5) motion adjudication. (*E.g., Brown v. Eddie World, Inc.* (2015) 2015 Nev. LEXIS 26, 348 P.3d 1002, 1003.)

VII. FOOTNOTE 6 IN THE COURT'S OPINION IS ERRONEOUS, AND WOULD CREATE A CONFUSING AND DAMAGING PRECEDENT THAT IS INCORRECT

Footnote 6 suggests strongly that all foreclosure trustees are now exempt by statute from the requirements of NRS Chapter 649 as a result of the enactment of NRS 107.028 in 2011. This is incorrect, and threatens a damaging and confusing precedent for the State of Nevada. Every single entity which serves as a trustee under a deed of trust is not involved contemporaneously in the business of collecting defaulted claims, *i.e.*, traditional collection agency activities as a business. Accordingly, NRS 107.028 did nothing more than identify the persons and entities who qualify to serve as a trustee under a deed of trust and thus, ultimately, to exercise the power of sale if needed. At the same time, subsection (i) of NRS 107.028(1) reflects the Legislature's mandate that any collection agency, including foreign collection agencies (because they are known to be so dangerous and abusive to the consumer), cannot even qualify to be a trustee (and thus exercise the power of sale) unless they are licensed under NRS Chapter 649, and therefore subject to all of the NRS Chapter 649 statutory rules and regulations, and supervision by the Financial Institutions Division.

Subsection (i) of NRS 107.028(1) provides: "A person who engages in the business of a collection agency pursuant to chapter 649 of NRS" may serve as a

trustee under a deed of trust. This makes absolutely clear that any business involved in claim collection cannot even qualify to serve as a trustee under a deed of trust unless that collection agency is licensed under NRS Chapter 649! Otherwise, the language "in the business of a collection agency pursuant to chapter 649" would indeed be "superfluous" and completely unnecessary. If it were true that any unlicensed collection agency, including foreign entities, could serve as a trustee, in order to "harmonize" the two statutory schemes, subsection (i) of NRS 107.028(1) would simply have been written as follows: "A person who is a collection agency." Accordingly, the Court's interpretation of NRS 107.028 in footnote 6 is 180 degrees incorrect, and threatens a damaging and dangerous precedent in the State.

Furthermore, directly on point but not discussed and quoted in the Court's Opinion, is NRS 649.020(2). Section 2 of NRS 649.020 expressly and specifically identifies the individuals and entities excluded from the requirements of the statutory and regulatory scheme applicable to claim collection businesses under NRS Chapter 649. Trustees of a deed of trust under NRS Chapter 107 are not listed. This is the definitive statement of the intent of the Legislature applicable here, and itself justifies rehearing and full alteration of the disposition of the case.

Furthermore, Section 3 of NRS 649.020, is expressly a statement of the Legislature defining inclusion, rather than exclusion, with respect to those within

the definition of a collection agency under Section 2. Specifically, Subsection (d) of Section 2 excludes unit-owners' associations and the board members, officers, employees, and unit owners of those associations when acting under the authority of and accordance with Chapter 116 or 116(B) of NRS and the governing documents of the association, except for those community managers included within the term "collection agency" pursuant to Subsection 3. In other words, the Legislature was excluding HOA collection activities generally, subject to the specific inclusion of such HOA activities if they were involved in foreclosure activities. Accordingly, everything stated in the entire content of NRS 649.020 completely contradicts the apparent conclusion in the Court's Opinion that the Legislature intended to exclude and/or exempt all trustees under a deed of trust, in all circumstances, from the legislative and regulatory mandates of NRS Chapter 649.[7]

In reality, NRS 107.028 has absolutely nothing to do with the collection agency rules and regulations of NRS Chapter 649, and the express exclusion from those regulations that are listed in NRS 649.020(2). As stated, Subsection (i) of

[7] In footnote 6, the Court suggests that NRS 107.028 supports the Court's conclusion "because requiring a trustee to possess a collection agency license would render the remaining credentialed categories meaningless." This too is 180 degrees incorrect. The correct interpretation, taken directly from NRS 107.028(1)(i) is that if you are engaged in the business of a collection agency, you must be licensed under NRS Chapter 649 in order to qualify to serve as a trustee! The other credentialed categories identified in NRS 107.028 do not require a license under NRS Chapter 649 in order to qualify to serve as a trustee because they are not in the business of claim collection, *i.e.*, they are not in the business of a collection agency.

NRS 107.028(1) makes clear that unlicensed collection agency businesses cannot serve as trustees, and Section 6(b) of that same statute makes clear that a court can enjoin the exercise of the power of sale by an unlicensed collection agency serving as a trustee. More illustrations: Section 1(a) of NRS 107.028 states that an attorney can serve as trustee, but that has absolutely nothing to do with whether attorneys who are in the business of claim collection are exempt from NRS Chapter 649. In fact, NRS 649.020(2)(g) already identifies attorneys! Accordingly, if NRS 107.028 somehow exempted trustees in the business of collection from NRS Chapter 649, Section 1(a) of NRS 107.028 would indeed be "superfluous." Also, look at Section 1(g) of NRS 107.028, which states that a person who acts as a registered agent can serve as a trustee. Does this mean that the mere registration in the State as a registered agent fully exempts all such foreign collection agencies from NRS Chapter 649 while conducting massive and/or abusive collection activities as a trustee in the State of Nevada? These rhetorical questions have no rational answer and well demonstrate the erroneous and dangerous conclusions currently published in the Court's original Opinion. Also, look at NRS 107.028(1)(b), which states that a title insurer or title agent can serve as a trustee. It makes sense that a title insurer or title agent might appropriately need to occasionally serve as a trustee, as a complement to their title business, which poses no threat to the consumer, (*i.e.*, the type of collection agency practices addressed by NRS Chapter 649). Question: If a

large title insurer reads this Court's currently published Opinion and decides to acquire a massive collection agency business and serve also as a substitute trustee after default, so that it can pursue collecting hundreds of millions of dollars from Nevada residents, is the title company exempted from obtaining a license under NRS Chapter 649 (and submitting to the jurisdiction of the Financial Institutions Division)? Respectfully, significant re-examination of this case should be undertaken by the Court.

Given the gravity of these issues and their importance State-wide, upon rehearing, the Court may wish to invite additional briefing and commentary from Commissioner Sandy O'Laughlin, and/or the Financial Institutions Division generally.

VIII. CONCLUSION

Plaintiffs respectfully request this Court grant Plaintiffs' Petition for Rehearing and, at a minimum, alter the case disposition to allow amendment of the complaint on remand, and remand the matter for further proceedings. However, for the reasons stated above, which can be augmented by additional briefing, the Opinion should be withdrawn, and a new decision reversing the 12(b)(5) ruling on the merits of the existing complaint and record should be issued. This case should not be swept under the rug, as it would constitute a serious and dangerous injustice, and a destructive precedent.

Dated this 10th day of January 2020.

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CERTIFICATE OF COMPLIANCE

I hereby certify I have read this Petition for Rehearing, 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 Petition for Rehearing 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 Petition for Rehearing is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

I hereby certify that this Petition for Rehearing complies with the requirements of NRAP 32, including NRAP 32(a)(4)-(6), and NRAP 40. This brief has been prepared in a proportionally-spaced typeface (Times New Roman) of 14 points, using Microsoft Word 2010, and is double-spaced. Excluding the parts of the brief exempted by NRAP 32(a)(7)(c), the Petition for Rehearing contains 4,566 words.

Dated this 10th day of January 2020.

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CERTIFICATE OF SERVICE

On January 10, 2020, I served the foregoing **PETITION FOR REHEARING** on the following individuals by electronic service via the Court's efiling system to the following parties:

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