Gmail

Tae Si Kim <taesikim2001@gmail.com>

answer from Gary DickensonWright

1 message

Tae Si Kim <taesikim2001@gmail.com> Thu, Jul 30, 2015 at 10:31 AM

RE: Did you check that Mr. Gibson filed a State Court case?

Important mainly because of the people in the conversation.
Click to teach Gmail this conversation is not important.

Inbox x

Michael G. Vartanian <MVartanian@dickinson-wright.com> 5:58 AM (4 hours ago)

to me, Eric

Ms. Kim,

We did check and Mr. Gibson did not file a case against Mr. Damus. You should contact Mr. Gibson if you wish to pursue any action against Mr. Damus.

Since you have received the settlement checks from the Reeds and Tobler, the federal case and our representation of you is now concluded.

Please keep in mind that you have a default judgment against Mr. Kearney. Although we did not locate any assets owned by Kearney, you may want to consider hiring an investigator at some point to determine if he has anything that could satisy the judgment you have.

From: Tae Si Kim [mailto:taesikim2001@gmail.com]
Sent: Thursday, July 30, 2015 1:14 AM
To: Michael G. Vartanian
Subject: Did you check that Mr. Gibson filed a State Court case?

Hi Mr. Vartanian,

I was waiting your e-mail . Did you check that Mr. Gibson filed a State Court case against Damus?

I need to know about the status of Damus at State Court for the next step to recover my damage.

A prompt reply will be appreciated.

Sincerely,

STEVEN A. GIBSON
Nevada Bar No. 6656
sgibson@dickinson-wright.com
JODI DONETTA LOWRY
Nevada Bar No. 7798
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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

TAE-SI KIM, an individual, and JIN-SUNG HONG, an individual,

Plaintiffs,

v.

ADAM B. KEARNEY, an individual; EDWARD C. REED, an individual; BARBARA R. REED, an individual; REED TEAM, d/b/a RE/MAX EXTREME, a Nevada general partnership; FIRST AMERICAN TITLE, a foreign corporation; RE/MAX INTERNATIONAL, INC., a Colorado corporation; GINA THOMAS, an individual; ALVERSON, TAYLOR, MORTENSEN & SANDERS, a Nevada law firm; the Estate of JAMES L. ZEMELMAN, ESQ.; CUMORAH CREDIT UNION, a Nevada non-profit corporation; CHARLES M. DAMUS, ESQ., an individual; and VALLEY FORECLOSURE SERVICES, LLC, a Nevada limited-liability company,

Defendants.

Case No.: 2:09-CV-02008-PMP-PAL

PLAINTIFFS' RESPONSE TO DEFENDANT CHARLES M. DAMUS, ESQ.'S MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION (Document No. 92)

Plaintiffs, Tae-Si Kim and Jin-Sung Hong (collectively "Plaintiffs"), by and through their counsel, Dickinson Wright PLLC, hereby submit Plaintiffs' Response to Defendant Charles M.

Damus, Esq.'s Motion to Dismiss for Lack of Subject Matter Jurisdiction (hereinafter "Response").

Plaintiffs' Response is based on the following Memorandum of Points and Authorities, on the pleadings and papers on file herein, on the oral argument of counsel to be adduced at hearing, and on any other matter this Court wishes to take into consideration.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This Court appropriately exercises original and supplemental jurisdiction over all of Plaintiffs' claims against all the Defendants in this matter, and, as such, Plaintiffs respectfully request that this Court deny Defendant Charles M. Damus, Esq.'s Motion to Dismiss For Lack of Subject Matter Jurisdiction ("Mr. Damus' Motion to Dismiss"; Document No. 92). This Court has supplemental jurisdiction over Plaintiffs' claims against Charles M. Damus, Esq. ("Mr. Damus"), pursuant to 28 U.S.C. § 1367(a), because the claims against Mr. Damus are intertwined with Plaintiffs federal-law causes of action, over which this Court indisputably has original jurisdiction.

In addition, this Court should deny Mr. Damus' Motion to Dismiss because Mr. Damus failed to make the threshold showing to warrant this Court's dismissal of Plaintiffs' claims against Mr. Damus pursuant to 28 U.S.C. § 1367(c). Mr. Damus' failure to show facts that support a justifiable cause for dismissal pursuant to 28 U.S.C. § 1367(c) proves that dismissal of the claims against Mr. Damus are not appropriate. Further, Plaintiffs have not prematurely sued Mr. Damus, because Plaintiffs have already sustained damages as a result of Mr. Damus' negligent actions irrespective of the ultimate outcome of this case.

II. FACTS

In March 2003, Plaintiffs sought the assistance of RE/MAX Extreme, Ed Reed, and Barbara Reed (collectively the "Reed Parties") to purchase real property. (Document No. 29-1 at ¶ 29.) In approximately June 2005, Mr. and Mrs. Reed provided instructions and advice to

Plaintiffs regarding acquiring parcel number 177-19-801-008 (the "Subject Property"). (*Id.* at ¶ 52.) Additionally, in approximately June 2005, the Reed Parties misrepresented information to Plaintiffs relating to the Subject Property, including the availability of conventional financing, the value of the Subject Property, and the urgency in purchasing the Subject Property. (*Id.* at ¶¶ 53-55.) On June 24, 2005, Plaintiffs entered into a contract to purchase the Subject Property for $435,000 from Santos and Karma Reyes. (*Id.* at ¶ 32.) In July 2005, Mr. Reed and Mrs. Reed informed Plaintiffs that the conventional financing for the Subject Property fell through. (*Id.* at ¶ 61.) Mr. Reed and Mrs. Reed advised Plaintiffs to engage Adam Kearney in obtaining financing to purchase the Subject Property. (*Id.* at ¶ 64.) On or about August 5, 2005, the Reed Parties and Mr. Kearney created a contract addendum purportedly showing that Jin-Sung Hong assigned his right to purchase the Subject Property to Mr. Kearney. (*Id.* at ¶ 33.) On or about August 12, 2005, Mr. Kearney purchased a note from Plaintiffs for $100,000 for a term of 30 days in exchange for 7 points ($7,000) and 10 percent interest to assist Plaintiffs in acquiring the Subject Property. (*Id.* at ¶ 71.) Mr. Kearney offered to obtain a loan for $315,000 to acquire the Subject Property by the purchase deadline of August 12, 2005. (*Id.* at ¶ 92.)

In August of 2005, the Reed Parties provided an option agreement to Plaintiffs that would provide Plaintiffs with the ability to purchase the property back from Mr. Kearney (the "RE/MAX Option Agreement"). (*Id.* at ¶¶ 34-36.) Pursuant to the RE/MAX Option Agreement, Mr. Hong would be able to exercise the option to acquire the Subject Property from Mr. Kearney if Mr. Hong paid the closing costs and the monthly mortgage payments associated with acquiring the loan from Cumorah Credit Union ("Cumorah"). (*Id.* at ¶ 93.) The Cumorah lien was defective because it provided an inaccurate description of the Subject Property and identified the wrong parcel number. (*Id.* at ¶ 105.) Mr. Reed and Mrs. Reed informed Plaintiffs that Plaintiffs would receive clear and marketable title if Plaintiffs exercised the option, through the services of First American Title Insurance Co. ("FATCO"). (*Id.* at ¶¶ 96-99.)

On August 15, 2005, FATCO prepared a settlement statement for Cumorah, Mr. Kearney, and Mr. and Mrs. Reyes regarding the Subject Property. (*Id.* at ¶ 116.) Later that day,

FATCO requested the filing of Cumorah's deed of trust, for property that was described incorrectly and was identified by the wrong parcel number. (*Id.* at ¶ 122.)

On August 31, 2005, pursuant to advice of Mr. Reed, Mrs. Reed, and Mr. Kearney, Plaintiffs obtained $108,710.98 by refinancing Plaintiffs' personal residence to pay off the note from Mr. Kearney. (*Id.* at ¶ 128.) Plaintiffs made Mr. Kearney's monthly payments, via U.S. mail and in person, of $2,787.46 every month to service the loan from Cumorah. (*Id.* at ¶ 130.) On March 14, 2006, Plaintiffs acquired $330,000.00 and Plaintiffs provided notice of intent to exercise the option and pay off Mr. Kearney's loan from Cumorah and the related costs. (*Id.* at ¶ 131.) Later that day, Plaintiffs delivered $330,000.00 to Mr. Kearney's office. (*Id.* at ¶ 138.) At that time, Plaintiffs had paid full value, $435,000.00, plus fees and costs, to acquire the Subject Property in full satisfaction of Plaintiffs' obligations. (*Id.* at ¶ 139.) The Cumorah lien for the Subject Property was never paid off and Mr. Kearney failed to transfer clear and marketable title to Plaintiffs. (*Id.* at ¶¶ 142-143.)

On approximately March 16, 2006, Mr. Reed and Mrs. Reed assured Plaintiffs that the Cumorah lien was clear and that Mr. Kearney had transferred clear and marketable title to Plaintiffs. (*Id.* at ¶ 153.) On June 26, 2006, Mr. Reed and Mrs. Reed again reassured Plaintiffs that the property was clear of liens and that title was transferred. (*Id.* at ¶ 156.) On that same day, Plaintiffs called Gina Thomas, an employee and agent of FATCO, and Ms. Thomas informed Plaintiffs that the land was not clear of the liens and that title was still in Mr. Kearney's name. (*Id.* at ¶¶ 159-160.)

On June 27, 2006, Plaintiffs retained legal counsel, James L. Zemelman, Esq., of Alverson, Taylor, Mortensen & Sanders ("ATM&S"), to enforce the terms of the agreements and to clear title on the Subject Property. A few days later, Ms. Thomas informed Mr. Zemelman and ATM&S that the title for the Subject Property was clear, the Cumorah loan had been paid, and the Subject Property had been transferred to Plaintiffs. (*Id.* at ¶ 169.) In July 2006, Mr. Zemelman misinformed Plaintiffs that the Cumorah loan had been paid in full and that title was transferred to Plaintiffs. (*Id.* at ¶ 172.) As of July 2006, the defective Cumorah loan had not been paid. (*Id.* at ¶ 173.)

On October 29, 2008, FATCO requested filing of Cumorah's re-recorded deed of trust, which still contained the wrong parcel identification number and property description. (*Id.* at ¶ 184.) On December 16, 2008, Plaintiffs received notice of foreclosure from Valley Foreclosure Services, LLC ("VFS") for the Cumorah lien on the Subject Property. (*Id.* at ¶ 187.) This was the first time Plaintiffs discovered that Cumorah had asserted a claim against Plaintiffs' Subject Property. (*Id.* at ¶ 199.) Prior to foreclosing, Cumorah and VFS knew that Plaintiffs owned the Subject Property and that Cumorah and VFS had failed to provide constructive notice of Cumorah's lien. (*Id.* at ¶¶ 209-212.)

On December 17, 2008, Plaintiffs hired Mr. Damus to protect Plaintiffs' interests and rights regarding the Subject Property. (*Id.* at ¶ 201.) Mr. Damus attempted settlement with Mr. Kearney up until March 17, 2009, when Mr. Damus advised Plaintiffs to proceed with litigation. (*Id.* at ¶ 206.) Mr. Damus represented that on March 30, 2009, Mr. Damus began drafting a complaint on behalf of Plaintiffs. Mr. Damus originally included Cumorah and VFS as defendants. (*Id.* at ¶ 215.) However, in April 2009, Mr. Damus elected to remove Cumorah and VFS as defendants after several discussions with Cumorah and VFS. (*Id.* at ¶ 216.) By September 2009, Mr. Damus had failed to complete the drafting of Plaintiffs' initial complaint. (*Id.* at ¶ 218.) By September 2009, Mr. Damus had charged Plaintiffs approximately $27,000.00, of which Plaintiffs had paid approximately $13,000.00. (*Id.* at ¶ 220.) Subsequently, Plaintiffs terminated Mr. Damus as Plaintiffs' counsel. (*Id.* at ¶ 221.)

On October 15, 2009, Plaintiffs filed Plaintiffs' initial Complaint against Defendants (Document No. 1). On April 9, 2010, Plaintiffs filed Plaintiffs' Motion for Leave to File First Amended Complaint and to Add Parties (Document No. 55). On October 4, 2010, Mr. Damus filed Defendant Charles M. Damus, Esq.'s Motion to Dismiss for Lack of Subject Matter Jurisdiction (Document No. 92).

III. ARGUMENT

A. This Court Has Original Subject Matter Jurisdiction Over Plaintiffs' Federal Causes of Action Because Plaintiffs' Federal Causes of Action Arise Under Federal Law.

This Court indisputably has original subject matter jurisdiction over Plaintiffs' federal causes of action. The district courts have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States. 28 U.S.C. § 1331. Plaintiffs' causes of action for federal securities fraud and conspiracy to commit federal securities fraud ("Federal Causes of Action") arise under federal law. Specifically, the Federal Causes of Action are associated with the Securities and Exchange Act of 1934, 15 U.S.C. § 78, and 17 C.F.R. § 240.10B-5. Therefore, this Court has original subject matter jurisdiction over the Federal Causes of Action.

B. This Court Has Supplemental Jurisdiction Over Plaintiffs' Claims Against Mr. Damus Pursuant to 28 U.S.C. § 1367.

Plaintiffs' state-law claims against Mr. Damus are within this Court's supplemental jurisdiction. Federal courts may exercise supplemental jurisdiction over causes of action for which federal courts would not otherwise have original jurisdiction if those claims "are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy." 28 U.S.C. § 1367(a). A federal court may assert supplemental jurisdiction "(1) to permit disposition by a single court of claims that are, in varying respects and degrees, factually interdependent, and (2) to enable a court to function successfully, that is, to manage its proceedings, vindicate its authority, and effectuate its decrees." *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 379-380 (1994) (citations omitted). In addition, justification for a federal court's exercise of supplemental jurisdiction "lies in considerations of judicial economy, convenience and fairness to litigants." *United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 726 (1966). Further, "supplemental jurisdiction extends over state claims brought against a party

even when that party was not subject to the federal claim primarily at issue." *In re: Pegasus Gold Corp.*, 394 F.3d 1189, 1195 n.2 (9th Cir. 2005) (quoting *Davis v. Courington*, 177 B.R. 907, 912 (B.A.P. 9th Cir. 1995)); *see also Mendoza v. Zirkle Fruit Co.*, 301 F.3d 1163, 1174 (9th Cir. 2003) (to avoid dismissal, "the [plaintiff] must show that the state conspiracy claims against [some defendants] constitute part of the same constitutional case as the federal RICO claims against [other defendants]"). This Court thus appropriately exercises supplemental jurisdiction over Plaintiffs' claims against Mr. Damus pursuant to 28 U.S.C. § 1367 because (1) Plaintiffs' state-law causes of action arise out of a common nucleus of operative fact with the Federal Causes of Action and (2) exercising supplemental jurisdiction achieves the objectives of judicial economy, convenience, and fairness.

1. This Court Has Supplemental Jurisdiction Over Plaintiffs' Claims Against Mr. Damus Because These Claims Arise Out Of A Common Nucleus Of Operative Fact With Plaintiffs' Federal Causes of Action.

Plaintiffs' state-law claims against Mr. Damus arise from facts that are closely interrelated to the facts of Plaintiffs' Federal Causes of Action. In order for a court to exercise supplemental jurisdiction over state-law claims, "the state and federal claims must derive from a common nucleus of operative fact." *Gibbs*, 383 U.S. at 725. The Ninth Circuit has also recognized that "[n]onfederal claims are part of the same 'case' as federal claims when they 'derive from a common nucleus of operative fact and are such that a plaintiff would ordinarily be expected to try them in one judicial proceeding.'" *Trustees of the Constr. Indus. and Laborers Health and Welfare Trust v. Desert Valley Landscape & Maint., Inc.*, 333 F.3d 923, 925 (9th Cir. 2003) (quoting *Finley v. United States*, 490 U.S. 545, 549 (1989) (citations omitted)). Further, as at least one federal district court has recognized, "[s]tate-law claims and federal claims need not derive from the exact same set of facts in order for a court to exercise supplemental jurisdiction." *Taylor v. Dist. of Columbia*, 626 F. Supp. 2d 25, 29 (D.D.C. 2009) (citing *Fed. Trade Comm'n v. Mylan Lab., Inc.*, 62 F. Supp. 2d 25, 49 (D.D.C. 1999)). In this case, this Court has supplemental

jurisdiction over the state causes of action because the facts associated with the state causes of action are closely interrelated to the Federal Causes of Action.

Plaintiffs' causes of action against Mr. Damus are closely interrelated to the Federal Causes of Action because Plaintiffs' causes of action against Mr. Damus would not have arisen but for other Defendants' conduct giving rise to the Federal Causes of Action, which conduct Plaintiffs retained Mr. Damus specifically to remedy. Plaintiffs' Federal Causes of Action relate to federal securities fraud perpetrated by other Defendants. Plaintiffs were damaged because of that securities fraud, and Plaintiffs sought the assistance of Mr. Damus to protect Plaintiffs' interests in relation to what ultimately would be presented to this Court as Plaintiffs' Federal Causes of Action and related state-law causes of action. Mr. Damus failed to protect the Plaintiffs' interests, and Mr. Damus was unjustly enriched to Plaintiffs' detriment by receiving and retaining payment for Mr. Damus' negligent services. Plaintiffs' claims against Mr. Damus are for legal malpractice, negligent undertaking to perform services, and unjust enrichment (the "Damus Claims"). The Damus Claims arise out of a common nucleus of operative fact with Plaintiffs' Federal Causes of Action because, but for the securities fraud against Plaintiffs, Plaintiffs would not have hired Mr. Damus to remedy Plaintiffs' injuries. The facts relevant to the Federal Causes of Action demonstrate that Mr. Damus was negligent in performing Mr. Damus' responsibility to attempt to remedy Plaintiffs' injuries associated with the Federal Causes of Action. It is appropriate for Plaintiffs to bring the Damus Claims in the same case as the Federal Causes of Action because the underlying facts of the Federal Causes of Action are relevant as well to the Damus Claims. In establishing the Damus Claims, Plaintiffs will show that Mr. Damus failed to adequately act and respond in remedying Plaintiffs' injuries involving the Federal Causes of Action.

Further, supplemental jurisdiction over Mr. Damus is still appropriate even though Plaintiffs' Federal Causes of Action and the Damus Claims do not have exactly the same facts. *See Taylor*, 626 F. Supp. 2d at 29 (citing *Fed. Trade Comm'n*, 62 F. Supp. 2d at 49) ("[s]tate-law claims and federal claims need not derive from the exact same set of facts in order for a court to exercise supplemental jurisdiction"). Mr. Damus' actions occurred after other Defendants'

securities fraud took place. However, the facts that evidence Plaintiffs' Federal Causes of Action are relevant to Plaintiffs' demonstration of Mr. Damus' failure to protect Plaintiffs' interests, and are closely interrelated to the Damus Claims because Plaintiffs' need to hire Mr. Damus arose because of the issues related to Plaintiffs' Federal Causes of Action. This Court thus properly exerts supplemental jurisdiction over the Damus Claims.

2. Exercising Supplemental Jurisdiction Over Mr. Damus Will Achieve The Objectives Of Judicial Economy, Convenience, And Fairness.

This Court should exercise supplemental jurisdiction over the Damus Claims to achieve the objectives of judicial economy, convenience, and fairness. Justification for exercising supplemental jurisdiction "lies in considerations of judicial economy, convenience and fairness to litigants." *Gibbs*, 383 U.S. at 726. This Court will achieve these objectives of judicial economy, convenience, and fairness by providing Plaintiffs with the availability to bring one case against all defendants regarding the Federal Causes of Action and the related state causes of action. Plaintiffs' causes of action relate to either Plaintiffs obtaining an interest in the Subject Property or protecting Plaintiffs' interests in the Subject Property. Mr. Damus became involved in this case when Plaintiffs sought Mr. Damus' assistance with protecting Plaintiffs' interests in the Subject Property as a result of other Defendants' securities fraud. Requiring Plaintiffs to file a separate case against Mr. Damus, when many of the facts presented in this case will provide evidence of why Plaintiffs needed assistance in protecting Plaintiffs' interests and the nature of the legal assistance Mr. Damus optimally should have provided, would be burdensome and inefficient. Therefore, this Court should not dismiss the Damus Claims because to do so would fail to achieve the objectives of judicial economy, convenience, and fairness.

C. *Defendants Have Failed To Make The Threshold Showing Necessary To Warrant This Court's Dismissal Of The Damus Claims Pursuant To 28 U.S.C. 1367(c).*

Courts have the discretion to dismiss state-law claims that "derive from a common nucleus of operative fact" as federal claims only if the moving party demonstrates facts that evidence the applicability of one of the subsections of 28 U.S.C. 1367(c). The Ninth Circuit has recognized "unless a court properly invokes a section 1367(c) category in exercising its discretion to decline to entertain pendent claims, supplemental jurisdiction must be asserted." *Executive Software N. Am., Inc. v. Dist. Ct.*, 24 F.3d 1545, 1556 (9th Cir. 1994) (*overruled on other grounds by Cal. Dept. of Water Res. v. Powerex Corp.*, 533 F.3d 1087, 1096 (9th Cir. 2008). Mr. Damus has requested this Court to dismiss the claims against Mr. Damus pursuant to subsections (c)(2) and/or (c)(4), but Mr. Damus has failed to provide the threshold showing under either subsection to warrant dismissal of the Damus Claims.

1. This Court Should Not Dismiss The Damus Claims Because The Damus Claims Do Not Predominate Over The Federal Causes of Action.

Dismissal of the Damus Claims is not appropriate under 28 U.S.C. 1367(c)(2) because the Damus Claims do not "predominate over" the Federal Causes of Actions. A court may decline to exercise supplemental jurisdiction if "the claim substantially predominates over the claim or claims over which the district court has original jurisdiction." 28 U.S.C. § 1367(c)(2). First, Mr. Damus argues that the Court should dismiss Plaintiffs' Damus Claims because the Damus Claims are all state-law claims. (Document No. 92 at 13.) The fact that only state-law claims have been filed against Mr. Damus has no relevance to whether a federal court should exercise supplemental jurisdiction because "supplemental jurisdiction extends over state claims brought against a party even when that party was not subject to the federal claim primarily at issue." *Pegasus*, 394 F.3d at 1195 n.2 (quoting *Davis*, 177 B.R. at 912). In addition, the Damus Claims do not predominate over the Federal Causes of Action because the securities fraud

against Plaintiffs lies at the heart of this litigation. Even though this case involves several state-law claims, these state-law claims are so closely interrelated to the Federal Causes of Action as to be intertwined with the Federal Causes of Action. Mr. Damus even states that "[l]ess than a total of three (3) pages of Plaintiffs' 51-page amended complaint address Plaintiffs' allegations against Damus." (Document No. 92 at 13.) Certainly, the Damus Claims do not predominate over the Federal Causes of Action because the Damus Claims arose out of the Federal Causes of Action against other Defendants. Further, Mr. Damus attempts to advise the court that because the majority of Plaintiffs' claims are state-law claims, the Court should deny supplemental jurisdiction. (*Id.*) It is inappropriate for Mr. Damus to make reference to the state-law claims against the other defendants in Mr. Damus' argument because Mr. Damus can only seek to have the Damus Claims dismissed. Therefore, Mr. Damus has not made the threshold showing necessary for the Court to dismiss the Damus Claims pursuant to subsection (c)(2).

2. This Court Should Not Dismiss The Damus Claims Because Mr. Damus Failed To Provide Compelling Reasons For Declining Jurisdiction Or Evidence Of Exceptional Circumstances.

Mr. Damus must provide this Court with "compelling reasons" and evidence of "exceptional circumstances" to justify dismissal pursuant to 28 U.S.C. § 1367(c)(4). A court may decline to exercise supplemental jurisdiction if "in exceptional circumstances, there are other compelling reasons for declining jurisdiction." 28 U.S.C. § 1367(c)(4). The Ninth Circuit determined that dismissal, with respect to § 1367(c)(4), "should be undertaken only when the district court *both* articulates compelling reasons for declining jurisdiction *and* identifies how the situation that it confronts is exceptional." *Bahrampour v. Lampert*, 356 F.3d 969, 978-979 (9th Cir. 2004) (quoting *Executive Software*, 24 F.3d at 1560) (emphasis supplied). In addition, "what ought to qualify as 'compelling reasons' for declining jurisdiction under subsection (c)(4) should be of the same nature as the reasons that gave rise to the categories listed in subsection (c)(1)-(3)." *Executive Software*, 24 F.3d at 1557. Further, "declining jurisdiction outside of

subsection (c)(1)-(3) should be the exception, rather than the rule." *Id.* at 1558. This Court should not dismiss the Damus Claims because Mr. Damus failed to provide either sufficient compelling reasons for this Court to decline jurisdiction or any evidence tending to show the existence of exceptional circumstances.

Mr. Damus fails to identify any genuinely compelling reasons for this Court to decline to exercise jurisdiction over the Damus Claims. The putatively compelling reasons that Mr. Damus provides in Mr. Damus' Motion to Dismiss are the alleged unfairness to Mr. Damus in being required to defend the Damus Claims in connection with Plaintiffs' claims against the other defendants, as well as the fact that Mr. Damus became involved in this matter after the Subject Property was purchased and the title was transferred. (Document No. 92 at 13.) It is not unfair for Mr. Damus to be required to defend himself in this forum because facts relevant to the purchase and transfer of title of the Subject Property demonstrate the culpability of Mr. Damus for Mr. Damus' negligent actions. Plaintiffs sought assistance from Mr. Damus to protect Plaintiffs' interests in the Subject Property. The extent to which Plaintiffs' interests were compromised provide evidence of actions that Mr. Damus should have taken to protect Plaintiffs' interests. Even though Mr. Damus became involved in this matter after transactions regarding the Subject Property occurred, facts relevant to those earlier transactions will be relevant to what actions Mr. Damus should have taken later to protect Plaintiffs' interests. It would be unfair to require Plaintiffs to try a separate case against Mr. Damus when the actions Mr. Damus should have taken will relate to the facts proven during this case. Thus, Mr. Damus has failed to show compelling reasons justifying dismissal of the Damus Claims.

Further, Mr. Damus provided no statement in Mr. Damus' Motion to Dismiss showing exceptional circumstances in this case. In fact, exceptional circumstances do not exist because Mr. Damus relied solely on an unfairness argument to support Mr. Damus' desire to have the Damus Claims dismissed. Based on the Ninth Circuit's *Bahrampour* and *Executive Software* opinions, which speak of "compelling reasons" in the conjunctive with "exceptional circumstances," Mr. Damus' proffered arguments, which speak only to putatively "compelling reasons," are insufficient to carry the day. Therefore, dismissal of the Damus Claims should not

be granted because Mr. Damus failed to meet the threshold showing justifying dismissal pursuant to 28 U.S.C. § 1367(c)(4), *Bahrampour*, and *Executive Software*.

3. Even If The Court Found Factual Support For Dismissal Pursuant To 28 U.S.C. 1367, Dismissal Would Not Promote The Objectives Of Economy, Convenience, Fairness, And Comity.

Even if the Court identifies a factual predicate that provides support of dismissal according to either sections 28 U.S.C. § 1367(c)(2) or 1367(c)(4), the Court must still use the Court's discretion in determining if remand would achieve the objectives of accommodating "economy, convenience, fairness, and comity." *Executive Software*, 24 F.3d at 1557 (citing *Imagineering, Inc. v. Kiewit Pac. Co.*, 976 F.2d 1303, 1309 (9th Cir. 1992)). The Court can achieve these objectives by allowing Plaintiffs to continue pursuing the Damus Claims in this forum. The Damus Claims relate to the other Defendants' fraudulent and negligent actions, because the other Defendants' actions will illustrate what actions Mr. Damus should have performed with respect to protecting Plaintiffs' interests. Therefore, the objectives of economy, convenience, and fairness will be achieved by allowing Plaintiffs to continue to pursue the Damus Claims in this case because the facts related to the Damus Claims are intertwined and will be presented simultaneously with the facts underlying the Federal Causes of Action.[1]

D. The Damus Claims Should Not Be Dismissed Because Plaintiffs Have Already Sustained Damages From Mr. Damus' Negligent Actions, Demonstrating The Validity of Plaintiffs' Legal Malpractice Claims.

This Court should refrain from dismissing the Damus Claims as having been prematurely brought because Plaintiffs have already sustained damages resulting directly from Mr. Damus'

[1] *See* Section III.B.2 for further discussion regarding the objectives of economy, convenience, and fairness.

negligence. In Mr. Damus' Motion to Dismiss, Mr. Damus cites to Nevada and other state cases in which courts dismissed legal malpractice claims because the courts decided it was too early to determine whether damages had been sustained. (Document No. 92 at 11.) Mr. Damus attempts to argue that "where damage has not been sustained or where it is too early to know whether damage has been sustained, a legal malpractice action is premature and should be dismissed." *Semenza v. Nevada Medical Liability Insur. Co.*, 104 Nev. 666, 668, 765 P.2d 184, 186 (Nev. 1988); *see Kopicko v. Young*, 114 Nev. 1333, 1337, 971 P.2d 789, 791 (1998); *see also Amfac Distribution Corp. v. Miller*, 673 P.2d 792 (Ariz. 1983); *Lucey v. Law Offices of Pretzel & Stouffer*, 703 N.E.2d 473, 477 (Ill. App. Ct. 1998). Each of these cases are distinguishable from this case, because, in this case, Plaintiffs' legal malpractice action against Mr. Damus is by no means premature.

In *Semenza*, an insurance carrier sued an attorney for legal malpractice after the insured physician represented by the attorney lost a medical malpractice case when damaging evidence was presented at trial. *Semenza*, 104 Nev. at 667, 765 P.2d at 185. Subsequently, the medical malpractice case was reversed because the evidence was improperly introduced. *Id.* Therefore, the Supreme Court of Nevada determined that the legal malpractice claim was premature because the doctor had not yet sustained any damages—the doctor was, instead, entitled to a new trial, which might well have undone any putative damages suffered as a result of the attorney's negligence. *Id.* at 668, 185-186. This case is distinguishable from *Semenza* because Plaintiffs have already been damaged by Mr. Damus' actions. Plaintiffs paid Mr. Damus approximately $13,000 in attorney fees, yet Mr. Damus did not even complete the drafting of the Plaintiffs' initial complaint during the ten-month time period during which Mr. Damus represented Plaintiffs. Further, unlike in *Semenza,* Plaintiffs have brought other claims against Mr. Damus in addition to the malpractice claim, including unjust enrichment and negligent undertaking to perform a duty. These causes of action have unquestionably accrued because of Plaintiffs' monetary loss occasioned by Mr. Damus' negligence.

This case is distinguishable as well from *Kopicko* because the issue in *Kopicko* was determining when the statute of limitations begins to run for a malpractice claim arising from an

attorney's negligence in conducting litigation. The *Kopicko* court determined that the statute of limitations began to run when plaintiffs had sustained damages, which, in the context of the litigation in which defendant attorney Mr. Young represented plaintiffs Mr. and Mrs. Kopicko, did not occur until the dismissal on statute-of-limitations grounds of the lawsuit Mr. Young brought on the Kopickos' behalf. *Kopicko*,114 Nev. 1336-1337, 971 P.2d at 791. In this case, Plaintiffs have already sustained damages of approximately $13,000, at a minimum, because of Mr. Damus' malpractice and negligent undertaking to perform services on behalf of Plaintiffs (and Mr. Damus has not elsewhere argued that the statute of limitations is at issue). Further, both *Semenza* and *Kopicko* related to cases where the alleged malpractice occurred in the then-current litigation proceeding. *Semenza*, 765 P.2d 184; *Kopicko*, 971 P.2d 789. Although Plaintiffs hired Mr. Damus to protect Plaintiffs' interests, actual litigation proceedings never commenced in which Mr. Damus represented Plaintiffs because Mr. Damus did not even file a complaint in behalf of Plaintiffs. This case is thus more like *Gonzales v. Stewart Title of Northern Nevada,* 111 Nev. 1350, 905 P.2d 176 (1995), *overruled in part by Kopicko,* 114 Nev. at 1337, 971 P.2d at 791, in which the Supreme Court of Nevada recognized, in the context of transactional, rather than litigation, malpractice, that "[a]n action accrues when the litigant discovers, or should have discovered, the *existence* of damages, not the exact numerical extent of those damages." 111 Nev. at 1353, 905 P.2d at 178. "A homeowner who knows of a construction defect would be ill advised to wait until the house falls down to sue the builder," observed the *Gonzales* court, and, in this case, Plaintiffs have already recognized that Mr. Damus was mishandling Plaintiffs' case from the outset of Mr. Damus' representation of Plaintiffs. Mr. Damus nonetheless accepted and retained thousands of dollars from Plaintiffs for doing no beneficial work on Plaintiffs' behalf, which is at least a considerable part of the injury Plaintiffs have suffered from Mr. Damus' negligence. To allow Mr. Damus to escape liability for such negligence in undertaking to represent Plaintiffs would work an injustice on Plaintiffs.

The issue in *Amfac*, as well, was the time at which a cause of action for legal malpractice begins to accrue. *Amfac* provides that "[n]egligence alone is not actionable; actual injury or damages must be sustained before a cause of action in negligence is generated." *Amfac*, 673

P.2d at 793. Again, in this case, Plaintiffs have already sustained damages, in the form of legal fees paid to Mr. Damus and to present counsel, because of Mr. Damus' negligent actions. *Amfac* is also similar to *Semenza* and *Kopicko* in that the *Amfac* court held the malpractice claim could not be brought until the appellate process was completed. *Id.* at 793-794. In this case, Plaintiffs do not need to wait until the appellate process is completed to sue Mr. Damus because Plaintiffs terminated Mr. Damus as Plaintiffs' counsel before the current litigation proceeding began. No case ever went to trial with Mr. Damus acting as counsel for Plaintiffs, because Plaintiffs, recognizing Mr. Damus' negligence early on, terminated Mr. Damus' representation before Mr. Damus could wreak any further damage to Plaintiffs' interests. Therefore, this Court need not wait for these proceedings to be completed before determining Mr. Damus' liability on Plaintiffs' malpractice claim.

Similarly, *Lucey* is distinguishable from this case because Plaintiffs have already sustained damages. In addition, *Lucey* provides some guidance into when certain damages are sustained. In *Lucey*, the Appellate Court of Illinois provided that "where an attorney's neglect is a direct cause of the legal expenses incurred by the plaintiff, the attorney fees incurred are recoverable as damages." *Lucey*, 703 N.E.2d at 478 (citations omitted). In this case, Plaintiffs sustained damages not only in the form of attorney fees paid to Mr. Damus, but also in the form of attorney fees paid to Plaintiffs' current counsel to prepare adequate pleadings and documents because of Mr. Damus' previous negligent work. Therefore, the malpractice claim, along with the other Damus Claims, should not be dismissed, because Plaintiffs have already sustained damages as a result of Mr. Damus' negligence.

IV. CONCLUSION

Based on the foregoing, Plaintiffs respectfully request that this Court deny Mr. Damus' Motion to Dismiss. In the alternative, to the extent that this Court believes that Plaintiffs' cause of action against Mr. Damus for legal malpractice has not yet accrued pending the resolution of this case, Plaintiffs respectfully request that Plaintiffs' claims against Mr. Damus for negligent undertaking to perform a duty and for unjust enrichment be allowed to stand.

Respectfully submitted this 22nd day of October, 2010.

DICKINSON WRIGHT PLLC

By /s/ J.D. Lowry

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CERTIFICATE OF SERVICE

Pursuant to Local Rule 5 of this Court, I certify that I am an employee of Dickinson Wright PLLC and that on this 22nd day of October, 2010, I caused a correct copy of the foregoing Plaintiffs' Response to Defendant Charles M. Damus, Esq.'s Motion to Dismiss for Lack of Subject Matter Jurisdiction to be served via CM/ECF to:

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I further certify that some of the participants in the case are not CM/ECF users, and pursuant to FRCP 5, I served a copy of the foregoing Plaintiffs' Response to Defendant Charles M. Damus, Esq.'s Motion to Dismiss for Lack of Subject Matter Jurisdiction by first-class United States mail on this _____ day of October, 2010 to the following non-CM/ECF participants, at their last known address:

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UNITES STATES DISTRICT COURT
DISTRICT OF NEVADA

TAE- SI KIM, an individual, and JIN-SUNG HONG, an individual,

Plaintiffs,

vs.

ADAM B. KEARNEY, an individual; EDWARD C. REED, an individual; BARBARA R. REED, an individual; REED TEAM, dba RE/MAX EXTREME, a Nevada general partnership; FIRST AMERICAN TITLE, a foreign corporation; RE/MAX INTERNATIONAL INC., a Colorado corporation; GINA THOMAS, an individual; ALVERSON, TAYLOR, MORTENSEN & SANDERS, a Nevada law firm; the Estate of JAMES L. ZEMELMAN, ESQ.; CUMORAH CREDIT UNION, a Nevada non-profit corporation; CHARLES M. DAMUS, Esq., an individual; VALLEY FORECLOSURE SERVICES, a Nevada limited-liability company,

Defendants.

CASE NO.: 2:09-cv-02008-PMP-PAL

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DEFENDANT CHARLES M. DAMUS, ESQ.'S MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION

COMES NOW, Defendant Charles M. Damus, Esq. (hereinafter, "Damus"), by and through his counsel of record, LIPSON, NEILSON, COLE, SELTZER & GARIN, P.C. and hereby moves this Court to dismiss Plaintiffs' claims with prejudice pursuant to Federal Rule of Civil Procedure 12(b)(1).

This Motion is based on the following Memorandum of Points and Authorities, the pleadings and papers on file herein, and such oral arguments as may be presented at the hearing on said motion.

Dated this 5th day of October, 2010

LIPSON NEILSON COLE SELTZER & GARIN, P.C.

By: _____

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

In 2005, Plaintiffs attempted to purchase real estate in Las Vegas. When Plaintiffs' "traditional" lending fell through, they decided to use an alternate method to purchase the property, i.e. a strawman. Unfortunately for Plaintiffs, the plan backfired as Plaintiffs' property was eventually foreclosed on.

Now, Plaintiffs seek to hold everyone liable for what happened to them including the very person who Plaintiffs hired to help them in the first place- Charles M. Damus, Esq. This Court should see through Plaintiffs' allegations and dismiss Plaintiffs' claims against Damus because this court does not have jurisdiction over Plaintiffs' claims against Charles M. Damus, Esq.

II. PROCEDURAL STATUS

On October 15, 2009, Plaintiffs Tai-si Kim ("Kim") and Jin-Sung Hong ("Hong") (collectively referred to as "Plaintiffs") filed their complaint against Adam B. Kearney ("Kearney"), Edward Reed, Barbara Reed, Reed Team dba RE/MAX Extreme ("RME"), First American Title, Gina Thomas, Alverson, Taylor, Mortensen & Sanders, and the Estate of James Zemelman, Esq. Defendant Damus was not originally named as a party Defendant. Plaintiffs allege over thirty causes of action including, but not limited to, federal securities

fraud, negligence and breach contract.

On March 2, 2010, Plaintiffs, without leave of court or stipulation, filed an amended complaint naming three additional defendants: Cumorah Credit Union, Charles M. Damus, Esq. and Valley Foreclosure Services. Specifically, as it relates to this motion, Plaintiffs allege three claims against Damus: (1) legal malpractice, (2) negligent undertaking to perform services, and (3) unjust enrichment. The claims against Damus arose out of a fee dispute, and essentially remain as such. None of the claims against Damus confer federal jurisdiction.

III. STATEMENT OF FACTS

According to Plaintiffs' complaint, in March 2003, Plaintiffs entered into a contract with Edward Reed, Barbara Reed, and RME to purchase real property. Complaint, ¶29. The Reeds were to advise and instruct Plaintiffs in this purchase. *Id.*

On June 24, 2005, Hong entered into a contract to purchase real property[1] for $435,000.00 with closing to occur by August 12, 2005. *Id.* at ¶32. Hong tendered a $10,000.00 non-refundable deposit for the seller. *Id.* On July 1, 2005, Hong received a pre-approval letter from AAA Mortgage Corporation to finance the transaction. *Id.* at ¶60. However, later that month, the Reeds told Plaintiffs that the financing fell through. *Id.* at ¶61. The Reeds advised and instructed Hong to obtain alternate financing and suggested Plaintiffs obtain such financing through Adam Kearney. *Id.* at ¶62-64. After agreeing to retain Kearney's services, the Reeds and Kearney told Plaintiffs that they needed to make an additional earnest-money deposit of $100,000.00 by August 12, 2005 in order to prevent the loss of Plaintiffs' initial $10,000.00 deposit. *Id.* at ¶66. As Plaintiffs did not have access to this amount of money on such short notice, the Reeds' and Kearney's suggested that Plaintiffs obtained a loan from Kearney and Frank Napoli for the $100,000.00. *Id.* at ¶69-70. Additionally, on August 7, 2005, the Reeds and Kearney told the Plaintiffs that they needed to pay an additional $17,394.00 to finance the transaction. *Id.* at ¶74. The Reeds and

[1]/ Parcel Number 177-19-801-008

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Kearney instructed Plaintiffs to pay the $17,394.00 directly to Kearney which Plaintiffs did. *Id.* at ¶76 -77. On approximately August 12, 2005, Kearney and Napoli purchased a promissory note evidencing the $100,000.00 loan subject to interest and additional fees. *Id.* at ¶71.

In addition to requiring Plaintiffs to pay the additional $17,394.00 and obtain the $100,000.00 loan from Kearney and Napoli, the Reeds and Kearney instructed Plaintiffs to enter into an option contract with Kearney. *Id.* at ¶83. Said option contract, drafted by a RE/MAX attorney, stated that Kearney would receive a $10,000.00 fee as "the sole consideration [he] is to receive for acting as the facilitator to Hong acquiring the property." *Id.* at ¶90. According to the option agreement, Kearney would obtain a loan and purchase of the subject property and then Plaintiffs would have the option of purchasing the property from Kearney when they were able to obtain financing. *Id.* at ¶92-93. If Plaintiffs exercised the option, Kearney was required to (1) open escrow with First American Title; (2) convey the subject property to Hong by grant, bargain and sale deed; (3) at close of escrow, cause the escrow agent to issue Hong a policy of title insurance insuring good and marketable title; and (4) convey the subject property to Hong after paying off the underlying loan. *Id.* at ¶94. Kearney failed to complete any of these requirements. *Id.* Throughout this process, the Reeds assured Plaintiffs that Kearney would clear the subject property of any liens, pay off his loan, and transfer free and clear title to Plaintiffs. *Id.* at ¶99.

Prior to August 15, 2005, Kearney obtained a loan from Cumorah Credit Union ("Cumorah") for the purchase of the subject property. On August 15, 2005, Kearney acquired the subject property. *Id.* at ¶109. That day, First American Title Company prepared a HUD-1 Settlement Statement, the Grant, Bargain and Sale Deed, and Cumorah's Deed of Trust. *Id.* at ¶116-122. Cumorah's deed of trust mistakenly identified the wrong parcel number.[2] *Id.* at ¶122.

On August 31, 2005, by refinancing their personal residence, Plaintiffs obtained $108,710.98 to pay off the promissory note to Kearney and Napoli. *Id.* at ¶128. In addition,

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[2]/ The Cumorah Deed of Trust listed the parcel number as 177-19-701-008; the subject property's parcel number was 177-19-801-008.

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Plaintiff continued making monthly payments on Kearney's Cumorah loan. *Id.* at ¶130. On March 14, 2006, Plaintiffs acquired $330,000.00 and provided notice of intent to pay off Kearney's loan from Cumorah and Kearney's $10,000.00 commission. *Id.* at ¶131. Although the option agreement required opening escrow, the Reeds and Kearney advised and instructed Plaintiffs to pay the $330,000.00 directly to Kearney. *Id.* at ¶133-134. On March 14, 2006, Kim delivered $330,000.00 to Kearney's office; at that point, Plaintiffs had paid full value plus fees and costs to acquire the subject property in full satisfaction of Plaintiffs' obligations. *Id.* at ¶138-139.

On March 16, 2006, the Reeds and Kearney reassured Plaintiffs that title to the property had been cleared of the Cumorah lien. *Id.* at ¶151. The Reeds and Kearney lied to Plaintiffs by stating that the property had been transferred and free of the Cumorah lien. *Id.* at ¶152. Subsequently, on June 26, 2006, the Reeds and Kearney reassured Plaintiffs that all money for the purchase of the property had been received and transferred to appropriate parties and the property was clear of any liens and the full title was in Kim's or Hong's name. *Id.* at ¶156. That same day, Plaintiffs called GinaThomas ("Thomas") at First American Title to confirm the Reeds' representations. Thomas informed Plaintiffs that the land was not clear of the liens and the property was still in Kearney's name. *Id.* at ¶160. On June 27, 2006, Plaintiffs retained James Zemelman, Esq. of Alverson Taylor Mortenson & Sanders to enforce the terms of the agreement and to clear the title on the subject property. *Id.* at ¶162. On June 27, 2006, in response to Zemelman's entry into the case, Kearney and Thomas transferred the subject property via Grant, Bargain and Sale Deed to Kim. *Id.* at ¶167. Within a few days, Thomas reported back that (1) the title for the subject property was clear, (2) the Cumorah loan had been paid, and (3) the subject property had been transferred to Plaintiffs. *Id.* at ¶169. In July 2006, Zemelman misinformed Plaintiffs that the Cumorah loan had been paid in full and that the subject property had been transferred with clear and marketable title to Plaintiffs. *Id.* at ¶172.

In March 2006, Plaintiffs requested assurances from the Reeds and Kearney that title had been cleared and transferred and that the Cumorah loan had been paid. *Id.* at ¶150.

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Despite receiving Plaintiffs' money, Kearney did not pay off the Cumorah lien; he did not transfer clear and marketable title. Apparently, from July 2006 until July 2008, Kearney was making the monthly mortgage payments to Cumorah. *Id.* at ¶181. Approximately one year later, on March 16, 2007, the Reeds again reassured Plaintiffs that (1) Kearney paid the Cumorah loan in full; (2) the title to the subject property was clear; and (3) Kearney had transferred clear and marketable title to Plaintiffs. *Id.* at ¶153.

On October 29, 2008, First American Title Company requested that Cumorah re-record its Deed of Trust to provide "a correct legal description" for the subject property. *Id.* at ¶184. On December 16, 2008, Plaintiffs discovered the Cumorah lien was not paid when they received a notice of foreclosure for the Cumorah lien from Valley Foreclosure Services. *Id.* at ¶ 187-190. On December 17, 2008, Plaintiffs retained Damus as their attorney. *Id.* at ¶ 201. Damus attempted to settle with Kearney up until March 17, 2009 when he advised Plaintiffs to proceed with litigation. On April 20, 2009, Lawyers Title of Nevada requested filing of Cumorah's "Trustee's Deed Upon Sale" of the subject property. *Id.* at ¶ 213. After working on Plaintiffs' case, Damus was terminated by Plaintiffs.

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IV. LEGAL ARGUMENT

A. Legal Standard for a Rule 12(b)(1) Motion to Dismiss

A defendant may move to dismiss a complaint for lack of subject matter jurisdiction pursuant to Federal Rules of Civil Procedure 12(b)(1) in one of two ways. *Thornhill Publ'g Co., Inc. v. General Tel. & Elec. Corp.*, 594 F.2d 730, 733 (9th Cir. 1979). A defendant's attack may be facial or one where the defendant attacks the sufficiency of the allegations supporting subject matter jurisdiction or the defendant may launch a "factual attack," attacking the existence of subject matter jurisdiction in fact. *Id.*[3]

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[3]/ When considering a "facial" attack made pursuant to Rule 12(b)(1), a court must consider the allegations of the complaint to be true and construe them in the light most favorable to the plaintiff. *Love v. U.S.*, 915 F.2d 1242, 1245 (9th Cir 1989). Unlike a "facial" attack, a "factual" attack made pursuant to Rule 12(b)(1) may be accompanied by extrinsic evidence. *St. Clair v. City of Chico*, 880 F.2d 199, 201 (9th Cir 1989). The opposing party must present affidavits or any other evidence necessary to satisfy its burden of establishing that the court, in fact, possesses subject matter jurisdiction. When considering a factual attack on subject matter jurisdiction, "the district court is ordinarily free to hear evidence regarding jurisdiction and to rule on that issue prior to trial, resolving factual disputes where necessary." *Augustine v. U.S.*, 704 F.2d 1074, 1077 (9th Cir. 1983). "No presumptive truthfulness

When a defendant files a motion to dismiss for lack of subject matter jurisdiction under Fed R. Civ. Pro. 12(b)(1), the plaintiff must prove jurisdiction in order to survive the motion. *Stock West, Inc. v. Confederated Tribers*, 873 F. 2d 1221, 1225 (9th Cir. 1989).

B. This Court Lacks Subject Matter Jurisdiction as to Plaintiffs' Claims Against Damus and, Therefore, Must Dismiss These Claims

1. Standard for Supplemental Subject Matter Jurisdiction

The United States district courts are courts of limited jurisdiction. *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375, 377 (1994). These courts possess only that power authorized by the Constitution and statute. *Id.* Congress provides two jurisdictional grounds for Plaintiffs to get into federal court. In order to provide a federal forum for plaintiffs who seek to vindicate federal rights, Congress has conferred on the district courts original jurisdiction in federal-question cases. 28 U.S.C. § 1331. In order to provide a neutral forum for what have come to be known as diversity cases, Congress has also granted district courts original jurisdiction in civil actions between citizens of different states, between U.S. citizens and foreign citizens, or by foreign states against U.S. citizens. 28 U.S.C. §1332. To ensure that diversity jurisdiction does not flood the federal courts with minor disputes, §1332(a) requires that the matter in controversy in a diversity case exceed a specified amount, currently $75,000.00.

Once a court makes the determination that it has original jurisdiction over some claims in the action, it may exercise supplemental jurisdiction over additional claims that are part of the same case or controversy. Supplemental jurisdiction extends over state claims brought against a party even when that party was not subject to the federal claims primarily at issue. The Supreme Court has broadly authorized the federal courts to assert jurisdiction over state law claims when "the state and federal claims . . . derive from a common nucleus of operative

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attaches to plaintiffs allegations, and the existence of disputed material facts will not preclude the trial court from evaluating for itself the merits of jurisdictional claims. *Thornhill Publ'g Co., Inc.* 594 F.2d at 733. The district court may review any evidence, such as affidavits and testimony, to resolve factual disputes concerning the existence of jurisdiction. *McCarthy v. United States*, 850 F.2d 558, 560 (9th Cir. 1988). In fact, a district court may hear evidence and make a finding of fact necessary to rule on the subject matter jurisdiction question prior to trial, if the jurisdictional facts are not intertwined with the merits." *Rosales v. United States*, 824 F.2d 799, 803 (9th Cir 1987).

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fact," the claims are such that a plaintiff "would ordinarily be expected to try them all in one judicial proceeding," and the federal issues are "substantial." *Executive Software North America, Inc. v. U.S. Distr. Ct. for C.D. of CA*, 24 F. 3d 1545, 1552 (9th Cir 1994)(*overruled on other grounds by CA Dept. of Water Resources v. Powerex Corp, 533 F.3d 1087, (9th Cir. 2008)- district court's discretionary decision to decline supplemental jurisdiction and remand must be challenged pursuant to appeal, rather than in petition for writ of mandamus*).

Specifically, Title 28 U.S.C. §1367(a) provides that "the district court shall have supplemental jurisdiction over all other claims that are so related to claims in the action within the court's original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution." The language of §1367 derives from the test for supplemental jurisdiction as stated in *Gibbs*, in which the Supreme Court held that federal courts have supplemental jurisdiction over a state law claim where the state claim and the federal claim "derive from a common nucleus of operative fact," such that "the relationship between the federal claim and the state claim permits the conclusion that the entire action before the court comprises but one constitutional case." *United Mine Workers v. Gibbs*, 383 U.S. 715, 725 (1966).

Once a party challenges subject matter jurisdiction, the non-moving party bears the burden to establish that subject matter jurisdiction exists. *Kokkonen*, 511 U.S. at 378.

2. This Court Does Not Have Original Subject Matter Jurisdiction as to Plaintiffs' Alleged Claims Against Damus

As previously stated, federal courts have original jurisdiction over all civil actions "arising under the Constitution, law, or treatises of the United States" and in all civil actions where complete diversity of citizenship exists and the amount in controversy exceeds $75,000.00. *See* 28 U.S.C. §§ 1331, 1332.

Plaintiffs' amended complaint alleges that "this court has jurisdiction over Plaintiffs' causes of action for federal securities fraud violations and conspiracy to commit federal securities fraud violations pursuant to 28 U.S.C. §1331 as Plaintiffs' federal law causes of action arise under the laws of the United States and are associated with violations of the

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Securities and Exchange Act of 1934, 15 U.S.C. §78, and 17 C.F.R. § 240.10b-5." Amended Complaint at ¶1. Next, Plaintiffs' amended complaint states "this court has supplemental jurisdiction over Plaintiffs' remaining causes of action pursuant to 28 U.S.C. §1367, because Plaintiffs' state law causes of action are so closely interrelated to Plaintiffs' federal law causes of action as to form part of the same case or controversy as Plaintiffs' state law causes of action [*sic*] pursuant to Article III of the United States Constitution." *Id.* at ¶3.

Here, Plaintiffs allege three claims against Damus: (1) legal malpractice, (2) negligent undertaking to perform services, and (3) unjust enrichment.[4] As these claims do not involve a federal question[5], the only way this Court has jurisdiction over these claims is if the court grants supplemental jurisdiction over these state claims. In this case, this court should not grant supplemental jurisdiction over Plaintiffs' claims against Damus.

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3. *This Court Does Not Have Supplemental Subject Matter Jurisdiction Over Plaintiff's State Law Claims Against Damus Because These Claims Do Not Arise Out of the Same Transaction or Occurrence As Plaintiffs' Alleged Federal Question Claim.*

Without addressing the actual merits of Plaintiffs' claims, on the one hand, Plaintiffs allege federal securities fraud and conspiracy to commit federal securities fraud against Edward Reed, Barbara Reed, RME, RE/MAX and Kearney in violation of 17 C.F.R. §240.10B-5. Amended Complaint ¶224- ¶242. Specifically, Plaintiffs allege these defendants used the instrumentalities of interstate commerce, i.e. the U.S. mail, in connection with purchase or sale of a promissory note for the property and that Edward and Barbara Reed and RME instructed Plaintiffs to use the U.S. mail for payments and correspondences related to the promissory note. These claims involve a federal statue and allegedly serve the basis for claimed federal jurisdiction. Notably, these claims all revolve around events that occurred between March 2003, when Plaintiffs entered into a business relationship with the Reeds, and June 2006,

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[4]/ The legal malpractice and negligent undertaking claims are essentially a single claim.

[5]/ Plaitniffs' do not allege federal jurisdiction based on complete diversity.

when the title to the property was transferred to the Plaintiffs. In general, these federal claims involve the process and eventual purchase of the subject property.

On the other hand, Plaintiffs' claims against Damus all stem from his representation of the Plaintiffs and his attempt to "protect Plaintiffs' interests and rights" related to the subject property. Importantly, these claims are not related to the actual *purchase* of the subject property. Moreover, according to Plaintiffs' amended complaint, Damus was not even retained until December 17, 2008- more than two (2) years after Plaintiffs received title to the subject property. While Damus acknowledges that the claims against him and the claims against the remaining defendants all involve the same subject property, clearly these claims are not part of the same transaction or occurrence. The mere fact that Plaintiffs' claims involve the same subject property does not automatically confer jurisdiction when the claims do not arise from the same transaction or occurrence. If there is almost no factual or legal overlap between state and federal claims, "a common nucleus of operative facts does not exist." *Taylor v. District of Columbia,* 626 F.Supp.2d 25, 28 (D.D.C. 2009).

Here, Plaintiffs' federal claims involved the purchase of the subject property whereas Plaintiffs' claims against Damus involve his attempt to protect Plaintiffs' interest in the property years after the purchase. Moreover, Plaintiffs' claims against Damus allegedly occurred more than three (3) years after the property contract was formed and two (2) years after Plaintiffs received title to the property. There is very little, if any, overlap between the factual and legal arguments that will be made regarding Plaintiffs' federal securities law claims against the other Defendants and the factual and legal arguments that will be made regarding Plaintiffs state law claims against Damus.

Furthermore, Plaintiffs would not be expected to resolve these claims in one proceeding. For example, typically, a party would not be expected to pursue litigation against certain defendants in one matter while, in the same proceeding, attempt to resolve the claims against the attorney they originally retained to protect their right from those original defendants. In fact, this is the basis of the "case within a case" theory in legal malpractice claims. A state law claim is part of the same case or controversy when it shares a common

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nucleus of operative facts with the federal claims, "and the state and federal claims would normally be tried together." *Feezor v. Tesstab Operations Group, Inc.*, 524 F.Supp.2d 1222, 1223 (S.D.Cal. 2007), *citing Bahrampour v. Lempert*, 356 F.3d 969, 978 (9th Cir. 2004), *See also Finley v. United States*, 490 U.S. 545, 549, 109 S.Ct. 2003, 104 L.Ed.2d 593 (1989).

Under Nevada law, Plaintiffs' claims against the other Defendants would not normally be tried together with the legal malpractice claims against Damus. The Nevada Supreme Court has made it clear that "where damage has not been sustained or where it is too early to know whether damage has been sustained, a legal malpractice action is premature and should be dismissed." *Semenza*, 104 Nev. at 668, 765 P.2d at 186, *See Kopicko v. Young*, 114 Nev. 1333, 1337, 971 P.2d 789, 791 (1998), *See also Amfac Distribution Corp. v. Miller*, 138 Ariz. 152, 673 P.2d 792 (Ariz. 1983) (actual injury or damages must be sustained before a cause of action for legal malpractice is generated), *Lucey v. Law Offices of Pretzel & Stouffer*, 301 Ill.App.3d 349, 353, 703 N.E.2d 473, 477 (Ill.App. 1998). In this case, if Plaintiffs are successful in their claims against the other Defendants, they will no longer be able to claim any damages against Damus. At a minimum, until the underlying dispute is resolved it is too early to know whether Plaintiffs have suffered any damages as a result of any alleged conduct by Damus, and the claims against Damus should be dismissed. Because the underlying claims and the legal malpractice claims would not normally be tried together, they do not arise out of the same case or controversy, and there is no supplemental subject matter jurisdiction.

Finally, Damus is a minor player in this litigation; he is not the proximate cause of Plaintiffs' damages. Plaintiffs only allege three (3) causes of action against him; the remaining 30+ claims involve the remaining eleven (11) defendants. The fact of the matter is that Damus' role in this matter is so minor because the claims alleged against him are not part of the same constitutional case.

Plaintiffs' claims against Damus have nothing to do with Plaintiffs' allegations of fraud and/or conspiracy to commit fraud relating to the purchase of the subject property;these claims are not part of the same transaction or occurrence. Therefore, this Court does not have supplemental jurisdiction over Plaintiffs' claims and should dismiss these claim.

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4. Alternatively, If This Court Finds That Plaintiffs' Allegations Against Damus Are Part of the Same Transaction or Occurrence, This Court Should Exercise Its Discretion And Dismiss These Claim in Accordance with § 1367(c).

Title 28 U.S.C. 1367(c) provides:

> The district court may decline to exercise supplemental jurisdiction over a claim under subsection (a) if
>
> > (1) the claim raises a novel or complex issue of State law;
> > (2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction;
> > (3) the district court has dismissed all claims over which it has original jurisdiction; or
> > (4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

While 1367(c)(1) and (c)(3) are not applicable to this particular case (as these state claims are not complex and the court has not dismissed all claims over which it had original jurisdiction), this court should exercise its discretion and not deny subject matter jurisdiction pursuant to subsection (c)(2) and/or subsection (c)(4).

The doctrine of supplemental jurisdiction is a doctrine of flexibility, designed to allow courts to deal with cases involving pendant claims in the manner that most sensibly accommodates a range of concerns and values. *Executive Software*, 24 F. 3d at 1552. Depending on a host of factors, including the circumstances of the particular case, the nature of the state law claims, the character of the governing state law, and the relationship between the state and federal claims, district courts may decline to exercise jurisdiction over supplemental state law claims. *City of Chicago v. Int'l College of Surgeons*, 522 U.S. 156, 118 S.Ct. 523, (1997). Whether supplemental jurisdiction should be exercised in a given circumstance depends on the district court assessing whether doing so would most sensibly accommodate the values of economy, convenience, fairness, and comity. Id. at 1554. Such power need not be exercised in every case in which it is found to exist. *Executive Software*, 24 F. 3d at1552. In fact, it has consistently been recognized that supplemental jurisdiction is a doctrine of discretion, not of plaintiff's right. *Id.* Its justifications lies in considerations of judicial economy, convenience and fairness to litigants; if these are not present a federal court should hesitate to exercise jurisdiction over state law claims. *Id.* Needless decisions of state

law should be avoided both as a matter of comity and to promote justice between the parties, by procuring for them a surer-footed reading of applicable law. *Id.*

Here, in the event this court finds that Plaintiffs' allegations against Damus arise out of the same transaction or occurrence, the court should exercise its discretion and deny supplemental jurisdiction as to Plaintiffs' claims against Damus. First, Plaintiffs' claims against Damus are all state claims. In fact, the overwhelming majority of Plaintiffs' claims are state law claims; only four (4) claims involve a federal question. As such, these claims are predominately state claims over which this court should deny supplemental jurisdiction.

Second, there are "compelling reasons" for this court to deny supplemental jurisdiction. As the Ninth Circuit stated in *Executive Software*, *supra*, "we believe that compelling reasons for the purposes of subsection (c)(4) similarly should be those that lead a court to conclude that declining jurisdiction best accommodates the values of economy, convenience, fairness, and comity." Id. at 1557. Here, it would be unfair to require Damus to defend the three claims alleged against him, arising from a fee dispute, against the backdrop of the other 30+ claims being alleged against the other eleven (11) defendants.[6] Less than a total of three (3) pages of Plaintiffs' 51 page amended complaint address Plaintiffs' allegations against Damus. The overwhelming majority of Plaintiffs' amended complaint is directed toward the claims against the remaining eleven (11) defendants. Finally, as mentioned previously, Damus was not even involved in this matter until after (1) the actual purchase of the property; (2) title was transferred; and (3) Plaintiffs conferred with previous counsel. Damus should not be forced to defend himself under these circumstances.

V. CONCLUSION

This Court should dismiss Plaintiffs' claims alleged against Charles Damus, Esq. First, this Court does not have jurisdiction over Plaintiffs' claims because Plaintiffs' claims against Damus do not arise out of the same transaction or occurrence. In the alternative, if this Court

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[6]/ For example, counsel for Damus just attended an eight hour deposition of Defendant Barbara Reed, which had absolutely no relationship or relevance to the claims made against Damus.

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does find that all claims arise out of the same transaction or occurrence, it should nevertheless exercise its discretion by denying supplemental jurisdiction in accordance with §1367(c). For these reasons, Defendant Charles M. Damus, Esq. respectfully requests that this court dismiss Plaintiffs' claims against him.

DATED this 5th day of October, 2010.

LIPSON, NEILSON, COLE, SELTZER, GARIN, P.C.

By _____

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Attorney for Plaintiffs
Tae-Si Kim and Jin-Sung Hong

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

TAE-SI KIM, an individual, and JIN-SUNG HONG, an individual,

Plaintiffs,

v.

ADAM B. KEARNEY, an individual; EDWARD C. REED, an individual; BARBARA R. REED, an individual; REED TEAM, dba RE/MAX EXTREME, a Nevada general partnership; FIRST AMERICAN TITLE, a foreign corporation; RE/MAX INTERNATIONAL INC., a Colorado corporation; GINA THOMAS, an individual; ALVERSON, TAYLOR, MORTENSEN & SANDERS, a Nevada law firm; the Estate of JAMES L. ZEMELMAN, ESQ.; CUMORAH CREDIT UNION, a Nevada non-profit corporation; CHARLES M. DAMUS, Esq., an individual,; VALLEY FORECLOSURE SERVICES, a Nevada limited-liability company,

Defendants.

Case No.:

Dept. No.:

FIRST AMENDED COMPLAINT

(Jury Trial Demanded)

Plaintiffs, Tae-Si Kim (Ms. Kim) and Jin-Sung Hong (Mr. Hong) (hereinafter, collectively "Plaintiffs"), by and through their counsel, Gibson Lowry Burris LLP, for Plaintiffs' causes of action against Defendants, complain and allege as follows on information and belief:

NATURE OF ACTION

Plaintiffs are seeking return of Plaintiffs' $462,000.00, at a minimum, from certain Defendants, who stole Plaintiffs' money without ever delivering clear and marketable title in exchange for Plaintiffs' payments in full. Plaintiffs are natives of South Korea with some English-speaking ability who relied on Plaintiffs' fiduciaries—Plaintiffs' real estate agents and mortgage broker—to acquire an investment property in Clark County, Nevada pursuant to Plaintiffs' fiduciaries' own self-serving and fraudulent scheme. As fiduciaries, Plaintiffs' real estate agents and mortgage broker created and implemented the scheme by: (1) fraudulently misrepresenting the terms of real estate agents' and mortgage broker's respective agency agreements; (2) advising and instructing Plaintiffs to follow an utterly absurd and fraudulent financing scheme (which was contrary to Plaintiffs' best interests) that included (a) an inappropriate assignment of Plaintiffs' rights to the mortgage broker, (b) using the fiduciaries' own self-serving promissory note, and (c) an inappropriate option contract; and (3) instructing Plaintiffs *not* to use an escrow company to complete the transaction to acquire the investment property. Instead, Plaintiffs' fiduciaries instructed Plaintiffs to pay Plaintiffs' money directly to the mortgage broker, who absconded with the payoff money ($327,250.00) that the mortgage broker acquired pursuant to an option contract with Plaintiffs. Additionally, the Defendants caused Plaintiffs to lose Plaintiffs' initial earnest-money deposit and costs: $134,394.00. As a result, Plaintiffs lost approximately $462,000.00 due to the fraudulent scheme of Plaintiffs' fiduciaries.

In 2006, prior to receiving a sham deed for their property, Plaintiffs hired legal counsel, James L. Zemelman, Esq. of Alverson Taylor Mortensen & Sanders, to protect Plaintiffs' rights. However, Mr. Zemelman merely relied on the misrepresentations of dubious individuals—who Mr. Zemelman knew or should have known were untrustworthy—instead of confirming whether or not Plaintiffs' rights were protected. As a result, Mr. Zemelman misled Plaintiffs into believing that the loan associated with the property (by Cumorah Credit Union) had been paid in

full with Plaintiffs' money. However, in December of 2008, Plaintiffs received a surprising foreclosure notice concerning their property. In response, Plaintiffs retained Charles M. Damus, Esq., but Mr. Damus failed to identify and protect Plaintiffs' status as *bona fide* purchasers in good faith. Plaintiffs' status had resulted when, prior to Plaintiffs' acceptance of title to their property in 2006, Cumorah Credit Union and First American Title Company had recorded a Deed of Trust associated with the prior record owner of the property, but against *the wrong property*. Nevertheless, and despite Cumorah Credit Union's and Valley Foreclosure Services' knowledge of their failure to provide constructive notice of the Deed of Trust, Cumorah Credit Union and Valley Foreclosure Services foreclosed on Plaintiffs' property in April of 2009. Thus, because Mr. Damus and Mr. Zemelman had failed to protect Plaintiffs' rights, Plaintiffs lost the property and all of Plaintiffs' investment money. Plaintiffs eventually terminated Mr. Damus's representation in approximately August of 2009.

JURISDICTION

1. This Court has jurisdiction over Plaintiffs' causes of action for federal securities fraud violations and conspiracy to commit federal securities fraud violations ("Federal Law Causes of Action") pursuant to 28 U.S.C. § 1331, as Plaintiffs' Federal Law Causes of Action arise under the laws of the United States and are associated with violations of the Securities and Exchange Act of 1934, 15 U.S.C. § 78, and 17 C.F.R. § 240.10b-5.

2. Nevada's Long-Arm Statute permits the exercise of personal jurisdiction to the limits of the Due Process Clause of the Fifth Amendment and each Defendant has availed itself to the enjoyment and protections of the laws of the State of Nevada.

3. This Court has supplemental jurisdiction over Plaintiffs' remaining causes of action ("State Law Causes of Action") pursuant to 28 U.S.C. § 1367, because Plaintiffs' State Law Causes of Action are so closely interrelated to Plaintiffs' Federal Law Causes of Action as to form part of the same case or controversy as Plaintiffs' State Law Causes of Action pursuant to Article III of the United States Constitution.

4. Personal jurisdiction over Defendants is proper because there is no alternative federal forum in which personal jurisdiction over all of the Defendants would be possible.

VENUE

5. Venue is proper in this judicial district under 28 U.S.C. § 1391(b)(2) for all Defendants because the acts and omissions giving rise to the claims alleged herein occurred in this judicial district.

6. Venue is proper in this judicial district under 28 U.S.C. § 1391(c) and 28 U.S.C. § 1391(b)(3), for the corporate Defendants because the corporate Defendants are subject to personal jurisdiction in this judicial district and thus are deemed to reside in this judicial district.

PARTIES

7. Ms. Tae-si Kim ("Ms. Kim") is an individual who is a Korean-speaking citizen of South Korea, with some English-speaking ability; and Ms. Kim is a resident alien in Clark County, Nevada.

8. Mr. Jin-sung Hong ("Mr. Hong") is a United States citizen, who speaks fluent English; Mr. Hong is a resident of Clark County, Nevada; and Mr. Hong is Ms. Kim's son.

9. Alverson, Taylor, Mortensen & Sanders ("ATM&S") is a Nevada law firm.

10. Cumorah Credit Union ("Cumorah") is a Nevada non-profit corporation.

11. Charles M. Damus, Esq. ("Damus") is an individual resident of Nevada and licensed with the Nevada Bar Association (Bar No. 943).

12. First American Title Company ("FATCO") is a foreign corporation registered to do business in Nevada.

13. Mr. Adam B. Kearney ("Kearney") is an individual resident of Nevada, who had been a Nevada-licensed mortgage broker up until August 16, 2007.

14. Mr. Edward C. Reed ("Mr. Reed") is an individual resident of Nevada and Mr. Reed is a licensed real estate agent of RE/MAX International, Inc.

15. Ms. Barbara R. Reed ("Mrs. Reed") is an individual resident of Nevada and Mrs. Reed is a licensed real estate agent of RE/MAX International, Inc.

16. The Reed Team is a Nevada general partnership.

17. Mr. Reed and Mrs. Reed are general partners of the Reed Team.

18. Mr. Reed and Mrs. Reed refer to themselves and hold themselves out as partners under the partnership name, the Reed Team, doing business as RE/MAX Extreme ("RME").

19. RME is a franchisee of RE/MAX International, Inc.

20. Ms. Gina Thomas ("Ms. Thomas") is an individual resident of Nevada.

21. Ms. Thomas is, or was at all relevant times, an employee and agent of Defendant FATCO.

22. The Estate of James L. Zemelman, Esq. ("Zemelman Estate") is the successor in interest to all rights, title, interests, and surviving obligations of James L. Zemelman, Esq. ("Mr. Zemelman") a deceased individual, who was an attorney, licensed to practice law in Nevada (Bar No. 819).

23. Mr. Zemelman was at all relevant times an employee for Defendant ATM&S.

24. RE/MAX International, Inc. ("RE/MAX"), is a Colorado corporation.

25. RE/MAX is a franchisor of RME.

26. RE/MAX's Registered Agent, Mr. Gary L. Weil, is located at 5075 S. Syracuse Street, Denver, Co. 80237.

27. Valley Foreclosure Services, LLC is a Nevada limited-liability company.

FACTS COMMON TO ALL CLAIMS FOR RELIEF

A. The Agency and Partnership Relationships of Mr. Reed, Mrs. Reed, and RE/MAX

28. Plaintiffs incorporate, repeat, and reallege every allegation set forth above.

29. In March of 2003, RME, Mr. Reed and Mrs. Reed (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) entered into a fiduciary relationship with Plaintiffs, for the apparent and represented purpose of advising and instructing Plaintiffs for the best interests of Plaintiffs with respect to real estate transactions in the United States and, specifically, Clark County, Nevada.

30. Mr. Reed and Mrs. Reed (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) told Plaintiffs that Plaintiffs should expect trust and confidence in the integrity and fidelity of Mr. Reed, Mrs. Reed, RME, and RE/MAX with respect to Plaintiffs' real estate transactions for which Mr. Reed, Mrs. Reed, RME, and RE/MAX served as Plaintiffs' agents and fiduciaries.

31. Plaintiffs did expect trust and confidence in the integrity and fidelity of Mr. Reed, Mrs. Reed, RME, and RE/MAX based on Mr. Reed and Mrs. Reed (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) having told Plaintiffs that Mr. Reed, Mrs. Reed, RME, and RE/MAX had substantial expertise helping international clients obtain property in the United States.

32. On June 24, 2005, Mr. Hong entered into a contract to purchase parcel number 177-19-801-008[1] (the "Subject Property") (1.25 acres) for $435,000.00 by August 12, 2005, and Mr. Hong tendered a $10,000.00 non-refundable deposit for the sellers, Santos & Karma Reyes.

33. On approximately August 5, 2005, Mr. Reed and Mrs. Reed (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) and Kearney created an addendum purportedly showing that Jin Sung Hong assigned his right to purchase the Subject Property to Kearney. (Ex. 6.)

34. In August of 2005, RE/MAX's attorney, Richard L. Tobler, Esq., drafted a document purporting to be an option agreement (dated August 10, 2005) for Mr. Hong and Kearney. (Ex. 1, "RE/MAX Option Agreement").

35. RE/MAX, Mr. Reed and Mrs. Reed told Plaintiffs that RE/MAX, Mr. Reed, and Mrs. Reed would guarantee that Plaintiffs rights would be protected by RE/MAX, Mr. Reed, and Mrs. Reed if Plaintiffs signed the RE/MAX Option Agreement.

36. Mr. Tobler failed to include the obligations for which RE/MAX, Mr. Reed and Mrs. Reed assured Plaintiffs that RE/MAX, Mr. Reed, and Mrs. Reed would guarantee that Plaintiffs would not be damaged if Plaintiffs signed the RE/MAX Option Agreement. (Ex. 1).

37. Mr. Tobler stated that he drafted the RE/MAX Option Agreement "with the understanding that RE/MAX is my client." (Ex. 1, at p. 1, fax cover sheet).

38. Initially, Plaintiffs expressed to Mr. and Mrs. Reed concerns regarding the unusual nature of the transaction.

39. Plaintiffs had never met Mr. Kearney, and Plaintiffs initially expressed concerns about working with Kearney.

[1] PT SW4 SE4 SEC 19 22 61 (SEC 19 TWP 22 RNG 61).

40. In response, Mr. Reed and (in his own self-interest, and as an agent for Mrs. Reed, and pursuant to a partnership with Mrs. Reed and RE/MAX) told Plaintiffs:

a. "We will do *whatever it takes* to ensure that you acquire the land."

b. "The Option Agreement was written by our lawyer."

c. "I don't want you to worry about this; we guarantee you that this will work out fine so long you pay the $315,000.00 on time."

d. "Mr. Kearney is a very trustworthy person, I've been working with him for years, he's very successful and Kearney is the number two broker in Las Vegas."

e. "This is a small amount of money for Kearney and Kearney could get this kind of money with a single phone call to the bank."

41. Prior to the closing of August 15, 2005, Plaintiffs had tendered personal funds towards the acquisition of the Subject Property totaling approximately $134,394.00 for commissions, costs, and a down payment.

42. Approximately $120,000.00 of the $134,394.00 was applied directly towards the Subject Property, which became Plaintiffs' equity in the property.

43. RE/MAX, Mr. Reed, and Mrs. Reed received commissions because Plaintiffs signed and complied with the terms of the RE/MAX Option Agreement.

44. RE/MAX acted outside of a typical or normal franchisee/franchisor relationship by choosing to be an intimate part of the transaction between Plaintiffs, Kearney, Mr. Reed and Mrs. Reed.

45. RE/MAX instructed and permitted Mr. Reed and Mrs. Reed to tout Mr. Reed's, Mrs. Reed's, and RME's relationship with RE/MAX to Plaintiffs and the public by persuading and permitting Mr. Reed and Mrs. Reed to say "I'm with RE/MAX." (Ex. 2.)

46. At all relevant times, Mr. Reed and Mrs. Reed (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) displayed the RE/MAX logo for Mr. Reed's and Mrs. Reed's office signage, letterhead, advertising, and training materials. (*See, e.g.,* Ex. 1, Letter of August 15, 2005 from Mr. Reed and Mrs. Reed, of RE/MAX, to Mr. Hong).

47. At all relevant times, Mr. Reed and Mrs. Reed (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) referred to Mr. Reed's and Mrs. Reed's office as "RE/MAX Extreme," as advertised on the website of RE/MAX International, Inc. (Exs. 3-5.)

48. RE/MAX instructed Mr. Reed and Mrs. Reed to "boost" Mr. Reed and Mrs. Reed's "local marketing efforts by leveraging the power of billions of dollars spent over the years promoting RE/MAX" such that Plaintiffs' subjective belief that Mr. Reed and Mrs. Reed had authority to bind each other and RE/MAX to the representations made by Mr. Reed and Mrs. Reed were objectively reasonable. (Ex. 2.)

49. Plaintiffs subjectively believed that Mr. Reed and Mrs. Reed had authority to bind each other and RE/MAX to the representations made by Mr. Reed and Mrs. Reed, and Plaintiffs' subjective belief that Mr. Reed and Mrs. Reed had authority to bind each other and RE/MAX to the representations made by Mr. Reed and Mrs. Reed were objectively reasonable.

B. The Securities Fraud Scheme

50. Plaintiffs incorporate, repeat, and reallege every allegation set forth above.

51. In June of 2005, in Las Vegas, Nevada, Mr. Reed and Mrs. Reed (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) knew that Mr. Reed and Mrs. Reed would be working for Mr. Reed's, Mrs. Reed's, and RE/MAX's own self-interests when Mr. Reed and Mrs. Reed (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) misrepresented to Ms. Kim and Mr. Hong that Mr. Reed, Mrs. Reed, RE/MAX, and RME would be working for Plaintiffs' best interests with integrity and fidelity concerning an investment property. ("RE/MAX Agency Misrepresentation.")

52. In approximately June of 2005, Plaintiffs, based on the misrepresentations, instructions, and advice of Mr. Reed and Mrs. Reed (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) in Las Vegas, Nevada, agreed to make an investment that should have resulted in Plaintiffs' unfettered ownership of the Subject Property.

53. In approximately June of 2005, Mr. Reed and Mrs. Reed (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) and in breach of Mr. Reed's, Mrs. Reed's, and RE/MAX's fiduciary duties, advised, assured, warranted to, and guaranteed to Plaintiffs that Plaintiffs would qualify to obtain conventional financing for the Subject Property, and Mr. and Mrs. Reed knew or should have known that Mr. and Mrs. Reed could not guarantee that Plaintiffs could obtain conventional financing. ("Conventional Financing Misrepresentation").

54. In approximately June of 2005, in Las Vegas, Nevada, Mr. Reed and Mrs. Reed (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) and in breach of Mr. Reed's, Mrs. Reed's, and RE/MAX's fiduciary duties, advised, assured, warranted to, and guaranteed to Plaintiffs that the Subject Property was worth much more than the market price, which was a lie, and Mr. Reed and Mrs. Reed knew or should have known that Mr. Reed and Mrs. Reed misrepresented the value of the Subject Property. ("Value Misrepresentation").

55. In approximately June of 2005, Mr. Reed and Mrs. Reed (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) used high-pressure sales tactics to create a false sense of urgency by telling Plaintiffs that Plaintiffs must act immediately to obtain the value of the investment or else Plaintiffs would lose the investment opportunity, which was a lie, and Mr. Reed and Mrs. Reed knew or should have known that there was no urgency because the Subject Property was overpriced. ("Timing Misrepresentation").

56. On June 24, 2005, Mr. Hong first entered into a real estate purchase contract to acquire the Subject Property for $435,000.00 by August 12, 2005 (the "Investment") in reliance on the advice, instructions, and misrepresentations of Mr. Reed and Mrs. Reed (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX). (*See* Ex. 6, "RE/MAX Extreme Addendum to Contract" of June 24, 2005).

57. Mr. Reed and Mrs. Reed (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) gave Plaintiffs such advice, instruction, and misrepresentations for the purpose of inducing Plaintiffs into making the Investment and entering into agreements as part of a holistic transaction.

58. In reasonable reliance on the purportedly expert advice, the instructions, the RE/MAX Agency Misrepresentation, the Value Misrepresentation, the Timing Misrepresentation, and the Conventional Financing Misrepresentation, Mr. Hong paid a $10,000.00 non-refundable deposit to First American Title Company ("FATCO") for the purchase of the Subject Property (Ex. 6); and Mr. Hong was required to close on the Subject Property by August 12, 2005.

59. Mr. Reed and Mrs. Reed (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX), in breach of Mr. Reeds', Mrs. Reeds', and RE/MAX's fiduciary duties, should have ensured that Mr. Hong's deposit would be refundable in the event of a failure, after good faith efforts, to obtain conventional financing, which would have been in Plaintiffs' best interests.

60. On July 1, 2005, Mr. Hong received a pre-approval letter from AAA Mortgage Corporation, Mr. Lee J. Meyer, for conventional financing for the purchase of the Subject Property for up to $445,000.00.

61. In July of 2005, Mr. Reed and Mrs. Reed (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) told Mr. Hong and Ms. Kim that the financing fell through.

62. Mr. Reed and Mrs. Reed (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) advised and instructed, pursuant to Mr. Reed's and Mrs. Reed's own self-interests, that Mr. Hong must obtain alternate financing, which was a breach of Mr. Reed's, Mrs. Reed's, RE/MAX's fiduciary duties because Mr. Reed and Mrs. Reed (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) intended to engage in predacious conduct to obtain commissions of nearly $18,000.00 despite the costs or risks to Plaintiffs.

63. Mr. Reed and Mrs. Reed (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) renewed the RE/MAX Agency Misrepresentation with respect to protecting Plaintiffs' interests associated with an alternate, unorthodox, and unusual financing arrangement.

64. Mr. Reed and Mrs. Reed (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) advised and instructed Mr. Hong and Ms. Kim to engage Mr. Reed's friend, Kearney, who was a licensed mortgage broker at that time for financing, but Mr. Reed and Mrs. Reed (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) assured Plaintiffs that Mr. Reed, Mrs. Reed, and RE/MAX would protect Plaintiffs' best interests in dealing with Kearney.

65. Kearney was a Nevada-licensed mortgage broker up until August 16, 2007.

66. Mr. Reed and Mrs. Reed (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) and Kearney told Plaintiffs that Plaintiffs must pay an additional earnest-money deposit of $100,000.00 by August 12, 2005 in order to prevent losing Plaintiffs' $10,000.00 non-refundable deposit and Plaintiffs' right to purchase the Subject Property.

67. In approximately July of 2005, in Las Vegas, Nevada, Kearney promised Plaintiffs that Kearney would act as a fiduciary with integrity and fidelity for Plaintiffs in protecting Plaintiffs' interests by serving as Plaintiffs' holder of bare legal title regarding the Subject Property, but Kearney knew that Kearney would be working for Kearney's own self-interests. ("Kearney Agency Misrepresentation.")

68. Plaintiffs did expect trust and confidence in the integrity and fidelity of Kearney based on Kearney having told Plaintiffs that Kearney had substantial expertise and competence in performing unconventional real estate financing and based on the guarantee expressed by Mr. Reed and Mrs. Reed (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) that Plaintiffs rights would be protected by Mr. Reed, Mrs. Reed, and RE/MAX.

69. Mr. Reed and Mrs. Reed (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) knew that Plaintiffs were unable to obtain the additional earnest-money deposit until after August 12, 2005 because Plaintiffs had relied on the Conventional Financing Misrepresentation.

70. Mr. Reed and Mrs. Reed (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) and Kearney advised and instructed Plaintiffs to

obtain a hard-money loan through Kearney and Mr. Frank Napoli, via a note or evidence of indebtedness, to acquire the $100,000.00 ("Note"). (Ex. 7.)

71. On approximately August 12, 2005, Kearney and Napoli purchased the Note for $100,000.00 for a term of 30 days in exchange for 7 points ($7,000.00) and 10% interest to assist Mr. Reed, Mrs. Reed, RE/MAX, and Plaintiffs with acquiring the Subject Property for Plaintiffs. (Ex. 7.)

72. The Note was the linchpin in a holistic transaction for the Investment, which formed the basis for the securities fraud by Mr. Reed, Mrs. Reed, and Kearney in furtherance of the interests of Mr. Reed, Mrs. Reed, RME, RE/MAX, and Kearney.

73. Mr. Reed and Mrs. Reed (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) further advised and instructed Plaintiffs to obtain the money to pay off the Note after August 12, 2005 from the equity in their personal residence, for which Mr. Reed, Mrs. Reed, RME, and RE/MAX had acquired confidential information through their fiduciary relationship with Plaintiffs.

74. On approximately August 7, 2005, Mr. Reed and Mrs. Reed (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) and Kearney told Plaintiffs that there was another shortage associated the financing requiring an immediate and additional $17,394.00 from Plaintiffs, which was the approximate amount of Mr. Reed's, Mrs. Reed's, and RE/MAX's commission for the transaction. (Ex. 8, HUD Settlement Statement at item no. 702.)

75. Mr. Reed and Mrs. Reed (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) and Kearney instructed Plaintiffs to pay the $17,394.00 directly to Kearney, as opposed to FATCO, by August 12, 2005 or else Plaintiffs would lose the Subject Property and the $10,000.00 deposit.

76. Plaintiffs, under the advice and direction of Mr. Reed and Mrs. Reed (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX), tendered the additional $17,394.00 to Kearney, as opposed to FATCO by the August 12, 2005 deadline.

77. Plaintiffs inquired why Mr. Reed and Mrs. Reed (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) had instructed Plaintiffs to

pay the $17,394.00 to Kearney instead of FATCO, but Mr. Reed and Mrs. Reed (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) and Kearney told Plaintiffs that the transaction was in Plaintiffs' best interest, which was a lie.

78. On approximately August 5, 2005, Mr. Reed and Mrs. Reed (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) and Kearney instructed Mr. Hong that Mr. Hong must assign Mr. Hong's right to purchase the Subject Property, as well as Mr. Hong's interest in the $10,000 deposit, to Kearney, which was not in Plaintiffs' best interests. (Ex. 6).

79. The Assignment was in writing, but there are no express terms that show any consideration or value given by Kearney or anyone else for the Assignment. (Ex. 6).

80. In exchange for the Assignment, Mr. Reed and Mrs. Reed (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) and Kearney orally promised that Mr. Kearney would acquire the Property for Plaintiffs and to act in Plaintiffs best interests to obtain the Subject Property for Plaintiffs.

81. Mr. Reed and Mrs. Reed (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) and Kearney engaged in a concert of action, and pursuant to a joint venture or partnership with each other, with respect to the Note, financing, and acquisition of the Property as fiduciaries for Plaintiffs.

C. The Unorthodox RE/MAX Option Agreement

82. Plaintiffs incorporate, repeat, and reallege every allegation set forth above.

83. On August 10, 2005, Mr. Reed and Mrs. Reed (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) and Kearney instructed Mr. Hong to enter into the RE/MAX Option Agreement, created by RE/MAX's attorney, for Plaintiffs and Kearney purportedly to create an equitable interest in the Property as an option to purchase the land from Kearney within 1 year. (Ex. 1.)

84. RE/MAX's attorney drafted the RE/MAX Option Agreement expressly for RE/MAX and, purportedly, as an accommodation for Mr. Hong and Kearny. (Ex. 1.)

85. Mr. Reed and Mrs. Reed told Plaintiffs that RE/MAX's counsel approved of and created a substantial part of the transactional structure with respect to the RE/MAX Option

Agreement to induce Plaintiffs into signing the RE/MAX Option Agreement. (Ex. 1, at p.1, fax cover sheet).

86. The RE/MAX Option Agreement provided means to enable, aid, and abet Kearney, Mr. Reed, and Mrs. Reed to commit fraud against Plaintiffs, such that the use of the RE/MAX Option Agreement was not in Plaintiffs' best interest.

87. The RE/MAX Option Agreement was a legally inconsistent, misleading, and confusing document that RE/MAX, Mr. Reed, Mrs. Reed, and Kearney used to confound the Plaintiffs' ability to understand the financing for the Investment.

88. The RE/MAX Option Agreement was legally inconsistent, in part, because Kearney had already promised to acquire the Subject Property for Plaintiffs as consideration for the Assignment.

89. The use of the RE/MAX Option Agreement by Mr. Reed, Mrs. Reed, RE/MAX, and Kearney was an act of bad faith on the part of RE/MAX, Mr. Reed and Mrs. Reed (for RE/MAX, Mr. Reed and Mrs. Reed and as agents for, and pursuant to a joint venture or partnership with, each other), and Kearney.

90. The RE/MAX Option Agreement stated that Kearney would receive a $10,000.00 fee as "as the sole consideration Kearney is to receive for acting as the facilitator to HONG acquiring the Property[.]" (Ex. 1 at ¶ 11.)

91. Mr. Reed and Mrs. Reed (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) and Kearney assured and warranted to Plaintiffs, pursuant to the Value Misrepresentation and the RE/MAX Agency Misrepresentation, that Plaintiffs would immediately recoup, from the then-current equity value of the Subject Property, the cost of fees and commissions associated with the financing arrangements, which Mr. Reed and Mrs. Reed (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) and Kearney knew or should have known was a lie.

92. Kearney had offered to obtain a loan for $315,000.00 and to acquire the Subject Property by the August 12, 2005 deadline for the purpose of inducing Plaintiffs into entering the agreements that Plaintiffs reasonably believed would enable Plaintiffs to acquire the Subject Property free and clear via an investment contract.

93. Pursuant to the terms of the RE/MAX Option Agreement, so long as Mr. Hong, first, paid closing costs for acquiring the Subject Property on August 12, 2005 and, second, paid Kearney's subsequent monthly mortgage payments associated with acquiring the loan from Cumorah to purchase the Subject Property, the RE/MAX Option Agreement allowed "Mr. Hong or Mr. Hong's nominee" (Ms. Kim) to exercise the option within one year by:

a. providing notice and a "non-refundable sum of Ten Thousand Dollars" (Ex. 1 at ¶ 4), which Hong completed by March 14, 2006; and

b. paying "the remaining principal and any interest accrued on the Note as of the date of closing, and no more" (Ex. 1 at ¶ 6), which Hong completed by March 14, 2006.

94. Pursuant to the terms of the RE/MAX Option Agreement, after Mr. Hong or Ms. Kim exercised the option, Kearney was required to perform as follows:

a. Kearney, "the Optionor[,] shall open an escrow (the "Escrow") with First American Title Company" (Ex. 1 at ¶ 5), which Kearney failed to do;

b. "Kearney shall convey the [Subject] Property to HONG or HONG'S nominee by grant, bargain and sale deed as customary in Nevada" (Ex. 1 at ¶ 5), which Kearney failed to do;

c. "At close of escrow, Kearny shall cause Escrow Agent to issue to Hong, Escrow Agent's standard CLTA owner's policy of title insurance . . . with coverage in the amount of the sum of no less than $435,000 . . . insuring good and marketable title" (Ex. 1 at ¶ 5), which Kearney failed to do; and

d. Kearney was required to convey the Subject Property to Mr. HONG after paying off the Cumorah loan (Ex. 1 at ¶ 6), which Kearney failed to do.

95. RE/MAX, Mr. Reed, and Mrs. Reed received consideration in the form of commissions or fees as a result of Plaintiffs' reliance on the validity of the RE/MAX Option Agreement.

96. In exchange, Mr. Reed and Mrs. Reed (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) told Plaintiffs that Mr. Reed and Mrs. Reed (in their own self-interests and as agents for each other and pursuant to a partnership

with RE/MAX) guaranteed that Plaintiffs would receive clear and marketable title if Plaintiffs signed the RE/MAX Option Agreement and exercised the option.

97. RE/MAX's choice to engage in, and construct, such an elaborate transaction was outside of a typical or normal franchisee/franchisor relationship.

98. RE/MAX exerted control over Mr. Reed and Mrs. Reed, above and beyond that of a franchisor, by instructing Mr. Reed and Mrs. Reed to use the RE/MAX Option Agreement prepared by RE/MAX's counsel for Plaintiffs' acquisition of the Subject Property through Kearney.

99. On approximately August 10, 2005, Mr. Reed and Mrs. Reed (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) and Kearney while at the offices of Mr. Reed, Mrs. Reed, and RE/MAX, assured Plaintiffs that, upon exercising the option, Mr. Reed and Mrs. Reed (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) and Kearney would ensure that Mr. Reed and Mrs. Reed (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) and Kearney would clear the Subject Property of any liens, pay the Cumorah loan, and transfer the title to the Subject Property, free and clear ("Clear Title Misrepresentation"), to Plaintiffs through the services of FATCO.

100. Mr. Reed and Mrs. Reed (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) and Kearney knew that the Clear Title Misrepresentation was false because Mr. Reed and Mrs. Reed (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) and Kearney intended to instruct Plaintiffs not to use an escrow service so that Kearney could abscond with Plaintiffs' money.

101. Mr. Reed and Mrs. Reed (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) and Kearney made the Clear Title Misrepresentation for the purpose of inducing Plaintiffs to enter into the bizarre RE/MAX Option Agreement, which only served the self-interests of Kearney, Mr. Reed, Mrs. Reed, and RE/MAX.

102. Kearney was required to acquire the Subject Property for the benefit of Plaintiffs; and Kearney had created a fiduciary relationship with Plaintiffs arising out of the holistic transaction involving the Assignment, the Note, and the RE/MAX Option Agreement, and the Kearney Agency Misrepresentation.

103. Kearney used the combined payments from Hong ($10,000.00 and $17,394.00, respectively) and the Note (Ex. 7, $100,000.00) towards the purchase price ($435,000.00) plus additional closing costs ($3,329.27), which should have resulted in a net principal balance of $310,935.27, not $315,000.00.

104. Instead, Kearney skimmed an additional $4,064.73 from Plaintiffs at the inception, which left a balance of $315,000.00, for which Kearney obtained a loan from Cumorah, which included Cumorah's corresponding, but utterly defective, lien against the Subject Property. (Ex. 8.)

105. The Cumorah lien was defective because it described the wrong property being subject to the lien and identified the wrong parcel number. (Ex. 11.)

106. Apparently, FATCO failed to identify that the Cumorah Deed of Trust described the wrong property before FATCO filed the documents for Cumorah.

107. FATCO had actual notice of the Cumorah lien.

108. Kearney failed to disclose the RE/MAX Option Agreement, the Kearney Agency Misrepresentation, or the nature of the transaction to Cumorah when Kearney obtained the loan.

109. On approximately August 15, 2005, Kearney, through FATCO's escrow services, acquired the Subject Property for the exclusive benefit of Plaintiffs. (Ex. 8.)

110. On August 15, 2005, Mr. Reed and Mrs. Reed (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) delivered, via the U.S. Mails, a letter with the RE/MAX logo, congratulating Mr. Hong "on the purchase of your land." (Ex. 9.)

111. Mr. Hong had not "purchased" the land as misstated in the RE/MAX letter. (Ex. 9.)

112. The fraudulent mailing misled Mr. Hong and Ms. Kim into believing that the property records showed some evidence of Plaintiffs' rights to the Subject Property.

113. The August 15, 2005 letter, with RE/MAX's logo, led Plaintiffs to believe that RE/MAX authorized, ratified, warranted, and guaranteed the transaction. (Ex. 9.)

114. Kearney had purchased the Subject Property to hold for the exclusive benefit of Plaintiffs, with no public record or notice of Plaintiffs' rights in the Subject Property.

D. August 15, 2005 Closing and Defective County Filings by FATCO and Cumorah

115. Plaintiffs incorporate, repeat, and reallege every allegation set forth above.

116. On August 15, 2005, FATCO prepared a HUD-1 Settlement Statement (printed on August 16, 2005 at 2:24 p.m.) for Cumorah (lender), Kearney (borrower), and Mr. and Mrs. Reyes (sellers). (Ex. 8.)

117. The HUD-1 states the correct parcel number and property description for the Subject Property. (Ex. 8.)

118. On August 15, 2005 at 3:06 p.m., FATCO requested filing of the Grant, Bargain and Sale Deed ("Reyes Deed") signed by grantors Santos and Karma Reyes, which states the correct parcel number and property description for the Subject Property. (Ex. 10.)

119. The Reyes Deed includes a Declaration of Value, which states the correct parcel number, but no property description, for the Subject Property. (Ex. 10.)

120. Both the Reyes Deed and the Declaration of Value state the Grantee/Buyer as Adam Kearney, but the Reyes Deed and the Declaration of Value show Mr. Hong's address: 2514 Breezy Cove, Las Vegas, NV. (Ex. 10.)

121. Neither the Reyes Deed nor the Declaration of Value mentions Cumorah or Cumorah's lien.

122. On August 15, 2005 at 3:06 p.m., FATCO requested filing of Cumorah's Deed of Trust ("First DOT"), which Kearney had previously signed as the "Borrower" on August 11, 2005, for property mistakenly identified as parcel number 177-19-701-008 ("Miranto Property");[2] and described incorrectly as, presumably, the Miranto Property (not the Subject Property). (Ex. 11.)

[2] The Miranto Property is parcel number 177-19-701-008; while the Subject Property is parcel number 177-19-801-008. The two properties are approximately 200 meters apart.

123. The First DOT included an Adjustable Rate Rider ("AR Rider"), which also mistakenly identified the Miranto Property. (Ex. 11.)

124. Cumorah failed to provide constructive notice of Cumorah's lien.

125. Kearney and FATCO had actual notice of Cumorah's lien.

126. The terms of the First DOT showed a loan for $315,000.00 with the full payment due by September 1, 2020. (Ex. 11.)

E. Plaintiffs' Full Payments for the Subject Property

127. Plaintiffs incorporate, repeat, and reallege every allegation set forth above.

128. On August 31, 2005, Plaintiffs, pursuant to the advice and counsel of Mr. Reed and Mrs. Reed (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) and Kearney obtained $108,710.98 by refinancing Plaintiffs' personal residence, through FATCO's escrow services, to pay off the forged Note from Kearney and Napoli.

129. Plaintiffs paid off the Note in full with the equity in Plaintiffs' home based on the set of fraudulent misrepresentations of Mr. Reed and Mrs. Reed (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) and Kearney, which served the self-interests of Mr. Reed, Mrs. Reed, RE/MAX, and Kearney, but not Plaintiffs.

130. Subsequently, Plaintiffs made Kearney's monthly payments, at the direction of Mr. Reed and Mrs. Reed (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) and Kearney via the U.S. Mails and in person, of $2,787.46, every month to service the loan from Cumorah until Plaintiffs obtained $330,000.00 cash from Korea in March of 2006 with which to exercise the option.

131. On March 14, 2006, Plaintiffs acquired $330,000.00 and Plaintiffs provided notice of intent to exercise the option and pay off Kearney's loan from Cumorah and the $10,000.00 commission, expecting Kearney to open escrow to clear the title to and transfer the Subject Property with title insurance, as required by the terms of the RE/MAX Option Agreement and/or the promise allegedly supporting the Assignment.

132. Plaintiffs requested that RE/MAX, Mr. Reed, Mrs. Reed, and Kearney open escrow with FATCO as stated in the RE/MAX Option Agreement. (Ex. 1 at ¶ 5.)

133. Mr. Reed and Mrs. Reed (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) and Kearney worked in combination to advise, instruct, and induce Plaintiffs not to use an escrow service by misleading Plaintiffs into believing that escrow was unnecessary and costly, which was a lie intended to complete the fraudulent scheme. ("Escrow Misrepresentation").

134. Mr. Reed and Mrs. Reed (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) and Kearney instructed Plaintiffs to deliver the $330,000.00 directly to Kearney, based on the Escrow Misrepresentation, for the purpose of accomplishing a fraud against the Plaintiffs.

135. Mr. Reed and Mrs. Reed (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) and Kearney had intended to abscond with Plaintiffs' $315,000.00 (plus commission and unlawful fees) without paying the Cumorah loan in order to allow the Subject Property, ultimately, to go into foreclosure, resulting in damage to Plaintiffs.

136. The scheme was an unlawful objective for the purpose of damaging Plaintiffs for the benefit of Mr. Reed, Mrs. Reed, RE/MAX, and Kearney.

137. The Escrow Misrepresentation was an act of malice by Mr. Reed and Mrs. Reed (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) and Kearney.

138. On March 14, 2006, Ms. Kim delivered $330,000.00 to Kearney's office and Kearny took the entire $330,000.00 while Mr. Reed and Mrs. Reed (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) and Kearney told Plaintiffs that Kearney would refund the excess fee amounts.

139. At that point, Plaintiffs had paid full value, $435,000.00, plus fees and costs, as instructed by Mr. Reed and Mrs. Reed (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) and Kearney to acquire the Subject Property in full satisfaction of Plaintiffs' obligations pursuant to the Assignment (Ex. 6), the Note (Ex. 7), and the RE/MAX Option Agreement (Ex. 1) for Kearney's acquisition of the Subject Property for Plaintiffs.

140. Plaintiffs satisfied all conditions and obligations required for Plaintiffs to receive clear and marketable title to the Subject Property.

141. Kearney received the benefit of the $10,000 flat-fee commission pursuant to the RE/MAX Option Agreement, plus an additional $5,000.00 excess.

142. Kearney never paid off the Cumorah lien for the Subject Property.

143. Kearney never transferred clear and marketable title to Plaintiffs.

144. Kearney's failure to transfer clear and marketable title to Plaintiffs was a breach of Kearney's fiduciary duties and a breach of the terms of the Assignment and the RE/MAX Option Agreement.

145. Kearney received the benefit of, and absconded with, Plaintiffs' money, which Kearney was obligated to pay to Cumorah, in derogation, exclusion, and defiance of Plaintiffs' rights and without a legal or equitable ground for retaining Plaintiffs' money and property.

146. Mr. Reed and Mrs. Reed (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) and Kearney received the benefit of, and wasted, Plaintiffs' $137,394.86 of equity in the Subject Property associated with the Assignment and the Note used to acquire the Subject Property.

147. Plaintiffs did not know and had no reason to know of the true facts.

148. Incidentally, on approximately March 15, 2006, Plaintiffs called Mr. Reed to notify Mr. Reed that Kearney had taken an excess fee amount of $2,750.00, but Plaintiffs did not know, and Plaintiffs had no reason to know, that Kearney intended to abscond with Plaintiffs' entire payment.

F. Concealment

149. Plaintiffs incorporate, repeat, and reallege every allegation set forth above.

150. In March of 2007, Plaintiffs requested assurances from Mr. Reed, Mrs. Reed, and Kearney that the title had been cleared and transferred and that the Cumorah loan had been paid.

151. On approximately March 15, 2006, Mr. Reed and Mrs. Reed (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) and Kearney reassured Plaintiffs, over the phone, that the title to the Subject Property had been cleared of the Cumorah lien as a result of Kearney's payment in full to Cumorah, which was a lie.

152. Mr. Reed and Mrs. Reed (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) and Kearney lied to Plaintiffs by stating that the Subject Property had been transferred clear and free of the Cumorah lien because Mr. Reed and Mrs. Reed (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) and Kearney intended to conceal the fraudulent acts of Mr. Reed and Mrs. Reed (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) and Kearney ("Transfer Misrepresentation"); and Plaintiffs did not know and had no reason to know the true facts.

153. On approximately March 16, 2007, Mr. Reed and Mrs. Reed (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) again told Plaintiffs that: (1) Kearney paid the Cumorah loan in full; (2) that the title to the Subject Property was clear; and (3) that Kearney had transferred clear and marketable title to Plaintiffs.

154. Mr. Reed and Mrs. Reed (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) were aware of their roles in promoting the fraudulent scheme and Mr. Reed and Mrs. Reed (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) knowingly and substantially assisted Kearney in committing the unlawful acts.

155. Mr. Reed and Mrs. Reed (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX), pursuant to a tacit or express agreement with Kearney to commit fraud against Plaintiffs, aided and abetted the unlawful scheme against Plaintiffs; and Mr. Reed and Mrs. Reed (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) and Kearney fraudulently concealed material information regarding the status of the Subject Property from Plaintiffs.

156. Subsequently, on June 26, 2006, via the telephone, Mr. Reed and Mrs. Reed (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) and Kearney, in a concert of action, reassured Plaintiffs again that all money for the purchase of the property had been received and transferred to appropriate parties and the property was clear of any liens and the full title was in Ms. Kim's or Mr. Hong's name, which were all lies intended to conceal the fraudulent scheme.

157. Plaintiffs reasonably relied on the instructions, advice, representations, and guarantees of Mr. Reed and Mrs. Reed (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX), and such instructions, advice, representations, and guarantees were given by Mr. Reed and Mrs. Reed (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) over the phone and in person in Las Vegas, Nevada to Plaintiffs.

158. That same day, Plaintiffs called Ms. Thomas (employee and agent of FATCO) to confirm the representations of Mr. Reed and Mrs. Reed (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) and Kearney regarding the status of the title and the liens on the Property because FATCO had recorded Cumorah's lien and the Kearney Deed.

159. FATCO held out Ms. Thomas as an agent for FATCO, and Ms. Thomas held herself out as an agent for FATCO, acting within the scope of Ms. Thomas' duties for FATCO with authority to bind FATCO to the acts of Ms. Thomas.

160. Initially, Ms. Thomas (acting at all times for herself and as an employee and agent of FATCO) informed Plaintiffs that the land was *not* clear of the liens and the property was still in Mr. Kearney's name, not Mr. Hong's or Ms. Kim's name.

161. Kearney had wrongfully exerted dominion over Plaintiffs money and Plaintiffs' Subject Property, in denial of, or inconsistent with Plaintiffs' equitable title or rights therein, in derogation, exclusion, or defiance of Plaintiffs' title or rights.

162. On June 27, 2006, Plaintiffs retained legal counsel, Mr. Zemelman of ATM&S, to enforce the terms of the agreements and to clear the title on the Subject Property.

163. Mr. Zemelman (for himself and as an agent and employee for ATM&S) assured Plaintiffs that Plaintiffs could expect trust and confidence in the integrity and fidelity of Mr. Zemelman and ATM&S with respect to protecting Plaintiffs' rights.

164. Plaintiffs did expect trust and confidence in the integrity and fidelity of Mr. Zemelman and ATM&S, based on Mr. Zemelman, for himself and as an agent for ATM&S, having told Plaintiffs that Mr. Zemelman and ATM&S had substantial expertise in real estate transactions and litigation.

165. Mr. Zemelman (for himself and as an agent and employee for ATM&S) called FATCO and spoke to Ms. Thomas, who told Mr. Zemelman that FATCO had subsequently "lost" the documents used for Kearney's purchase of the property.

166. Ms. Thomas lied to Mr. Zemelman for the purpose of delaying or preventing Plaintiffs from discovery of the true facts so that Ms. Thomas could speak to Kearney to formulate a plan.

167. On June 27, 2006, in response to Mr. Zemelman's entry into the case, Kearney and Ms. Thomas transferred the Subject Property *via* Grant, Bargain, and Sale Deed to Ms. Kim, while concealing the true fact that Kearney did not pay the Cumorah loan in full. (Ex. 12.)

168. Kearney and Ms. Thomas failed to disclose in any manner to Plaintiffs, Mr. Zemelman, or ATM&S the fact that Cumorah had not been paid.

169. Within a few days of June 27, 2006, Ms. Thomas reported back to Mr. Zemelman and ATM&S that the title for the Property was clear, that the Cumorah loan had been paid, and that the Subject Property had been transferred to Plaintiffs ("FATCO Misrepresentation") for the purpose of aiding in concealing the fraudulent scheme.

170. Ms. Thomas and FATCO, pursuant to a tacit or express agreement with Kearney and Mr. Reed and Mrs. Reed (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX), conspired to commit fraud against Plaintiffs.

171. Ms. Thomas and FATCO, Kearney, Mr. Reed and Mrs. Reed (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) aided and abetted each other to conceal the fraudulent scheme from Plaintiffs.

172. In July of 2006, Mr. Zemelman misinformed Plaintiffs that the Cumorah loan had been paid in full and that the Property had been transferred with clear and marketable title to Plaintiffs.

173. As of July of 2006, the defective Cumorah loan had not been paid.

174. Mr. Zemelman and ATM&S failed to ensure that the Cumorah loan had been paid.

175. Mr. Zemelman and ATM&S should have followed-up with a confirmation from Cumorah, instead of relying on untrustworthy people, and insisted on receiving a copy of the reconveyance of Cumorah's Deed of Trust.

176. Mr. Zemelman and ATM&S should have discovered that Cumorah had not been paid, and Mr. Zemelman and ATM&S should have filed an appropriate lawsuit.

177. Plaintiffs relied on Mr. Zemelman, ATM&S, and the misrepresentations of Ms. Thomas (as an employee and agent of FATCO), Mr. Reed and Mrs. Reed (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX), and Kearney to believe that the lien to Cumorah had been paid off in full or cleared and that the Property had been transferred to Plaintiffs with clear and marketable title and appropriate title insurance.

178. In fact, Kearney had absconded with Plaintiffs' $315,000.00 principal and the $10,000.00 commissions, and the $2,300.00 fees.

179. At a minimum, Mr. Zemelman's and ATM&S's failure to discover the cloud on Plaintiffs' title and failure to protect Plaintiffs' rights caused Plaintiffs to lose the equity in the property arising out of Plaintiffs' cash investment totaling approximately $130,394.86.

180. As a result of Plaintiffs' full payments for the Property, Mr. Reed, Mrs. Reed, RE/MAX, and FATCO received all of their respective commissions and fees from Plaintiffs' payments associated with the Subject Property; and ATM&S received its attorneys fees from Plaintiffs

181. In 2006, after Kearney and FATCO transferred the Property to Plaintiffs, Kearney continued to cause monthly mortgage payments to be made to Cumorah until July of 2008.

182. Kearney made the monthly payments to Cumorah to conceal the fact that Kearny never used Plaintiffs' money to pay off or clear the Cumorah loan.

183. Cumorah knew that Cumorah had not provided constructive notice of Cumorah's claim against the Subject Property.

184. On October 29, 2008, FATCO requested filing of Cumorah's re-recorded DOT, which still contained the wrong parcel identification number, to provide a "correct legal description" for the Subject Property. (Ex. 13.)

185. Cumorah's re-recorded DOT was slander against Plaintiffs' title.

186. On October 29, 2008, FATCO had constructive notice, in addition to the prior actual notice, of Cumorah's claim against the Subject Property.

187. Plaintiffs did not discover the fraud until, December 16, 2008, when Plaintiffs received a notice of foreclosure for the Cumorah Lien—a lien that Mr. Reed and Mrs. Reed (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) and Kearney never cleared, and a lien that Mr. Zemelman, ATM&S, Ms. Thomas, and FATCO had claimed was cleared.

188. As a result of the concerted, malicious, oppressive and fraudulent actions of Kearney, Mr. Reed and Mrs. Reed (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) and Ms. Thomas (employee and agent of FATCO), the Plaintiffs lost approximately $462,000.00, in an amount to be proved at trial.

F. Cumorah's Wrongful Foreclosure Against Plaintiffs as Bona Fide Purchasers

189. Plaintiffs incorporate, repeat, and reallege every allegation set forth above.

190. On December 15, 2008, LandAmerica Title requested filing of Valley Foreclosure Services' Notice of Breach and Election to Sell under Deed of Trust, on behalf of the purported Trustor, Cumorah, regarding Plaintiffs' Subject Property. (Ex. 14.)

191. The Notice of Breach and Election to Sell was slander against Plaintiffs' title.

192. On December 15, 2008, Valley Foreclosure Services delivered to Plaintiffs a Notice of Default ("Notice of Default"), describing Plaintiffs' Subject Property. (Ex. 15.)

193. On December 16, 2008, Plaintiffs received a Notice of Default from Valley Foreclosure Services.

194. Plaintiffs had not defaulted on any obligations to any party regarding the Subject Property.

195. Plaintiffs had not breached any condition or failed to perform in any manner.

196. The Notice of Default informed Plaintiffs that Cumorah intended to foreclose on Plaintiffs' Subject Property. (Exs. 14-15.)

197. The Notice of Default contained the Subject Property's correct parcel identification number.

198. The Notice of Default was the first document that Cumorah filed or caused to be filed at the Clark County Assessor's Office with the Subject Property's parcel identification number.

199. December 16, 2008 was the first time Plaintiffs discovered that Cumorah had asserted a claim against Plaintiffs' Subject Property.

G. Plaintiffs Hired Charles M. Damus, Esq. to Protect Plaintiffs' Rights

200. Plaintiffs incorporate, repeat, and reallege every allegation set forth above.

201. On December 17, 2008, Plaintiffs hired Damus as Plaintiffs' attorney to protect Plaintiffs' interests and rights regarding the Subject Property.

202. Damus agreed to represent Plaintiffs as Plaintiffs' attorney and to protect Plaintiffs' rights.

203. Damus informed Plaintiffs that Plaintiffs should trust Damus to act in Plaintiffs' best interest with integrity, fidelity, and competence in protecting Plaintiffs' rights.

204. Plaintiffs believed that Plaintiffs could trust Damus to act competently with integrity and fidelity and in Plaintiffs' best interest.

205. Damus failed to create a written legal services agreement regarding Damus's duty to act as Plaintiffs' attorney to protect Plaintiffs' best interest.

206. Damus attempted settlement with Kearney up until March 17, 2009, when Damus advised Plaintiffs to proceed with litigation.

207. On March 19, 2009, Valley Foreclosure Services delivered notice of the trustee's sale regarding Plaintiffs' Subject Property. (Ex. 16.)

208. Damus represented that, on March 30, 2009, he began drafting a complaint on behalf of Plaintiffs.

209. Prior to foreclosing, Cumorah and Valley Foreclosure Services knew that Plaintiffs owned the Subject Property and that Cumorah and Valley Foreclosure Services had failed to provide constructive notice of Cumorah's lien.

210. Prior to foreclosing, Cumorah and Valley Foreclosure Services ignored the warning signs despite the fact that Cumorah and Valley Foreclosure Services knew of the potential mix-up.

211. Cumorah and Valley Foreclosure Services consciously disregarded the probable harmful consequences of proceeding with the foreclosure on the Subject Property.

212. Despite such knowledge, Cumorah and Valley Foreclosure Services foreclosed on the Subject Property and such foreclosure was malicious, oppressive, and fraudulent pursuant to NRS 42.005.

213. On April 20, 2009, Lawyers Title of Nevada requested filing of Cumorah's "Trustee's Deed Upon Sale" of Plaintiffs' Subject Property. (Ex. 17.)

214. The Trustee's Deed Upon Sale was slander against Plaintiffs' title as being false, malicious, and causing special damages including, but not limited to, approximately $60,000.00 in attorneys' fees.

215. Initially, within Damus's draft complaint, Damus apparently included Cumorah and Valley Foreclosure Services as defendants.

216. Subsequently, in April of 2009, and after several discussions with Cumorah and Valley Foreclosure Services, Damus elected to remove Cumorah and Valley Foreclosure Services as defendants.

217. Damus, in breach of his duty to perform competently, failed to discover that, in August of 2005, Cumorah had not given constructive notice of Cumorah's lien against the Subject Property such that Plaintiffs, in June of 2006, became *bona fide* purchasers in good faith and without notice of the Cumorah lien.

218. By September of 2009 (ten months after Plaintiffs retained Damus), Damus had failed to complete the drafting of the complaint.

219. By September of 2009, Damus's draft complaint failed to address, at a minimum, Plaintiffs' rights to the Subject Property arising out of Plaintiffs' protection pursuant to NRS 111.325 ("bona fide purchaser[s]") and the covenants of the June 27, 2006 Grant, Bargain, and Sale Deed.

220. By September of 2009, Damus had charged Plaintiffs approximately $27,000.00, of which Plaintiffs had paid approximately $13,000.00.

221. Plaintiffs terminated Damus.

222. Damus's failure to protect Plaintiffs' status as *bona fide* purchasers had caused Plaintiffs to lose the Subject Property.

223. As a proximate cause of Damus's failure to protect Plaintiffs' status as *bona fide* purchasers, Plaintiffs lost all of their cash equity paid prior to August 15, 2005 ($134,394.00) and the remaining cash paid to exercise the Option Agreement ($325,000.00) in March of 2006.

FIRST CAUSE OF ACTION

FEDERAL SECURITIES FRAUD (17 C.F.R. § 240.10B-5)

(Against Mr. Reed, Mrs. Reed, RME and RE/MAX)

224. Plaintiffs incorporate, repeat, and reallege every allegation set forth above.

225. Mr. Reed, Mrs. Reed, and RME (as co-conspirators, partners, and pursuant to a concert of action with each other and RE/MAX) used the instrumentalities of interstate commerce, *e.g.*, the U.S. Mails, in connection with the purchase or sale of the Note and Mr. Reed, Mrs. Reed, and RME (as co-conspirators, partners, and pursuant to a concert of action with each other and RE/MAX) instructed Plaintiffs to use the U.S. Mails for payments and correspondence related to the Note. (Ex. 7.)

226. The Note is a security under federal securities law as a "note" or an "evidence of indebtedness."

227. Mr. Reed, Mrs. Reed, and RME (as co-conspirators, partners, and pursuant to a concert of action with each other and RE/MAX) made the RE/MAX Agency Misrepresentation, the Value Misrepresentation, the Timing Misrepresentation, the Conventional Financing Misrepresentation, the Clear Title Misrepresentation, the Escrow Misrepresentation, and the Transfer Misrepresentation (collectively, the "RE/MAX Misrepresentations") to Plaintiffs, which were all false, in connection with the purchase or sale of the Note.

228. Mr. Reed, Mrs. Reed, and RME (as co-conspirators, partners, and pursuant to a concert of action with each other and RE/MAX) knew or should have known that the RE/MAX Misrepresentations were false at the time when Mr. Reed, Mrs. Reed, and RME (as co-conspirators, partners, and pursuant to a concert of action with each other and RE/MAX) made the RE/MAX Misrepresentations to Plaintiffs.

229. Plaintiffs have alleged facts sufficient to show a strong inference of scienter because Mr. Reed, Mrs. Reed, and RME (as co-conspirators, partners, and pursuant to a concert of action with each other and RE/MAX) engaged in predatory and opportunistic behavior despite Mr. Reed's and Mrs. Reed's (as co-conspirators, partners, and pursuant to a concert of action with each other and RE/MAX) fiduciary duties to protect Plaintiffs interests.

230. Plaintiffs have alleged facts sufficient to show a strong inference of scienter as demonstrated by Mr. and Mrs. Reed's subsequent concealment of the fraud.

231. The Plaintiffs' justifiable reliance on the RE/MAX Misrepresentations directly caused damages in the form of economic losses to Plaintiffs in an amount to be determined at trial.

SECOND CAUSE OF ACTION

FEDERAL SECURITIES FRAUD (17 C.F.R. § 240.10B-5)

(Against Kearney)

232. Plaintiffs incorporate, repeat, and reallege every allegation set forth above.

233. Kearney used the instrumentalities of interstate commerce, *e.g.,* the U.S. Mails, in connection with the purchase or sale of the Note and Kearney instructed Plaintiffs to use the U.S. Mails for payments and correspondence related to the Note. (Ex. 7).

234. The Note is a security under federal securities law as a "note" or an "evidence of indebtedness," at a minimum. (*Id.*)

235. Kearney made the Kearney Agency Misrepresentation, the Clear Title Misrepresentation, the Escrow Misrepresentation, and the Transfer Misrepresentation (collectively, the "Kearney Misrepresentations"), which were all false, in connection with the purchase or sale of the Note.

236. Kearney knew or should have known that the Kearney Misrepresentations were false at the time when Kearney made the Kearney Misrepresentations to Plaintiffs.

237. Plaintiffs have alleged facts sufficient to show a strong inference of scienter because Kearney engaged in predatory and opportunistic behavior despite Kearney's fiduciary duties.

238. Plaintiffs have alleged facts sufficient to show a strong inference of scienter as demonstrated by Kearney's subsequent concealment of the fraud.

239. The Plaintiffs' justifiable reliance on the Kearney Misrepresentations directly caused damages in the form of economic losses to Plaintiffs in an amount to be determined at trial.

THIRD CAUSE OF ACTION

CONSPIRACY TO COMMIT FEDERAL SECURITIES FRAUD

(Against Mr. Reed, Mrs. Reed, RME, RE/MAX, and Kearney)

240. Plaintiffs incorporate, repeat, and reallege every allegation set forth above.

241. Mr. Reed, Mrs. Reed, and RME (as co-conspirators, partners, and pursuant to a concert of action with each other and RE/MAX) and Kearney combined and participated in the fraudulent scheme to commit securities fraud against Plaintiffs pursuant to a tacit or express agreement.

242. Mr. Reed, Mrs. Reed, and RME (as co-conspirators, partners, and pursuant to a concert of action with each other and RE/MAX) and Kearney performed unlawful overt acts in furtherance of their agreement to commit securities fraud against Plaintiffs, which caused damages to Plaintiffs in an amount to be determined at trial.

FOURTH CAUSE OF ACTION

NEVADA STATE SECURITIES FRAUD (NRS 90.660)

(Against the Mr. Reed, Mrs. Reed, RME, and RE/MAX)

243. Plaintiffs incorporate, repeat, and reallege every allegation set forth above.

244. The Note is a security under Nevada law. (Ex. 7).

245. Mr. Reed, Mrs. Reed, and RME (as co-conspirators, partners, and pursuant to a concert of action with each other and RE/MAX) engaged in the offer, purchase, or sale of the Note in violation of NRS 90.310(1).

246. Plaintiffs have been damaged by Mr. Reed's and Mrs. Reed's (as co-conspirators, partners, and pursuant to a concert of action with each other and RE/MAX) fraudulent sale of the security to Plaintiffs in an amount to be determined at trial.

FIFTH CAUSE OF ACTION

NEVADA STATE SECURITIES FRAUD (NRS 90.660)

(Against Kearney)

247. Plaintiffs incorporate, repeat, and reallege every allegation set forth above.

248. Kearney engaged in the offer, purchase, or sale of the Note in violation of NRS 90.310(1).

249. Plaintiffs have been damaged by Kearney's fraudulent sale of the security to Plaintiffs in an amount to be determined at trial.

SIXTH CAUSE OF ACTION

FRAUDULENT OR INTENTIONAL MISREPRESENTATION

(Against Mr. Reed, Mrs. Reed, RME and RE/MAX)

250. Plaintiffs incorporate, repeat, and reallege every allegation set forth above.

251. Mr. Reed, Mrs. Reed, and RME (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) made the RE/MAX Misrepresentations which were all false.

252. Mr. Reed, Mrs. Reed, and RME (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) knew that the RE/MAX Misrepresentations were false or Mr. Reed, Mrs. Reed, and RME (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) knew that Mr. Reed, Mrs. Reed, and RME (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) had insufficient bases for making the RE/MAX Misrepresentations.

253. Mr. Reed, Mrs. Reed, and RME (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) made the RE/MAX Misrepresentations with the intent to induce Plaintiffs to act or refrain from acting upon the RE/MAX Misrepresentations.

254. Plaintiffs were damaged because of the RE/MAX Misrepresentations in an amount to be determined at trial.

SEVENTH CAUSE OF ACTION

FRAUDULENT OR INTENTIONAL MISREPRESENTATION

(Against Kearney)

255. Plaintiffs incorporate, repeat, and reallege every allegation set forth above.

256. Kearney made the Kearney Misrepresentations, which were all false.

257. Kearney knew that the Kearney Misrepresentations were false or Kearney knew that Kearney had insufficient bases for making the Kearney Misrepresentations.

258. Kearney made the Kearney Misrepresentations with the intent to induce Plaintiffs to act or refrain from acting upon the Kearney Misrepresentations.

259. Plaintiffs were damaged because of the Kearney Misrepresentations in an amount to be determined at trial.

EIGHTH CAUSE OF ACTION

FRAUDULENT OR INTENTIONAL MISREPRESENTATION

(Against Ms. Thomas and FATCO)

260. Plaintiffs incorporate, repeat, and reallege every allegation set forth above.

261. FATCO consented to, authorized, or ratified the FATCO Misrepresentation which was false.

262. Ms. Thomas made the FATCO Misrepresentation which was within the scope of Ms. Thomas' duties for FATCO.

263. FATCO knew that FATCO Misrepresentation was false or FATCO knew that FATCO had an insufficient basis for making the FATCO Misrepresentation.

264. FATCO made FATCO Misrepresentation with the intent to induce Plaintiffs to act or refrain from acting upon FATCO Misrepresentation.

265. Plaintiffs were damaged because of the FATCO Misrepresentation in an amount to be determined at trial.

NINTH CAUSE OF ACTION

FRAUD IN THE INDUCEMENT

(Against Mr. Reed, Mrs. Reed, RME, and RE/MAX)

266. Plaintiffs incorporate, repeat, and reallege every allegation set forth above.

267. Mr. Reed, Mrs. Reed, and RME (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) made the Value Misrepresentation, the Timing Misrepresentation, and the Clear Title Misrepresentation (collectively, the "RE/MAX Contract Misrepresentations"), which were all false and the RE/MAX Contract Misrepresentations were all material to the transaction.

268. Mr. Reed, Mrs. Reed, and RME (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) knew that the RE/MAX Contract Misrepresentations were false or Mr. Reed, Mrs. Reed, and RME (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) had insufficient bases for making the RE/MAX Contract Misrepresentations.

269. Mr. Reed, Mrs. Reed, and RME (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) intended to induce Plaintiffs to consent to the formation of the Assignment, Note, and RE/MAX Option Agreement (collectively, "Contracts") based on the RE/MAX Contract Misrepresentations.

270. Plaintiffs justifiably relied on RE/MAX Contract Misrepresentations.

271. Plaintiffs were damaged by relying on the RE/MAX Contract Misrepresentations in an amount to be determined at trial.

TENTH CAUSE OF ACTION

FRAUD IN THE INDUCEMENT

(Against Kearney)

272. Plaintiffs incorporate, repeat, and reallege every allegation set forth above.

273. Kearney made the Clear Title Misrepresentation (the "Kearney Contract Misrepresentation"), which was false and material to the transaction.

274. Kearney knew that Kearney Contract Misrepresentation was false or Kearney had insufficient bases for making Kearney Contract Misrepresentation.

275. Kearney intended to induce Plaintiffs to consent to the formation of the Contracts based on the Kearney Contract Misrepresentation.

276. Plaintiffs justifiably relied on the Kearney Contract Misrepresentations.

277. Plaintiffs were damaged by relying on the Kearney Contract Misrepresentations in an amount to be determined at trial.

ELEVENTH CAUSE OF ACTION

FRAUDULENT CONCEALMENT

(Against Mr. Reed, Mrs. Reed, RME, RE/MAX, Kearney, and FATCO)

278. Plaintiffs incorporate, repeat, and reallege every allegation set forth above.

279. Mr. Reed, Mrs. Reed, and RME (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX), Kearney, and FATCO concealed or suppressed material facts in making their respective misrepresentations.

280. Mr. Reed, Mrs. Reed, and RME (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) and Kearney concealed or suppressed material facts in making the Escrow Misrepresentation and the Transfer Misrepresentation.

281. FATCO concealed or suppressed material facts in making the FATCO Misrepresentation.

282. Mr. Reed, Mrs. Reed, and RME (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX), Kearney, and FATCO were under duties to disclose the facts to the Plaintiffs.

283. Mr. Reed, Mrs. Reed, and RME (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX), Kearney, and FATCO intentionally concealed or suppressed the facts with the intent to defraud the Plaintiffs; that is, Mr. Reed, Mrs. Reed, and RME (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX), Kearney, and FATCO concealed or suppressed the facts for the purpose of inducing the Plaintiffs to act differently than the Plaintiffs would have if the Plaintiffs had known the facts.

284. The Plaintiffs were unaware of the facts and would have acted differently if the Plaintiffs had known of the concealed or suppressed facts.

285. As a result of the concealment or suppression of the facts, the Plaintiffs sustained damages in an amount to be determined at trial.

TWELFTH CAUSE OF ACTION

CONVERSION

(Against Kearney)

286. Plaintiffs incorporate, repeat, and reallege every allegation set forth above.

287. Kearney engaged in a distinct act of dominion over Plaintiffs' money and equitable/legal rights in the Subject Property.

288. Kearney wrongfully exerted control over Plaintiffs' money and equitable/legal rights in the Subject Property in denial of, or inconsistent with Plaintiffs' title or rights therein.

289. Kearney wrongfully exerted control over Plaintiffs' money and equitable/legal rights in the Subject Property in derogation, exclusion, or defiance of such title or rights.

THIRTEENTH CAUSE OF ACTION

CONSTRUCTIVE FRAUD

(Against Mr. Reed, Mrs. Reed, RME, RE/MAX, and Kearney)

290. Plaintiffs incorporate, repeat, and reallege every allegation set forth above.

291. Mr. Reed, Mrs. Reed, and RME (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) and Kearney owed a legal or equitable duty to Plaintiffs arising out of fiduciary relationships.

292. Mr. Reed, Mrs. Reed, and RME (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX), Kearney, and FATCO breached that duty by misrepresenting or concealing material facts.

293. Plaintiff sustained damages due to Mr. Reed's, Mrs. Reed's, RE/MAX's, Kearney's, and FATCO's breaches in an amount to be determined at trial.

FOURTEENTH CAUSE OF ACTION

NEGLIGENT MISREPRESENTATION

(Against Mr. Reed, Mrs. Reed, RME, and RE/MAX)

294. Plaintiffs incorporate, repeat, and reallege every allegation set forth above.

295. Mr. Reed, Mrs. Reed, and RME (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) advised Plaintiffs that Kearney was reliable and trustworthy and Mr. Reed, Mrs. Reed, and RME (in their own self-interests and as agents for

each other and pursuant to a partnership with RE/MAX) made the Value Misrepresentation, the Timing Misrepresentation, the Conventional Financing Misrepresentation, the Clear Title Misrepresentation, the Escrow Misrepresentation, and the Transfer Misrepresentation.

296. Mr. Reed, Mrs. Reed, and RME (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) breached Mr. Reed's, Mrs. Reeds', and RE/MAX's duty to exercise reasonable care or competence in obtaining or communicating information to Plaintiff by making such misrepresentations.

297. On approximately March 16, 2006, Mr. Reed, Mrs. Reed, and RME (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) had told Plaintiffs that the title to the Subject Property was clear, that the Cumorah loan had been paid, and that Kearney had transferred clear title to Plaintiffs.

298. Plaintiffs justifiably relied on Mr. Reed's and Mrs. Reed's (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) misrepresentations because Mr. Reed, Mrs. Reed, and RME (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) touted themselves as reliable, honest, and competent experts in the area of real estate transactions, while Plaintiffs had little or no experience with American real estate law.

299. Plaintiff suffered damages as a result, in amount to be determined at trial.

FIFTEENTH CAUSE OF ACTION

NEGLIGENT MISREPRESENTATION

(Against Kearney)

300. Plaintiffs incorporate, repeat, and reallege every allegation set forth above.

301. Kearney made the Clear Title Misrepresentation, the Escrow Misrepresentation, and the Transfer Misrepresentation.

302. Kearney breached Kearney's duty to exercise reasonable care or competence in obtaining or communicating information to Plaintiffs by making such misrepresentations.

303. Plaintiffs justifiably relied on this information because Kearney touted Kearney as a reliable expert in the area of real estate finance, while Plaintiffs had little or no experience with American real estate financing.

304. Plaintiff suffered damages as a result, in amount to be determined at trial.

SIXTEENTH CAUSE OF ACTION

CIVIL CONSPIRACY

(Against Mr. Reed, Mrs. Reed, RME, RE/MAX, Kearney, and FATCO)

305. Plaintiffs incorporate, repeat, and reallege every allegation set forth above.

306. Mr. Reed, Mrs. Reed, and RME (in their own self-interests and as agents for each other and pursuant to a partnership and conspiracy with RE/MAX) and FATCO knew that Kearney had promised to acquire the Property for Plaintiffs and not for Kearney.

307. Mr. Reed, Mrs. Reed, and RME (in their own self-interests and as agents for each other and pursuant to a partnership and conspiracy with RE/MAX), Kearney, and FATCO a combined and conspired to engage in a concert of action pursuant to an express or tacit agreement intended to accomplish the fraud against Plaintiffs for the purpose of harming Plaintiffs to the benefit of Mr. Reed, Mrs. Reed, and RME (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX), Kearney, and FATCO.

308. Plaintiffs were damaged as a result of the acts of the coconspirators in an amount to be determined at trial.

SEVENTEENTH CAUSE OF ACTION

CONCERT OF ACTION

(Against Mr. Reed, Mrs. Reed, RME, and RE/MAX, Kearney, and FATCO)

309. Plaintiffs incorporate, repeat, and reallege every allegation set forth above.

310. Mr. Reed, Mrs. Reed, and RME (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX), Kearney, and FATCO a combined and conspired to engage in a concert of action pursuant to an express or tacit agreement to accomplish the fraud against Plaintiffs to benefit Mr. Reed, Mrs. Reed, and RME (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX), Kearney, and FATCO.

311. Plaintiffs were damaged as a result of the acts of the coconspirators in an amount to be determined at trial.

EIGHTEENTH CAUSE OF ACTION

AIDING & ABETTING

(Against Mr. Reed, Mrs. Reed, RME, RE/MAX, Kearney, Ms. Thomas, and FATCO)

312. Plaintiffs incorporate, repeat, and reallege every allegation set forth above.

313. Mr. Reed, Mrs. Reed, and RME (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX), Kearney, Ms. Thomas, and FATCO each engaged in fraudulent or tortious acts that injured Plaintiffs.

314. Mr. Reed, Mrs. Reed, and RME (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) was aware of Mr. Reed's and Mrs. Reed's (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) role in promoting the fraudulent or tortious acts of Kearney, Ms. Thomas, and FATCO at the time when Mr. Reed, Mrs. Reed, and RME (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) assisted Kearney, Ms. Thomas, and FATCO.

315. Kearney was aware of Kearney's role in promoting the fraudulent or tortious acts of Mr. Reed, Mrs. Reed, and RME (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) Ms. Thomas, and FATCO at the time when Kearney assisted Mr. Reed, Mrs. Reed, and RME (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX), Ms. Thomas, and FATCO.

316. Ms. Thomas and FATCO were aware of Ms. Thomas's and FATCO's role in promoting the fraudulent or tortious acts of Mr. Reed, Mrs. Reed, and RME (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) and Kearney at the time when Ms. Thomas and FATCO assisted Mr. Reed, Mrs. Reed, and RME (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) and Kearney.

317. Plaintiffs were damaged by the acts of aiding and abetting by Mr. Reed, Mrs. Reed, and RME (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX), Kearney, Ms. Thomas, and FATCO in an amount to be determined at trial.

NINETEENTH CAUSE OF ACTION

NEGLIGENT UNDERTAKING TO PERFORM SERVICES

(Against Kearney)

318. Plaintiffs incorporate, repeat, and reallege every allegation set forth above.

319. Kearney undertook to render services as Plaintiffs' fiduciary in Kearney's practice as a licensed mortgage broker and in Kearney's role in acquiring the Property for the benefit of Plaintiffs.

320. Kearney failed to exercise the skill and knowledge normally possessed by members of that profession or trade in good standing in similar communities.

321. Plaintiffs were damaged by Kearney's negligence in an amount to be determined at trial.

TWENTIETH CAUSE OF ACTION

NEGLIGENT UNDERTAKING TO PERFORM SERVICES

(Against Mr. Reed, Mrs. Reed, RME, and RE/MAX)

322. Plaintiffs incorporate, repeat, and reallege every allegation set forth above.

323. Mr. Reed, Mrs. Reed, and RME (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) undertook to render services as Plaintiffs' fiduciary in the practice of licensed real estate agents.

324. Mr. Reed, Mrs. Reed, and RME (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) failed to exercise the skill and knowledge normally possessed by members of that profession or trade in good standing in similar communities.

325. Plaintiffs were damaged by Mr. Reed's and Mrs. Reed's (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) negligence in an amount to be determined at trial.

TWENTY-FIRST CAUSE OF ACTION

NEGLIGENT UNDERTAKING TO PERFORM SERVICES

(Against ATM&S and Mr. Zemelman)

326. Plaintiffs incorporate, repeat, and reallege every allegation set forth above.

327. ATM&S and Mr. Zemelman undertook to render services in the practice of licensed attorneys to ensure that Plaintiffs had obtained clear and marketable title for the Property and, generally, to protect Plaintiffs' rights.

328. ATM&S and Mr. Zemelman had a duty to perform competent due diligence.

329. ATM&S and Mr. Zemelman failed to exercise the skill and knowledge normally possessed by members of that profession or trade in good standing in similar communities because ATM&S relied exclusively on the misrepresentations of a self-serving Defendant, FATCO, *via* Ms. Gina Thomas, after ATM&S and Mr. Zemelman knew that FATCO and Ms. Gina Thomas were unreliable, dishonest, and self-serving.

330. Plaintiffs were damaged in an amount to be determined at trial because Plaintiffs relied on ATM&S and Mr. Zemelman to believe that the Subject Property had been transferred with clear and marketable title, but the Cumorah initiated foreclosure proceedings for the Subject Property the following year, which resulted in Plaintiffs utter loss of the Property.

TWENTY-SECOND CAUSE OF ACTION

NEGLIGENT UNDERTAKING TO PERFORM SERVICES

(Against Ms. Thomas and FATCO)

331. Plaintiffs incorporate, repeat, and reallege every allegation set forth above.

332. Ms. Thomas and FATCO undertook to render services in the practice of licensed escrow and real estate title insurance agents in facilitating Kearny's acquisition of the Subject Property for Plaintiffs.

333. Ms. Thomas and FATCO failed to exercise the skill and knowledge normally possessed by members of that profession or trade in good standing in similar communities and Ms. Thomas and FATCO attempted to conceal Kearney's fraudulent acts.

334. Plaintiffs were damaged by Ms. Thomas's and FATCO's negligence in an amount to be determined at trial.

TWENTY-THIRD CAUSE OF ACTION

BREACH OF FIDUCIARY DUTIES

(Against Mr. Reed, Mrs. Reed, RME, and RE/MAX)

335. Plaintiffs incorporate, repeat, and reallege every allegation set forth above.

336. Mr. Reed, Mrs. Reed, and RME (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) undertook to accept a duty to protect Plaintiffs' rights and to act for the benefit of Plaintiffs with integrity and fidelity.

337. Plaintiffs did expect trust and confidence in the integrity and fidelity of Mr. Reed, Mrs. Reed, and RE/MAX.

338. Mr. Reed, Mrs. Reed, and RME (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) breached Mr. Reed's and Mrs. Reed's (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) fiduciary duties by acting with reckless disregard for Plaintiffs' rights.

339. Mr. Reed's and Mrs. Reed's (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) breach of Mr. Reed's and Mrs. Reed's (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) fiduciary duties damaged Plaintiffs in an amount to be determined at trial.

TWENTY-FOURTH CAUSE OF ACTION

BREACH OF FIDUCIARY DUTIES

(Against Kearney)

340. Plaintiffs incorporate, repeat, and reallege every allegation set forth above.

341. Kearney undertook to accept a duty to protect Plaintiffs' rights and to act for the benefit of Plaintiffs with integrity and fidelity.

342. Plaintiffs did expect trust and confidence in the integrity and fidelity of Kearney.

343. Kearney breached Kearney's fiduciary duties by acting with reckless disregard for Plaintiffs' rights.

344. Kearney's breach of Kearney's fiduciary duties damaged Plaintiffs in an amount to be determined at trial.

TWENTY-FIFTH CAUSE OF ACTION

BREACH OF FIDUCIARY DUTIES

(Against ATM&S and Zemelman)

345. Plaintiffs incorporate, repeat, and reallege every allegation set forth above.

346. ATM&S and Zemelman undertook to accept a duty to protect Plaintiffs' rights and to act for the benefit of Plaintiffs with integrity, fidelity, and competent representation.

347. ATM&S and Zemelman breached ATM&S's and Zemelman's fiduciary duties by acting with reckless disregard for Plaintiffs' rights.

348. ATM&S's and Zemelman's breach of ATM&S's and Zemelman's fiduciary duties damaged Plaintiffs in an amount to be determined at trial.

TWENTY-SIXTH CAUSE OF ACTION

BREACH OF CONTRACT

(Against Kearney, Mr. Reed, Mrs. Reed, RME, and RE/MAX)

349. Plaintiffs incorporate, repeat, and reallege every allegation set forth above.

350. Plaintiffs paid the full price, $435,000.00, plus other fees and costs, for the Property.

351. Plaintiffs complied with the terms of the RE/MAX Option Agreement and other financing arrangements as instructed by Mr. Reed, Mrs. Reed, and RME (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) and Kearney for Plaintiffs to be entitled to own the Property free and clear of mortgage liens with marketable title.

352. Plaintiff satisfied all conditions precedent as required by the terms of the RE/MAX Option Agreement and as required by Mr. Reed, Mrs. Reed, and RME (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) and Kearney.

353. Mr. Reed, Mrs. Reed, and RME (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) and Kearney received the benefit of: (1) the Plaintiffs' performance under the terms of the RE/MAX Option Agreement by Plaintiffs' payment of $330,000.00 directly to Kearney; and (2) Kearney's use of the Plaintiffs' earnest money and fees of approximately $130,394.86 for Kearney's purchase of the Subject Property as Plaintiffs' fiduciary.

354. Mr. Reed, Mrs. Reed, and RME (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) and Kearney were required to use Plaintiffs'

money to deliver clear marketable title with title insurance as required by the terms of the RE/MAX Option Agreement.

355. Mr. Reed, Mrs. Reed, and RME (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) and Kearney failed to pay off the lien against the Property; and Mr. Reed, Mrs. Reed, and RME (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) and Kearney failed to deliver clear and marketable title with title insurance.

356. Plaintiffs have been damaged in the amount of the money Plaintiffs delivered for the Property, totaling $438,329.27, plus additional commissions of $17,000.00, plus additional costs, interest, and fees paid in connection with the Property, in an amount to be determined at trial.

TWENTY-SEVENTH CAUSE OF ACTION

BREACH OF THE DUTY OF GOOD FAITH AND FAIR DEALING

(Against Kearney, Mr. Reed, Mrs. Reed, RME, and RE/MAX)

357. Plaintiffs incorporate, repeat, and reallege every allegation set forth above.

358. Mr. Reed, Mrs. Reed, and RME (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) and Kearney deliberately contravened the spirit and intention of the RE/MAX Option Agreement by delivering untimely and unmarketable title to the Subject Property without using the Plaintiffs' payment of $330,000.00 to pay off the mortgage and clear the title and by concealing the fraud.

359. Due to the subsequent foreclosure, Mr. Reed, Mrs. Reed, and RME (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) and Kearney essentially wasted Plaintiffs' earnest money deposit and fees totaling approximately $130,394.86.

360. Kearney also deliberately contravened the spirit and intention of the contract by taking excess fees for which Kearney was not entitled.

361. Plaintiffs were damaged by Kearney's, Mr. Reed's, Mrs. Reed's, and RE/MAX's breaches in an amount to be determined at trial.

TWENTY-EIGHTH CAUSE OF ACTION

UNJUST ENRICHMENT

(Against Kearney, Ms. Thomas, FATCO, Mr. Reed, Mrs. Reed, RME, and RE/MAX)

362. Plaintiffs incorporate, repeat, and reallege every allegation set forth above.

363. Ms. Thomas and FATCO received, appreciated, accepted and retained a benefit conferred by Plaintiffs in the form of commissions, fees, and costs.

364. Kearney received, appreciated, accepted and retained all benefits conferred by Plaintiffs' $462,000.00.

365. Mr. Reed, Mrs. Reed, and RME (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) received, appreciated, accepted and retained a benefit conferred by Plaintiffs in the form of commissions, fees, and costs.

366. Ms. Thomas, FATCO, Kearney, and Mr. Reed, Mrs. Reed, and RME (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) should be jointly and severally liable to return the benefit of $462,000.00 conferred by Plaintiffs.

TWENTY-NINTH CAUSE OF ACTION

MONEY HAD AND RECEIVED

(Against Kearney)

367. Plaintiffs incorporate, repeat, and reallege every allegation set forth above.

368. Kearney received the $330,000.00 directly from Plaintiffs.

369. Kearney received or benefited from the $130,394.86 earnest-money deposit-related investment from Plaintiffs.

370. Kearney cannot show a legal or equitable ground for retaining Plaintiffs' money.

371. Plaintiffs' have been damaged in an amount to be determined at trial.

THIRTIETH CAUSE OF ACTION

RESPONDEAT SUPERIOR, BREACH OF IMPLIED WARRANTY, AGENCY

(Against RE/MAX)

372. Plaintiffs incorporate, repeat, and reallege every allegation set forth above.

373. RE/MAX is liable for the acts of RME, Mr. Reed, and Mrs. Reed by way of respondeat superior, vicarious liability, breach of implied warranty, and agency.

374. RE/MAX exerted control over RME, Mr. Reed, and Mrs. Reed beyond that of a mere franchisor.

375. RE/MAX created an implied warranty of competent service, honesty, and satisfaction by authorizing RME, Mr. Reed, and Mrs. Reed to rely on the name, mark, commercial advertising, reputation, and legal documents of RE/MAX and Plaintiffs relied on RE/MAX's reputation and services to trust Mr. Reed, Mrs. Reed, and RME (in their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX) and RE/MAX.

376. Plaintiffs' were damaged as a result of RE/MAX's breach of the implied warranty of competent service, honesty, and satisfaction through the agency relationship of RE/MAX, Mr. Reed, and Mrs. Reed.

377. As a result, RE/MAX should be vicariously liable for the acts of Mr. Reed, Mrs. Reed, and RME.

THIRTY-FIRST CAUSE OF ACTION

NEGLIGENT SUPERVISION

(Against FATCO)

378. Plaintiffs incorporate, repeat, and reallege every allegation set forth above.

379. FATCO owed to Plaintiffs a duty to use reasonable care in supervising the conduct of Ms. Thomas.

380. FATCO breached that duty to Plaintiffs and Plaintiffs suffered damages caused by FATCO's breach in an amount to be determined at trial.

THIRTY-SECOND CAUSE OF ACTION

NEGLIGENT SUPERVISION

(Against ATM&S)

381. Plaintiffs incorporate, repeat, and reallege every allegation set forth above.

382. ATM&S owed to Plaintiffs a duty to use reasonable care in supervising the conduct of Mr. Zemelman.

383. ATM&S breached that duty to Plaintiffs and Plaintiffs suffered damages caused by ATM&S's breach in an amount to be determined at trial.

THIRTY-THIRD CAUSE OF ACTION

LEGAL MALPRACTICE

(Against ATM&S and Zemelman)

384. Plaintiffs incorporate, repeat, and reallege every allegation set forth above.

385. There was an attorney-client relationship between Plaintiffs and ATM&S.

386. There was an attorney-client relationship between Plaintiffs and Zemelman.

387. ATM&S and Zemelman owed respective duties to Plaintiffs to protect Plaintiffs against the risk of loss of the Subject Property.

388. ATM&S and Zemelman breached those duties, which proximately caused Plaintiffs to lose their property.

THIRTY-FOURTH CAUSE OF ACTION

LEGAL MALPRACTICE

(Against Damus)

389. Plaintiffs incorporate, repeat, and reallege every allegation set forth above.

390. There was an attorney-client relationship between Plaintiffs and Damus.

391. Damus owed a duty to Plaintiffs to protect Plaintiffs against risk of loss of the Subject Property.

392. Damus breached his duty, which proximately caused Plaintiffs to lose their property.

THIRTY-FIFTH CAUSE OF ACTION

NEGLIGENT UNDERTAKING TO PERFORM SERVICES

(Against Damus)

393. Plaintiffs incorporate, repeat, and reallege every allegation set forth above.

394. Damus undertook to render services in the practice of a licensed attorney for the protection and enforcement of Plaintiffs' rights.

395. Damus failed to exercise the skill and knowledge normally possessed by members of the legal profession in good standing in similar communities by failing to protect Plaintiffs' status as *bona fide* purchasers in a timely manner or at all.

396. Plaintiffs were damaged by Damus's negligence in an amount to be determined at trial.

THIRTY-SIXTH CAUSE OF ACTION

WRONGFUL FORECLOSURE

(Against Cumorah and Valley Foreclosure Services)

397. Plaintiffs incorporate, repeat, and reallege every allegation set forth above.

398. Plaintiffs did not breach any conditions or obligations that would entitle Cumorah and Valley Foreclosure Services to exercise a power of sale against the Subject Property.

399. Cumorah and Valley Foreclosure Services exercised a purported power of sale despite knowing that Plaintiffs had not breached any conditions or obligations regarding the Subject Property.

400. Cumorah and Valley Foreclosure Services acted with malice, oppression, and fraud to exercise a purported power of sale.

401. Plaintiffs were damaged by such malicious and wrongful foreclosure in an amount to be determined at trial.

THIRTY-SEVENTH CAUSE OF ACTION

CONVERSION

(Against Cumorah and Valley Foreclosure Services)

402. Plaintiffs incorporate, repeat, and reallege every allegation set forth above.

403. Cumorah and Valley Foreclosure Services engaged in a distinct act of dominion over Plaintiffs' equitable/legal rights in the Subject Property.

404. Cumorah and Valley Foreclosure Services wrongfully exerted control over Plaintiffs' equitable/legal rights in the Subject Property in denial of, or inconsistent with Plaintiffs' title or rights therein.

405. Cumorah and Valley Foreclosure Services wrongfully exerted control over Plaintiffs' equitable/legal rights in the Subject Property in derogation, exclusion, or defiance of such title or rights.

THIRTY-EIGTH CAUSE OF ACTION

Unjust Enrichment

(Against Damus)

406. Plaintiffs incorporate, repeat, and reallege every allegation set forth above.

407. Damus received, appreciated, accepted, and retained monetary benefits conferred by Plaintiffs in the form of payments for services, which Damus failed to perform competently.

THIRTY-NINTH CAUSE OF ACTION

Slander of Title

(Against Cumorah and Valley Foreclosure Services)

408. Plaintiffs incorporate, repeat, and reallege every allegation set forth above.

409. Cumorah and Valley Foreclosure Services delivered false and malicious communications—up to and including the words spoken at the trustee sale—disparaging Plaintiffs' title to the Subject Property.

410. Cumorah and Valley Foreclosure Services, without right, conducted the foreclosure process regarding the Subject Property willfully, intentionally, and with careless disregard for the rights of Plaintiffs.

411. Cumorah and Valley Foreclosure caused special damages—including attorney's fees and costs of approximately $60,000.00; loss in value; and lost opportunity—in an amount to be proven at trial.

FORTIETH CAUSE OF ACTION

Quiet Title

(Against Cumorah and Valley Foreclosure Services)

412. Plaintiffs incorporate, repeat, and reallege every allegation set forth above.

413. Plaintiffs held title to the Subject Property in the form of a general warranty deed acquired on June 27, 2006 from Kearney, which was duly recorded.

414. Cumorah's claim of ownership of the Subject Property is adverse to Plaintiffs' ownership of the Subject Property.

415. Plaintiffs seek a determination of the title to the Subject Property as of June 27, 2006.

FORTY-FIRST CAUSE OF ACTION

Breach of Covenants in a Warranty Deed

(Against Kearney)

416. Plaintiffs incorporate, repeat, and reallege every allegation set forth above.

417. On June 27, 2006, Kearney covenanted and warranted to Plaintiffs that Kearney lawfully possessed the Subject Property with the right to convey the Subject Property free from encumbrances.

418. Kearney covenanted and warranted the title to the Subject Property against lawful claims.

419. Kearney breached the June 27, 2006 Deed covenants, which proximately caused Plaintiffs to lose the Subject Property.

PRAYER FOR RELIEF

Plaintiffs pray for judgment against Defendants as follows:

1. For $462,000.00;
2. For punitive damages;
3. For attorneys' fees and costs of suit incurred herein;
4. For pre- and post-judgment interest as allowed by law;
5. For equitable relief; and
6. For any other relief this Court may deem proper.

DEMAND FOR JURY TRIAL

Plaintiffs hereby request trial by jury on all causes of action set forth in this Complaint.

Dated this 2nd day of March, 2009.

GIBSON LOWRY BURRIS LLP

BY /s/ J. SCOTT BURRIS

STEVEN A. GIBSON, ESQ.
Nevada Bar No. 6656
J. SCOTT BURRIS, ESQ.
Nevada Bar No. 10529
City Center West
7201 West Lake Mead Boulevard, Suite 503
Las Vegas, Nevada 89128
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

Pursuant to Local Rule 5-1 of this Court, I certify that I am an employee of Gibson Lowry Burris LLP and that on this 2nd day of March, 2010, I caused a correct electronic copy of the foregoing FIRST AMENDED COMPLAINT to be served via CM/ECF:

Michael E. Stoberski, Esq.
mstoberski@ocgd.com
Zachary J. Thompson, Esq.
zthompson@ocgd.com
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Counsel for Defendants
Edward C. Reed; Barbara R. Reed; and Reed Team, d/b/a RE/MAX Extreme

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First American Title Insurance Company and Gina Thomas

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Facsimile: 303.446.9111
Counsel for Defendant
RE/MAX International

By: Priyanka Menon
An employee of Gibson Lowry Burris LLP

5/31/2012

AMENDED AND RESTATED LEGAL SERVICES AGREEMENT

This AMENDED AND RESTATED LEGAL SERVICES AGREEMENT (the "Amended Agreement") is entered into as of the 31st day of May, 2012 (the "Effective Date") by and between Dickinson Wright PLLC (hereinafter the "Firm"), Tae-Si Kim and Jin-Sung Hong with both of their principal addresses at 8380 Belmont Valley Street, Las Vegas, Nevada 89123 (hereinafter "Client"; collectively with the Firm, the "Parties").

In consideration of the covenants, representations, and warranties set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. Amendment/Restatement/Novation. Client covenants that Client entered into a legal services agreement, dated August 17, 2009 (the "Prior Agreement"), with the Firm's predecessor-in-interest law firm, Gibson Lowry Burris LLP ("GLB"), and that the Firm has combined GLB's practice into the Firm with the Firm being the only law firm presently in a legal services relationship with Client. The Parties further covenant that this Amended Agreement amends and, to the extent not amended, restates the Prior Agreement with the other exception being that the Firm is recognized as one of the parties in effective replacement of GLB. This Amended Agreement shall constitute the sole agreement by and between the parties, replacing all prior agreements of whatsoever nature and Client recognizes that there is no enduring agreement with GLB.

2. Definitions and Interpretations.

2.1. Certain terms used herein shall have the meaning ascribed to those terms as set forth in Schedule A.

2.2. Section headings are used for convenience only and shall have no interpretive effect or impact whatsoever.

2.3. All of the defined terms as set forth in Schedule A, if defined in the singular, shall also retain such general meaning if used in the plural, and if used in the plural, shall retain the general meaning if used in the singular.

3. Conditions. A condition precedent to the Firm having any obligation whatsoever to Client pursuant to or arising from this Amended Agreement (including, without limitation, the provision of Legal Services pursuant to or arising from this Amended Agreement) shall be the satisfaction in full of the following conditions precedent: (a) Client Executes this Amended Agreement; and (b) Client pays to the Firm, with the Firm gaining actual receipt of cash funds in the Firm's trust account, on the Effective Date, Five-Thousand Thousand Dollars ($5,000.00) (the 1st installment of the "Retainer"); Client agrees to pay Five-Thousand Dollars ($5,000.00) per month, by the 17th calendar day of each calendar month following the date of this Amended Agreement, until the Client has paid Thirty-Thousand Dollars ($30,000.00) (the total "Retainer"). The Firm covenants that all conditions set forth in this Section 3 have been satisfied except for the Execution of this Amended Agreement by Client.

4. Scope of Services. Client hereby retains the Firm to represent Client for the purpose of providing Legal Services. The Firm shall take reasonable steps to keep Client informed of significant developments with respect to the Litigation and promptly provide copies of all documents filed with the court as well as correspondence between the Firm and any other party or parties in the Litigation. The Firm shall represent Client with respect to the Litigation until settlement or judgment of the Litigation is reached by way of trial or summary judgment, subject to Section 12.1. The Firm shall oppose any motion for new trial or any other post-trial motions filed by an opposing party in the Litigation, and/or shall make any appropriate post-trial motion on Client's behalf. THE FIRM SHALL NOT BE IN ANY MANNER OBLIGATED TO REPRESENT CLIENT WITH RESPECT TO ANY APPEAL OF THE LITIGATION (EXCEPT FOR AN APPEAL FROM A DENIAL OF A PRELIMINARY INJUNCTION OR A REQUIRED INTERLOCUTORY APPEAL). The Firm covenants that it has undertaken the appeal with respect to United States Court of Appeals for the Ninth Circuit, Case Number: 12-15959. The Firm shall represent Client (and, in doing so, conduct a defense) against counterclaims brought by the Defendants arising out of essentially the same facts and circumstances as any Claim made in the Litigation. The Firm shall not conduct a defense for Client in any cross-complaints or Claims that do not arise out of essentially the same facts and circumstances as any Claim made in the Litigation, or Claims that involve parties other than the Defendants.

5. Certain Covenants, Representations and Warranties of Client and Members.

5.1. Client shall: (a) be truthful with the Firm; (b) keep the Firm informed of any information and developments concerning the Litigation; (c) abide by this Amended Agreement; (d) pay the amounts appropriately reflected in Bills when due in accordance with this Amended Agreement; and (e) keep the Firm advised of Client's address and telephone number(s). An authorized representative of Client shall appear at all legal proceedings as the Firm deems necessary and shall cooperate fully with the Firm on all matters related to the investigation, preparation and presentation of the Litigation.

5.2. Client covenants, represents and warrants that, to Client's actual knowledge, all information Client has provided to the Firm commencing with the date the Firm first commenced discussions with Client regarding the possibility of entering into this Amended Agreement, as well as all prior information given to the Firm or any attorney in the Firm, are true, accurate and complete in all material respects.

5.3. Client shall indemnify the Firm and pay for any Losses incurred by the Firm as a direct or indirect result of any breach of the Amended Agreement by Client or the Firm's reliance on information, representations or warranties Client falsely covenanted, warranted or represented as true, accurate and complete.

5.4. Client currently owns all right, title and interest in and to the Investment and there are Encumbrances existing as of the Effective Date on or in association with the Investment.

5.5. Client shall never, during the Term, impose or allow to exist any Encumbrance upon or otherwise effect an Assignment of any or all of the Investment without the prior written consent of the Firm, withheld in the Firm's sole and absolute discretion.

6. Legal Fees.

6.1. Subject to Section 6.2, commencing on the Effective Date, Client shall pay all Legal Fees, based on the hours worked by Firm personnel on an Hourly Rate Basis, with billing in tenths of hours and calculated according to Schedule B, up to the total Retainer; provided, however, that Client shall not have responsibility for payment of Legal Fees either above the Retainer or apart from the authorized withdrawals from the Retainer except that the Flat Legal Fee and Litigation Contingency Fee shall be payable as set forth in Sections 6.2, 6.3, 6.4 and 6.5.

6.2 Upon payment of any and all Recoveries to Client (which Client shall cause to be immediately paid by way of and/or to the Firm), the Firm shall deposit Recovery Funds into the Firm's client trust account and distribute said Recovery Funds as follows: first, to pay all Litigation Costs not paid by Client; second, to pay the Flat Legal Fee for the Firm's own account (payment of the Flat Legal Fee should be paid by Client through multiple Recoveries if the amount of one or more Recoveries (if any) is not sufficient to pay the entire Flat Legal Fee but shall never exceed a combined total of more than Fifty Thousand Dollars ($50,000)); third, to pay the Litigation Contingency Fee for the Firm's own account; and fourth, to pay the remainder to the Client. Client shall use Client's best efforts to effect Liquidation if Liquidation is appropriate upon the exercise of reasonable business judgment. Other than to effect Liquidation of Investment or Recovery that are in the form of non-Liquid Assets pursuant to this Section 6, Client shall not, other than to the Firm, transfer, assign or effect any Encumbrance upon all or part of the Investment or Recovery.

6.3. Within sixty (60) days of any Payment Event other than cash, the Parties shall use their best efforts (with the costs of the Appraisal and Appraisal Report being the equal responsibility of the Firm and Client) to cause an Appraisal of the fair market value of the Investment and the Recovery, to be conducted and an Appraisal Report to be delivered to both Parties. Within ten (10) days after receipt of the Appraisal Report, the Firm shall effect the payments with respect to the Liquid Assets as required by Section 6.2 and within ten (10) days after Liquidation, Client shall effect the payments required with respect to Liquid Assets converted from non-Liquid Assets. The parties hereby covenant that numerous Recoveries may occur and therefore there will be, in such events, more than one payment requirement arising out of this Section 6.

6.4. In the event the Litigation Contingency Fee arises out of funds received from other Persons structured payable mandatorily over a period of time, then Client shall pay the Firm on a *pro rata* basis with respect to each structured payment.

6.5. In the event of the Firm's discharge or withdrawal as provided in Section 12.1, Client shall still be required to pay the Firm a reasonable fee for Legal Services rendered. Such reasonable fee shall be determined by considering the following factors:

(a) The actual number of hours expended by the Firm in performing Legal Services for Client;

(b) The hourly rates charged by the Firm's attorneys and non-attorney staff, as set forth on Schedule B;

(c) The extent to which the Legal Services have contributed to the result obtained;

(d) The amount of Legal Fees in proportion to the value of the Legal Services performed and the amounts owed by Client to any other provider of legal services in connection with the Litigation, either before or after the commencement of the Firm's Legal Services;

(e) The amount of Recovery obtained or value in the Investment preserved;

(f) The time limitation imposed on the Firm by Client or by the circumstances; and

(g) The experience, reputation and ability of the Firm's attorneys and non-attorney staff performing the services.

6.6. The State Bar of Nevada requires that this Amended Agreement contain the following warning: **Any lawsuit brought solely to harass or to coerce a settlement may result in liability for malicious prosecution or abuse of process.**

7. Negotiability of Fees. Client covenants, represents and warrants that Client understands the Legal Fees provisions as set forth in Section 6, and Client further understands that Legal Fees are not set by law, but are negotiated between the Firm and Client.

8. Litigation Costs and Expenses.

8.1. Client shall promptly pay for all Litigation Costs incurred by the Firm with respect to the Litigation or otherwise on behalf of the Client in the performance of Legal Services either out of the Retainer and when the Retainer is exhausted, when due. For services and/or activities that will incur Litigation Costs and are in an amount that exceeds One Thousand Five Hundred Dollars ($1,500), the Firm shall have the right to request payment by the Client in advance for such Litigation Costs, after exhaustion of the Retainer.

8.2. The Firm shall select expert witnesses, consultants, investigators and other professionals (hereinafter "Personnel") that in the Firm's judgment are necessary to aid in the preparation or presentation of the Litigation. The Firm shall not be responsible for any negative consequences or outcomes in the Litigation that may result if Client does not consent to the Firm's retention of Personnel that the Firm has advised the Client are, in the Firm's judgment, necessary to aid in the preparation or presentation of the Litigation.

9. Monthly Billing Statements. The Firm shall send Bills monthly to Client. The Bills shall detail the amount each month that Client actually must pay. The Bills shall also detail the amount of Legal Fees and Litigation Costs incurred and presently due, whether or not Client has any duty to pay the Legal Fees reflected therein until Recovery occurs. Client shall pay each Bill in full within ten (10) days after receipt.

10. Services Not Covered by This Amended Agreement. The Firm shall only be obligated to provide to Client the Legal Services. The Firm shall not be obligated to provide to Client general legal services other than the Legal Services.

11. Settlement. The Firm shall not make any settlement, agreement or compromise in the Litigation or otherwise with respect to any Client interest without Client's prior approval, provided, however, that Client shall: be reasonable in approving settlement or other resolution of any matter. Client shall not make any settlement, agreement or compromise with respect to the Litigation or any other matter involving or implicating Legal Services without prior written notice to the Firm.

12. Discharge and Withdrawal.

12.1. Client may discharge the Firm at any time upon written notice to the Firm. The Firm may withdraw from representation of Client: (a) with Client's consent; or (b) upon court approval sought for good cause upon reasonable prior written notice to Client. Good cause includes Client's breach of this Amended Agreement, Client's refusal to cooperate with the Firm or to follow the Firm's advice on a material matter, or any other fact or circumstance that, in the Firm's judgment, would render the Firm's continuing representation unlawful or unethical.

12.2. If any dispute arises with respect to the transactions between Tae-Si Kim and/or Jin-Sung Hong please understand that to the extent that such dispute becomes the subject of court, tribunal or other formal dispute resolution procedures, then the Firm may not be in a position to represent any party with respect to such dispute. Any such conflict may also negate the Firm's ability to represent both Tae-Si Kim and Jin-Sung Hong on a going-forward basis.

12.3. Client shall promptly deliver to the Firm a signed substitution-of-counsel form at the Firm's request.

13. Conclusion of Services.

13.1. When the Firm's services conclude, whether by completing the terms of this Amended Agreement or by discharge or withdrawal pursuant to Section 12.1, all unpaid charges, including, without limitation, Legal Fees and Litigation Costs, shall be due and payable. The Firm shall be authorized to use any funds held in the Firm's client trust account as a deposit against Litigation Costs and to apply such funds to unpaid Bills resulting from Litigation Costs incurred pursuant to this Amended Agreement. After the Firm's services conclude and upon Client's request, the Firm shall deliver Client's files and property to Client whether or not Client has paid any Legal Fees and/or Litigation Costs owed to the Firm.

13.2. If Client does not request the return of Client's files, the Firm shall retain Client's files for a period of seven (7) years, after which time the Firm may have Client's files destroyed. If Client desires to have Client's files maintained beyond the seven (7) years after Client's matter has concluded, separate arrangements with the Firm must be made.

13.3. Based upon the Firm's initial assessment of the Litigation, Mr. Hong may have standing to bring claims; however, upon further review by the Firm, if any, it may be possible that only Ms. Kim should be a party to the Litigation. In such event, the Firm's representation Mr. Hong shall automatically terminate.

14. Lien. Client hereby grants the Firm a lien on the Litigation. The Firm's lien shall be for any sums Client owes to the Firm for any unpaid Litigation Costs or Legal Fees at the conclusion of the Firm's services pursuant to this Amended Agreement, whether by completing the terms of this Amended Agreement or by discharge or withdrawal pursuant to Section 12.1. The Firm's lien shall attach to any Recovery Client may obtain, whether by arbitration award, judgment, settlement or otherwise.

15. Disclaimer of Guarantee. Nothing in this Amended Agreement and nothing in the Firm's statements to Client may be construed as a promise or guarantee about the outcome or resolution of the Litigation or any other matter. The Firm makes no such promises or guarantees. There can be no assurance that Client will Recover any sum or sums in the Litigation. The Firm's comments about the outcome of the Litigation are expressions of opinion only. Client acknowledges that the Firm has made no promise or guarantee about the outcome of the Litigation.

16. Prevailing Parties' Fees and Costs. In the event of an adverse decision, ruling, finding, and/or verdict in the Litigation, Client may be liable for one or more opposing parties' attorney fees, and shall be liable for such opposing party's or parties' costs as required by law. Any such award shall be entirely Client's responsibility and shall be paid promptly by Client directly to the party or other entity awarded such fees and/or costs. The Firm will not be responsible for any Losses incurred by Client as a result, whether directly or indirectly, of the Firm's representation, except for any such costs or award attributable to the Firm's gross negligence or willful and wrongful acts.

17. Arbitration Clause. Client and the Firm agree to have any and all disputes that arise out of or relate to this Amended Agreement, including, without limitation, Claims of negligence or malpractice arising out of or relating to Legal Services provided by the Firm to Client, decided only by binding fee dispute arbitration in accordance with the rules of the State Bar of Nevada and not by court action.

18. Counterparts/Facsimile Signatures. This Amended Agreement may be Executed in two (2) or more counterparts, each of which shall constitute an original, but all of which when taken together shall constitute but one (1) Amended Agreement. Signatures represented through a facsimile transmission shall be binding upon the Parties.

19. Entire Amended Agreement.

19.1. This Amended Agreement contains the entire agreement of the parties. No other agreement, statement or promise made on or before the Effective Date of this Amended Agreement shall be binding on the Parties.

19.2. This Amended Agreement may be modified by subsequent agreement of Client and the Firm only by an instrument in writing signed by Client and the Firm.

19.3. This Amended Agreement shall govern the Legal Services performed by the Firm on behalf of Client commencing on the Effective Date.

19.4. Client shall have the right to assign or encumber Client's rights in the Litigation or to the Recovery, under and subject to this Amended Agreement and the Firm's entitlement to Litigation Costs and the Litigation Contingency Fee.

THE PARTIES HAVE READ AND UNDERSTAND THE FOREGOING TERMS AND AGREE TO THEM AS OF THE DATE THE FIRM COMMENCED DISCUSSIONS WITH CLIENT REGARDING THE POSSIBILITY OF ENTERING INTO THIS AMENDED AGREEMENT. CLIENT SHALL RECEIVE A FULLY-EXECUTED DUPLICATE OF THIS AMENDED AGREEMENT.

DATED: May 31, 2012 By: _____
Tae-Si Kim

DATED: May 31, 2012 By: _____
Jin-Sung Hong

DATED: May 31, 2012 By: _____
Steven A. Gibson, Esq. of
Dickinson Wright PLLC

SCHEDULE A – DEFINITIONS

"Amended Agreement" shall mean this LEGAL SERVICES AGREEMENT by and between Client and the Firm.

"Appraisal" shall mean engaging a third Person, reasonably acceptable to both Parties and generally qualified to conduct valuations and in the business generally of conducting valuations, to promptly appraise the market value of the Investment and any Recovery and to prepare an Appraisal Report.

"Appraisal Report" shall mean a report reflecting in detail the valuations associated with an Appraisal and the detailed basis for those valuations.

"Bill" shall mean a monthly billing statement sent by the Firm to Client for monies owed by Client to the Firm.

"Claim" shall mean any demand, complaint, request for redress, assertion of a cause of action or other claim whatsoever.

"Client" shall mean Tae-Si Kim and Jin Sung Hong with both of their principal addresses at 8380 Belmont Valley Street, Las Vegas, Nevada 89123.

"Defendants" shall mean the Relevant Persons that are named as "defendants" in the Litigation.

"Effective Date" shall have the meaning as set forth in the first paragraph of this Amended Agreement.

"Encumbrance" shall mean a security interest, pledge, hypothecation, lien, mortgage, or any other encumbrance of whatsoever nature.

"Execute" or "Execution" shall mean to have an authorized representative sign a counterpart of this Amended Agreement, as set forth in Section 18.

"Firm" shall mean Dickinson Wright PLLC.

"Flat Legal Fee" shall mean Fifty Thousand Dollars ($50,000), payable to the Firm upon Recovery, regardless of the number of total Recoveries that occur on or after the Effective Date of the Amended Agreement.

"Hourly Rate Basis" shall mean payment of Legal Services on a basis of time billed at the hourly rates set forth on Schedule B (or if new professionals join the Firm, at said new professionals' standard billing rates generally quoted to clients of the Firm).

"Investment" shall mean all right, title and interest held either legally or beneficially by Client in the property identified by the Clark County Recorder's office as APN#177-19-801-008 (1.25 acres) any accretions thereto and/or any interests arising therefrom.

"Legal Fees" shall mean fees for Legal Services at the hourly rates set forth in Schedule B.

"Legal Services" shall mean the prosecution of the Litigation and defense of the Client in all counterclaims brought by Defendants against Client in the Litigation, including preparation of all pleadings and papers necessary to the Litigation.

"Liquid Asset" shall mean an asset in the form of cash or easily convertible into cash without any loss of value.

"Liquidation" shall mean the conversion of assets that constitute Investment or Recovery from non-Liquid Assets to Liquid Assets.

"Litigation" shall mean an action in a court in Nevada against the Relevant Persons that the Client and the Firm has a good faith belief have perpetrated civil wrongs against the Client(s) in connection with the Investment and/or breached contractual obligation(s) with respect to Client in connection with the Investment.

"Litigation Contingency Fee" shall mean thirty percent (30%) of the remaining Recovery Funds in excess of the Retainer and after payment of all Litigation Costs not paid by Client and, if applicable, payment of the Firm's Flat Legal Fee. In the event Recovery consists of non-cash-equivalent property, the Litigation Contingency Fee shall be based on the present value of the Recovery based on the Appraisal.

"Litigation Costs" shall include actual, reasonable and necessary out-of-pocket expenses for, without limitation, court fees; jury fees; service-of-process charges; court and deposition reporters' fees, including such court and deposition reporters' photocopying, reproduction, and mailing costs; photocopying and reproduction costs; notary fees; long-distance telephone charges; messenger and other delivery fees; postage; deposition costs; travel costs including, without limitation, parking, travel and lodging expenses; investigation expenses; consultant and expert witness fees and expenses approved by Client in writing; mediation, arbitration and special matter fees and expenses; and other similar items at the rates set forth in Schedule C; provided, however, that Litigation Costs shall not include prevailing parties' fees and costs assessed against Client, as described in Section 16.

"Losses" shall mean all costs, Litigation Costs, expenses, fees (including, without limitation, attorneys', accountants', investigators', witnesses', and professionals' fees), charges, expenditures, liabilities, damages, and other losses of whatsoever nature.

"Payment Event" shall mean any circumstance or event whereby either the Firm or Client receives Proceeds.

"Person" shall mean any natural person, corporation, limited-liability company, limited partnership, limited-liability partnership, limited-liability limited partnership, partnership trust, association, organization or other entity of whatsoever nature.

"Personnel" shall mean expert witnesses, consultants or investigators, including, without limitation, co-counsel and other professionals to aid in the preparation or presentation of any aspect of the Litigation.

"Proceeds" shall mean any funds, sums or value paid or transferred by any Person pursuant to and/or arising out of a Recovery.

"Recovery" shall mean the total amount (by way of funds, sums or value of any nature) of settlement, arbitration award or judgment arising out of the Litigation paid by and/or collected from any Person to or for the benefit of Client as well as the value of the Investment as of the date of any settlement, arbitration award or judgment arising out of the Litigation, including, without limitation, any award of legal fees (including, without limitation, the Legal Fees) or Litigation Costs.

"Relevant Persons" shall mean any Person who solicited (or participated in the solicitation of) the Investment and/or any Person who engaged in effecting the Investment (whether directly or indirectly) during the time period that the Client engaged in activities aimed at securing ownership of the Investment.

"Schedule" shall mean an enumerated Schedule, all of which shall be deemed attached to and incorporated in this Amended Agreement by way of the specific reference or references made in this Amended Agreement.

"Section" shall mean an enumerated provision of this Amended Agreement.

"Term" shall mean the period commencing on the Effective Date and ending with either the expiration or termination of this Amended Agreement pursuant to the Amended Agreements terms and provisions.

SCHEDULE B – LEGAL FEES

A. ***Hourly rates for legal personnel***

Steven A. Gibson, Esq.	$425
Jodi Donetta Lowry, Esq.	$295
Jonathan M. A. Salls, Esq.	$190
Ms. Raisha Y. Gibson (Paralegal)	$175
Ms. Julie T. Dubocq (Paralegal)	$140

B. ***Standard charges***

We charge for our time in minimum units of .1 hours (6 minutes).

SCHEDULE C – LITIGATION COSTS

1) At cost:

Long-distance telephone, facsimile, telegraph and telex charges; research bureau services and record services; parking and validations; travel expenses and lodging (all of the foregoing provided that such Litigation Costs are reasonable, necessary and pre-approved by Client); meals and refreshments; special-handling mail (other than first-class service, including, without limitation, registered, certified, express delivery, FedEx, *etc.*); messenger service (outside); special printing/binding (outside); court costs (including, without limitation, filing fees, service of process, deposition costs, *etc.*); retrieval of files from storage (plus $20 per hour staff time, one hour minimum); special materials, etc.

2) Other:

Computer Research	At cost
Mileage	Rates as prescribed by federal regulation (currently $0.55/mile)
Messenger Services	At cost
Secretarial Overtime (when dictated by special Client needs)	$35 per hour
Photocopying	$0.20 per page

Clerical staff overtime (when dictated by special Client needs) on priority jobs will be charged at 1.5 times the base hourly rate or at the rates required by applicable law, whichever is greater. The base hourly rates for clerical personnel presently range between $17 and $27 per hour.

IN THE SUPREME COURT OF THE STATE OF NEVADA

Tae-Si Kim as an individual; and Jin-Sung Hong, as an individual.

Appellants,

v.

Dickinson Wright, PLLC, a Nevada Professional Limited Liability Company; Jodi Donetta Lowry, Esq., an individual; Jonathan M. A. Salls, Esq., an individual; Eric Dobberstein, Esq., an individual; and Michael G. Vartanian, Esq., an Individual

Respondents.

SUPREME COURT CASE NO. 74803

DISTRICT COURT CASE NO. A-756785

APPELLANTS' APPENDIX
VOLUME I OF IV

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