

EXHIBIT E

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1 JOSEPH P. GARIN (Nevada Bar No. 6653)
STEPHEN G. KEIM (Nevada Bar No. 11621)
2 LIPSON, NEILSON, COLE, SELTZER, GARIN, P.C.
9080 West Post Road, Suite 100
3 Las Vegas, Nevada 89148-2419
(702) 382-1500
4 (702) 382-1512 - fax
jgarin@lipsonneilson.com
5 skeim@lipsonneilson.com

6 Attorneys for Defendant Charles M. Damus, Esq.

7
8 UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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

11 Plaintiffs,

12 vs.

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

21 Defendants.

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

22
23 **DEFENDANT CHARLES M. DAMUS, ESQ.'S MOTION TO DISMISS**
24 **FOR LACK OF SUBJECT MATTER JURISDICTION**

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

Lipson, Neilson, Cole, Seltzer & Garin, P.C.
9080 West Post Road, Suite 100
Las Vegas, Nevada 89148-2419
(702) 382-1500

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

4 Dated this 5th day of October, 2010

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

6
7 By: 

8 Joseph P. Garin, Esq. (NV Bar No. 6653)
9 Stephen G. Keim, Esq. (NV Bar No. 11621)
10 9080 West Post Road, Suite 100
11 Las Vegas, NV 89148
12 Attorneys for Defendant Charles M. Damus, Esq.

11 **MEMORANDUM OF POINTS AND AUTHORITIES**

12 **I. INTRODUCTION**

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

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

22 **II. PROCEDURAL STATUS**

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

1 fraud, negligence and breach contract.

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

8 **III. STATEMENT OF FACTS**

9 According to Plaintiffs' complaint, in March 2003, Plaintiffs entered into a contract with
10 Edward Reed, Barbara Reed, and RME to purchase real property. Complaint, ¶129. The
11 Reeds were to advise and instruct Plaintiffs in this purchase. *Id.*

12 On June 24, 2005, Hong entered into a contract to purchase real property¹ for
13 \$435,000.00 with closing to occur by August 12, 2005. *Id.* at ¶132. Hong tendered a
14 \$10,000.00 non-refundable deposit for the seller. *Id.* On July 1, 2005, Hong received a pre-
15 approval letter from AAA Mortgage Corporation to finance the transaction. *Id.* at ¶160.
16 However, later that month, the Reeds told Plaintiffs that the financing fell through. *Id.* at ¶161.
17 The Reeds advised and instructed Hong to obtain alternate financing and suggested Plaintiffs
18 obtain such financing through Adam Kearney. *Id.* at ¶162-64. After agreeing to retain
19 Kearney's services, the Reeds and Kearney told Plaintiffs that they needed to make an
20 additional earnest-money deposit of \$100,000.00 by August 12, 2005 in order to prevent the
21 loss of Plaintiffs' initial \$10,000.00 deposit. *Id.* at ¶166. As Plaintiffs did not have access to this
22 amount of money on such short notice, the Reeds' and Kearney's suggested that Plaintiffs
23 obtained a loan from Kearney and Frank Napoli for the \$100,000.00. *Id.* at ¶169-70.
24 Additionally, on August 7, 2005, the Reeds and Kearney told the Plaintiffs that they needed
25 to pay an additional \$17,394.00 to finance the transaction. *Id.* at ¶174. The Reeds and
26
27
28

¹/ Parcel Number 177-19-801-008

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

4 In addition to requiring Plaintiffs to pay the additional \$17,394.00 and obtain the
 5 \$100,000.00 loan from Kearney and Napoli, the Reeds and Kearney instructed Plaintiffs to
 6 enter into an option contract with Kearney. *Id.* at ¶83. Said option contract, drafted by a
 7 RE/MAX attorney, stated that Kearney would receive a \$10,000.00 fee as "the sole
 8 consideration [he] is to receive for acting as the facilitator to Hong acquiring the property." *Id.*
 9 at ¶90. According to the option agreement, Kearney would obtain a loan and purchase of the
 10 subject property and then Plaintiffs would have the option of purchasing the property from
 11 Kearney when they were able to obtain financing. *Id.* at ¶¶92-93. If Plaintiffs exercised the
 12 option, Kearney was required to (1) open escrow with First American Title; (2) convey the
 13 subject property to Hong by grant, bargain and sale deed; (3) at close of escrow, cause the
 14 escrow agent to issue Hong a policy of title insurance insuring good and marketable title; and
 15 (4) convey the subject property to Hong after paying off the underlying loan. *Id.* at ¶94.
 16 Kearney failed to complete any of these requirements. *Id.* Throughout this process, the
 17 Reeds assured Plaintiffs that Kearney would clear the subject property of any liens, pay off his
 18 loan, and transfer free and clear title to Plaintiffs. *Id.* at ¶99.

19 Prior to August 15, 2005, Kearney obtained a loan from Cumorah Credit Union
 20 ("Cumorah") for the purchase of the subject property. On August 15, 2005, Kearney acquired
 21 the subject property. *Id.* at ¶109. That day, First American Title Company prepared a HUD-1
 22 Settlement Statement, the Grant, Bargain and Sale Deed, and Cumorah's Deed of Trust. *Id.*
 23 at ¶¶116-122. Cumorah's deed of trust mistakenly identified the wrong parcel number.² *Id.* at
 24 ¶122.

25 On August 31, 2005, by refinancing their personal residence, Plaintiffs obtained
 26 \$108,710.98 to pay off the promissory note to Kearney and Napoli. *Id.* at ¶128. In addition,
 27

28 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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 9080 West Post Road, Suite 100
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1 Plaintiff continued making monthly payments on Kearney's Cumorah loan. *Id.* at ¶130. On
 2 March 14, 2006, Plaintiffs acquired \$330,000.00 and provided notice of intent to pay off
 3 Kearney's loan from Cumorah and Kearney's \$10,000.00 commission. *Id.* at ¶131. Although
 4 the option agreement required opening escrow, the Reeds and Kearney advised and
 5 instructed Plaintiffs to pay the \$330,000.00 directly to Kearney. *Id.* at ¶133-134. On March
 6 14, 2006, Kim delivered \$330,000.00 to Kearney's office; at that point, Plaintiffs had paid full
 7 value plus fees and costs to acquire the subject property in full satisfaction of Plaintiffs'
 8 obligations. *Id.* at ¶138-139.

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

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

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

7 On October 29, 2008, First American Title Company requested that Cumorah re-record
 8 its Deed of Trust to provide "a correct legal description" for the subject property. *Id.* at ¶184.

9 On December 16, 2008, Plaintiffs discovered the Cumorah lien was not paid when they
 10 received a notice of foreclosure for the Cumorah lien from Valley Foreclosure Services. *Id.*
 11 at ¶ 187-190. On December 17, 2008, Plaintiffs retained Damus as their attorney. *Id.* at ¶
 12 201. Damus attempted to settle with Kearney up until March 17, 2009 when he advised
 13 Plaintiffs to proceed with litigation. On April 20, 2009, Lawyers Title of Nevada requested filing
 14 of Cumorah's "Trustee's Deed Upon Sale" of the subject property. *Id.* at ¶ 213. After working
 15 on Plaintiffs' case, Damus was terminated by Plaintiffs.

16 **IV. LEGAL ARGUMENT**

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

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

24
 25 ³ When considering a "facial" attack made pursuant to Rule 12(b)(1), a court must consider the allegations
 26 of the complaint to be true and construe them in the light most favorable to the plaintiff. *Love v. U.S.*, 915 F.2d
 27 1242, 1245 (9th Cir 1989). Unlike a "facial" attack, a "factual" attack made pursuant to Rule 12(b)(1) may be
 28 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 Tribes*, 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

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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 Las Vegas, Nevada 89148-2419
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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 treaties 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

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

7 Here, Plaintiffs allege three claims against Damus: (1) legal malpractice, (2) negligent
 8 undertaking to perform services, and (3) unjust enrichment.⁴ As these claims do not involve
 9 a federal question⁵, the only way this Court has jurisdiction over these claims is if the court
 10 grants supplemental jurisdiction over these state claims. In this case, this court should not
 11 grant supplemental jurisdiction over Plaintiffs' claims against Damus.

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

16 Without addressing the actual merits of Plaintiffs' claims, on the one hand, Plaintiffs
 17 allege federal securities fraud and conspiracy to commit federal securities fraud against
 18 Edward Reed, Barbara Reed, RME, RE/MAX and Kearney in violation of 17 C.F.R. §240.10B-
 19 5. Amended Complaint ¶224- ¶242. Specifically, Plaintiffs allege these defendants used the
 20 instrumentalities of interstate commerce, i.e. the U.S. mail, in connection with purchase or sale
 21 of a promissory note for the property and that Edward and Barbara Reed and RME instructed
 22 Plaintiffs to use the U.S. mail for payments and correspondences related to the promissory
 23 note. These claims involve a federal statute and allegedly serve the basis for claimed federal
 24 jurisdiction. Notably, these claims all revolve around events that occurred between March
 25 2003, when Plaintiffs entered into a business relationship with the Reeds, and June 2006,
 26 \\

27 ^{4/} The legal malpractice and negligent undertaking claims are essentially a single claim.

28 ^{5/} Plaintiffs do not allege federal jurisdiction based on complete diversity.

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

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

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

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

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

5 Under Nevada law, Plaintiffs' claims against the other Defendants would not normally
 6 be tried together with the legal malpractice claims against Damus. The Nevada Supreme
 7 Court has made it clear that "where damage has not been sustained or where it is too early
 8 to know whether damage has been sustained, a legal malpractice action is premature and
 9 should be dismissed." *Semenza*, 104 Nev. at 668, 765 P.2d at 186, See *Kopicko v. Young*,
 10 114 Nev. 1333, 1337, 971 P.2d 789, 791 (1998), See also *Amfac Distribution Corp. v. Miller*,
 11 138 Ariz. 152, 673 P.2d 792 (Ariz. 1983) (actual injury or damages must be sustained before
 12 a cause of action for legal malpractice is generated), *Lucey v. Law Offices of Pretzel &*
 13 *Stouffer*, 301 Ill.App.3d 349, 353, 703 N.E.2d 473, 477 (Ill.App. 1998). In this case, if Plaintiffs
 14 are successful in their claims against the other Defendants, they will no longer be able to claim
 15 any damages against Damus. At a minimum, until the underlying dispute is resolved it is too
 16 early to know whether Plaintiffs have suffered any damages as a result of any alleged conduct
 17 by Damus, and the claims against Damus should be dismissed. Because the underlying
 18 claims and the legal malpractice claims would not normally be tried together, they do not arise
 19 out of the same case or controversy, and there is no supplemental subject matter jurisdiction.

20 Finally, Damus is a minor player in this litigation; he is not the proximate cause of
 21 Plaintiffs' damages. Plaintiffs only allege three (3) causes of action against him; the remaining
 22 30+ claims involve the remaining eleven (11) defendants. The fact of the matter is that
 23 Damus' role in this matter is so minor because the claims alleged against him are not part of
 24 the same constitutional case.

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

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

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

5 The district court may decline to exercise supplemental jurisdiction over a claim under
6 subsection (a) if

- 7 (1) the claim raises a novel or complex issue of State law;
8 (2) the claim substantially predominates over the claim or claims over which the
9 district court has original jurisdiction;
10 (3) the district court has dismissed all claims over which it has original
11 jurisdiction; or
12 (4) in exceptional circumstances, there are other compelling reasons for
13 declining jurisdiction.

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

18 The doctrine of supplemental jurisdiction is a doctrine of flexibility, designed to allow
19 courts to deal with cases involving pendant claims in the manner that most sensibly
20 accommodates a range of concerns and values. *Executive Software*, 24 F. 3d at 1552.
21 Depending on a host of factors, including the circumstances of the particular case, the nature
22 of the state law claims, the character of the governing state law, and the relationship between
23 the state and federal claims, district courts may decline to exercise jurisdiction over
24 supplemental state law claims. *City of Chicago v. Int'l College of Surgeons*, 522 U.S. 156, 118
25 S.Ct. 523, (1997). Whether supplemental jurisdiction should be exercised in a given
26 circumstance depends on the district court assessing whether doing so would most sensibly
27 accommodate the values of economy, convenience, fairness, and comity. *Id.* at 1554. Such
28 power need not be exercised in every case in which it is found to exist. *Executive Software*,
24 F. 3d at 1552. 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

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9080 West Post Road, Suite 100
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1 law should be avoided both as a matter of comity and to promote justice between the parties,
2 by procuring for them a surer-footed reading of applicable law. *Id.*

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

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

22 V. CONCLUSION

23 This Court should dismiss Plaintiffs' claims alleged against Charles Damus, Esq. First,
24 this Court does not have jurisdiction over Plaintiffs' claims because Plaintiffs' claims against
25 Damus do not arise out of the same transaction or occurrence. In the alternative, if this Court
26

27 ^{6/} For example, counsel for Damus just attended an eight hour deposition of Defendant Barbara Reed,
28 which had absolutely no relationship or relevance to the claims made against Damus.

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

5 DATED this 5th day of October, 2010.

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

7
8 

9 By

10 JOSEPH P. GARIN, ESQ. (NV Bar No. 6653)
11 STEPHEN G. KEIM, ESQ. (NV Bar No. 11621)
12 9080 West Post Road, Suite 100
13 Las Vegas, Nevada 89148-2419
14 (702) 382-1500
15 (702) 382-1512 - fax
16 jgarin@lipsonneilson.com
17 skeim@lipsonneilson.com
18 Attorneys for Defendant Charles M. Damus, Esq.

Lipson, Neilson, Cole, Seltzer & Garin, P.C.
9080 West Post Road, Suite 100
Las Vegas, Nevada 89148-2419
(702) 382-1500

EXHIBIT F

EXHIBIT F

CLOSED,STAYED

**United States District Court
District of Nevada (Las Vegas)
CIVIL DOCKET FOR CASE #: 2:09-cv-02008-RFB-GWF**

Kim et al v. Kearney et al.,
Assigned to: Judge Richard F. Boulware, II
Referred to: Magistrate Judge George Foley, Jr
Demand: \$462,000
Case in other court: 9th Circuit Court of Appeals, 12-15959
Ninth Circuit, 13-16311
Cause: 12:22 Securities Fraud

Date Filed: 10/15/2009
Date Terminated: 09/04/2015
Jury Demand: Defendant
Nature of Suit: 370 Fraud
Jurisdiction: Federal Question

Date Filed	#	Docket Text
10/15/2009	<u>1</u>	COMPLAINT against all defendants (Filing fee \$ 350, Receipt# 0978000000001406241), filed by Tae-Si Kim, Jin-Sung Hong. Certificate of Interested Parties due by 10/25/2009. Proof of service due by 2/12/2010. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4, # <u>5</u> Exhibit 5, # <u>6</u> Exhibit 6, # <u>7</u> Exhibit 7, # <u>8</u> Exhibit 8, # <u>9</u> Exhibit 9, # <u>10</u> Civil Cover Sheet)(SRK) (Entered: 10/16/2009)
10/15/2009	<u>2</u>	PROPOSED SUMMONS to be issued, filed by Plaintiffs Tae-Si Kim, Jin-Sung Hong. (Attachments: # <u>1</u> Edward Reed, # <u>2</u> Barbara Reed, # <u>3</u> Reed Team, # <u>4</u> First American Title Company, # <u>5</u> Gina Thomas, # <u>6</u> Alverson, Taylor, # <u>7</u> James Zemelman)(SRK) (Entered: 10/16/2009)
10/15/2009		Case assigned to Judge Philip M. Pro and Magistrate Judge Peggy A. Leen. (SD) (Entered: 10/16/2009)
10/16/2009	<u>3</u>	Summons Issued as to Barbara R. Reed, Reed Team, First American Title, Gina Thomas, Alverson, Taylor, Mortensen & Sanders, Estate of James L. Zemelman, Esq., Adam B Kearney, and Edward C. Reed. (SD) (Entered: 10/16/2009)
10/16/2009	<u>4</u>	NOTICE PURSUANT TO LOCAL RULE IB 2-2: In accordance with 28 USC § 636(c) and FRCP 73, the parties in this action are provided with a link to the "AO 85 Notice of Availability, Consent, and Order of Reference - Exercise of Jurisdiction by a U.S. Magistrate Judge" form on the Court's website - www.nvd.uscourts.gov . Consent forms should NOT be electronically filed. Upon consent of all parties, counsel are advised to manually file the form with the Clerk's Office. (no image attached) (SD) (Entered: 10/16/2009)
11/05/2009	<u>5</u>	ORDER for Certificate of Interested Parties. IT IS ORDERED that counsel for Plaintiffs shall have a period of 10 calendar days from the filing date of this order within which to fully comply with the provisions of Local Rule 7.1-1. Certificate of Interested Parties due by 11/23/2009. Signed by Magistrate Judge Peggy A. Leen on 11/4/2009. (Copies have been distributed pursuant to the NEF - SD) (Entered: 11/05/2009)
11/06/2009	<u>6</u>	CERTIFICATE of Interested Parties filed by Tae-Si Kim, Jin-Sung Hong.. There are no known interested parties other than those participating in the case. (Burris, John) (Entered: 11/06/2009)
12/03/2009	<u>7</u>	PROPOSED SUMMONS to be issued to <i>RE/MAX International, Inc.</i> , filed by Plaintiffs Jin-Sung Hong, Tae-Si Kim. (Burris, John) (Entered: 12/03/2009)
12/04/2009	<u>8</u>	Summons Issued as to RE/MAX International, Inc. (SD) (Entered: 12/04/2009)
12/14/2009	<u>9</u>	MOTION to Dismiss by Defendants Barbara R. Reed, Edward C. Reed, Reed Team. Responses due by 12/31/2009. (Stoberski, Michael) (Entered: 12/14/2009)
12/17/2009	<u>10</u>	MOTION to Dismiss <i>Defendant Alverson, Taylor, Mortensen & Sanders' Motion to Dismiss Plaintiffs' Complaint</i> by Defendant Alverson, Taylor, Mortensen & Sanders. Responses due by 1/3/2010. (Owens, Jonathan) (Entered: 12/17/2009)

12/24/2009	<u>11</u>	CERTIFICATE of Interested Parties filed by First American Title. There are no known interested parties other than those participating in the case. (Gunnerson, Spencer) (Entered: 12/24/2009)
12/24/2009	<u>12</u>	MOTION to Dismiss by Defendant First American Title. Responses due by 1/10/2010. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D)(Gunnerson, Spencer) (Entered: 12/24/2009)
12/30/2009	<u>13</u>	CERTIFICATE of Interested Parties filed by Alverson, Taylor, Mortensen & Sanders. There are no known interested parties other than those participating in the case <i>Certificate of Interested Parties Required by Local Rule 7.1-1</i> . (Owens, Jonathan) (Entered: 12/30/2009)
12/31/2009	<u>14</u>	RESPONSE to <u>2</u> MOTION to Dismiss, filed by Plaintiffs Jin-Sung Hong, Tae-Si Kim. Replies due by 1/10/2010. (Burris, John) (Entered: 12/31/2009)
01/06/2010	<u>15</u>	CERTIFICATE of Interested Parties filed by Barbara R. Reed, Edward C. Reed, RE/MAX EXTREME. There are no known interested parties other than those participating in the case. (Stoberski, Michael) (Entered: 01/06/2010)
01/07/2010	<u>16</u>	CERTIFICATE OF SERVICE for Complaint and Summons by Plaintiffs Jin-Sung Hong, Tae-Si Kim re <u>8</u> Summons Issued, <u>1</u> Complaint,. (Burris, John) (Entered: 01/07/2010)
01/11/2010	<u>17</u>	REPLY to Response to <u>2</u> MOTION to Dismiss ; filed by Defendants RE/MAX EXTREME, Barbara R. Reed, Edward C. Reed. (Stoberski, Michael) (Entered: 01/11/2010)
01/11/2010	<u>18</u>	RESPONSE to <u>12</u> MOTION to Dismiss, filed by Plaintiffs Jin-Sung Hong, Tae-Si Kim. Replies due by 1/21/2010. (Attachments: # <u>1</u> Exhibit Property Record)(Burris, John) (Entered: 01/11/2010)
01/18/2010	<u>19</u>	RESPONSE to <u>10</u> MOTION to Dismiss <i>Defendant Alverson, Taylor, Mortensen & Sanders' Motion to Dismiss Plaintiffs' Complaint</i> , filed by Plaintiffs Jin-Sung Hong, Tae-Si Kim. Replies due by 1/28/2010. (Burris, John) (Entered: 01/18/2010)
01/21/2010	<u>20</u>	REPLY to Response to <u>12</u> MOTION to Dismiss ; filed by Defendant First American Title. (Gunnerson, Spencer) (Entered: 01/21/2010)
01/28/2010	<u>21</u>	REPLY to Response to <u>10</u> MOTION to Dismiss <i>Defendant Alverson, Taylor, Mortensen & Sanders' Motion to Dismiss Plaintiffs' Complaint</i> ; filed by Defendant Alverson, Taylor, Mortensen & Sanders. <i>Defendant Alverson, Taylor, Mortensen & Sanders' Reply in Support of its Motion to Dismiss Plaintiffs' Complaint</i> (Owens, Jonathan) (Entered: 01/28/2010)
02/08/2010	<u>23</u>	SUMMONS Returned Executed by Jin-Sung Hong, Tae-Si Kim re <u>3</u> Summons Issued. Adam B Kearney served on 2/2/2010, answer due 2/23/2010. (Burris, John) (Entered: 02/08/2010)
02/17/2010	<u>25</u>	SUMMONS Returned Unexecuted by Jin-Sung Hong, Tae-Si Kim as to Gina Thomas re <u>3</u> Summons Issued (Burris, John) (Entered: 02/17/2010)
02/17/2010	<u>26</u>	SUMMONS Returned Unexecuted by Jin-Sung Hong, Tae-Si Kim as to Estate of James L. Zemelman, Esq. (Burris, John) (Entered: 02/17/2010)
02/26/2010	<u>28</u>	MOTION to Extend Time regarding discovery/non dispositive matter by Plaintiffs Jin-Sung Hong, Tae-Si Kim. Motion ripe 2/26/2010. (Attachments: # <u>1</u> Proposed Order)(Burris, John) (Entered: 02/26/2010)
03/02/2010	<u>29</u>	AMENDED COMPLAINT with Jury Demand against Alverson, Taylor, Mortensen & Sanders, Estate of James L. Zemelman, Esq., First American Title, Adam B Kearney, RE/MAX EXTREME, RE/MAX International, Inc., Barbara R. Reed, Edward C. Reed, Reed Team, Gina Thomas, filed by Jin-Sung Hong, Tae-Si Kim. Adds new parties. Proof of service due by 6/30/2010. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit, # <u>3</u> Exhibit, # <u>4</u> Exhibit, # <u>5</u> Exhibit, # <u>6</u> Exhibit, # <u>7</u> Exhibit, # <u>8</u> Exhibit, # <u>9</u> Exhibit, # <u>10</u> Exhibit, # <u>11</u> Exhibit, # <u>12</u> Exhibit, # <u>13</u> Exhibit, # <u>14</u> Exhibit, # <u>15</u> Exhibit, # <u>16</u> Exhibit, # <u>17</u> Exhibit)(Burris, John) (Entered: 03/02/2010)

03/03/2010	<u>30</u>	PROPOSED SUMMONS to be issued, filed by Plaintiffs Jin-Sung Hong, Tae-Si Kim. (Burris, John) (Entered: 03/03/2010)
03/03/2010	<u>31</u>	PROPOSED SUMMONS to be issued, filed by Plaintiffs Jin-Sung Hong, Tae-Si Kim. (Burris, John) (Entered: 03/03/2010)
03/03/2010	<u>32</u>	PROPOSED SUMMONS to be issued, filed by Plaintiffs Jin-Sung Hong, Tae-Si Kim. (Burris, John) (Entered: 03/03/2010)
03/03/2010	<u>33</u>	Summons Issued as to Cumorah Credit Union. (AXM) (Entered: 03/03/2010)
03/03/2010	<u>34</u>	Summons Issued as to Charles M. Damus. (AXM) (Entered: 03/03/2010)
03/03/2010	<u>35</u>	Summons Issued as to Valley Foreclosure Services. (AXM) (Entered: 03/03/2010)
03/04/2010	<u>36</u>	ORDER granting <u>28</u> Motion to Extend Time. Discovery Plan/Scheduling Order due by 4/1/2010. Signed by Magistrate Judge Peggy A. Leen on 3/2/10. (Copies have been distributed pursuant to the NEF - AXM) (Entered: 03/04/2010)
03/15/2010	<u>37</u>	MOTION to Strike <i>Defendant Alverson Taylor Mortensen & Sanders Motion to Strike Plaintiffs' First Amended Complaint</i> by Defendant Alverson, Taylor, Mortensen & Sanders. Responses due by 4/1/2010. (Owens, Jonathan) (Entered: 03/15/2010)
03/15/2010	<u>38</u>	MOTION to Strike <u>29</u> Amended Complaint,, by Defendant First American Title. Responses due by 4/1/2010. (Gunnerson, Spencer) (Entered: 03/15/2010)
03/16/2010	<u>39</u>	SUMMONS Returned Executed by Jin-Sung Hong, Tae-Si Kim re <u>34</u> Summons Issued. Charles M. Damus served on 3/9/2010, answer due 3/30/2010. (Burris, John) (Entered: 03/16/2010)
03/16/2010	<u>40</u>	SUMMONS Returned Executed by Jin-Sung Hong, Tae-Si Kim re <u>33</u> Summons Issued. Cumorah Credit Union served on 3/9/2010, answer due 3/30/2010. (Burris, John) (Entered: 03/16/2010)
03/16/2010	<u>41</u>	SUMMONS Returned Executed by Jin-Sung Hong, Tae-Si Kim re <u>35</u> Summons Issued. Valley Foreclosure Services served on 3/9/2010, answer due 3/30/2010. (Burris, John) (Entered: 03/16/2010)
03/16/2010	<u>42</u>	NOTICE of Lis Pendens by Plaintiffs Jin-Sung Hong, Tae-Si Kim. (Burris, John) (Entered: 03/16/2010)
03/16/2010	<u>43</u>	JOINDER to <u>37</u> <u>38</u> Motion to Strike; filed by Defendants Barbara R. Reed, Edward C. Reed, Reed Team. (Attachments: # <u>1</u> Exhibit)(Stoberski, Michael) Docket entry relationship added on 3/23/2010. (MJZ) (Entered: 03/16/2010)
03/25/2010	<u>44</u>	SUMMONS Returned Unexecuted by Jin-Sung Hong, Tae-Si Kim as to Gina Thomas re <u>3</u> Summons Issued (Burris, John) (Entered: 03/25/2010)
03/29/2010	<u>45</u>	MOTION for Summary Judgment by Defendant Valley Foreclosure Services. Responses due by 4/22/2010. (Attachments: # <u>1</u> Exhibit Exhibit A deed, # <u>2</u> Exhibit Exhibit B deed of trust, # <u>3</u> Exhibit Exhibit C deed, # <u>4</u> Exhibit Exhibit D re-recorded deed of trust, # <u>5</u> Exhibit Exhibit E notice of default, # <u>6</u> Exhibit Exhibit F notice of sale, # <u>7</u> Exhibit Exhibit G trustee's deed)(Bohn, Michael) <u>46</u> Corrected image filed on 3/29/2010. (MJZ) (Entered: 03/29/2010)
03/29/2010	<u>46</u>	NOTICE of Corrected Image/Document re <u>45</u> MOTION for Summary Judgment by Defendant Valley Foreclosure Services. (Service of corrected image is attached). (Attachments: # <u>1</u> Exhibit A---deed, # <u>2</u> Exhibit B---deed of trust, # <u>3</u> Exhibit C---deed, # <u>4</u> Exhibit D---re-recorded deed of trust, # <u>5</u> Exhibit E---notice of default, # <u>6</u> Exhibit F---notice of sale, # <u>7</u> Exhibit G---trustee's deed)(Bohn, Michael) (Entered: 03/29/2010)
03/29/2010	<u>47</u>	STIPULATION and Order to Exend Time to File Responsive Pleading by Defendant Cumorah Credit Union. (Burch, Carleton) (Entered: 03/29/2010)
03/30/2010	<u>48</u>	ORDER ON STIPULATION granting <u>47</u> Stipulation for time to respond by Cumorah Credit Union, due 4/12/2010. Signed by Judge Philip M. Pro. (Copies have been distributed pursuant to the NEF - AXM) (Entered: 03/30/2010)

04/01/2010	<u>49</u>	PROPOSED Discovery Plan/Scheduling Order filed by Plaintiffs Jin-Sung Hong, Tae-Si Kim. (Burris, John) (Entered: 04/01/2010)
04/01/2010	<u>50</u>	RESPONSE to <u>37</u> MOTION to Strike <i>Defendant Alverson Taylor Mortensen & Sanders Motion to Strike Plaintiffs' First Amended Complaint</i> , filed by Plaintiffs Jin-Sung Hong, Tae-Si Kim. Replies due by 4/11/2010. (Burris, John) (Entered: 04/01/2010)
04/01/2010	<u>51</u>	RESPONSE to <u>38</u> MOTION to Strike <u>29</u> Amended Complaint,, filed by Plaintiffs Jin-Sung Hong, Tae-Si Kim. Replies due by 4/11/2010. (Burris, John) (Entered: 04/01/2010)
04/06/2010	<u>52</u>	SCHEDULING ORDER. Discovery due by 9/10/2010. Motions due by 10/10/2010. Proposed Joint Pretrial Order due by 11/9/2010. Signed by Magistrate Judge Peggy A. Leen on 4/5/10. (Copies have been distributed pursuant to the NEF - AXM) (Entered: 04/07/2010)
04/07/2010	<u>53</u>	CERTIFICATE of Interested Parties filed by Valley Foreclosure Services. There are no known interested parties other than those participating in the case. (Bohn, Michael) (Entered: 04/07/2010)
04/09/2010	<u>54</u>	REPLY to Response to <u>38</u> MOTION to Strike <u>29</u> Amended Complaint,, filed by Defendant First American Title. (Gunnerson, Spencer) (Entered: 04/09/2010)
04/09/2010	<u>55</u>	MOTION to Amend/Correct Complaint re <u>1</u> Complaint,, by Plaintiffs Jin-Sung Hong, Tae-Si Kim. Responses due by 4/26/2010. (Attachments: # <u>1</u> Exhibit)(Burris, John) (Entered: 04/09/2010)
04/12/2010	<u>56</u>	REPLY to Response to <u>37</u> MOTION to Strike <i>Defendant Alverson Taylor Mortensen & Sanders Motion to Strike Plaintiffs' First Amended Complaint</i> ; filed by Defendant Alverson, Taylor, Mortensen & Sanders. <i>Defendant Alverson Taylor Mortensen & Sanders Reply in Support of its Motion to Strike Plaintiffs' First Amended Complaint</i> (Owens, Jonathan) (Entered: 04/12/2010)
04/12/2010	<u>57</u>	MOTION to Dismiss <i>and</i> MOTION to Strike Plaintiffs' Claims for Punitive Damages by Defendant Cumorah Credit Union. Responses due by 4/29/2010. (Burch, Carleton) (Entered: 04/12/2010)
04/12/2010	<u>59</u>	MOTION to Strike Plaintiffs' Claims for Punitive Damages by Defendant Cumorah Credit Union. Responses due by 4/29/2010. (MJZ) (Entered: 04/13/2010)
04/13/2010	<u>58</u>	SERVICE by Publication filed by Plaintiffs Jin-Sung Hong, Tae-Si Kim. Last publication date April-13-2010. (Burris, John) (Entered: 04/13/2010)
04/13/2010		NOTICE of Docket Correction to <u>57</u> MOTION to Dismiss : ERROR: Document should've been filed as two separate entries by Attorney <u>Carleton R. Burch</u> ; CORRECTION: Entry refiled by Court as <u>59</u> MOTION to Strike. (no image attached) (MJZ) (Entered: 04/13/2010)
04/21/2010	<u>61</u>	STIPULATION re <u>45</u> MOTION for Summary Judgment ; by Plaintiffs Jin-Sung Hong, Tae-Si Kim. (Burris, John) (Entered: 04/21/2010)
04/22/2010	<u>62</u>	ORDER Granting <u>61</u> Stipulation for time to file deadlines to <u>45</u> MOTION for Summary Judgment. Responses due by 5/6/2010. Replies due by 5/11/2010. Signed by Judge Philip M. Pro. (Copies have been distributed pursuant to the NEF - AXM) (Entered: 04/22/2010)
04/26/2010	<u>63</u>	RESPONSE to <u>55</u> MOTION to Amend/Correct Complaint re <u>1</u> Complaint,, filed by Defendant Alverson, Taylor, Mortensen & Sanders. <i>Defendant Alverson Taylor Mortensen & Sanders' Opposition to Plaintiffs' Motion for Leave to File a First Amended Complaint and to Add Parties</i> Replies due by 5/6/2010. (Owens, Jonathan) (Entered: 04/26/2010)
04/26/2010	<u>64</u>	RESPONSE to <u>55</u> MOTION to Amend/Correct Complaint re <u>1</u> Complaint,, filed by Defendant First American Title. Replies due by 5/6/2010. (Gunnerson, Spencer) (Entered: 04/26/2010)
04/28/2010	<u>65</u>	STIPULATION re <u>59</u> MOTION to Strike, <u>57</u> MOTION to Dismiss <i>and</i> MOTION to Strike Plaintiffs' Claims for Punitive Damages ; by Plaintiffs Jin-Sung Hong, Tae-Si

		Kim. (Burris, John) (Entered: 04/28/2010)
04/28/2010	<u>66</u>	ORDER Granting <u>65</u> Stipulation for time to file deadlines to <u>57</u> MOTION to Dismiss, and <u>59</u> MOTION to Strike. Responses due by 5/7/2010. Replies due by 5/18/2010. Signed by Judge Philip M. Pro. (Copies have been distributed pursuant to the NEF – AXM) (Entered: 04/28/2010)
05/05/2010	<u>67</u>	STIPULATION re <u>59</u> MOTION to Strike, <u>57</u> MOTION to Dismiss and <i>MOTION to Strike Plaintiffs' Claims for Punitive Damages</i> ; by Plaintiffs Jin-Sung Hong, Tae-Si Kim. (Burris, John) (Entered: 05/05/2010)
05/05/2010	<u>68</u>	STIPULATION re <u>45</u> MOTION for Summary Judgment, <u>46</u> Notice of Corrected Image/Document, ; by Plaintiffs Jin-Sung Hong, Tae-Si Kim. (Burris, John) (Entered: 05/05/2010)
05/05/2010	<u>69</u>	ORDER GRANTING <u>68</u> Stipulation to Extend Deadlines. Responses due by 5/11/2010 and Replies due by 5/24/2010 re <u>45</u> MOTION for Summary Judgment. Signed by Judge Philip M. Pro on 5/5/10. (Copies have been distributed pursuant to the NEF – ECS) (Entered: 05/05/2010)
05/06/2010	<u>70</u>	REPLY to Response to <u>55</u> MOTION to Amend/Correct Complaint re <u>1</u> Complaint, ; filed by Plaintiffs Jin-Sung Hong, Tae-Si Kim. (Burris, John) (Entered: 05/06/2010)
05/06/2010	<u>71</u>	REPLY to Response to <u>55</u> MOTION to Amend/Correct Complaint re <u>1</u> Complaint, ; filed by Plaintiffs Jin-Sung Hong, Tae-Si Kim. (Burris, John) (Entered: 05/06/2010)
05/11/2010	<u>72</u>	RESPONSE to <u>45</u> MOTION for Summary Judgment, filed by Plaintiffs Jin-Sung Hong, Tae-Si Kim. Replies due by 5/28/2010. (Attachments: # <u>1</u> Declaration)(Burris, John) (Entered: 05/11/2010)
05/14/2010	<u>73</u>	RESPONSE to <u>57</u> MOTION to Dismiss, <u>59</u> MOTION to Strike, filed by Plaintiffs Jin-Sung Hong, Tae-Si Kim. Replies due by 5/24/2010. (Burris, John) (Entered: 05/14/2010)
05/24/2010	<u>74</u>	REPLY to Response to <u>57</u> MOTION to Dismiss and <i>MOTION to Strike Plaintiffs' Claims for Punitive Damages</i> ; filed by Defendant Cumorah Credit Union. <i>Reply in Support of Cumorah Credit Union's Motion to Dismiss</i> (Bradford, Brian) (Entered: 05/24/2010)
06/14/2010	<u>75</u>	MOTION to Extend Time regarding discovery/non dispositive matter by Plaintiffs Jin-Sung Hong, Tae-Si Kim. Motion ripe 6/14/2010. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit)(Burris, John) (Entered: 06/14/2010)
06/28/2010	<u>76</u>	ORDER Granting <u>75</u> Motion to Extend Time to Serve Defendant The Estate of James L. Zelman. Proof of service due by 7/2/2010. Signed by Magistrate Judge Peggy A. Leen on 6/23/10. (Copies have been distributed pursuant to the NEF – ASB) (Entered: 06/28/2010)
07/01/2010	<u>77</u>	SERVICE by Publication filed by Plaintiffs Jin-Sung Hong, Tae-Si Kim. Last publication date 06/29/2010. (Burris, John) (Entered: 07/01/2010)
07/12/2010	<u>78</u>	Joint STATUS REPORT by Plaintiffs Jin-Sung Hong, Tae-Si Kim. (Burris, John) (Entered: 07/12/2010)
07/12/2010	<u>79</u>	MOTION to Extend Time regarding discovery/nondispositive matter re <u>52</u> Scheduling Order by Plaintiffs Jin-Sung Hong, Tae-Si Kim. Motion ripe 7/12/2010. (Attachments: # <u>1</u> Exhibit)(Burris, John) (Entered: 07/12/2010)
07/19/2010	<u>80</u>	SCHEDULING ORDER DENYING <u>79</u> MOTION for Extension of Dates. The court will give the parties a 90-day extension of the existing Discovery Plan and Scheduling Order Deadlines as follows: Discovery due by 12/8/2010. Motions due by 1/7/2011. Proposed Joint Pretrial Order due by 2/6/2011. Signed by Magistrate Judge Peggy A. Leen on 7/16/10. (Copies have been distributed pursuant to the NEF – EDS) (Entered: 07/19/2010)
07/22/2010	<u>81</u>	MOTION for Entry of Clerks Default by Plaintiffs Jin-Sung Hong, Tae-Si Kim. Motion ripe 7/22/2010. (Attachments: # <u>1</u> Exhibit)(Burris, John) (Entered: 07/22/2010)

07/22/2010	<u>82</u>	MOTION for Entry of Clerks Default by Plaintiffs Jin-Sung Hong, Tae-Si Kim. Motion ripe 7/22/2010. (Attachments: # <u>1</u> Exhibit)(Burris, John) (Entered: 07/22/2010)
07/23/2010	<u>83</u>	Clerk's ENTRY OF DEFAULT as to Estate of James L. Zemelman, Esq. and Adam B Kearney re <u>81</u> and <u>82</u> MOTIONS for Entry of Clerks Default. (ASB) (Entered: 07/23/2010)
08/26/2010	<u>84</u>	NOTICE of Change of Address by Steven A. Gibson. (<i>Change of Firm Name from Gibson Lowry Burris LLP to Dickinson Wright PLLC</i>) (Gibson, Steven) (Entered: 08/26/2010)
08/30/2010	<u>85</u>	ORDER granting in part and denying in part <u>2</u> Motion to Dismiss; granting in part and denying in part <u>10</u> Motion to Dismiss; granting in part and denying in part <u>12</u> Motion to Dismiss. Signed by Judge Philip M. Pro on 8/29/2010. (Copies have been distributed pursuant to the NEF - MJZ) (Entered: 08/30/2010)
08/30/2010	<u>86</u>	ORDER denying as moot <u>37</u> Motion to Strike; denying as moot <u>38</u> Motion to Strike; granting in part and denying in part <u>45</u> Motion for Summary Judgment; granting in part and denying in part <u>57</u> Motion to Dismiss; and denying <u>59</u> Motion to Strike. IT IS FURTHER ORDERED granting in part and denying in part <u>55</u> Motion to Amend Complaint. Plaintiffs have 30 days to file a second amended complaint. Signed by Judge Philip M. Pro on 8/29/2010. (Copies have been distributed pursuant to the NEF - MJZ) (Entered: 08/30/2010)
09/02/2010	<u>87</u>	NOTICE of Appearance by attorney Joseph P Garin on behalf of Defendant Charles M. Damus. (Garin, Joseph) (Entered: 09/02/2010)
09/08/2010	<u>88</u>	MOTION to Compel <i>Deposition</i> by Plaintiffs Jin-Sung Hong, Tae-Si Kim. Responses due by 9/25/2010. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit, # <u>3</u> Exhibit, # <u>4</u> Exhibit, # <u>5</u> Exhibit, # <u>6</u> Exhibit)(Burris, John) (Entered: 09/08/2010)
09/08/2010	<u>89</u>	MOTION for Sanctions re Discovery by Plaintiffs Jin-Sung Hong, Tae-Si Kim. Responses due by 9/25/2010. (MJZ) (Entered: 09/09/2010)
09/09/2010		NOTICE of Docket Correction to <u>88</u> MOTION to Compel. ERROR: Document should've been filed as <i>two</i> separate entries by attorney <u>John Burris</u> ; CORRECTION: Entry refiled by Court as <u>89</u> MOTION for Sanctions re Discovery. (no image attached)(MJZ) (Entered: 09/09/2010)
09/13/2010	<u>90</u>	NOTICE of Hearing on <u>88</u> MOTION to Compel <i>Deposition</i> , <u>89</u> MOTION for Sanctions re Discovery : Motion Hearing set for 10/5/2010 09:15 AM in LV Courtroom 3B before Magistrate Judge Peggy A. Leen. (no image attached)(TKH) Modified on 9/13/2010 (TKH). (Entered: 09/13/2010)
09/17/2010	<u>91</u>	RESPONSE to Defendant Cumorah Credit Union's Demand for Prior Discovery filed by Defendant Alverson, Taylor, Mortensen & Sanders. (Attachments: # <u>1</u> Exhibit D)(Owens, Jonathan) Modified text on 9/20/2010 (SRK). (Entered: 09/17/2010)
10/05/2010	<u>92</u>	MOTION to Dismiss for Lack of Jurisdiction by Defendant Charles M. Damus. Responses due by 10/22/2010. (Garin, Joseph) (Entered: 10/05/2010)
10/05/2010	<u>94</u>	MINUTES OF PROCEEDINGS - Motion Hearing held on 10/5/2010 before Magistrate Judge Peggy A. Leen. Crtrm Administrator: <i>Jeff Miller</i> ; Pla Counsel: <i>Steven A. Gibson, Esq.</i> ; Def Counsel: <i>Zach Thompson, Esq., Andres Camacho, Esq., James Fairbanks, Esq.</i> ; Court Reporter/FTR #: 9:15:33 - 9:19:16; Time of Hearing: 9:15am; Courtroom: 3B; This matter has been scheduled to hear arguments on Plaintiffs' Motion to Compel <u>88</u> and Motion for Sanctions re: Discovery <u>89</u> . Defendant Kearney has not responded to these motions, and is not present at this hearing. IT IS ORDERED: Plaintiffs' Motion to Compel <u>88</u> and Motion for Sanctions re: Discovery <u>89</u> are GRANTED. <u>A SEPARATE WRITTEN ORDER WILL ISSUE</u> requiring the Plaintiff to appear for his duly noticed deposition on 10/21/2010 @ 9:30am in the law offices of counsel. Plaintiffs' Counsel is directed to file a memorandum, supported by affidavit, regarding the costs and fees incurred due to the necessity of filing this motion and the out of pocket costs for Defendant Kearney's failure to appear at a previously noticed deposition on 8/25/2010, IT IS FURTHER ORDERED: Defendant Kearney shall comply with the outstanding discovery obligation to serve Plaintiffs' and other counsel with his initial disclosures and responses to production of document requests no later than 4:00pm on 10/20/2010, IT

		IS FURTHER ORDERED: Defendant Kearney shall provide the Court and opposing counsel with a valid mailing address where he can accept papers and pleadings filed in this matter. If Defendant Kearney fails to timely comply with these orders, this Court will recommend up to and including case dispositive sanctions to the District Judge for his failure to engage in discovery, failure to meet his obligations, and for failure to comply with Court orders. Plaintiffs' Counsel shall provide email notice of the entry of this order and the Court's written order to Defendant Kearney, as well as inform Defendant Kearney telephonically of these orders, and shall file a Certificate of Service reflecting their efforts in complying with the Court's directions. (Copies have been distributed pursuant to the NEF – JAM) (Entered: 10/06/2010)
10/06/2010	<u>93</u>	JOINDER to <u>92</u> MOTION to Dismiss for Lack of Jurisdiction ; filed by Defendant Valley Foreclosure Services. (Bohn, Michael) (Entered: 10/06/2010)
10/06/2010	<u>95</u>	AMENDED MINUTES OF PROCEEDINGS – Motion Hearing held on 10/5/2010 before Magistrate Judge Peggy A. Leen. Crtrm Administrator: <i>Jeff Miller</i> ; Pla Counsel: <i>Steven A. Gibson, Esq.</i> ; Def Counsel: <i>Zach Thompson, Esq., Andres Camacho, Esq., James Fairbanks, Esq.</i> ; Court Reporter/FTR #: 9:15:33 – 9:19:16; Time of Hearing: 9:15am; Courtroom: 3B; This matter has been scheduled to hear arguments on Plaintiffs' Motion to Compel <u>88</u> and Motion for Sanctions re: Discovery <u>89</u> . Defendant Kearney has not responded to these motions, and is not present at this hearing. IT IS ORDERED: Plaintiffs' Motion to Compel <u>88</u> and Motion for Sanctions re: Discovery <u>89</u> are GRANTED. A SEPARATE WRITTEN ORDER WILL ISSUE requiring <i>Defendant Kearney</i> to appear for his duly noticed deposition on 10/21/2010 @ 9:30am in the law offices of counsel. Plaintiffs' Counsel is directed to file a memorandum, supported by affidavit, regarding the costs and fees incurred due to the necessity of filing this motion and the out of pocket costs for Defendant Kearney's failure to appear at a previously noticed deposition on 8/25/2010, IT IS FURTHER ORDERED: Defendant Kearney shall comply with the outstanding discovery obligation to serve Plaintiffs' and other counsel with his initial disclosures and responses to production of document requests no later than 4:00pm on 10/20/2010, IT IS FURTHER ORDERED: Defendant Kearney shall provide the Court and opposing counsel with a valid mailing address where he can accept papers and pleadings filed in this matter. If Defendant Kearney fails to timely comply with these orders, this Court will recommend up to and including case dispositive sanctions to the District Judge for his failure to engage in discovery, failure to meet his obligations, and for failure to comply with Court orders. Plaintiffs' Counsel shall provide email notice of the entry of this order and the Court's written order to Defendant Kearney, as well as inform Defendant Kearney telephonically of these orders, and shall file a Certificate of Service reflecting their efforts in complying with the Court's directions. (Copies have been distributed pursuant to the NEF – JAM)(Copies have been distributed pursuant to the NEF – JAM) (Entered: 10/07/2010)
10/07/2010	<u>96</u>	ORDER Granting <u>88</u> MOTION to Compel <i>Deposition</i> and <u>89</u> MOTION for Sanctions re Discovery filed by Jin-Sung Hong, and Tae-Si Kim. Signed by Magistrate Judge Peggy A. Leen on 10/6/2010. (Copies have been distributed pursuant to the NEF – DXS) (Entered: 10/08/2010)
10/11/2010	<u>97</u>	ANSWER to <u>29</u> Amended Complaint,, <i>Defendant Alverson Taylor Mortensen & Sanders' Answer to Plaintiffs' First Amended Complaint</i> filed by Alverson, Taylor, Mortensen & Sanders. Certificate of Interested Parties due by 10/21/2010. Discovery Plan/Scheduling Order due by 11/25/2010.(Owens, Jonathan) (Entered: 10/11/2010)
10/11/2010	<u>98</u>	DEMAND for Trial by Jury by Defendant Alverson, Taylor, Mortensen & Sanders <i>Demand for Jury Trial</i> . (Owens, Jonathan) (Entered: 10/11/2010)
10/11/2010	<u>99</u>	Second STATUS REPORT by Plaintiffs Jin-Sung Hong, Tae-Si Kim. (Burris, John) (Entered: 10/11/2010)
10/12/2010	<u>100</u>	JOINDER to <u>92</u> Motion to Dismiss; filed by Defendant Alverson, Taylor, Mortensen & Sanders. (Owens, Jonathan) Docket entry relationship added on 10/12/2010. (MJZ) (Entered: 10/12/2010)
10/12/2010	<u>101</u>	NOTICE by Plaintiffs Jin-Sung Hong, Tae-Si Kim re <u>96</u> Order,. (Lowry, Jodi) (Entered: 10/12/2010)

10/20/2010	<u>102</u>	ANSWER to <u>29</u> Amended Complaint,, with Jury Demand filed by Barbara R. Reed, Edward C. Reed, Reed Team. Certificate of Interested Parties due by 10/30/2010. Discovery Plan/Scheduling Order due by 12/4/2010.(Stoberski, Michael) (Entered: 10/20/2010)
10/21/2010	<u>103</u>	STIPULATION of Dismissal <i>with Prejudice of First American Title Insurance Co. and Gina Thomas by Plaintiff Jin-Sung Hong and by Plaintiff Tae-Si Kim.</i> (Lowry, Jodi) (Entered: 10/21/2010)
10/21/2010	<u>104</u>	MEMORANDUM of Fees and Costs filed by Plaintiff Tae-Si Kim RE <u>96</u> Order,. (Lowry, Jodi) (Entered: 10/21/2010)
10/22/2010	<u>105</u>	ORDER ON STIPULATION Granting <u>103</u> Stipulation of Dismissal with prejudice as to Defendants First American Title and Gina Thomas. Each party shall bear their own fees and costs. Signed by Judge Philip M. Pro on 10/22/10. (Copies have been distributed pursuant to the NEF – EDS) (Entered: 10/22/2010)
10/22/2010	<u>106</u>	RESPONSE to <u>92</u> MOTION to Dismiss for Lack of Jurisdiction, filed by Plaintiffs Jin-Sung Hong, Tae-Si Kim. Replies due by 11/1/2010. (Lowry, Jodi) (Entered: 10/22/2010)
10/22/2010	<u>107</u>	BRIEF re <u>93</u> Joinder ; filed by Plaintiffs Jin-Sung Hong, Tae-Si Kim. (<i>Opposition to Valley Foreclosure Services' Joinder to Charles M. Damus' Motion to Dismiss [Doc. 92]</i>) (Lowry, Jodi) (Entered: 10/22/2010)
11/01/2010	<u>108</u>	REPLY to Response to <u>92</u> MOTION to Dismiss for Lack of Jurisdiction ; filed by Defendant Charles M. Damus. (Garin, Joseph) (Entered: 11/01/2010)
11/09/2010	<u>109</u>	MINUTE ORDER IN CHAMBERS of the Honorable Judge Philip M. Pro, on 11/9/2010. By Deputy Clerk: Donna Sherwood. RE: <u>92</u> Defendant Charles M. Damus, Esq.'s Motion to Dismiss for Lack of Subject Matter Jurisdiction and Joinders [93 & 100]. IT IS ORDERED a Motion Hearing is set for 12/6/2010 at 10:30 AM in LV Courtroom 7C before Judge Philip M. Pro.(no image attached) (Copies have been distributed pursuant to the NEF – DMS) (Entered: 11/09/2010)
11/24/2010	<u>110</u>	NOTICE by Defendant Alverson, Taylor, Mortensen & Sanders re <u>100</u> Joinder. <i>Notice of Withdrawal of Defendant Alverson, Taylor, Mortensen & Sanders' Joinder in Defendant Charles M. Damus, Esq.'s Motion to Dismiss for Lack of Subject Matter Jurisdiction</i> (Owens, Jonathan) (Entered: 11/24/2010)
11/24/2010	<u>111</u>	STIPULATION and Order to Continue the Deposition of Charles Damus, Esq. Until After the Close of Discovery by Defendant Charles M. Damus, Plaintiffs Jin-Sung Hong, Tae-Si Kim. (Garin, Joseph) (Entered: 11/24/2010)
11/29/2010	<u>112</u>	ORDER ON STIPULATION Granting <u>111</u> Stipulation to Continue the Deposition of Charles Damus until after the close of discovery. Signed by Judge Philip M. Pro on 11/29/10. (Copies have been distributed pursuant to the NEF – EDS) (Entered: 11/29/2010)
11/30/2010	<u>113</u>	MOTION to Withdraw as Attorney by Plaintiff Tae-Si Kim. and Plaintiff Jin-Sung Hong (Burris, John) <u>Event type corrected on 2/28/2012. (MIZ)</u> (Entered: 11/30/2010)
11/30/2010	<u>114</u>	NOTICE by Defendants Barbara R. Reed, Edward C. Reed, Reed Team of Bankruptcy (Stoberski, Michael) (Entered: 11/30/2010)
12/02/2010	<u>115</u>	STIPULATION re <u>80</u> Scheduling Order, Terminate Motions,, ; <i>Stipulation and Order to Continue Deposition of Adam B. Kearney and Extend Time for Dispositive Motions</i> by Defendant Cumorah Credit Union. (Bradford, Brian) (Entered: 12/02/2010)
12/03/2010	<u>116</u>	ORDER Granting <u>115</u> Stipulation to Continue Deposition and Extend time for Dispositive Motions. (Motions due by 2/21/2011.) Signed by Judge Philip M. Pro on 12/3/2010. (Copies have been distributed pursuant to the NEF – DXS) (Entered: 12/03/2010)
12/06/2010	<u>117</u>	MINUTES OF PROCEEDINGS – Motion Hearing held on 12/6/2010 before Judge Philip M. Pro. Crtrm Administrator: Donna Sherwood; Pla Counsel: Steven A. Gibson, Jonathan Salls; Def Counsel: Zachary J. Thompson, Brian L. Bradford, Joseph P. Garin, Steven Keim, Michael F. Bohn; Court Reporter/FTR #: Summer Rivera; Time of Hearing: 10:30 a.m. – 11:00 a.m.; Courtroom: 7C; The Court having heard the

		arguments of counsel, IT IS ORDERED Defendant Charles M. Damus, Esq.'s Motion to Dismiss for Lack of Subject Matter Jurisdiction and Defendant Valley Foreclosure Services' Joinder in motion to Dismiss <u>23</u> are GRANTED. (Copies have been distributed pursuant to the NEF – DMS) (Entered: 12/06/2010)
12/06/2010	<u>120</u>	MINUTES OF PROCEEDINGS – Status Conference held on 12/6/2010 before Magistrate Judge Peggy A. Leen. Crtrm Administrator: <i>Teresa K. Hoskin</i> ; Pla Counsel: <i>Steven A. Gibson</i> ; Def Counsel: <i>Brian L. Bradford and Zachary J. Thompson</i> ; Time of Hearing: 2:30 PM–2:40 PM; The court conducted a telephonic status conference regarding discovery issues, commencing at 2:30 p.m. and concluding at 2:40 p.m. Counsel advised that, due to recent developments in the case, there is a need for an extension of deadlines in the existing Discovery Plan and Scheduling Order. The court inquired of counsel what discovery has been completed to date and what discovery has yet to be completed. The court advised counsel that the extended deadlines would be granted and further advised counsel to submit a Stipulated Extension of the Discovery Plan and Scheduling Order. (Copies have been distributed pursuant to the NEF – ASB) (Entered: 12/08/2010)
12/07/2010	<u>118</u>	STIPULATION re <u>116</u> Order on Stipulation, Set/Reset Deadlines ; <i>Stipulation and Order to Continue Discovery and Extend Time for Dispositive Motions Pursuant to LR 6–1 and LR 7–1 (ThirdRequest)</i> by Defendant Cumorah Credit Union. (Bradford, Brian) (Entered: 12/07/2010)
12/07/2010	<u>119</u>	ORDER ON STIPULATION. Granting <u>118</u> Stipulation to Continue Discovery and Extend Time for Dispositive Motions. Discovery due by 3/1/2011. Motions due by 3/31/2011. Signed by Judge Philip M. Pro on 12/7/10. (Copies have been distributed pursuant to the NEF – MMM) (Entered: 12/07/2010)
12/08/2010	<u>121</u>	SUBPOENA Returned Executed as to PMK First American Title (Bradford, Brian) (Entered: 12/08/2010)
12/10/2010	<u>122</u>	STIPULATION of Dismissal <i>Joint Stipulation and Order for Dismissal with Prejudice</i> by Defendant Alverson, Taylor, Mortensen & Sanders. (Owens, Jonathan) (Entered: 12/10/2010)
12/13/2010	<u>123</u>	ORDER Granting <u>122</u> Stipulation of Dismissal with prejudice as to Defendants Alverson, Taylor, Mortensen & Sanders. Each party shall bear it's own costs and attorney's fees. Signed by Judge Philip M. Pro on 12/13/2010. (Copies have been distributed pursuant to the NEF – DXS) (Entered: 12/13/2010)
12/13/2010	<u>124</u>	STIPULATION of Dismissal <i>Stipulation and Order of Dismissal with Prejudice Pursuant to FRCP 41(a)</i> by Plaintiffs Jin–Sung Hong, Tae–Si Kim. (Lowry, Jodi) (Entered: 12/13/2010)
12/14/2010	<u>125</u>	ORDER ON STIPULATION Granting <u>124</u> Stipulation of Dismissal of Defendant Estate of James L. Zemelman, Esq. Signed by Judge Philip M. Pro on 12/14/10. (Copies have been distributed pursuant to the NEF – ASB) (Entered: 12/15/2010)
01/18/2011	<u>126</u>	MINUTE ORDER IN CHAMBERS of the Honorable Roger L. Hunt, on 1/18/2011. To properly distribute the case load for the magistrate judges in the District of Nevada, IT IS ORDERED that this case is reassigned to Judge George W. Foley, Jr., U.S. Magistrate Judge for all further proceedings consistent with his jurisdiction. All further documents must bear the correct case number 2:09–cv–02008–PMP–GWF . (no image attached) (Copies have been distributed pursuant to the NEF – PM) (Entered: 01/18/2011)
01/28/2011	<u>127</u>	NOTICE of Voluntary Dismissal by Plaintiffs Jin–Sung Hong, Tae–Si Kim. <i>Notice of Dismissal of Adam B. Kearney with Prejudice Pursuant to Fed. R. Civ. P. 41(a)</i> (Gibson, Steven) (Entered: 01/28/2011)
01/28/2011		Party Adam B Kearney terminated pursuant to Notice of Voluntary Dismissal <u>127</u> . (ECS) (Entered: 01/31/2011)
01/31/2011	<u>128</u>	ORDER Approving <u>127</u> Notice of Voluntary Dismissal of Adam B. Kearney. Signed by Judge Philip M. Pro on 1/31/11. (Copies have been distributed pursuant to the NEF – ECS) (Entered: 01/31/2011)

02/02/2011	<u>129</u>	ORDER that the court will assess sanctions in favor of the Plaintiffs against Defendant Adam Kearney in the amount of \$3,667.25 which represents \$3,514.75 in attorneys fees incurred for deposition preparation and preparation of the motion to compel, and \$152.50 in costs. Signed by Magistrate Judge George Foley, Jr on 2/2/11. (Copies have been distributed pursuant to the NEF – ECS) (Entered: 02/02/2011)
02/09/2011	<u>130</u>	STIPULATION re <u>120</u> Status Conference,,, <u>119</u> Order on Stipulation,, Set/Reset Deadlines, ; <i>Stipulation and Order to Extend Discovery (Fourth Request)</i> by Defendant Cumorah Credit Union. (Bradford, Brian) (Entered: 02/09/2011)
02/10/2011	<u>131</u>	SCHEDULING ORDER Granting <u>130</u> Stipulation to Extend Discovery Deadlines. Discovery due by 4/15/2011. Motions due by 5/16/2011. Proposed Joint Pretrial Order due by 6/16/2011. Signed by Magistrate Judge George Foley, Jr on 2/10/11. (Copies have been distributed pursuant to the NEF – ASB) (Entered: 02/10/2011)
02/28/2011	<u>132</u>	SUBPOENA Returned Executed as to Adam B. Kearney (Bradford, Brian) (Entered: 02/28/2011)
03/08/2011	<u>133</u>	NOTICE by Plaintiffs Jin-Sung Hong, Tae-Si Kim of <i>Stipulated Order Modifying Automatic Stay</i> (Attachments: # <u>1</u> Exhibit)(Salls, Jonathan) (Entered: 03/08/2011)
03/18/2011	<u>134</u>	NOTICE of Voluntary Dismissal by Plaintiffs Jin-Sung Hong, Tae-Si Kim. <i>Plaintiffs' Notice of Dismissal of RE/MAX International, Inc. Without Prejudice Pursuant To Fed. R. Civ. P. 41(a)</i> (Salls, Jonathan) (Entered: 03/18/2011)
03/18/2011		Party RE/MAX International, Inc. terminated per <u>134</u> Notice of Voluntary Dismissal. (ASB) (Entered: 03/21/2011)
03/21/2011	<u>135</u>	ORDER Granting <u>134</u> Notice of Voluntary Dismissal as to Re/Max International, Inc. Signed by Judge Philip M. Pro on 3/21/11. (Copies have been distributed pursuant to the NEF – ASB) (Entered: 03/21/2011)
04/12/2011	<u>136</u>	SUBPOENA Returned Executed as to Kevin J. Lee (Bradford, Brian) (Entered: 04/12/2011)
04/15/2011	<u>137</u>	STIPULATION FOR EXTENSION OF TIME (Fifth Request) <i>Stipulation and Order to Extend Discovery (Fifth Request)</i> by Plaintiffs Jin-Sung Hong, Tae-Si Kim. (Salls, Jonathan) (Entered: 04/15/2011)
04/18/2011	<u>138</u>	SCHEDULING ORDER Granting <u>137</u> Stipulation for Extension of Discovery. Discovery due by 5/16/2011. Motions due by 6/16/2011. Proposed Joint Pretrial Order due by 7/18/2011. Signed by Magistrate Judge George Foley, Jr on 4/18/11. (Copies have been distributed pursuant to the NEF – ASB) (Entered: 04/18/2011)
05/02/2011	<u>139</u>	SUBPOENA Returned Executed as to PMK First American Title (Bradford, Brian) (Entered: 05/02/2011)
05/10/2011	<u>140</u>	STIPULATION FOR EXTENSION OF TIME (Sixth or more Request) re <u>138</u> Scheduling Order, ; <i>Stipulation and Order to Continue Discovery (Sixth Request)</i> by Defendant Cumorah Credit Union. (Bradford, Brian) (Entered: 05/10/2011)
05/11/2011	<u>141</u>	ORDER GRANTING <u>140</u> Stipulation to Extend Deadlines. Discovery due by 6/6/2011. Motions due by 7/7/2011. Proposed Joint Pretrial Order due by 8/8/2011. Signed by Magistrate Judge George Foley, Jr on 5/11/11. (Copies have been distributed pursuant to the NEF – ECS) (Entered: 05/11/2011)
05/31/2011	<u>142</u>	NOTICE of Association of Counsel by Aaron R. Maurice on behalf of Defendant Cumorah Credit Union. (Maurice, Aaron) (Entered: 05/31/2011)
06/06/2011	<u>143</u>	STIPULATION FOR EXTENSION OF TIME (Sixth or more Request) <i>Stipulation and Order to Extend Discovery (Seventh Request)</i> by Plaintiffs Jin-Sung Hong, Tae-Si Kim. (Salls, Jonathan) (Entered: 06/06/2011)
06/07/2011	<u>144</u>	SCHEDULING ORDER Granting <u>143</u> Stipulation for Extension of Discovery Deadlines. Discovery due by 7/8/2011. Motions due by 8/8/2011. Proposed Joint Pretrial Order due by 9/8/2011. Signed by Magistrate Judge George Foley, Jr on 6/7/11. (Copies have been distributed pursuant to the NEF – ASB) (Entered: 06/07/2011)

06/10/2011	<u>145</u>	MOTION to remove attorney(s) Joseph P. Garin from the Electronic Service List in this case, by Defendant Charles M. Damus. Motion ripe 6/10/2011. (Garin, Joseph) (Entered: 06/10/2011)
06/10/2011	<u>146</u>	MOTION to remove from the Electronic Service List in this case, by Defendant Alverson, Taylor, Mortensen & Sanders. (Owens, Jonathan) <u>Event type corrected on 6/13/2011. (MJZ)</u> (Entered: 06/10/2011)
06/13/2011	<u>147</u>	ORDER granting <u>145</u> Motion to Remove Attorney from Electronic Service List for Defendant Charles M. Damus. Signed by Judge Philip M. Pro on 6/13/11. (Copies have been distributed pursuant to the NEF – ASB) (Entered: 06/13/2011)
06/14/2011	<u>148</u>	ORDER Granting <u>146</u> Motion to Remove Attorney from Electronic Service List for Defendant Alverson, Taylor, Mortensen & Sanders. Signed by Magistrate Judge George Foley, Jr on 6/14/11. (Copies have been distributed pursuant to the NEF – ASB) (Entered: 06/14/2011)
06/14/2011	149	(1st Notice) PURSUANT TO SPECIAL ORDER 109: that Brittany Wood is in violation of Special Order 109. Participation in the electronic filing system became mandatory for all attorneys effective January 1, 2006. You are required to register for the Court's Case Management and Electronic Case Filing (CM/ECF) program and the electronic service of pleadings. Please visit the Court's website to register for CM/ECF. (MJZ) (Entered: 06/14/2011)
06/24/2011	<u>150</u>	MOTION for Relief from Court's Order Granting Valley Foreclosure Services' Joinder in Motion to Dismiss, by Plaintiffs Jin-Sung Hong, Tae-Si Kim. Responses due by 7/11/2011. (Attachments: # <u>1</u> Exhibit Exhibit 1, # <u>2</u> Exhibit Exhibit 2, # <u>3</u> Exhibit Exhibit 3, # <u>4</u> Exhibit Exhibit 4, # <u>5</u> Exhibit Exhibit 5, # <u>6</u> Exhibit Exhibit 6)(Lucero, Laura) (Entered: 06/24/2011)
07/06/2011	<u>151</u>	STIPULATION FOR EXTENSION OF TIME (Sixth or more Request) re <u>144</u> Scheduling Order, ; <i>Stipulation and Order to Continue Discovery (Sixth or More Request)</i> by Defendant Cumorah Credit Union. (Bradford, Brian) (Entered: 07/06/2011)
07/07/2011	<u>152</u>	ORDER GRANTING <u>151</u> Stipulation to Extend Deadlines. Discovery due by 8/1/2011. Motions due by 9/1/2011. Proposed Joint Pretrial Order due by 10/3/2011. Signed by Magistrate Judge George Foley, Jr on 7/7/11. (Copies have been distributed pursuant to the NEF – ECS) (Entered: 07/07/2011)
07/12/2011	153	MINUTE ORDER IN CHAMBERS of the Honorable Judge Philip M. Pro, on 7/12/2011. By Deputy Clerk: Donna Sherwood. IT IS ORDERED Defendant Valley Foreclosure Services, LLC shall file a Response by 7/19/2011 to Plaintiff's Motion for Relief From Court's Order Granting Valley Foreclosure Services' Joinder in Motion to Dismiss <u>150</u> . (no image attached) (Copies have been distributed pursuant to the NEF – DMS) (Entered: 07/12/2011)
07/20/2011	<u>154</u>	ORDER TO SHOW CAUSE re: Defendant Valley Foreclosure Services' Failure to Comply with 153 Order. Show Cause Response due by 7/29/2011. Signed by Judge Philip M. Pro on 7/20/11. (Copies have been distributed pursuant to the NEF – ASB) (Entered: 07/20/2011)
07/25/2011	<u>155</u>	RESPONSE to <u>150</u> Motion for Relief; filed by Defendant Valley Foreclosure Services. Replies due by 8/4/2011. (Bohn, Michael) <u>Docket entry relationship added on 7/26/2011. (MJZ)</u> (Entered: 07/25/2011)
07/25/2011	<u>156</u>	RESPONSE TO ORDER TO SHOW CAUSE by Defendant Valley Foreclosure Services. (Bohn, Michael) (Entered: 07/25/2011)
08/04/2011	<u>157</u>	OBJECTION to <u>156</u> Response to Order to Show Cause ; filed by Plaintiffs Jin-Sung Hong, Tae-Si Kim. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit, # <u>3</u> Exhibit, # <u>4</u> Exhibit, # <u>5</u> Exhibit, # <u>6</u> Exhibit, # <u>7</u> Exhibit, # <u>8</u> Exhibit, # <u>9</u> Exhibit, # <u>10</u> Exhibit, # <u>11</u> Exhibit, # <u>12</u> Exhibit, # <u>13</u> Exhibit)(Salls, Jonathan) (Entered: 08/04/2011)
08/04/2011	<u>158</u>	REPLY to Response to <u>150</u> MOTION for Relief from Court's Order Granting Valley Foreclosure Services' Joinder in Motion to Dismiss ; filed by Plaintiffs Jin-Sung Hong, Tae-Si Kim. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit, # <u>3</u> Exhibit, # <u>4</u> Exhibit, # <u>5</u> Exhibit, # <u>6</u> Exhibit, # <u>7</u> Exhibit, # <u>8</u> Exhibit)(Salls, Jonathan) (Entered: 08/04/2011)

08/15/2011	<u>159</u>	MOTION for Summary Judgment <i>Defendant Cumorah Credit Union's Motion for Summary Judgment</i> by Defendant Cumorah Credit Union. Responses due by 9/8/2011. (Bradford, Brian) (Entered: 08/15/2011)
08/15/2011	<u>160</u>	DECLARATION of Brian L. Bradford, Esq. re <u>159</u> MOTION for Summary Judgment <i>Defendant Cumorah Credit Union's Motion for Summary Judgment ; Declaration of Brian L. Bradford, Esq. in Support of Defendant's Motion for Summary Judgment</i> by Defendant Cumorah Credit Union. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G1, # <u>8</u> Exhibit G2, # <u>9</u> Exhibit G3, # <u>10</u> Exhibit G4, # <u>11</u> Exhibit H, # <u>12</u> Exhibit I, # <u>13</u> Exhibit J, # <u>14</u> Exhibit K)(Bradford, Brian) (Entered: 08/15/2011)
08/15/2011	<u>161</u>	REQUEST for Judicial Notice re <u>159</u> MOTION for Summary Judgment <i>Defendant Cumorah Credit Union's Motion for Summary Judgment ;</i> by Defendant Cumorah Credit Union. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4, # <u>5</u> Exhibit 5, # <u>6</u> Exhibit 6, # <u>7</u> Exhibit 7, # <u>8</u> Exhibit 8, # <u>9</u> Exhibit 9, # <u>10</u> Exhibit 10, # <u>11</u> Exhibit 11, # <u>12</u> Exhibit 12, # <u>13</u> Exhibit 13)(Bradford, Brian) (Entered: 08/15/2011)
08/18/2011	<u>162</u>	MINUTE ORDER IN CHAMBERS of the Honorable Judge Philip M. Pro, on 8/18/2011. By Deputy Clerk: Donna Sherwood. RE: <u>150</u> Plaintiff's Motion for Relief from Court's Order Granting Valley Foreclosure Services' Joinder in Motion to Dismiss. IT IS ORDERED a Motion Hearing is set for 9/15/2011 at 09:30 AM in LV Courtroom 7C before Judge Philip M. Pro.(no image attached) (Copies have been distributed pursuant to the NEF – DMS) (Entered: 08/18/2011)
08/30/2011	<u>163</u>	MOTION to Amend/Correct Complaint re <u>29</u> Amended Complaint,, <i>to Extend the Amend Pleading Deadline and Leave to File Second Amended Complaint</i> by Plaintiffs Jin-Sung Hong, Tae-Si Kim. Responses due by 9/16/2011. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4, # <u>5</u> Exhibit 5-1, # <u>6</u> Exhibit 5-2, # <u>7</u> Exhibit 5-3, # <u>8</u> Exhibit 5-4, # <u>9</u> Exhibit 5-5, # <u>10</u> Exhibit 5-6, # <u>11</u> Exhibit 5-7, # <u>12</u> Exhibit 5-8, # <u>13</u> Exhibit 5-9, # <u>14</u> Exhibit 5-10, # <u>15</u> Exhibit 5-11, # <u>16</u> Exhibit 5-12)(Salls, Jonathan) (Entered: 08/30/2011)
08/30/2011	<u>164</u>	MOTION to Extend Time regarding discovery/nondispositive matter (Sixth or more Request) . by Plaintiffs Jin-Sung Hong, Tae-Si Kim. Motion ripe 8/30/2011. (Salls, Jonathan) Modified text on 8/31/2011 (SRK). (Entered: 08/30/2011)
08/30/2011	<u>165</u>	MOTION to Stay re 162 Minute Order Setting Hearing on Motion, RE Dispositive Motion Deadline. by Plaintiffs Jin-Sung Hong, Tae-Si Kim. Motion ripe 8/30/2011. (Attachments: # <u>1</u> Exhibit)(Salls, Jonathan) Modified text on 8/31/2011 (SRK). (Entered: 08/30/2011)
08/31/2011	<u>166</u>	MINUTE ORDER IN CHAMBERS of the Honorable Magistrate Judge George Foley, Jr, on 8/31/2011. By Deputy Clerk: Heidi Ojeda. RE: <u>164</u> MOTION for Extension of Discovery Deadlines. Defendants are to file a response to this motion no later than <u>Wednesday, September 7, 2011</u> . (Copies have been distributed pursuant to the NEF – Ojeda, Heidi) (Entered: 08/31/2011)
09/01/2011	<u>167</u>	MOTION for Partial Summary Judgment <i>on Negligent Undertaking to Perform Services</i> by Defendants Barbara R. Reed, Edward C. Reed, Reed Team. Responses due by 9/18/2011. (Stoberski, Michael) (Entered: 09/01/2011)
09/01/2011	<u>168</u>	MOTION for Partial Summary Judgment <i>on Civil Conspiracy, Concert of Action, Aiding and Abetting</i> by Defendants Barbara R. Reed, Edward C. Reed, Reed Team. Responses due by 9/18/2011. (Stoberski, Michael) (Entered: 09/01/2011)
09/01/2011	<u>169</u>	MOTION for Partial Summary Judgment <i>on Contract Related Claims</i> by Defendants Barbara R. Reed, Edward C. Reed, Reed Team. Responses due by 9/18/2011. (Stoberski, Michael) (Entered: 09/01/2011)
09/01/2011	<u>170</u>	MOTION for Partial Summary Judgment <i>on Plaintiffs' Fraud-Based Claims</i> by Defendants Barbara R. Reed, Edward C. Reed, Reed Team. Responses due by 9/18/2011. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G, # <u>8</u> Exhibit H, # <u>9</u> Exhibit I, # <u>10</u> Exhibit J, # <u>11</u> Exhibit K, # <u>12</u> Exhibit L, # <u>13</u> Exhibit M, # <u>14</u> Exhibit N, # <u>15</u> Exhibit O, # <u>16</u> Exhibit P, # <u>17</u> Exhibit Q, # <u>18</u> Exhibit R, # <u>19</u> Exhibit S, # <u>20</u> Exhibit T, # <u>21</u> Exhibit U)(Stoberski, Michael) (Entered: 09/01/2011)

09/01/2011	<u>171</u>	DECLARATION of Zachary J. Thompson, Esq. re <u>169</u> MOTION for Partial Summary Judgment <i>on Contract Related Claims</i> , <u>167</u> MOTION for Partial Summary Judgment <i>on Negligent Undertaking to Perform Services</i> , <u>168</u> MOTION for Partial Summary Judgment <i>on Civil Conspiracy, Concert of Action, Aiding and Abetting</i> , <u>170</u> MOTION for Partial Summary Judgment <i>on Plaintiffs' Fraud-Based Claims</i> ; filed by Defendants Barbara R. Reed, Edward C. Reed, Reed Team. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G, # <u>8</u> Exhibit H, # <u>9</u> Exhibit I, # <u>10</u> Exhibit J, # <u>11</u> Exhibit K, # <u>12</u> Exhibit L, # <u>13</u> Exhibit M, # <u>14</u> Exhibit N, # <u>15</u> Exhibit O, # <u>16</u> Exhibit P, # <u>17</u> Exhibit Q, # <u>18</u> Exhibit R, # <u>19</u> Exhibit S, # <u>20</u> Exhibit T, # <u>21</u> Exhibit U)(Stoberski, Michael) (Entered: 09/01/2011)
09/01/2011	<u>172</u>	JOINDER to <u>164</u> MOTION to Extend Time regarding discovery/nondispositive matter (Sixth or more Request) ; <i>Partial Joinder to Plaintiffs' Motion for Extension of Discovery Deadlines</i> filed by Defendants Barbara R. Reed, Edward C. Reed, Reed Team. (Stoberski, Michael) (Entered: 09/01/2011)
09/07/2011	<u>173</u>	RESPONSE to <u>165</u> MOTION to Stay re 162 Minute Order Setting Hearing on Motion, <u>164</u> MOTION to Extend Time regarding discovery/nondispositive matter (Sixth or more Request) re <u>163</u> MOTION to Amend/Correct Complaint re <u>29</u> Amended Complaint,, <i>to Extend the A</i> , filed by Defendant Cumorah Credit Union. Defendant Cumorah Credit Union's Opposition to Plaintiffs' Emergency Motion to Suspend Dispositive Motion Deadline Replies due by 9/17/2011. (Attachments: # <u>1</u> Exhibit A)(Bradford, Brian) (Entered: 09/07/2011)
09/07/2011	<u>174</u>	RESPONSE to <u>164</u> MOTION to Extend Time regarding discovery/nondispositive matter (Sixth or more Request), filed by Defendant Cumorah Credit Union. Defendant Cumorah Credit Union's Opposition to Plaintiffs' Motion for Extension of Discovery Deadlines Replies due by 9/17/2011. (Attachments: # <u>1</u> Exhibit A)(Bradford, Brian) (Entered: 09/07/2011)
09/07/2011	<u>175</u>	RESPONSE to <u>163</u> MOTION to Amend/Correct Complaint re <u>29</u> Amended Complaint,, <i>to Extend the Amend Pleading Deadline and Leave to File Second Amended Complaint</i> MOTION to Amend/Correct Complaint re <u>29</u> Amended Complaint,, <i>to Extend the Amend Pleading Deadline and Leave to File Second Amended Complaint</i> MOTION to Amend/Correct Complaint re <u>29</u> Amended Complaint,, <i>to Extend the Amend Pleading Deadline and Leave to File Second Amended Complaint</i> , filed by Defendant Cumorah Credit Union. Defendant Cumorah Credit Union's Limited Opposition to Plaintiffs' Motion to Extend the Amend Pleading Deadline and Leave to File a Second Amended Complaint Replies due by 9/17/2011. (Bradford, Brian) (Entered: 09/07/2011)
09/08/2011	<u>176</u>	ORDER Denying without prejudice <u>164</u> Motion for Extension of Discovery Deadlines. Signed by Magistrate Judge George Foley, Jr on 9/8/2011. (Copies have been distributed pursuant to the NEF – SLR) (Entered: 09/08/2011)
09/08/2011	<u>177</u>	RESPONSE to <u>159</u> MOTION for Summary Judgment <i>Defendant Cumorah Credit Union's Motion for Summary Judgment</i> , filed by Plaintiffs Jin-Sung Hong, Tae-Si Kim. Replies due by 9/25/2011. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2 part 1, # <u>3</u> Exhibit 2 part 2, # <u>4</u> Exhibit 2 part 3, # <u>5</u> Exhibit 2 part 4, # <u>6</u> Exhibit 2 part 5, # <u>7</u> Exhibit 3, # <u>8</u> Exhibit 4, # <u>9</u> Exhibit 5, # <u>10</u> Exhibit 6, # <u>11</u> Exhibit 7 part 1, # <u>12</u> Exhibit 7 part 2, # <u>13</u> Exhibit 7 part 3, # <u>14</u> Exhibit 7 part 4, # <u>15</u> Exhibit 8, # <u>16</u> Exhibit 9)(Salls, Jonathan) (Entered: 09/08/2011)
09/09/2011	<u>178</u>	MINUTE ORDER IN CHAMBERS of the Honorable Judge Philip M. Pro, on 9/9/2011. In addition to Plaintiffs' Motion for Relief (Doc. #150) set for hearing on September 15, 2011, @ 9:30 AM, the Honorable Judge Philip Pro will also hear Plaintiffs' Emergency Motion to Suspend Dispositive Motion Deadline (Doc. #165) (Copies have been distributed pursuant to the NEF – DG) (Entered: 09/09/2011)
09/09/2011	<u>179</u>	MOTION For Relief from Voluntary Dismissal of Adam B. Kearney re <u>128</u> Order by Plaintiffs Jin-Sung Hong, Tae-Si Kim. Responses due by 9/26/2011. (Attachments: # <u>1</u> Exhibit 1)(Salls, Jonathan) (Entered: 09/09/2011)
09/14/2011	<u>180</u>	REPLY to Response to <u>163</u> MOTION to Amend/Correct Complaint re <u>29</u> Amended Complaint,, <i>to Extend the Amend Pleading Deadline and Leave to File Second Amended Complaint</i> MOTION to Amend/Correct Complaint re <u>29</u> Amended

		Complaint,, to Extend the Amend Pleading Deadline and Leave to File Second Amended Complaint MOTION to Amend/Correct Complaint re <u>29</u> Amended Complaint,, to Extend the Amend Pleading Deadline and Leave to File Second Amended Complaint ; filed by Plaintiffs Jin-Sung Hong, Tae-Si Kim. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2)(Salls, Jonathan) (Entered: 09/14/2011)
09/15/2011	<u>181</u>	MINUTES OF PROCEEDINGS – Motion Hearing held on 9/15/2011 before Judge Philip M. Pro. Crtrm Administrator: <i>Donna Sherwood</i> ; Pla Counsel: <i>Steven A. Gibson, Jonathan M.A. Salls</i> ; Def Counsel: <i>Zachary J. Thompson, Brian L. Bradford, Aaron R. Maurice</i> ; Present Telephonically – <i>Michael F. Bohn</i> ; Court Reporter/FTR #: <i>Joan Quiros</i> ; Time of Hearing: <i>9:30 a.m.</i> ; Courtroom: <i>3B</i> ; The Court having heard the arguments of counsel, IT IS ORDERED Plaintiffs' Motion for Relief from Court's Order Granting Valley Foreclosure Services' Joinder in Motion to Dismiss <u>150</u> is GRANTED in part and DENIED in part, as stated on the record. Plaintiffs' Emergency Motion to Suspend Dispositive Motion Deadline <u>165</u> stands submitted. (Copies have been distributed pursuant to the NEF – DMS) (Entered: 09/15/2011)
09/15/2011	<u>182</u>	JOINDER to <u>159</u> MOTION for Summary Judgment <i>Defendant Cumorah Credit Union's Motion for Summary Judgment</i> ; filed by Defendant Valley Foreclosure Services. (Bohn, Michael) (Entered: 09/15/2011)
09/16/2011	<u>183</u>	ORDER that Plaintiffs Motion for Relief From Courts Order Granting Valley Foreclosure Services Joinder in Motion to Dismiss <u>150</u> is GRANTED to the extent that this Courts Order 117 of December 6, 2010 is VACATED to the limited extent that it GRANTED Defendant Valley Foreclosure Services, LLCs Joinder in Defendant Damus Motion to Dismiss. Defendant Valley Foreclosure Services, LLC is hereby reinstated as a party Defendant to this action. Signed by Judge Philip M. Pro on 9/16/11. (Copies have been distributed pursuant to the NEF – ECS) (Entered: 09/16/2011)
09/16/2011	<u>184</u>	STIPULATION FOR EXTENSION OF TIME (First Request) re <u>167</u> MOTION for Partial Summary Judgment <i>on Negligent Undertaking to Perform Services</i> , <u>168</u> MOTION for Partial Summary Judgment <i>on Civil Conspiracy, Concert of Action, Aiding and Abetting</i> , <u>169</u> MOTION for Partial Summary Judgment <i>on Contract Related Claims</i> , <u>170</u> MOTION for Partial Summary Judgment <i>on Plaintiffs' Fraud-Based Claims</i> ; To File Oppositions to the RE/MAX Defendants' Partial Motions for Summary Judgment by Plaintiffs Jin-Sung Hong, Tae-Si Kim. (Salls, Jonathan) (Entered: 09/16/2011)
09/19/2011	<u>185</u>	ORDER ON STIPULATION Granting <u>184</u> Stipulation for Extension of Time to File Response to <u>167</u> , <u>168</u> , <u>169</u> , and <u>170</u> Motions for Summary Judgment. Responses due by 9/26/2011. Signed by Judge Philip M. Pro on 9/19/11. (Copies have been distributed pursuant to the NEF – ASB) (Entered: 09/20/2011)
09/26/2011	<u>186</u>	REPLY to Response to <u>159</u> MOTION for Summary Judgment <i>Defendant Cumorah Credit Union's Motion for Summary Judgment</i> ; filed by Defendant Cumorah Credit Union. <i>Defendant Cumorah Credit Union's Reply in Support of Motion for Summary Judgment</i> (Bradford, Brian) (Entered: 09/26/2011)
09/26/2011	<u>187</u>	RESPONSE to <u>167</u> MOTION for Partial Summary Judgment <i>on Negligent Undertaking to Perform Services</i> , filed by Plaintiffs Jin-Sung Hong, Tae-Si Kim. Replies due by 10/13/2011. (Salls, Jonathan) (Entered: 09/26/2011)
09/26/2011	<u>188</u>	RESPONSE to <u>168</u> MOTION for Partial Summary Judgment <i>on Civil Conspiracy, Concert of Action, Aiding and Abetting</i> , filed by Plaintiffs Jin-Sung Hong, Tae-Si Kim. Replies due by 10/13/2011. (Salls, Jonathan) (Entered: 09/26/2011)
09/26/2011	<u>189</u>	RESPONSE to <u>169</u> MOTION for Partial Summary Judgment <i>on Contract Related Claims</i> , filed by Plaintiffs Jin-Sung Hong, Tae-Si Kim. Replies due by 10/13/2011. (Salls, Jonathan) (Entered: 09/26/2011)
09/26/2011	<u>190</u>	RESPONSE to <u>170</u> MOTION for Partial Summary Judgment <i>on Plaintiffs' Fraud-Based Claims</i> , filed by Plaintiffs Jin-Sung Hong, Tae-Si Kim. Replies due by 10/13/2011. (Salls, Jonathan) (Entered: 09/26/2011)
09/26/2011	<u>191</u>	DECLARATION re <u>169</u> MOTION for Partial Summary Judgment <i>on Contract Related Claims</i> , <u>167</u> MOTION for Partial Summary Judgment <i>on Negligent</i>

		<i>Undertaking to Perform Services</i> , <u>168</u> MOTION for Partial Summary Judgment on <i>Civil Conspiracy, Concert of Action, Aiding and Abetting</i> , <u>170</u> MOTION for Partial Summary Judgment on <i>Plaintiffs' Fraud-Based Claims</i> ; filed by Plaintiffs Jin-Sung Hong, Tae-Si Kim. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2 part 1, # <u>3</u> Exhibit 2 part 2, # <u>4</u> Exhibit 2 part 3, # <u>5</u> Exhibit 2 part 4, # <u>6</u> Exhibit 2 part 5, # <u>7</u> Exhibit 2 part 6, # <u>8</u> Exhibit 2 part 7, # <u>9</u> Exhibit 3 part 1, # <u>10</u> Exhibit 3 part 2, # <u>11</u> Exhibit 3 part 3, # <u>12</u> Exhibit 3 part 4, # <u>13</u> Exhibit 4, # <u>14</u> Exhibit 5, # <u>15</u> Exhibit 6, # <u>16</u> Exhibit 7, # <u>17</u> Exhibit 8, # <u>18</u> Exhibit 9, # <u>19</u> Exhibit 10, # <u>20</u> Exhibit 11)(Salls, Jonathan) (Entered: 09/26/2011)
09/29/2011	<u>192</u>	RESPONSE to <u>159</u> MOTION for Summary Judgment <i>Defendant Cumorah Credit Union's Motion for Summary Judgment</i> , filed by Plaintiffs Jin-Sung Hong, Tae-Si Kim. <i>PLAINTIFFS' OPPOSITION TO VALLEY'S JOINDER IN CUMORAH CREDIT UNION'S MOTION FOR SUMMARY JUDGMENT</i> Replies due by 10/9/2011. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2 - Part 1, # <u>3</u> Exhibit 2 - Part 2, # <u>4</u> Exhibit 2 - Part 3, # <u>5</u> Exhibit 2 - Part 4, # <u>6</u> Exhibit 2 - Part 5, # <u>7</u> Exhibit 3, # <u>8</u> Exhibit 4, # <u>9</u> Exhibit 5, # <u>10</u> Exhibit 6, # <u>11</u> Exhibit 7 - Part 1, # <u>12</u> Exhibit 7 - Part 2, # <u>13</u> Exhibit 7 - Part 3, # <u>14</u> Exhibit 7 - Part 4, # <u>15</u> Exhibit 7 - Part 5, # <u>16</u> Exhibit 8, # <u>17</u> Exhibit 9)(Salls, Jonathan) (Entered: 09/29/2011)
10/13/2011	<u>193</u>	REPLY to Response to <u>169</u> MOTION for Partial Summary Judgment on <i>Contract Related Claims</i> ; filed by Defendants Barbara R. Reed, Edward C. Reed, Reed Team. (Stoberski, Michael) (Entered: 10/13/2011)
10/13/2011	<u>194</u>	REPLY to Response to <u>170</u> MOTION for Partial Summary Judgment on <i>Plaintiffs' Fraud-Based Claims</i> ; filed by Defendants Barbara R. Reed, Edward C. Reed, Reed Team. (Stoberski, Michael) (Entered: 10/13/2011)
10/13/2011	<u>195</u>	REPLY to Response to <u>168</u> MOTION for Partial Summary Judgment on <i>Civil Conspiracy, Concert of Action, Aiding and Abetting</i> ; filed by Defendants Barbara R. Reed, Edward C. Reed, Reed Team. (Stoberski, Michael) (Entered: 10/13/2011)
10/13/2011	<u>196</u>	REPLY to Response to <u>167</u> MOTION for Partial Summary Judgment on <i>Negligent Undertaking to Perform Services</i> ; filed by Defendants Barbara R. Reed, Edward C. Reed, Reed Team. (Stoberski, Michael) (Entered: 10/13/2011)
10/26/2011	<u>197</u>	MOTION for Clarification re <u>183</u> Order,, by Plaintiffs Jin-Sung Hong, Tae-Si Kim. Responses due by 11/12/2011. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4, # <u>5</u> Exhibit 5, # <u>6</u> Exhibit 6)(Salls, Jonathan) (Entered: 10/26/2011)
10/26/2011	<u>198</u>	RESPONSE to <u>197</u> MOTION for Clarification re <u>183</u> Order,,, filed by Defendant Valley Foreclosure Services. Replies due by 11/12/2011. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit, # <u>3</u> Exhibit)(Bohn, Michael) (Entered: 10/26/2011)
11/01/2011	<u>199</u>	JOINDER to <u>198</u> Response to Motion ; <i>Defendant Cumorah Credit Union's Joinder to Valley Foreclosure's Opposition to Motion for Clarification of Order [Doc. 198]</i> filed by Defendant Cumorah Credit Union. (Bradford, Brian) (Entered: 11/01/2011)
11/08/2011	<u>200</u>	REPLY to Response to <u>197</u> MOTION for Clarification re <u>183</u> Order,, ; filed by Plaintiffs Jin-Sung Hong, Tae-Si Kim. <i>Reply to Opposition to Motion for Clarification of Order</i> (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4, # <u>5</u> Exhibit 5, # <u>6</u> Exhibit 6, # <u>7</u> Exhibit 7)(Salls, Jonathan) (Entered: 11/08/2011)
11/09/2011	<u>201</u>	REPLY to Response to <u>197</u> MOTION for Clarification re <u>183</u> Order,, ; filed by Plaintiffs Jin-Sung Hong, Tae-Si Kim. <i>REPLY TO DEFENDANT CUMORAH CREDIT UNION'S JOINDER TO VALLEY FORECLOSURE'S OPPOSITION TO MOTION FOR CLARIFICATION OF ORDER</i> (Salls, Jonathan) (Entered: 11/09/2011)
11/16/2011	<u>202</u>	MOTION to Compel <i>MOTION TO COMPEL DEPOSITIONS OF ALAN MAYNOR AND DENISE CRARY</i> by Plaintiffs Jin-Sung Hong, Tae-Si Kim. Responses due by 12/3/2011. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4, # <u>5</u> Exhibit 5, # <u>6</u> Exhibit 6, # <u>7</u> Exhibit 7, # <u>8</u> Exhibit 8)(Salls, Jonathan) (Entered: 11/16/2011)
11/23/2011	<u>203</u>	PROPOSED Discovery Plan/Scheduling Order filed by Plaintiffs Jin-Sung Hong, Tae-Si Kim (<i>PROPOSED</i>) <i>SCHEDULING ORDER REGARDING VALLEY FORECLOSURE SERVICES</i> . (Salls, Jonathan) (Entered: 11/23/2011)

11/28/2011	<u>204</u>	MINUTE ORDER IN CHAMBERS of the Honorable Magistrate Judge George Foley, Jr, on 11/28/2011. By Judicial Assistant: Julia Wright. RE: <u>203</u> Proposed Discovery Plan/Scheduling Order : IT IS ORDERED that a responsive pleading to this proposed scheduling order is due no later than December 5, 2011 . (Copies have been distributed pursuant to the NEF – JBW) (Entered: 11/28/2011)
11/28/2011	<u>205</u>	RESPONSE to <u>202</u> MOTION to Compel <i>MOTION TO COMPEL DEPOSITIONS OF ALAN MAYNOR AND DENISE CRARY</i> , filed by Defendant Valley Foreclosure Services. Replies due by 12/8/2011. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit)(Bohn, Michael) (Entered: 11/28/2011)
11/28/2011	<u>206</u>	RESPONSE to <u>203</u> Proposed Discovery Plan/Scheduling Order; filed by Defendant Valley Foreclosure Services. (Bohn, Michael) <u>Event type corrected on 11/29/2011. (MIZ)</u> (Entered: 11/28/2011)
11/29/2011	<u>207</u>	MINUTE ORDER IN CHAMBERS of the Honorable Magistrate Judge George Foley, Jr, on 11/29/2011. By Judicial Assistant: Julia Wright. RE: <u>203</u> Proposed Discovery Plan/Scheduling Order : Status Conference set for Wednesday, December 7, 2011, at 1:30 PM in LV Courtroom 3A before Magistrate Judge George Foley Jr. (Copies have been distributed pursuant to the NEF – JBW) (Entered: 11/29/2011)
11/29/2011	<u>208</u>	JOINDER to <u>206</u> Brief ; <i>Defendant Cumorah Credit Union's Joinder to Defendant Valley Foreclosure Services' Memorandum in Response to Plaintiffs' Proposed Scheduling Order [Doc. 206]</i> filed by Defendant Cumorah Credit Union. (Bradford, Brian) (Entered: 11/29/2011)
12/01/2011	<u>209</u>	MINUTE ORDER IN CHAMBERS of the Honorable Magistrate Judge George Foley, Jr, on 12/1/2011. By Deputy Clerk: Heidi Ojeda. RE: <u>202</u> MOTION to Compel <i>MOTION TO COMPEL DEPOSITIONS OF ALAN MAYNOR AND DENISE CRARY</i> . Motion Hearing set for Wednesday, December 7, 2011, at 01:30 PM in LV Courtroom 3A before Magistrate Judge George Foley Jr. The Court will hear arguments on the Motion to Compel (#202) and the Proposed Scheduling Order (#203). (no image attached) (Copies have been distributed pursuant to the NEF – Ojeda, Heidi) (Entered: 12/01/2011)
12/05/2011	<u>210</u>	RESPONSE to <u>203</u> Proposed Discovery Plan/Scheduling Order ; filed by Defendants Barbara R. Reed, Edward C. Reed, Reed Team. (Stoberski, Michael) (Entered: 12/05/2011)
12/06/2011	<u>211</u>	REPLY to Response to <u>202</u> MOTION to Compel <i>MOTION TO COMPEL DEPOSITIONS OF ALAN MAYNOR AND DENISE CRARY</i> ; filed by Plaintiffs Jin-Sung Hong, Tae-Si Kim. (Attachments: # <u>1</u> Exhibit 1)(Salls, Jonathan) (Entered: 12/06/2011)
12/07/2011	<u>212</u>	MINUTES OF PROCEEDINGS – Motion Hearing held on 12/7/2011 before Magistrate Judge George Foley, Jr. Crtrm Administrator: <i>Heidi Jordan</i> ; Pla Counsel: <i>Jonathan Salls</i> ; Def Counsel: <i>Carleton Burch, Tyson Dobbs, Zach Thompson for Michael Stoberski, Michael Bohn</i> ; Court Reporter/FTR #: <i>1:33 – 1:49</i> ; Courtroom: <i>3A</i> ; The Court hears representations and arguments of counsel. ORDERED that Plaintiffs' Motion to Compel Depositions of Alan Maynor and Denise Crary <u>202</u> is GRANTED to the extent that leave is given as long as it is not repeat questioning asked in Ms. Crary's previous deposition. FURTHER ORDERED that the Court will treat the Proposed Scheduling Order <u>203</u> as Motion to Reopen Discovery. The Court will reopen discovery as between Plaintiffs and Valley Foreclosure Services only through Thursday, January 31, 2012, for the limited purpose of taking the two depositions as discussed above. Plaintiffs may also serve written discovery upon Valley Foreclosure Services but are again cautioned that they should not repeat discovery that has already been conducted and responded to. (Copies have been distributed pursuant to the NEF – HJ) (Entered: 12/08/2011)
01/23/2012	<u>213</u>	ORDER Granting <u>159</u> Motion for Summary Judgment. Judgment is hereby entered in favor of Defendant Cumorah Credit union and against Plaintiffs Tai-Si Kim and Jin-Sung Hong. FURTHER ORDERED that <u>182</u> Defendant Valley Foreclosure Services' Joinder in Cumorah Credit Union's Motion for Summary Judgment is GRANTED. Judgment is hereby entered in favor of Defendent Valley Foreclosure Services and against

		<p>Plaintiffs Tai-Si Kim and Jin-Sung Hong.</p> <p>FURTHER ORDERED that <u>163</u> Motion to Extend the Amend Pleading Deadline and Leave to File a Second Amended Complaint is GRANTED. FURTHER ORDERED that Plaintiffs shall file separately the Second Amended Complaint within 15 days of this Order.</p> <p>FURTHER ORDERED that the Clerk shall amend the caption to correct the name of current Defendant Reed Team doing business as RE/MAX Extreme to its proper name, Barbie Ltd. doing business as RE/MAX Extreme.</p> <p>FURTHER ORDERED that any Defendant named in the First Amended Complaint need not file an answer to the Second Amended Complaint.</p> <p>FURTHER ORDERED that <u>165</u> Emergency Motion to Suspend Dispositive Motion Deadline is GRANTED only with respect to any newly named Defendant in the Second Amended Complaint.</p> <p>FURTHER ORDERED that <u>167</u> Motion for Partial Summary Judgment on Negligent Undertaking to Perform Services is DENIED.</p> <p>FURTHER ORDERED that <u>168</u> Motion for Partial Summary Judgment on Civil Conspiracy, Concert of Action, Aiding and Abetting is GRANTED.</p> <p>FURTHER ORDERED that <u>169</u> Motion for Partial Summary Judgment on Contract Related Claims is DENIED.</p> <p>FURTHER ORDERED that <u>170</u> Motion for Partial Summary Judgment on Plaintiffs' Fraud-Based Claims is Granted in part and Denied in part. (<i>See Order for details</i>).</p> <p>FURTHER ORDERED that <u>179</u> Motion for Relief from Voluntary Dismissal of Adam B. Kearney is GRANTED to the extent Plaintiffs seek to enforce the settlement agreement. Plaintiffs shall file a motion to enforce the settlement agreement within 30 days from the date of this Order.</p> <p>FURTHER ORDERED that <u>197</u> Motion for Clarification of Order is DENIED as moot in light of the Magistrate Judge's decision to reopen discovery as to Defendant Valley Foreclosure Services.</p> <p>Signed by Judge Philip M. Pro on 1/22/12. (Copies have been distributed pursuant to the NEF – MMM) (Entered: 01/23/2012)</p>
01/25/2012	<u>214</u>	CLERK'S JUDGMENT in favor of Defendants Cumorah Credit Union, Valley Foreclosure Services against Plaintiffs Jin-Sung Hong, Tae-Si Kim. Signed by Clerk of Court, Lance S. Wilson on 1/25/12. (Copies have been distributed pursuant to the NEF – MMM) (Entered: 01/25/2012)
01/30/2012	<u>215</u>	AMENDED COMPLAINT <i>Second Amended Complaint</i> with Jury Demand against Richard L. Tobler, Ltd., Richard L. Tobler, filed by Jin-Sung Hong, Tae-Si Kim. Adds new parties. Proof of service due by 5/29/2012. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4, # <u>5</u> Exhibit 5, # <u>6</u> Exhibit 6, # <u>7</u> Exhibit 7, # <u>8</u> Exhibit 8, # <u>9</u> Exhibit 9, # <u>10</u> Exhibit 10, # <u>11</u> Exhibit 11, # <u>12</u> Exhibit 12, # <u>13</u> Exhibit 13, # <u>14</u> Exhibit 14, # <u>15</u> Exhibit 15, # <u>16</u> Exhibit 16, # <u>17</u> Exhibit 17, # <u>18</u> Summons Richard L. Tobler, Esq., # <u>19</u> Summons Richard L. Tobler, Ltd.) (Salls, Jonathan) (Entered: 01/30/2012)
01/31/2012	<u>216</u>	Summons Issued as to Richard L. Tobler. (MMM) (Entered: 01/31/2012)
01/31/2012	<u>217</u>	Summons Issued as to Richard L. Tobler, Ltd.. (MMM) (Entered: 01/31/2012)
02/01/2012	<u>218</u>	MOTION to Enforce Settlement <i>Agreement</i> by Plaintiffs Jin-Sung Hong, Tae-Si Kim. Responses due by 2/18/2012. (Attachments: # <u>1</u> Exhibit 1)(Salls, Jonathan) (Entered: 02/01/2012)
02/06/2012	<u>219</u>	BILL OF COSTS by Defendants Cumorah Credit Union, Cumorah Credit Union. Tax or object to Bill of Costs by 2/24/2012. (Bradford, Brian) (Entered: 02/06/2012)

02/07/2012	<u>220</u>	MINUTE ORDER IN CHAMBERS of the Honorable Judge Philip M. Pro, on 2/7/2012. RE: <u>218</u> MOTION to Enforce Settlement <i>Agreement</i> (no image attached) The certificate of service does not indicate that Plaintiffs have served Defendant Adam Kearney with this motion. Plaintiffs shall serve the Motion to Enforce Settlement (Doc. #218) on Defendant Adam Kearney within ten (10) days. (Copies have been distributed pursuant to the NEF – KSR) (Entered: 02/07/2012)
02/10/2012	<u>221</u>	CERTIFICATE OF SERVICE for Plaintiffs' Motion to Enforce the Settlement Agreement by Plaintiffs Jin-Sung Hong, Tae-Si Kim re <u>218</u> MOTION to Enforce Settlement <i>Agreement</i> . (Salls, Jonathan) (Entered: 02/10/2012)
02/10/2012	<u>222</u>	MOTION to Expunge Lis Pendens and <i>FRCP 54(B) Certification with Certificate of Service</i> by Defendant Cumorah Credit Union. Responses due by 2/27/2012. (Maurice, Aaron) (Entered: 02/10/2012)
02/17/2012	<u>223</u>	CERTIFICATE OF SERVICE by Defendant Cumorah Credit Union re <u>222</u> MOTION to Expunge Lis Pendens and <i>FRCP 54(B) Certification with Certificate of Service</i> . (Maurice, Aaron) (Entered: 02/17/2012)
02/24/2012	<u>224</u>	OBJECTION to <u>219</u> Bill of Costs ; filed by Plaintiffs Jin-Sung Hong, Tae-Si Kim. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3)(Salls, Jonathan) (Entered: 02/24/2012)
02/27/2012	<u>225</u>	ANSWER to <u>215</u> Amended Complaint,, filed by Richard L. Tobler, Ltd., Richard L. Tobler. Certificate of Interested Parties due by 3/8/2012. Discovery Plan/Scheduling Order due by 4/12/2012.(Thome, Sheri) (Entered: 02/27/2012)
02/27/2012	<u>226</u>	RESPONSE to <u>222</u> MOTION to Expunge Lis Pendens and <i>FRCP 54(B) Certification with Certificate of Service</i> , filed by Plaintiffs Jin-Sung Hong, Tae-Si Kim. Replies due by 3/8/2012. (Salls, Jonathan) (Entered: 02/27/2012)
02/28/2012		NOTICE of Docket Correction to <u>113</u> Notice of Change of Attorney. ERROR: Wrong event selected by attorney John Burris in accordance with Local Rule IA 10-6(b). CORRECTION: Entry corrected by Court to <u>113</u> Motion to Withdraw as Attorney. (no image attached)(MJZ) (Entered: 02/28/2012)
03/02/2012	<u>227</u>	NOTICE of Change of Attorney on behalf of Defendants Richard L. Tobler, Ltd., Richard L. Tobler. <i>Substitution of Attorney</i> (Alberts, Jeremy) (Entered: 03/02/2012)
03/02/2012	<u>228</u>	REPLY to Objections to <u>219</u> Bill of Costs; filed by Defendant Cumorah Credit Union. (Attachments: # <u>1</u> Exhibit Exhibit 1)(Wood, Brittany) (Entered: 03/02/2012)
03/05/2012	<u>229</u>	NOTICE: Attorney Action Required to <u>227</u> Notice of Change of Attorney. <i>Wrong event selected in accordance with Local Rule IA 10-6(c)</i> . Attorney <u>Jeremy Alberts</u> advised to refile PDF using <i>Stipulation</i> event under the <i>Other Documents</i> category. (no image attached)(MJZ) (Entered: 03/05/2012)
03/05/2012	<u>230</u>	ORDER Granting <u>113</u> Motion to Withdraw as Attorney by John Scott Burris as attorney of record for plaintiffs Tae Si Kim and Jim Sung Hong. Signed by Judge Philip M. Pro on 3/5/12. (Copies have been distributed pursuant to the NEF – MMM) (Entered: 03/05/2012)
03/05/2012	<u>231</u>	STIPULATION <i>Substitution of Attorney</i> by Defendants Richard L. Tobler, Ltd., Richard L. Tobler. (Alberts, Jeremy) (Entered: 03/05/2012)
03/05/2012	<u>232</u>	SUMMONS Returned Executed by Tae-Si Kim, Jin-Sung Hong re <u>216</u> Summons Issued. Richard L. Tobler served on 2/6/2012, answer due 2/27/2012. (Salls, Jonathan) (Entered: 03/05/2012)
03/05/2012	<u>233</u>	SUMMONS Returned Executed by Tae-Si Kim, Jin-Sung Hong re <u>217</u> Summons Issued. Richard L. Tobler, Ltd. served on 2/6/2012, answer due 2/27/2012. (Salls, Jonathan) (Entered: 03/05/2012)
03/05/2012	<u>234</u>	REPLY to Response to <u>222</u> MOTION to Expunge Lis Pendens and <i>FRCP 54(B) Certification with Certificate of Service</i> ; filed by Defendant Cumorah Credit Union. <i>Reply to Plaintiffs' Response to Cumorah Credit Union's Motion for FRCP 54(B) Certification and Cancellation of Lis Pendens</i> (Wood, Brittany) (Entered: 03/05/2012)

03/05/2012	<u>235</u>	ORDER ON STIPULATION Granting <u>231</u> Stipulation for Substitution of Attorneys. Attorney David J. Larson substituted in place and stead of Attorney Sheri M. Thome as counsel for Richard L. Tobler, Ltd. and Richard L. Tobler. Signed by Magistrate Judge George Foley, Jr on 3/5/12. (Copies have been distributed pursuant to the NEF – MMM) (Entered: 03/05/2012)
03/07/2012	<u>236</u>	CERTIFICATE of Interested Parties filed by Richard L. Tobler, Ltd., Richard L. Tobler. There are no known interested parties other than those participating in the case. (Alberts, Jeremy) (Entered: 03/07/2012)
03/07/2012	<u>237</u>	EX PARTE MOTION to remove from service list by Defendants Valley Foreclosure Services, Valley Foreclosure Services, LLC. Motion ripe 3/7/2012. (Bohn, Michael) (Entered: 03/07/2012)
03/21/2012	<u>239</u>	ORDER Granting <u>222</u> Motion for FRCP 54(b) Certification and Cancellation of Lis Pendens. FURTHER ORDERED that the notice of lis pendens filed by Plaintiffs on the subject property is hereby cancelled. Plaintiffs shall record with the recorder of the county a copy of this Order of cancellation within 20 days of the date of this Order. This cancellation has the same effect as an expungement of the original notice. Signed by Judge Philip M. Pro on 3/21/12. (Copies have been distributed pursuant to the NEF – MMM) (Entered: 03/21/2012)
03/21/2012	<u>240</u>	CLERK'S JUDGMENT in favor of Defendant Cumorah Credit Union and against Plaintiffs Jin-Sung Hong, Tae-Si Kim. Signed by Clerk of Court, Lance S. Wilson. (Copies have been distributed pursuant to the NEF – MMM) (Entered: 03/21/2012)
03/21/2012	<u>241</u>	ORDERED that the Court will hold a hearing on Plaintiffs' Motion to Enforce the Settlement Agreement <u>218</u> on Monday, 4/16/2012 at 11:30 AM in LV Courtroom 7C before Judge Philip M. Pro. FURTHER ORDERED that Plaintiffs shall serve Defendant Adam B. Kearney with a copy of this Order. Signed by Judge Philip M. Pro on 3/21/12. (Copies have been distributed pursuant to the NEF – MMM) (Entered: 03/21/2012)
03/23/2012	<u>242</u>	CERTIFICATE OF SERVICE for Order <u>241</u> by Plaintiffs Jin-Sung Hong, Tae-Si Kim re <u>241</u> Order, Set/Reset Motion and R&R Deadlines/Hearings,, (Attachments: # <u>1</u> Order)(Salls, Jonathan) (Entered: 03/23/2012)
04/12/2012	<u>243</u>	MINUTE ORDER IN CHAMBERS of the Honorable Judge Philip M. Pro, on 4/12/2012. By Deputy Clerk: D. Sherwood. IT IS ORDERED the Hearing on Plaintiffs' Motion to Enforce the Settlement Agreement <u>218</u> set for 4/16/2012 at 11:30 AM is CONTINUED to 02:00 PM on the same date in LV Courtroom 7C before Judge Philip M. Pro. The Court has a conflict in scheduling.(no image attached) (Copies have been distributed pursuant to the NEF – DMS) (Entered: 04/12/2012)
04/13/2012	<u>244</u>	CERTIFICATE OF SERVICE for Minute Order In Chambers by Plaintiffs Jin-Sung Hong, Tae-Si Kim re <u>243</u> Minute Order Setting Hearing,, Set/Reset Hearings,, (Attachments: # <u>1</u> Exhibit)(Salls, Jonathan) (Entered: 04/13/2012)
04/13/2012	<u>245</u>	NOTICE OF APPEAL as to <u>239</u> Order and <u>240</u> Clerk's Judgment; filed by Plaintiffs Jin-Sung Hong, Tae-Si Kim. Filing fee \$ 455, receipt number 0978-2337141. E-mail notice (NEF) sent to the US Court of Appeals, Ninth Circuit. (MJZ) (Entered: 04/16/2012)
04/16/2012	<u>246</u>	SUPPLEMENT to <u>49</u> Proposed Discovery Plan/Scheduling Order ; <i>Supplemental Joint Discovery Plan and Scheduling Order</i> by Plaintiffs Jin-Sung Hong, Tae-Si Kim, Defendants Richard L. Tobler, Ltd., Richard L. Tobler. (Lowry, Jodi) (Entered: 04/16/2012)
04/16/2012	<u>247</u>	MINUTES OF PROCEEDINGS – Motion Hearing held on 4/16/2012 before Judge Philip M. Pro. Crtrm Administrator: D. Sherwood; Pla Counsel: Jonathan M.A. Salls; Def Counsel: Zachary J. Thompson; Court Reporter/FTR #: Araceli Bareng; Time of Hearing: 2:00 p.m. – 2:10 p.m.; Courtroom: 7C; On inquiry by the Court, Mr. Salls states he has not heard anything from Mr. Kearney. Mr. Thompson advises the Court he does not represent Mr. Kearney and has no position on the motion. IT IS ORDERED Plaintiffs' Motion to Enforce the Settlement Agreement <u>218</u> is GRANTED. IT IS FURTHER ORDERED in accord with paragraph four of the Settlement Agreement, all claims previously asserted by Plaintiffs against Defendant Adam B. Kearney are reinstated. Plaintiffs shall file their Motion for Default Judgment

		by 5/16/2012. The Court ORDERS a copy of the Settlement Agreement be filed under seal in the court file. (Copies have been distributed pursuant to the NEF – DMS) (Entered: 04/16/2012)
04/24/2012	<u>249</u>	SCHEDULING ORDER re <u>246</u> Supplemental Joint Discovery Plan and Scheduling Order. Discovery due by 8/24/2012. Motions due by 9/21/2012. Proposed Joint Pretrial Order due by 10/19/2012. Signed by Magistrate Judge George Foley, Jr on 4/24/12. (Copies have been distributed pursuant to the NEF – EDS) (Entered: 04/24/2012)
04/25/2012	<u>250</u>	MOTION Request for Submission of Briefings Regarding Bill of Costs re <u>219</u> Bill of Costs <i>Request for Submission of Briefings Regarding Defendant Cumorah Credit Union's Bill of Costs [Doc. 219]</i> by Defendants Cumorah Credit Union, Cumorah Credit Union. Responses due by 5/12/2012. (Bradford, Brian) (Entered: 04/25/2012)
04/25/2012	<u>251</u>	ORDER for Time Schedule as to <u>245</u> Notice of Appeal filed by Jin–Sung Hong, Tae–Si Kim. USCA Case Number 12–15959 . (ECS) (Entered: 04/25/2012)
05/07/2012	<u>252</u>	MOTION for Summary Judgment filed by Defendants Richard L. Tobler, Ltd., Richard L. Tobler. Responses due by 5/31/2012. (Attachments: # <u>1</u> Exhibits 1–4)(Alberts, Jeremy) (Entered: 05/07/2012)
05/10/2012	<u>253</u>	MOTION for Default Judgment Against Defendant Mr. Adam B. Kearney Plaintiffs Jin–Sung Hong, Tae–Si Kim. Motion ripe 5/10/2012. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2)(Salls, Jonathan) (Entered: 05/10/2012)
05/11/2012	<u>254</u>	CERTIFICATE OF SERVICE for Plaintiffs' <u>253</u> Motion for Entry of Default Judgment Against Defendant Mr. Adam B. Kearney filed by Plaintiffs Jin–Sung Hong and Tae–Si Kim. (Salls, Jonathan) (Entered: 05/11/2012)
05/29/2012	<u>255</u>	STIPULATION FOR EXTENSION OF TIME (First Request) re <u>252</u> MOTION for Summary Judgment <i>Defendant Richard L. Tobler, Esq. and Richard L. Tobler, Ltd.'s Motion for Summary Judgment and Memorandum of Law in Support</i> ; by Plaintiffs Jin–Sung Hong, Tae–Si Kim, Defendants Richard L. Tobler, Ltd., Richard L. Tobler. (Lowry, Jodi) (Entered: 05/29/2012)
05/30/2012	<u>256</u>	ORDER ON STIPULATION Granting <u>255</u> Stipulation to Extend Time to Respond re <u>252</u> MOTION for Summary Judgment. Responses due by 6/8/2012. Signed by Judge Philip M. Pro on 5/30/12. (Copies have been distributed pursuant to the NEF – MMM) (Entered: 05/30/2012)
05/30/2012	<u>257</u>	ORDER granting Plaintiffs' <u>253</u> Motion for Default Judgment Against Mr. Adam B. Kearney. Judgment is hereby entered in favor of Plaintiffs Tae–Si Kim and Jin–Sung Hong and against Defendant Adam B. Kearney in the amount of \$464,384.00. Signed by Judge Philip M. Pro on 5/30/12. (Copies have been distributed pursuant to the NEF – ECS) (Entered: 05/31/2012)
05/31/2012	<u>258</u>	DEFAULT JUDGMENT in favor of Jin–Sung Hong, Tae–Si Kim against Adam B Kearney. Signed by Clerk of Court, Lance S. Wilson on 5/31/12. (Copies have been distributed pursuant to the NEF – ECS) (Entered: 05/31/2012)
05/31/2012	<u>259</u>	ORDER Granting <u>250</u> Motion Request for Submission of Briefings Regarding Defendant Cumorah Credit Unions Bill of Costs in the amount of \$14,662.06. Signed by Judge Philip M. Pro on 5/31/2012. (Copies have been distributed pursuant to the NEF – SLR) (Entered: 05/31/2012)
06/08/2012	<u>260</u>	MOTION for Leave to File <i>Oversized Brief</i> by Plaintiffs Jin–Sung Hong, Tae–Si Kim. Motion ripe 6/8/2012. (Salls, Jonathan) (Entered: 06/08/2012)
06/08/2012	<u>261</u>	RESPONSE to <u>252</u> MOTION for Summary Judgment filed by Plaintiffs Jin–Sung Hong and Tae–Si Kim. Replies due by 6/25/2012. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4, # <u>5</u> Exhibit 5, # <u>6</u> Exhibit 6, # <u>7</u> Exhibit 7, # <u>8</u> Exhibit 8, # <u>9</u> Exhibit 9)(Salls, Jonathan) (Entered: 06/08/2012)
06/11/2012	<u>262</u>	ORDER Granting <u>260</u> Motion for Leave to File Oversized Brief. Signed by Judge Philip M. Pro on 6/11/12. (Copies have been distributed pursuant to the NEF – MMM) (Entered: 06/11/2012)

06/13/2012	<u>263</u>	BILL OF COSTS by Plaintiffs Jin-Sung Hong, Tae-Si Kim. Tax or object to Bill of Costs by 7/1/2012. (Salls, Jonathan) (Entered: 06/13/2012)
06/13/2012	<u>264</u>	CERTIFICATE OF SERVICE for <u>263</u> Bill of Costs filed by Plaintiffs Jin-Sung Hong, Tae-Si Kim. (Salls, Jonathan) (Entered: 06/13/2012)
06/14/2012	<u>265</u>	MOTION for Judgment Debtor Exam filed by Plaintiffs Jin-Sung Hong, Tae-Si Kim. Motion ripe 6/14/2012. (Attachments: # <u>1</u> Proposed Order Exhibit 1)(Salls, Jonathan) (Entered: 06/14/2012)
06/15/2012	<u>266</u>	ORDER Granting <u>265</u> Motion for Judgment Debtor Exam and to Produce Documents. Signed by Magistrate Judge George Foley, Jr on 6/15/12. (Copies have been distributed pursuant to the NEF - MMM) (Entered: 06/15/2012)
06/15/2012	<u>267</u>	CERTIFICATE OF SERVICE for <u>266</u> Order Granting Motion for Judgment Debtor Examination and to Produce Documents by Plaintiffs Jin-Sung Hong, Tae-Si Kim. (Salls, Jonathan) (Entered: 06/15/2012)
06/18/2012	<u>268</u>	STIPULATION FOR EXTENSION OF TIME re: <u>252</u> MOTION for Summary Judgment filed by Defendants Richard L. Tobler, Ltd., Richard L. Tobler. (Alberts, Jeremy) <u>Added docket entry relationship on 6/19/2012 (REF)</u> . (Entered: 06/18/2012)
06/19/2012	<u>269</u>	ORDER ON STIPULATION Granting <u>268</u> Stipulation to Extend Time to Reply re <u>252</u> MOTION for Summary Judgment. Replies due by 6/29/2012. Signed by Judge Philip M. Pro on 6/19/12. (Copies have been distributed pursuant to the NEF - MMM) (Entered: 06/19/2012)
06/29/2012	<u>270</u>	REPLY to Response to <u>252</u> MOTION for Summary Judgment filed by Defendants Richard L. Tobler, Ltd., and Richard L. Tobler. (Attachments: # <u>1</u> Exhibit)(Alberts, Jeremy) (Entered: 06/29/2012)
07/02/2012	<u>271</u>	COSTS TAXED in amount of \$ \$16,200.20 against Adam B. Kearney re <u>263</u> Bill of Costs. (VHM) (Entered: 07/02/2012)
07/06/2012	<u>272</u>	ORDER Denying <u>252</u> Motion for Summary Judgment. FURTHER ORDERED that the Parties shall file a joint pre-trial order no later than August 15, 2012. Signed by Judge Philip M. Pro on 7/6/12. (Copies have been distributed pursuant to the NEF - MMM) (Entered: 07/06/2012)
07/06/2012	<u>273</u>	NOTICE of Demand for Prior Pleadings filed by Defendants Richard L. Tobler, Ltd., Richard L. Tobler. (Alberts, Jeremy) (Entered: 07/06/2012)
07/12/2012	<u>274</u>	SATISFACTION OF JUDGMENT re <u>259</u> Order on Motion, entered In favor of Cumorah Credit Union Against Jin-Sung Hong, In favor of Cumorah Credit Union Against Tae-Si Kim by Defendant Cumorah Credit Union. (Burch, Carleton) (Entered: 07/12/2012)
07/25/2012	<u>275</u>	Interim STATUS REPORT filed by Plaintiffs Jin-Sung Hong, and Tae-Si Kim. (Salls, Jonathan) (Entered: 07/25/2012)
08/15/2012	<u>276</u>	PROPOSED Pretrial Order by Plaintiffs Jin-Sung Hong, Tae-Si Kim. (Salls, Jonathan) (Entered: 08/15/2012)
08/20/2012	<u>277</u>	PRETRIAL ORDER: Jury Trial set for 4/9/2013 09:00 AM in LV Courtroom 7C before Judge Philip M. Pro. Calendar Call set for 4/3/2013 09:00 AM in LV Courtroom 7C before Judge Philip M. Pro. Proposed Jury Instructions due by 4/3/2013. Proposed Voir Dire due by 4/3/2013. Signed by Judge Philip M. Pro on 8/20/12. (Copies have been distributed pursuant to the NEF - MMM) (Entered: 08/20/2012)
08/20/2012	<u>278</u>	ORDER that this case is hereby referred to Magistrate Judge George W. Foley, Jr. for a settlement conference. Signed by Judge Philip M. Pro on 8/20/12. (Copies have been distributed pursuant to the NEF - MMM) (Entered: 08/20/2012)
08/21/2012	<u>279</u>	ORDER Scheduling Settlement Conference: Settlement Conference set for 11/13/2012 09:00 AM in Chambers before Magistrate Judge George Foley Jr.. Signed by Magistrate Judge George Foley, Jr on 8/21/12. (Copies have been distributed pursuant to the NEF - MMM) (Entered: 08/21/2012)

08/21/2012	<u>280</u>	NOTICE of Joint Letter to the Court filed by Plaintiffs Jin-Sung Hong and Tae-Si Kim. (Salls, Jonathan) (Entered: 08/21/2012)
08/22/2012	<u>281</u>	ORDER re <u>280</u> Joint Letter. The discovery deadline remains 8/24/12, and dispositive motions are due no later than 9/21/12. <i>See Order 249</i> . Given the impending discovery deadline, the Court will grant the parties until 9/5/12 to complete the Tobler PMK deposition. All other deadlines remain the same. Signed by Magistrate Judge George Foley, Jr on 8/22/12. (Copies have been distributed pursuant to the NEF - MMM) (Entered: 08/22/2012)
09/05/2012	<u>282</u>	SUPPLEMENT to Pretrial Order filed by Defendants Richard L. Tobler, Ltd., Richard L. Tobler. (Alberts, Jeremy) (Entered: 09/05/2012)
09/14/2012	<u>283</u>	NOTICE of Joint Letter to the Court filed by Defendants Richard L. Tobler, Ltd., Richard L. Tobler. (Alberts, Jeremy) (Entered: 09/14/2012)
09/20/2012	<u>284</u>	ORDER re <u>283</u> Joint Letter to the Court. Dispositive Motions Deadline is extended to 9/27/2012. Proposed Joint Pretrial Orders are due 10/29/2012. In the event that dispositive motions are filed, the date for the filing of the joint pretrial order shall be suspended until 30 days after decision on the dispositive motions. Signed by Magistrate Judge George Foley, Jr on 9/20/12. (Copies have been distributed pursuant to the NEF - MMM) (Entered: 09/20/2012)
09/27/2012	<u>285</u>	MOTION for Leave to File Motion for Summary Judgment on Plaintiffs' Remaining Common Law Claims and Motion for Reconsideration filed by Defendants Barbie Ltd., Barbara R. Reed, Edward C. Reed. Motion ripe 9/27/2012. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B)(Stoberski, Michael) (Entered: 09/27/2012)
09/27/2012	<u>286</u>	OBJECTIONS re LR IB 3-1 or MOTION for District Judge to Reconsider <u>272</u> Order filed by Defendants Richard L. Tobler, Ltd., Richard L. Tobler. Responses due by 10/14/2012. (Alberts, Jeremy) (Entered: 09/27/2012)
09/28/2012		NOTICE of Docket Correction to <u>286</u> MOTION for Magistrate Judge to Reconsider <u>272</u> Order. ERROR : Wrong event selected by attorney. CORRECTION : Event modified as <u>286</u> OBJECTIONS re LR IB 3-1 or MOTION for District Judge to Reconsider <u>272</u> Order. (no image attached)(ASB) (Entered: 09/28/2012)
10/02/2012	<u>287</u>	STIPULATION FOR EXTENSION OF TIME (First Request) re <u>286</u> OBJECTIONS re LR IB 3-1 or MOTION for District Judge to Reconsider <u>272</u> Order ; by Plaintiffs Jin-Sung Hong, Tae-Si Kim. (Salls, Jonathan) (Entered: 10/02/2012)
10/03/2012	<u>288</u>	ORDER ON STIPULATION Granting <u>287</u> Stipulation to Extend Deadline to Respond re <u>286</u> OBJECTIONS re LR IB 3-1 or MOTION for District Judge to Reconsider <u>272</u> Order. Responses due by 10/29/2012. Signed by Judge Philip M. Pro on 10/3/12. (Copies have been distributed pursuant to the NEF - MMM) (Entered: 10/03/2012)
10/04/2012	<u>289</u>	STIPULATION FOR EXTENSION OF TIME (First Request) to File Response to <u>285</u> MOTION for Leave to File Motion for Summary Judgment on Plaintiffs' Remaining Common Law Claims and Motion for Reconsideration by Plaintiffs Jin-Sung Hong, Tae-Si Kim. (Salls, Jonathan) (Entered: 10/04/2012)
10/04/2012	<u>290</u>	ORDER ON STIPULATION Granting <u>289</u> Stipulation to Extend Time to Respond re <u>285</u> MOTION for Leave to File Motion for Summary Judgment on Plaintiffs' Remaining Common Law Claims and Motion for Reconsideration. Responses due by 10/29/2012. Signed by Judge Philip M. Pro on 10/4/12. (Copies have been distributed pursuant to the NEF - MMM) (Entered: 10/04/2012)
10/04/2012	<u>291</u>	MOTION Order Allowing Telephonic Appearance at Settlement Conference by Insurance Carrier Representative for the Tobler Defendants filed by Defendants Richard L. Tobler, Ltd., Richard L. Tobler. Responses due by 10/21/2012. (Alberts, Jeremy) (Entered: 10/04/2012)
10/05/2012	<u>292</u>	NOTICE of Change of Firm Name by Barbie Ltd., Barbara R. Reed, Edward C. Reed. (Stoberski, Michael) (Entered: 10/05/2012)
10/05/2012	<u>293</u>	REQUEST to Amend CM/ECF Service List filed by Defendants Barbie Ltd., Barbara R. Reed, and Edward C. Reed. (Stoberski, Michael) (Entered: 10/05/2012)

10/05/2012	<u>294</u>	(1st Notice) NOTICE: of Non-Compliance with Special Order 109 that Michael Stoberski is in violation of Special Order 109. re: <u>292</u> NOTICE of Change of Firm Name. Pursuant Special Order 109, section 2.C., <i>"It shall be the responsibility of each Filing User to maintain and update their user account information."</i> It is therefore recommended that you review and update your CM/ECF account in accordance with your notice of change of firm name by clicking "Utilities" and then selecting "Maintain Your Address". (ASB) (Entered: 10/05/2012)
10/05/2012	<u>295</u>	MINUTE ORDER IN CHAMBERS of the Honorable Magistrate Judge George Foley, Jr, on 10/5/2012. By Deputy Clerk: Dan Hill. granting <u>291</u> Motion for Telephonic Appearance at Settlement Conference. (Copies have been distributed pursuant to the NEF – DJH) (Entered: 10/05/2012)
10/12/2012	<u>297</u>	ORDER Granting <u>296</u> Motion to Amend Electronic Service List. Signed by Magistrate Judge George Foley, Jr on 10/12/12. (Copies have been distributed pursuant to the NEF – MMM) (Entered: 10/12/2012)
10/24/2012	<u>298</u>	STIPULATION to Continue Settlement Conference by Plaintiffs Jin-Sung Hong, Tae-Si Kim. (Salls, Jonathan) (Entered: 10/24/2012)
10/25/2012	<u>299</u>	ORDER ON STIPULATION Granting <u>298</u> Stipulation to Continue Settlement Conference. Settlement Conference set for 12/19/2012 09:00 AM in Chambers before Magistrate Judge George Foley Jr. Signed by Magistrate Judge George Foley, Jr on 10/25/2012. (Copies have been distributed pursuant to the NEF – SLR) (Entered: 10/25/2012)
10/26/2012	<u>300</u>	MOTION for Order Allowing Telephonic Appearance at Settlement Conference by Insurance Carrier Representative by Defendants Barbie Ltd., Barbara R. Reed, Edward C. Reed. Responses due by 11/12/2012. (Stoberski, Michael) (Entered: 10/26/2012)
10/29/2012	<u>301</u>	ORDER Granting <u>300</u> Motion Allowing Telephonic Appearance at Settlement Conference. Signed by Magistrate Judge George Foley, Jr on 10/29/2012. (Copies have been distributed pursuant to the NEF – SLR) (Entered: 10/29/2012)
10/29/2012	<u>302</u>	RESPONSE to <u>286</u> OBJECTIONS re LR IB 3-1 or MOTION for District Judge to Reconsider <u>272</u> Order, filed by Plaintiffs Jin-Sung Hong, Tae-Si Kim. Replies due by 11/8/2012. (Salls, Jonathan) (Entered: 10/29/2012)
10/29/2012	<u>303</u>	RESPONSE to <u>285</u> MOTION for Leave to File Motion for Summary Judgment on Plaintiffs' Remaining Common Law Claims and Motion for Reconsideration, filed by Plaintiffs Jin-Sung Hong, Tae-Si Kim. Replies due by 11/8/2012. (Salls, Jonathan) (Entered: 10/29/2012)
11/08/2012	<u>304</u>	REPLY to Response to <u>286</u> OBJECTIONS re LR IB 3-1 or MOTION for District Judge to Reconsider <u>272</u> Order filed by Defendants Richard L. Tobler, Ltd., Richard L. Tobler. (Alberts, Jeremy) (Entered: 11/08/2012)
11/08/2012	<u>305</u>	REPLY to Response to <u>285</u> MOTION for Leave to File Motion for Summary Judgment on Plaintiffs' Remaining Common Law Claims and Motion for Reconsideration filed by Defendants Barbie Ltd., Barbara R. Reed, Edward C. Reed. (Stoberski, Michael) (Entered: 11/08/2012)
12/20/2012	<u>306</u>	MINUTES OF PROCEEDINGS – Settlement Conference held on 12/20/2012 before Magistrate Judge George Foley, Jr. Judicial Assistant: <i>Julia Wright</i> ; Pla Counsel: <i>Steve Gibson; Jonathan Salls; J.D. Lowry</i> ; Def Counsel: <i>Matthew Cavanaugh; Mike Stoberski; David Larson</i> ; Time of Hearing: <i>9:00 a.m.</i> The Court heard presentations from counsel and from each of the parties present. NO SETTLEMENT WAS REACHED. The matter is returned to the normal litigation track. (Copies have been distributed pursuant to the NEF – JBW) (Entered: 12/20/2012)
01/31/2013	<u>307</u>	MOTION to Stay <i>Proceedings</i> by Plaintiffs Jin-Sung Hong, Tae-Si Kim. Motion ripe 1/31/2013. (Lowry, Jodi) (Entered: 01/31/2013)
02/08/2013	<u>308</u>	MINUTE ORDER IN CHAMBERS of the Honorable Judge Philip M. Pro, on 2/8/2013. By Deputy Clerk: D. Sherwood. IT IS ORDERED Defendants' shall have until 2/18/2013 within which to file a Response to Plaintiffs' Motion to Stay Proceedings <u>307</u> . (no image attached) (Copies have been distributed pursuant to the NEF – DMS) (Entered: 02/08/2013)

02/18/2013	<u>309</u>	RESPONSE to <u>307</u> MOTION to Stay <i>Proceedings</i> , filed by Defendants Richard L. Tobler, Ltd., Richard L. Tobler. Replies due by 2/28/2013. (Alberts, Jeremy) (Entered: 02/18/2013)
02/19/2013	<u>310</u>	JOINDER to <u>309</u> Response to <u>307</u> MOTION to Stay <i>Proceedings</i> filed by Defendants Barbie Ltd., Barbara R. Reed, Edward C. Reed. (Stoberski, Michael) (Entered: 02/19/2013)
02/20/2013	<u>311</u>	ORDER. The Court having read and considered <u>307</u> Plaintiffs' Motion to Stay <i>Proceedings</i> , and Defendants' Response <u>309</u> and Joinder <u>310</u> thereto, IT IS ORDERED <u>307</u> Plaintiffs' Motion to Stay <i>Proceedings</i> is DENIED. Signed by Judge Philip M. Pro on 2/20/2013. (Copies have been distributed pursuant to the NEF – DMS) (Entered: 02/20/2013)
03/08/2013	<u>312</u>	MOTION in Limine to Exclude Evidence of Liability Insurance by Defendants Barbie Ltd., Barbara R. Reed, Edward C. Reed. Responses due by 3/25/2013. (Stoberski, Michael) (Entered: 03/08/2013)
03/08/2013	<u>313</u>	MOTION in Limine No. 2 to Exclude the Testimony of Any Expert, Witness, or Documents Plaintiffs Have Not Timely Identified by Defendants Barbie Ltd., Barbara R. Reed, Edward C. Reed. Responses due by 3/25/2013. (Stoberski, Michael) (Entered: 03/08/2013)
03/08/2013	<u>314</u>	MOTION in Limine No. 3 to Require All Parties to Give 24-Hour Notice of Witnesses, Deposition, and Exhibits to be Called or Used at Trial by Defendants Barbie Ltd., Barbara R. Reed, Edward C. Reed. Responses due by 3/25/2013. (Stoberski, Michael) (Entered: 03/08/2013)
03/08/2013	<u>315</u>	MOTION in Limine No. 4 to Exclude All Witnesses From Trial Until They are Called to Testify by Defendants Barbie Ltd., Barbara R. Reed, Edward C. Reed. Responses due by 3/25/2013. (Stoberski, Michael) (Entered: 03/08/2013)
03/08/2013	<u>316</u>	MOTION in Limine No. 5 to Preclude Appeal to the Community Conscience or the "Golden Rule" by Defendants Barbie Ltd., Barbara R. Reed, Edward C. Reed. Responses due by 3/25/2013. (Stoberski, Michael) (Entered: 03/08/2013)
03/08/2013	<u>317</u>	MOTION in Limine No. 6 Prohibiting the Display of Exhibits or Demonstrative Evidence Until Admitted or Court Permission is Obtained by Defendants Barbie Ltd., Barbara R. Reed, Edward C. Reed. Responses due by 3/25/2013. (Stoberski, Michael) (Entered: 03/08/2013)
03/08/2013	<u>318</u>	MOTION in Limine No. 7 to Exclude Expert Testimony by Non-Experts by Defendants Barbie Ltd., Barbara R. Reed, Edward C. Reed. Responses due by 3/25/2013. (Stoberski, Michael) (Entered: 03/08/2013)
03/08/2013	<u>319</u>	MOTION in Limine No. 8 for an Order Precluding the Application of Joint and Several Liability and Applying Comparative Negligence Liability by Defendants Barbie Ltd., Barbara R. Reed, Edward C. Reed. Responses due by 3/25/2013. (Stoberski, Michael) (Entered: 03/08/2013)
03/08/2013	<u>320</u>	MOTION in Limine No. 9 Excluding Comment by Plaintiffs on the Probable Testimony of All Absent Witnesses Not Appearing at Trial or Who Plaintiffs Could Have Brought to Trial But Did Not by Defendants Barbie Ltd., Barbara R. Reed, Edward C. Reed. Responses due by 3/25/2013. (Stoberski, Michael) (Entered: 03/08/2013)
03/08/2013	<u>321</u>	MOTION in Limine No. 10 Excluding Plaintiffs From Soliciting Testimony From a Witness, Or Otherwise Attempt to Introduce Evidence, About the Reed Defendants Filing for Bankruptcy by Defendants Barbie Ltd., Barbara R. Reed, Edward C. Reed. Responses due by 3/25/2013. (Stoberski, Michael) (Entered: 03/08/2013)
03/08/2013	<u>322</u>	MOTION in Limine No. 11 to Preclude Claim for Punitive Damages by Defendants Barbie Ltd., Barbara R. Reed, Edward C. Reed. Responses due by 3/25/2013. (Stoberski, Michael) (Entered: 03/08/2013)
03/08/2013	<u>323</u>	MOTION in Limine No. 1 to Preclude Plaintiffs From Offering Any Expert Opinion or Any Expert Testimony From Witnesses Who Have Not Been Properly Designated as an Expert Witness by Plaintiffs by Defendants Richard L. Tobler, Ltd., Richard L. Tobler. Responses due by 3/25/2013. (Alberts, Jeremy) (Entered: 03/08/2013)

03/08/2013	<u>324</u>	MOTION in Limine No. 2 to Preclude Any Expert Witness From Offering Opinions Beyond the Scope of His/Her Expertise by Defendants Richard L. Tobler, Ltd., Richard L. Tobler. Responses due by 3/25/2013. (Alberts, Jeremy) (Entered: 03/08/2013)
03/08/2013	<u>325</u>	MOTION in Limine No. 3 Barring Non-Experts From Offering Testimony on an Ultimate Issue by Defendants Richard L. Tobler, Ltd., Richard L. Tobler. Responses due by 3/25/2013. (Alberts, Jeremy) (Entered: 03/08/2013)
03/08/2013	<u>326</u>	MOTION in Limine No. 4 to Exclude Presence of Non-Party Witnesses From Courtroom During Trial by Defendants Richard L. Tobler, Ltd., Richard L. Tobler. Responses due by 3/25/2013. (Alberts, Jeremy) (Entered: 03/08/2013)
03/08/2013	<u>327</u>	MOTION in Limine No. 5 to Preclude Plaintiffs From Offering Any Evidence or Testimony Regarding the Standard of Care for Licensed Attorneys or Whether the Tobler Defendants Failed to Meet the Standard of Care for Licensed Attorneys by Defendants Richard L. Tobler, Ltd., Richard L. Tobler. Responses due by 3/25/2013. (Alberts, Jeremy) (Entered: 03/08/2013)
03/08/2013	<u>328</u>	MOTION in Limine No. 6 to Preclude Any Evidence or Testimony in Support of Plaintiffs' Claims for Breach of Fiduciary Duty, Negligent Undertaking and Negligent Misrepresentation by Defendants Richard L. Tobler, Ltd., Richard L. Tobler. Responses due by 3/25/2013. (Alberts, Jeremy) (Entered: 03/08/2013)
03/08/2013	<u>329</u>	MOTION in Limine No. 1: <i>Motion to Admit Excerpts of Thomas Tarter's Expert Testimony</i> by Plaintiffs Jin-Sung Hong, Tae-Si Kim. Responses due by 3/25/2013. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3)(Salls, Jonathan) (Entered: 03/08/2013)
03/08/2013	<u>330</u>	MOTION in Limine No. 2: <i>Motion to Exclude J.C. Melvin Expert Opinion</i> by Plaintiffs Jin-Sung Hong, Tae-Si Kim. Responses due by 3/25/2013. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2)(Salls, Jonathan) (Entered: 03/08/2013)
03/08/2013	<u>331</u>	MOTION in Limine No. 3: <i>Motion to Exclude References to Dismissed Defendants and Claims</i> by Plaintiffs Jin-Sung Hong, Tae-Si Kim. Responses due by 3/25/2013. (Salls, Jonathan) (Entered: 03/08/2013)
03/08/2013	<u>332</u>	MOTION in Limine No. 4: <i>Motion to Exclude Evidence Regarding Gambling Activity of Plaintiff Jin-Sung Hong</i> by Plaintiffs Jin-Sung Hong, Tae-Si Kim. Responses due by 3/25/2013. (Attachments: # <u>1</u> Exhibit 1)(Lowry, Jodi) (Entered: 03/08/2013)
03/08/2013	<u>333</u>	MOTION in Limine No. 5: <i>Motion to Exclude Bates No. KIM000015</i> by Plaintiffs Jin-Sung Hong, Tae-Si Kim. Responses due by 3/25/2013. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3)(Lowry, Jodi) (Entered: 03/08/2013)
03/08/2013	<u>334</u>	MOTION in Limine No. 6: <i>Motion to Exclude Witnesses Not Identified in Pretrial Order</i> by Plaintiffs Jin-Sung Hong, Tae-Si Kim. Responses due by 3/25/2013. (Lowry, Jodi) (Entered: 03/08/2013)
03/15/2013	<u>335</u>	JOINDER to <u>313</u> MOTION in Limine No. 2 to Exclude the Testimony of Any Expert, Witness, or Documents Plaintiffs Have Not Timely Identified; filed by Defendants Richard L. Tobler, Ltd., Richard L. Tobler. (Alberts, Jeremy) (Entered: 03/15/2013)
03/15/2013	<u>336</u>	JOINDER to <u>314</u> MOTION in Limine No. 3 to Require All Parties to Give 24-Hour Notice of Witnesses, Deposition, and Exhibits to be Called or Used at Trial; filed by Defendants Richard L. Tobler, Ltd., Richard L. Tobler. (Alberts, Jeremy) (Entered: 03/15/2013)
03/15/2013	<u>337</u>	JOINDER to <u>317</u> MOTION in Limine No. 6 Prohibiting the Display of Exhibits or Demonstrative Evidence Until Admitted or Court Permission is Obtained; filed by Defendants Richard L. Tobler, Ltd., Richard L. Tobler. (Alberts, Jeremy) (Entered: 03/15/2013)
03/15/2013	<u>338</u>	JOINDER to <u>318</u> MOTION in Limine No. 7 to Exclude Expert Testimony by Non-Experts; filed by Defendants Richard L. Tobler, Ltd., Richard L. Tobler. (Alberts, Jeremy) (Entered: 03/15/2013)
03/15/2013	<u>339</u>	JOINDER to <u>319</u> MOTION in Limine No. 8 for an Order Precluding the Application of Joint and Several Liability and Applying Comparative Negligence Liability; filed by

		Defendants Richard L. Tobler, Ltd., Richard L. Tobler. (Alberts, Jeremy) (Entered: 03/15/2013)
03/15/2013	<u>340</u>	JOINDER to <u>322</u> MOTION in Limine No. 11 to Preclude Claim for Punitive Damages; filed by Defendants Richard L. Tobler, Ltd., Richard L. Tobler. (Alberts, Jeremy) (Entered: 03/15/2013)
03/18/2013	<u>341</u>	ORDER that the trial date of April 9, 2013, previously set in this case is hereby vacated. FURTHER ORDERED that this action is hereby rescheduled for trial on the Court's stacked calendar for October 22, 2013, at 9:00 a.m. with calendar call to be conducted the prior Wednesday, October 16, 2013, at 9:00 a.m. Signed by Judge Philip M. Pro on 3/18/13. (Copies have been distributed pursuant to the NEF – MMM) (Entered: 03/18/2013)
03/21/2013	<u>342</u>	MOTION for Leave to File <i>Amended Pre-Trial Order</i> by Defendants Barbie Ltd., Barbara R. Reed, Edward C. Reed. Motion ripe 3/21/2013. (Stoberski, Michael) (Entered: 03/21/2013)
03/25/2013	<u>343</u>	RESPONSE to <u>329</u> MOTION in Limine No. 1: <i>Motion to Admit Excerpts of Thomas Tarter's Expert Testimony</i> , filed by Defendants Barbie Ltd., Barbara R. Reed, Edward C. Reed. (Stoberski, Michael) (Entered: 03/25/2013)
03/25/2013	<u>344</u>	RESPONSE to <u>330</u> MOTION in Limine No. 2: <i>Motion to Exclude J.C. Melvin Expert Opinion</i> , filed by Defendants Barbie Ltd., Barbara R. Reed, Edward C. Reed. (Stoberski, Michael) (Entered: 03/25/2013)
03/25/2013	<u>345</u>	RESPONSE to <u>331</u> MOTION in Limine No. 3: <i>Motion to Exclude References to Dismissed Defendants and Claims</i> , filed by Defendants Barbie Ltd., Barbara R. Reed, Edward C. Reed. (Stoberski, Michael) (Entered: 03/25/2013)
03/25/2013	<u>346</u>	RESPONSE to <u>332</u> MOTION in Limine No. 4: <i>Motion to Exclude Evidence Regarding Gambling Activity of Plaintiff Jin-Sung Hong</i> , filed by Defendants Barbie Ltd., Barbara R. Reed, Edward C. Reed. (Stoberski, Michael) (Entered: 03/25/2013)
03/25/2013	<u>347</u>	RESPONSE to <u>334</u> MOTION in Limine No. 6: <i>Motion to Exclude Witnesses Not Identified in Pretrial Order</i> , filed by Defendants Barbie Ltd., Barbara R. Reed, Edward C. Reed. (Stoberski, Michael) (Entered: 03/25/2013)
03/25/2013	<u>348</u>	RESPONSE to <u>314</u> MOTION in Limine No. 3 to Require All Parties to Give 24-Hour Notice of Witnesses, Deposition, and Exhibits to be Called or Used at Trial, filed by Plaintiffs Jin-Sung Hong, Tae-Si Kim. (Salls, Jonathan) (Entered: 03/25/2013)
03/25/2013	<u>349</u>	RESPONSE to <u>313</u> MOTION in Limine No. 2 to Exclude the Testimony of Any Expert, Witness, or Documents Plaintiffs Have Not Timely Identified, filed by Plaintiffs Jin-Sung Hong, Tae-Si Kim. (Salls, Jonathan) (Entered: 03/25/2013)
03/25/2013	<u>350</u>	RESPONSE to <u>318</u> MOTION in Limine No. 7 to Exclude Expert Testimony by Non-Experts, filed by Plaintiffs Jin-Sung Hong, Tae-Si Kim. (Salls, Jonathan) (Entered: 03/25/2013)
03/25/2013	<u>351</u>	RESPONSE to <u>322</u> MOTION in Limine No. 11 to Preclude Claim for Punitive Damages, filed by Plaintiffs Jin-Sung Hong, Tae-Si Kim. (Salls, Jonathan) (Entered: 03/25/2013)
03/25/2013	<u>352</u>	RESPONSE to <u>325</u> MOTION in Limine No. 3 Barring Non-Experts From Offering Testimony on an Ultimate Issue, filed by Plaintiffs Jin-Sung Hong, Tae-Si Kim. (Salls, Jonathan) (Entered: 03/25/2013)
03/25/2013	<u>353</u>	RESPONSE to <u>315</u> MOTION in Limine No. 4 to Exclude All Witnesses From Trial Until They are Called to Testify, filed by Plaintiffs Jin-Sung Hong, Tae-Si Kim. (Lowry, Jodi) (Entered: 03/25/2013)
03/25/2013	<u>354</u>	RESPONSE to <u>320</u> MOTION in Limine No. 9 Excluding Comment by Plaintiffs on the Probable Testimony of All Absent Witnesses Not Appearing at Trial or Who Plaintiffs Could Have Brought to Trial But Did Not, filed by Plaintiffs Jin-Sung Hong, Tae-Si Kim. (Lowry, Jodi) (Entered: 03/25/2013)
03/25/2013	<u>355</u>	RESPONSE to <u>321</u> MOTION in Limine No. 10 Excluding Plaintiffs From Soliciting Testimony From a Witness, Or Otherwise Attempt to Introduce Evidence, About the

		Reed Defendants Filing for Bankruptcy, filed by Plaintiffs Jin-Sung Hong, Tae-Si Kim. (Lowry, Jodi) (Entered: 03/25/2013)
03/25/2013	<u>356</u>	RESPONSE to <u>312</u> MOTION in Limine to Exclude Evidence of Liability Insurance, filed by Plaintiffs Jin-Sung Hong, Tae-Si Kim. (Lowry, Jodi) (Entered: 03/25/2013)
03/25/2013	<u>357</u>	RESPONSE to <u>326</u> MOTION in Limine No. 4 to Exclude Presence of Non-Party Witnesses From Courtroom During Trial, filed by Plaintiffs Jin-Sung Hong, Tae-Si Kim. (Lowry, Jodi) (Entered: 03/25/2013)
03/25/2013	<u>358</u>	RESPONSE to <u>319</u> MOTION in Limine No. 8 for an Order Precluding the Application of Joint and Several Liability and Applying Comparative Negligence Liability, filed by Plaintiffs Jin-Sung Hong, Tae-Si Kim. (Lowry, Jodi) (Entered: 03/25/2013)
03/25/2013	<u>359</u>	RESPONSE to <u>329</u> MOTION in Limine No. 1: <i>Motion to Admit Excerpts of Thomas Tarter's Expert Testimony</i> , filed by Defendants Richard L. Tobler, Ltd., Richard L. Tobler. <i>Defendant Richard L. Tobler, Esq. and Richard L. Tobler, Ltd.'s Response to Plaintiffs' Motion in Limine No. 1 to Admit Excerpts of Thomas Tarter's Expert Testimony</i> (Alberts, Jeremy) (Entered: 03/25/2013)
03/25/2013	<u>360</u>	RESPONSE to <u>328</u> MOTION in Limine No. 6 to Preclude Any Evidence or Testimony in Support of Plaintiffs' Claims for Breach of Fiduciary Duty, Negligent Undertaking and Negligent Misrepresentation, filed by Plaintiffs Jin-Sung Hong, Tae-Si Kim. (Lowry, Jodi) (Entered: 03/25/2013)
03/25/2013	<u>361</u>	RESPONSE to <u>331</u> MOTION in Limine No. 3: <i>Motion to Exclude References to Dismissed Defendants and Claims</i> , filed by Defendants Richard L. Tobler, Ltd., Richard L. Tobler. <i>Defendant Richard L. Tobler, Esq. and Richard L. Tobler, Ltd.'s Response to Plaintiffs' Motion in Limine No. 3 to Exclude References to Dismissed Defendants and Claims</i> (Alberts, Jeremy) (Entered: 03/25/2013)
03/25/2013	<u>362</u>	RESPONSE to <u>332</u> MOTION in Limine No. 4: <i>Motion to Exclude Evidence Regarding Gambling Activity of Plaintiff Jin-Sung Hong</i> , filed by Defendants Richard L. Tobler, Ltd., Richard L. Tobler. <i>Defendant Richard L. Tobler, Esq. and Richard L. Tobler, Ltd.'s Response to Plaintiffs' Motion in Limine No. 4 to Exclude Evidence Regarding Gambling Activity of Plaintiff Jin-Sung Hong</i> (Alberts, Jeremy) (Entered: 03/25/2013)
03/25/2013	<u>363</u>	RESPONSE to <u>333</u> MOTION in Limine No. 5: <i>Motion to Exclude Bates No. KIM000015</i> , filed by Defendants Richard L. Tobler, Ltd., Richard L. Tobler. <i>Defendant Richard L. Tobler, Esq. and Richard L. Tobler, Ltd.'s Response to Plaintiffs' Motion in Limine No. 5 to Exclude Bates No. KIM000015</i> (Alberts, Jeremy) (Entered: 03/25/2013)
03/25/2013	<u>364</u>	RESPONSE to <u>323</u> MOTION in Limine No. 1 to Preclude Plaintiffs From Offering Any Expert Opinion or Any Expert Testimony From Witnesses Who Have Not Been Properly Designated as an Expert Witness, filed by Plaintiffs Jin-Sung Hong, Tae-Si Kim. (Attachments: # <u>1</u> Exhibit 1)(Salls, Jonathan) (Entered: 03/25/2013)
03/25/2013	<u>365</u>	RESPONSE to <u>327</u> MOTION in Limine No. 5 to Preclude Plaintiffs From Offering Any Evidence or Testimony Regarding the Standard of Care for Licensed Attorneys or Whether the Tobler Defendants Failed to Meet the Standard of Care for Licensed Attorneys, filed by Plaintiffs Jin-Sung Hong, Tae-Si Kim. (Attachments: # <u>1</u> Exhibit 1)(Salls, Jonathan) (Entered: 03/25/2013)
03/25/2013	<u>366</u>	RESPONSE to <u>324</u> MOTION in Limine No. 2 to Preclude Any Expert Witness From Offering Opinions Beyond the Scope of His/Her Expertise, filed by Plaintiffs Jin-Sung Hong, Tae-Si Kim. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3)(Lowry, Jodi) (Entered: 03/25/2013)
04/04/2013	<u>367</u>	RESPONSE to <u>342</u> MOTION for Leave to File <i>Amended Pre-Trial Order</i> , filed by Plaintiffs Jin-Sung Hong, Tae-Si Kim. Replies due by 4/14/2013. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4, # <u>5</u> Exhibit 5)(Salls, Jonathan) (Entered: 04/04/2013)
04/15/2013	<u>368</u>	REPLY to Response to <u>342</u> MOTION for Leave to File <i>Amended Pre-Trial Order</i> filed by Defendants Barbie Ltd., Barbara R. Reed, Edward C. Reed. (Stoberski, Michael) (Entered: 04/15/2013)

05/28/2013	<u>369</u>	ORDER that <u>285</u> Motion for Leave to File for Summary Judgment on Plaintiffs' Remaining Common Law Claims and Motion for Reconsideration is GRANTED to the extent that Plaintiffs' common law claims in counts six, thirteen, fourteen, twenty, twenty-three, and twenty-eight are converted to statutory claims under Nevada Revised Statutes § 645.257. The Motion is denied in all other respects. FURTHER ORDERED that <u>286</u> Motion for Reconsideration is GRANTED. FURTHER ORDERED that Judgment is hereby entered in favor of Defendants Richard L. Tobler, Esq. and Richard L. Tobler, Ltd. and against Plaintiffs Tae-Si Kim and Jin-Sung Hong. FURTHER ORDERED that pursuant to Federal Rule of Civil Procedure 54(b), there is no just reason for delay in entering final judgment as between Defendants Richard L. Tobler, Esq. and Richard L. Tobler, Ltd. and against Plaintiffs Tae-Si Kim and Jin-Sung Hong. Signed by Judge Philip M. Pro on 5/26/13. (Copies have been distributed pursuant to the NEF – MMM) (Entered: 05/28/2013)
05/28/2013	<u>370</u>	CLERK'S JUDGMENT in favor of Defendants Richard L. Tobler, Esq. and Richard L. Tobler, Ltd., and against Plaintiffs Jin-Sung Hong and Tae-Si Kim. Signed by Clerk of Court, Lance S. Wilson on 5/28/13. (Copies have been distributed pursuant to the NEF – MMM) (Entered: 05/28/2013)
05/31/2013	<u>371</u>	ORDER that the following Motions are denied as moot: <u>323</u> Motion in Limine 1; <u>324</u> Motion in Limine 2; <u>325</u> Motion in Limine 3; <u>326</u> Motion in Limine 4; <u>327</u> Motion in Limine 5; <u>328</u> Motion in Limine 6; <u>333</u> Plaintiffs' Motion in Limine 5. Signed by Judge Philip M. Pro on 5/31/13. (Copies have been distributed pursuant to the NEF – MMM) (Entered: 05/31/2013)
06/03/2013	<u>372</u>	BILL OF COSTS by Defendants Richard L. Tobler, Ltd., Richard L. Tobler. Tax or object to Bill of Costs by 6/21/2013. (Alberts, Jeremy) (Entered: 06/03/2013)
06/21/2013	<u>373</u>	OBJECTION to <u>372</u> Bill of Costs ; filed by Plaintiffs Jin-Sung Hong, Tae-Si Kim. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2)(Salls, Jonathan) (Entered: 06/21/2013)
06/26/2013	<u>374</u>	NOTICE OF APPEAL as to <u>370</u> Clerk's Judgment,, Add and Terminate Parties, <u>369</u> Order on Motion for Leave to File,,,,, Order on Motion for District Judge to Reconsider Order,,,,,,, by Plaintiffs Jin-Sung Hong, Tae-Si Kim. Filing fee \$ 455, receipt number 0978-2867998. E-mail notice (NEF) sent to the US Court of Appeals, Ninth Circuit. (Salls, Jonathan) (Entered: 06/26/2013)
06/26/2013	<u>375</u>	Designation of Transcripts and Transcript Order forms and instructions for <u>374</u> Notice of Appeal,. The forms may also be obtained on the Court's website at www.nvd.uscourts.gov/Forms.aspx . (ASB) (Entered: 06/26/2013)
06/27/2013	<u>376</u>	ORDER for Time Schedule as to <u>374</u> Notice of Appeal filed by Jin-Sung Hong, Tae-Si Kim. USCA Case Number 13-16311 . (SLD) (Entered: 06/27/2013)
08/07/2013	<u>377</u>	MOTION to Amend/Correct Complaint re <u>215</u> Amended Complaint, filed by Plaintiffs Jin-Sung Hong, Tae-Si Kim. Responses due by 8/24/2013. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4, # <u>5</u> Exhibit 5, # <u>6</u> Exhibit 6, # <u>7</u> Exhibit 7, # <u>8</u> Exhibit 8)(Salls, Jonathan) (Entered: 08/07/2013)
08/27/2013	<u>378</u>	RESPONSE to <u>377</u> MOTION to Amend/Correct Complaint re <u>215</u> Amended Complaint, filed by Defendants Barbie Ltd., Barbara R. Reed, Edward C. Reed. Replies due by 9/6/2013. (Stoberski, Michael) (Entered: 08/27/2013)
09/05/2013	<u>379</u>	STIPULATION FOR EXTENSION OF TIME (First Request) re <u>378</u> Response to <u>377</u> MOTION to Amend/Correct Complaint re <u>215</u> Amended Complaint by Plaintiffs Jin-Sung Hong, Tae-Si Kim. (Salls, Jonathan) <u>Linked to motion.</u> (ASB) (Entered: 09/05/2013)
09/06/2013	<u>380</u>	MOTION to Stay <i>Proceedings (Renewed)</i> by Plaintiffs Jin-Sung Hong, Tae-Si Kim. Motion ripe 9/6/2013. (Gibson, Steven) (Entered: 09/06/2013)
09/09/2013	<u>381</u>	ORDER ON STIPULATION Granting <u>379</u> Stipulation to Extend Time to Reply re <u>377</u> MOTION to Amend/Correct Complaint re <u>215</u> Amended Complaint. Replies due by 9/20/2013. Signed by Judge Philip M. Pro on 9/9/13. (Copies have been distributed

		pursuant to the NEF – MMM) (Entered: 09/09/2013)
09/20/2013	<u>382</u>	REPLY to Response to <u>377</u> MOTION to Amend/Correct Complaint re <u>215</u> Amended Complaint filed by Plaintiffs Jin–Sung Hong, Tae–Si Kim. (Salls, Jonathan) (Entered: 09/20/2013)
09/23/2013	<u>383</u>	MINUTE ORDER IN CHAMBERS of the Honorable Judge Philip M. Pro, on 9/23/2013. Motion Hearing set for 10/22/2013 at 09:00 AM in LV Courtroom 7C before Judge Philip M. Pro RE: <u>342</u> MOTION for Leave to File <i>Amended Pre– Trial Order</i> , <u>380</u> MOTION to Stay <i>Proceedings (Renewed)</i> , <u>314</u> MOTION in Limine No. 3 to Require All Parties to Give 24–Hour Notice of Witnesses, Deposition, and Exhibits to be Called or Used at Trial, <u>317</u> MOTION in Limine No. 6 Prohibiting the Display of Exhibits or Demonstrative Evidence Until Admitted or Court Permission is Obtained, <u>316</u> MOTION in Limine No. 5 to Preclude Appeal to the Community Conscience or the "Golden Rule", <u>331</u> MOTION in Limine No. 3: <i>Motion to Exclude References to Dismissed Defendants and Claims</i> , <u>313</u> MOTION in Limine No. 2 to Exclude the Testimony of Any Expert, Witness, or Documents Plaintiffs Have Not Timely Identified, <u>319</u> MOTION in Limine No. 8 for an Order Precluding the Application of Joint and Several Liability and Applying Comparative Negligence Liability, <u>318</u> MOTION in Limine No. 7 to Exclude Expert Testimony by Non–Experts, <u>322</u> MOTION in Limine No. 11 to Preclude Claim for Punitive Damages, <u>330</u> MOTION in Limine No. 2: <i>Motion to Exclude J.C. Melvin Expert Opinion</i> , <u>329</u> MOTION in Limine No. 1: <i>Motion to Admit Excerpts of Thomas Tarter's Expert Testimony</i> , <u>320</u> MOTION in Limine No. 9 Excluding Comment by Plaintiffs on the Probable Testimony of All Absent Witnesses Not Appearing at Trial or Who Plaintiffs Could Have Brought to Trial But Did Not, <u>334</u> MOTION in Limine No. 6: <i>Motion to Exclude Witnesses Not Identified in Pretrial Order</i> , <u>377</u> MOTION to Amend/Correct Complaint re <u>215</u> Amended Complaint, <u>321</u> MOTION in Limine No. 10 Excluding Plaintiffs From Soliciting Testimony From a Witness, Or Otherwise Attempt to Introduce Evidence, About the Reed Defendants Filing for Bankruptcy, <u>332</u> MOTION in Limine No. 4: <i>Motion to Exclude Evidence Regarding Gambling Activity of Plaintiff Jin–Sung Hong</i> , <u>312</u> MOTION in Limine to Exclude Evidence of Liability Insurance, <u>315</u> MOTION in Limine No. 4 to Exclude All Witnesses From Trial Until They are Called to Testify. (no image attached) (Copies have been distributed pursuant to the NEF – EW) (Entered: 09/23/2013)
09/23/2013	<u>384</u>	Joint MOTION to Stay Proceedings Pending Plaintiffs' Appeals by Defendants Barbie Ltd., Barbara R. Reed, Edward C. Reed, Plaintiffs Jin–Sung Hong, Tae–Si Kim. Motion ripe 9/23/2013. (Attachments: # <u>1</u> Proposed Order)(Stoberski, Michael) (Entered: 09/23/2013)
09/24/2013	<u>385</u>	MINUTE ORDER IN CHAMBERS of the Honorable Judge Philip M. Pro, on 9/24/2013. The Motion Hearing scheduled for October 22, 2013 is VACATED. Case is stayed pending further Order. (no image attached) (Copies have been distributed pursuant to the NEF – EW) (Entered: 09/24/2013)
09/24/2013	<u>386</u>	ORDER that <u>384</u> Joint Motion to Stay Proceedings is GRANTED. Signed by Judge Philip M. Pro on 9/24/13. (Copies have been distributed pursuant to the NEF – MMM) Modified on 9/24/2013 to link to correct motion (MMM). (Entered: 09/24/2013)
09/24/2013	<u>387</u>	ORDER that all pending motions are denied without prejudice to request the Court to reinstate the motions once the stay is lifted. Signed by Judge Philip M. Pro on 9/24/13. (Copies have been distributed pursuant to the NEF – MMM) (Entered: 09/24/2013)
10/23/2013	<u>388</u>	ORDER of USCA, Ninth Circuit, as to <u>245</u> Notice of Appeal filed by Jin–Sung Hong, Tae–Si Kim. This matter is ordered submitted without oral argument on November 8, 2013, at San Francisco, California. Fed. R. App. P. 34(a)(2). (SLR) (Entered: 10/24/2013)
10/28/2013	<u>389</u>	TRANSCRIPT of Proceedings, 117 Order on Motion to Dismiss/Lack of Jurisdiction,, Motion Hearing,, held on 12–6–10, before Judge Philip M. Pro. Court Reporter/Transcriber: Kathy French, 530–913–9213. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber using the court's "Transcript Order" form available on our website www.nvd.uscourts.gov before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER Redaction Request due 11/18/2013. Redacted Transcript Deadline set

		for 11/28/2013. Release of Transcript Restriction set for 1/26/2014. (KF) (Entered: 10/28/2013)
11/26/2013	<u>390</u>	MEMORANDUM of USCA, Ninth Circuit, as to <u>245</u> Notice of Appeal filed by Jin-Sung Hong, Tae-Si Kim. AFFIRMED. (SLR) (Entered: 11/26/2013)
12/09/2013	<u>391</u>	ORDER that the parties shall file a joint status report and propose a scheduling order to govern the remaining conduct of the litigation on or before December 30, 2013. Signed by Judge Philip M. Pro on 12/9/13. (Copies have been distributed pursuant to the NEF - MMM) (Entered: 12/09/2013)
12/23/2013	<u>392</u>	MANDATE of USCA, Ninth Circuit, as to <u>390</u> USCA Memorandum/Opinion AFFIRMING the judgment of the district court re <u>245</u> Notice of Appeal filed by Jin-Sung Hong, Tae-Si Kim. Costs are taxed against the appellants in the amount of \$40.00. (MMM) (Entered: 12/27/2013)
12/30/2013	<u>394</u>	ORDER on Mandate as to <u>390</u> USCA Memorandum/Opinion re <u>392</u> USCA Mandate AFFIRMING the judgment of the District Court re <u>245</u> Notice of Appeal filed by Jin-Sung Hong, Tae-Si Kim. Signed by Judge Philip M. Pro on 12/30/13. (MMM) (Entered: 12/30/2013)
12/30/2013	<u>395</u>	Joint STATUS REPORT by <i>Reed Defendants</i> and by Plaintiffs Jin-Sung Hong, Tae-Si Kim. (Lowry, Jodi) (Entered: 12/30/2013)
01/06/2014	<u>396</u>	ORDER that the <u>386</u> Court's Order granting a stay remains in effect pending the Ninth Circuit's resolution of Plaintiffs' appeal. Signed by Judge Philip M. Pro on 01/06/2014. (Copies have been distributed pursuant to the NEF - AC) (Entered: 01/06/2014)
06/30/2014	<u>397</u>	MINUTE ORDER IN CHAMBERS of the Honorable Chief Judge Gloria M. Navarro, on 6/30/2014. By Deputy Clerk: Amber Freeman. IT IS ORDERED that this case is reassigned to Judge Richard F. Boulware, II for all further proceedings. Judge Philip M. Pro no longer assigned to case. All further documents must bear the correct case number 2:09-cv-02008-RFB-GWF . (no image attached) (Copies have been distributed pursuant to the NEF - AF) (Entered: 06/30/2014)
07/28/2014	<u>398</u>	NOTICE of Change of Address by Jonathan M.A. Salls. (Salls, Jonathan) (Entered: 07/28/2014)
07/29/2014	<u>399</u>	(1st Notice) NOTICE: of Non-Compliance with Special Order 109 that <u>Laura Lucero</u> is in violation of Special Order 109. re: <u>398</u> NOTICE of Change of Address. Pursuant to Special Order 109, section 2.C., " <i>It shall be the responsibility of each Filing User to maintain and update their user account information.</i> " It is therefore recommended that you review and update your CM/ECF account in accordance with your notice of change of address by clicking "Utilities" and then selecting "Maintain Your Address". (ASB) (Entered: 07/29/2014)
07/29/2014	<u>400</u>	MOTION for Judgment Debtor Exam by Plaintiffs Jin-Sung Hong, Tae-Si Kim. Motion ripe 7/29/2014. (Attachments: # <u>1</u> Exhibit 1)(Salls, Jonathan) (Entered: 07/29/2014)
07/29/2014	<u>401</u>	AFFIDAVIT of Jonathan Salls re <u>258</u> Default Judgment ; by Plaintiffs Jin-Sung Hong, Tae-Si Kim. (Attachments: # <u>1</u> Exhibit 1)(Salls, Jonathan) (Entered: 07/29/2014)
07/30/2014	<u>402</u>	ORDER granting <u>400</u> Motion allowing examination of the Judgment Debtor Adam B. Kearney and requiring production of documents. The Judgment Debtor is ordered to appear at the law offices of Dickenson Wright PLLC, 8965 S. Eastern Ave., Suite 280, Las Vegas, Nevada 89123, on the 27th day of August, 2014, at the hour of 9:30 a.m., and on such further days as the undersigned counsel shall name, to testify under oath concerning Judgment Debtor's assets and property. Failure to produce the documents requested and/or failure to appear may result in a bench warrant being issued for the arrest of Judgment Debtor. Signed by Magistrate Judge George Foley, Jr on 7/30/2014. (Copies have been distributed pursuant to the NEF - DKJ) (Entered: 07/30/2014)
08/11/2014	<u>403</u>	CERTIFICATE OF SERVICE for <u>402</u> Order on Motion for Judgment Debtor Exam,, by Plaintiff Tae-Si Kim. (Salls, Jonathan) (Entered: 08/11/2014)

09/10/2014	<u>404</u>	MOTION for Order to Show Cause re: <u>400</u> MOTION for Judgment Debtor Exam; filed by Plaintiff Tae-Si Kim. Motion ripe 9/10/2014. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit)(Salls, Jonathan) (Entered: 09/10/2014)
09/30/2014	<u>405</u>	ORDER TO SHOW CAUSE. Show Cause Hearing set for 10/16/2014 10:30 AM in LV Courtroom 7C before Judge Richard F. Boulware II. Signed by Magistrate Judge George Foley, Jr on 9/30/2014. (Copies have been distributed pursuant to the NEF - SLR) (Entered: 09/30/2014)
10/14/2014	<u>406</u>	MOTION to Withdraw as Attorney by Steven A. Gibson, Esq. by Plaintiff Tae-Si Kim. Motion ripe 10/14/2014. (Gibson, Steven) (Entered: 10/14/2014)
10/15/2014	<u>407</u>	ORDER granting <u>406</u> Motion to Withdraw as Attorney. Steven A. Gibson withdrawn from the case. Signed by Magistrate Judge George Foley, Jr on 10/15/2014. (Copies have been distributed pursuant to the NEF - DKJ) (Entered: 10/15/2014)
10/16/2014	<u>408</u>	<p>MINUTES OF PROCEEDINGS - Show Cause Hearing held on 10/16/2014 before The Honorable Richard F. Boulware, II. Crtrm Administrator: Blanca Lenzi; Plaintiff Counsel: Rhonda Long, Esq. Counsel for Tae-Si Kim; Def Counsel: Michael Storbeski Esq. Counsel for Re/Max; Court Reporter/FTR #: Patty Ganci; Time of Hearing: 12:24 - 12:33 PM; Courtroom: 7C.</p> <p>The Court makes preliminary statements and canvasses plaintiff's counsel as to their late appearance to Court. For the reasons stated at the hearing, IT IS HEREBY ORDERED that Plaintiff Tae-Si Kim shall serve Defendant Adam Kearney with its <u>404</u> Motion for Order To Show Cause and the <u>405</u> Order Setting Hearing by mail AND by personal service by 10/23/2014. IT IS FURTHER ORDERED, Plaintiff Kim shall file a notification with the Court by 10/23/14 regarding service upon Defendant Adam Kearney. The Court will consider resetting the date for the hearing on the <u>404</u> Motion for Order To Show Cause after receiving the notification to be filed by Plaintiff Kim.</p> <p>(no image attached) (Copies have been distributed pursuant to the NEF - BEL)Modified CR name.(BEL). (Entered: 10/21/2014)</p>
12/05/2014	<u>409</u>	NOTICE of Change of Attorney on behalf of Plaintiffs Jin-Sung Hong, Tae-Si Kim. (Dobberstein, Eric) (Entered: 12/05/2014)
03/10/2015	<u>410</u>	NOTICE re: MOTION to Dismiss Appeal; filed by Plaintiff Tae-Si Kim. Responses due by 3/27/2015. (Duthie, Tracee) Wrong event selected by attorney, event modified on 3/11/2015 (RFJ). (Entered: 03/10/2015)
03/11/2015	<u>411</u>	<p>NOTICE: of Attorney Action Required to <u>410</u> NOTICE re: MOTION to Dismiss Appeal:</p> <p>ERROR: Motion filed in the wrong Court by attorney <u>Tracee L. Duthie</u>.</p> <p>CORRECTION: Attorney is advised to file MOTION with the 9th Circuit Court of Appeals as the Appeal is still pending in the 9th Circuit Court of Appeals. (no image attached)(RFJ) (Entered: 03/11/2015)</p>
03/18/2015	<u>412</u>	MEMORANDUM/OPINION of USCA, Ninth Circuit, as to <u>374</u> Notice of Appeal, filed by Jin-Sung Hong, Tae-Si Kim. AFFIRMED. (MMM) (Entered: 03/20/2015)
04/10/2015	<u>413</u>	MANDATE of USCA, Ninth Circuit, as to <u>412</u> USCA Memorandum/Opinion AFFIRMING the judgment of the District Court re <u>374</u> Notice of Appeal. (MMM) (Entered: 04/14/2015)
04/21/2015	<u>415</u>	ORDER on Mandate as to <u>413</u> USCA Mandate re <u>412</u> USCA Memorandum AFFIRMING the decision of the U.S. District Court re <u>374</u> Notice of Appeal. Signed by Judge Richard F. Boulware, II on 4/21/2015. (DKJ) (Entered: 04/21/2015)
06/16/2015	<u>416</u>	STIPULATION of Dismissal with Prejudice; filed by Defendants Barbie Ltd., Barbara R. Reed, Edward C. Reed. (Stoberski, Michael) (Entered: 06/16/2015)
06/17/2015	<u>417</u>	MOTION to remove attorney(s) Carleton R. Burch from the Electronic Service List in this case, by Defendants Cumorah Credit Union, Cumorah Credit Union. (Burch, Carleton) (Entered: 06/17/2015)

06/18/2015	<u>418</u>	ORDER that <u>417</u> Carleton R. Burch's Ex Parte Motion to Remove Attorney from Electronic Service List is granted. Signed by Magistrate Judge George Foley, Jr on 6/18/15. (Copies have been distributed pursuant to the NEF – MMM) (Entered: 06/18/2015)
06/19/2015	<u>419</u>	MOTION to remove attorney(s) Aaron R. Maurice; Brittany Wood from the Electronic Service List in this case, by Defendant Cumorah Credit Union. (Maurice, Aaron) (Entered: 06/19/2015)
06/23/2015	<u>420</u>	ORDER Granting <u>419</u> Motion to Remove Attorney from Electronic Service List. Signed by Magistrate Judge George Foley, Jr on 6/22/15. (Copies have been distributed pursuant to the NEF – TR) (Entered: 06/24/2015)
07/13/2015	<u>421</u>	MINUTE ORDER IN CHAMBERS of the Judge Richard F. Boulware, II, on 7/13/2015. IT IS ORDERED that <u>416</u> Stipulation of Dismissal with Prejudice is GRANTED. The Court is not using the proposed order as it appears to conflict with the stipulation itself as to which parties should be dismissed or whether the entire action should be dismissed. This action is therefore DISMISSED WITH PREJUDICE as to the following Defendants only: Edward C. Reed, Barbara R. Reed, and Barbie, Ltd. d/b/a RE/MAX Extreme. Each side shall bear its own attorneys' fees and costs. (Copies have been distributed pursuant to the NEF – BEL) (Entered: 07/13/2015)
07/13/2015	<u>422</u>	MOTION to remove attorney(s) David J. Larson, Jeremy R. Alberts from the Electronic Service List in this case, by Defendants Richard L. Tobler, Ltd., Richard L. Tobler. (Alberts, Jeremy) (Entered: 07/13/2015)
07/14/2015	<u>423</u>	ORDER Granting <u>422</u> Motion to Remove Attorney from Electronic Service List. Signed by Magistrate Judge George Foley, Jr on 7/14/15. (Copies have been distributed pursuant to the NEF – PS) (Entered: 07/15/2015)
08/06/2015	<u>424</u>	ORDER Denying <u>404</u> Plaintiffs' Motion for Order to Show Cause. IT IS FURTHER ORDERED that Plaintiffs' shall show cause, in writing, no later than 8/14/15, why this case should not be dismissed with prejudice in accordance with <u>416</u> Stipulation of Dismissal. Signed by Judge Richard F. Boulware, II on 8/6/15. (Copies have been distributed pursuant to the NEF – PS) (Entered: 08/07/2015)
09/03/2015	<u>425</u>	NOTICE of Association of Counsel by Joseph A. Geller on behalf of Plaintiffs Jin-Sung Hong, Tae-Si Kim. (Geller, Joseph) (Entered: 09/03/2015)
09/04/2015	<u>426</u>	ORDER. IT IS ORDERED that this case is DISMISSED WITH PREJUDICE. The Clerk of Court is instructed to close this case. Case is closed. Signed by Judge Richard F. Boulware, II on 9/4/15. (Copies have been distributed pursuant to the NEF – PS) (Entered: 09/04/2015)

EXHIBIT G

EXHIBIT G

STEVEN A. GIBSON, ESQ.
Nevada Bar No. 6656
sgibson@gibsonlegrand.com

GIBSON LEGRAND LLP
7495 West Azure Drive, Suite 503
Las Vegas, Nevada 89130
Telephone 702.541.7888
Facsimile 702.541.7899

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, dba
RE/MAX EXTREME, a Nevada general
partnership; FIRST AMERICAN TITLE, a
foreign corporation; GINA THOMAS, an
individual; ALVERSON, TAYLOR,
MORTENSEN & SANDERS, a Nevada law
firm; and, the Estate of JAMES L.
ZEMELMAN, ESQ.

Defendants.

Case No.: 2:09-cv-02008-RFB-GWF

**MOTION TO WITHDRAW AS
COUNSEL**

TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that Steven A. Gibson, Esq. hereby requests leave of Court to have himself withdrawn as counsel of record in this case. The other lawyers from the law firm of Dickinson Wright PLLC ("Dickinson Wright") will remain as counsel of record for the Plaintiffs. Mr. Gibson has not been with Dickinson Wright since March 31, 2014. In compliance with D.Nev. Local Rule IA 10-6, the clients have been provided notice of this withdrawal.

1 The Clerk's office is requested to make such changes to the docket and to the electronic
2 notification system as are necessary to reflect the withdrawal of Mr. Gibson as counsel of record
3 for Plaintiffs.

4 Respectfully submitted this 14th day of October, 2014.

5 GIBSON LEGRAND LLP

6 By /s/ Steven A. Gibson

7 STEVEN A. GIBSON, ESQ.
8 Nevada Bar No. 6656
9 7495 West Azure Drive, Suite 233
10 Las Vegas, Nevada 89130
11 Tel.: (702) 541-7888
12 Fax: (702) 541-7899

13 **ORDER**

14 IT IS SO ORDERED.

15 DATED: October 15, 2014

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17 United States Magistrate Judge
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CERTIFICATE OF SERVICE

Pursuant to Local Rule 5 of this Court, I certify that I am an employee of GIBSON LEGRAND LLP and that on this 14th day of October, 2014, I caused a correct copy of the foregoing **MOTION TO WITHDRAW AS COUNSEL** to be served via CM/ECF to:

Eric Dobberstein, Esq.
Jonathan M. A. Salls, Esq.
Dickinson Wright PLLC
8965 South Eastern Avenue, Suite 280
Las Vegas, Nevada 89123
Telephone: (702) 382-4002
Facsimile: (702) 382-1661
Counsel for Plaintiffs
Tae-si Kim and Jin-Sung Hong

Michael E. Stoberski, Esq.
mstoberski@ocgd.com
Matthew A. Cavanaugh, Esq.
mcavanaugh@ocgd.com
Olson, Cannon, Gormley Angulo & Stoberski
9950 West Cheyenne Avenue
Las Vegas, Nevada 89129
Telephone: (702) 384-4012
Facsimile: (702) 383-0701
Counsel for Defendants
Edward C. Reed; Barbara R. Reed; and Barbie Ltd., d/b/a RE/MAX Extreme

I further certify that, pursuant to Local Rule 5 of this Court, on this 14th day of October, 2014, I caused a correct copy of the foregoing MOTION TO WITHDRAW AS COUNSEL to be placed in the United States mail, with postage prepaid thereon addressed as follows (with a courtesy copy sent via electronic mail):

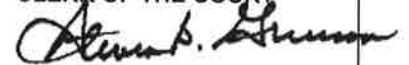
Mr. Adam B. Kearney
32 Via Vasari
Henderson, Nevada 89011
akearney@sfn-mail.com
akearney@ignitefunding.com

6585 High Street
Las Vegas, Nevada 89113

Judgment Debtor

/s/ Raisha Y. Gibson

An employee of GIBSON LEGRAND LLP



MDSM

Steve Morris, NV Bar No. 1543
Ryan M. Lower, NV Bar No. 9108
MORRIS LAW GROUP
411 E. Bonneville Ave., Ste. 360
Las Vegas, Nevada 89101
Telephone: (702) 474-9400
Email: sm@morrislawgroup.com
Email: rml@morrislawgroup.com

Attorneys for Defendants
Dickinson Wright, PLLC,
Jodi Donetta Lowry, Jonathan M.A.
Salls, Eric Dobberstein, and
Michael G. Vartanian

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

Plaintiffs,

v.

GIBSON LOWRY BURRIS, LLP,
(now known as GIBSON LOWRY,
LLP), a Nevada limited liability
partnership; DICKINSON WRIGHT,
PLLC, a Nevada Professional
limited liability company; STEVE A.
GIBSON, ESQ., an Individual; 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;
and DOES I through X, inclusive,
and ROE BUSINESS ENTITIES XI
through XX, inclusive,

Defendants.

) Case No. A-17-756785-C

)

) Dept. No. XXIV

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**DICKINSON WRIGHT'S MOTION
TO DISMISS**

Defendants Dickinson Wright, PLLC, Jodi Donetta Lowry,
Jonathan M.A. Salls, Eric Dobberstein, and Michael G. Vartanian
(collectively "Dickinson Wright") hereby move the Court to dismiss the
complaint. This motion is based on Nev. R. Civ. P. 12(b)(5), 28 U.S.C. §
1367(d), NRS 11.270, the papers and pleadings on file, the exhibits hereto,
and the following points and authorities.

MORRIS LAW GROUP

By: 


Steve Morris, NV Bar No. 1543
Ryan M. Lower, NV Bar No. 9108
411 E. Bonneville Ave., Ste. 360
Las Vegas, Nevada 89101

Attorneys for Defendants
Dickinson Wright, PLLC,
Jodi Donetta Lowry, Jonathan M.A.
Salls, Eric Dobberstein, and
Michael G. Vartanian

NOTICE OF MOTION

PLEASE TAKE NOTICE that the undersigned will bring
Dickinson Wright's Motion to Dismiss before the above Court in Dept.
XXIV on the 14 day of Sept., 2017 at 9:00 am

MORRIS LAW GROUP

By: 
Steve Morris, NV Bar No. 1543
Ryan M. Lower, NV Bar No. 9108
411 E. Bonneville Ave., Ste. 360
Las Vegas, Nevada 89101

Attorneys for Defendants
Dickinson Wright, PLLC,
Jodi Donetta Lowry, Jonathan M.A.
Salls, Eric Dobberstein, and
Michael G. Vartanian

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The plaintiffs allege the defendants committed malpractice because they did not file a state-court legal malpractice action against attorney Charles Damus on or before September 2011, after that claim against Damus in federal court had been dismissed on December 6, 2010. They allege the legal conclusion that a "claim against defendant Damus had to [be] brought, pursuant to statute, on or before September of 2011" (Compl. ¶ 37), and that "Defendants [had] represented to Plaintiffs that a claim against Damus could be brought at the end of the United States District Court case." Compl. ¶ 39. That statement, the plaintiffs allege, "was statutorily false." Compl. ¶ 40.

This fanciful pleading does not, as a matter of law, state a claim against Dickinson Wright. Here's why: under 28 U.S.C. § 1367(d), the

1 statute of limitations against Damus was suspended during the pendency
2 of the federal action, which was not finally dismissed until September 4,
3 2015. Plaintiffs' claims against Damus could have been brought in state
4 court after that date.

5 Although plaintiffs correctly allege that Dickinson Wright
6 informed them in writing by email on July 30, 2015 "that no suit had been
7 filed against Damus" in state court and "that as of that date the defendants'
8 representation of the Plaintiffs had ended" (Compl. ¶ 29), plaintiffs omit
9 the critical portion of the remainder of the email in which Dickinson
10 Wright told plaintiffs "[y]ou should contact [another lawyer] if you wish to
11 pursue any action against Mr. Damus." Ex. A, Email from Vartanian to
12 Kim.¹

13 Because plaintiffs could have re-filed their claims against
14 Damus *after* Dickinson Wright's representation of them ended on July 30,
15 2015, they do not, as a matter of law, have any viable claims against
16 Dickinson Wright for not filing an action against Damus in September 2011
17 while the federal case was pending because the statute of limitations was
18 tolled between that time and September 4, 2015 pursuant to 28 U.S.C. §
19 1367(d).

20 Moreover, based on Nevada's litigation tolling rule, plaintiffs'
21 legal malpractice claim against Damus did not accrue until the conclusion
22 of the federal action *when their damages became certain*. Thus, plaintiffs have
23 until September 4, 2017 to file a legal malpractice action against Damus.

24
25
26 ¹ The Court may properly consider on a motion to dismiss the entirety of
27 documents incorporated or referenced in the complaint. *Breliant v.*
28 *Preferred Equities Corp.*, 109 Nev. 842, 847, 858 P.2d 1258, 1261 (1993); *Lazy Y*
Ranch LTD v. 24 Behrens, 546 F.3d 580, 588 (9th Cir. 2008); *Dettling v. U.S.*,
948 F. Supp. 2d 1116, 1123 (D. Hawaii 2013).

1 The Court should also dismiss the complaint under the
2 attorney judgment rule that is made applicable to this case by 28 U.S.C. §
3 1367(d)'s tolling of Nevada's statute of limitations while the federal action
4 was pending. Therefore, Dickinson Wright's exercise of professional
5 judgment as to when plaintiffs could re-file their claims against Damus in
6 state court is not, as a matter of law, actionable in this case.

7 Alternatively, if the Court should rule that the Federal and
8 Nevada tolling rules do not apply, the plaintiffs' claims against Dickinson
9 Wright are nevertheless time-barred under NRS 11.270.

10 For these reasons, the Court should dismiss the complaint,
11 with prejudice.

12 **II. FACTS**

13 **A. Plaintiffs Retain and Terminate Charles Damus.**

14 On December 17, 2008, plaintiffs retained Charles Damus, a
15 Nevada lawyer, to represent them in a dispute concerning "certain real
16 estate and other related claims regarding real property." Compl. ¶ 19. In
17 September 2009, plaintiffs terminated Damus because he failed to file a
18 complaint to initiate an action to resolve the real estate investment dispute.
19 Compl. ¶ 20.

20 **B. The Federal Action.**

21 On August 20, 2009, plaintiffs retained Gibson Lowry Burris,
22 LLP ("GLB")² to initiate the action that Damus failed to file. Compl. ¶¶ 11–
23

24 ² GLB was a Nevada limited liability partnership. Ex. B, Secretary of State
25 Business Entity Information for GLB. It was wound down, and its
26 registration was withdrawn from the Nevada Secretary of State on April
27 11, 2011. *Id.*; *Breliant*, 109 Nev. at 847; 858 P.2d at 1261 ("the court may take
28 into account matters of public record . . . when ruling on a motion to
dismiss"); *Lee v City of Los Angeles*, 250 F.3d 668, 689 (9th Cir 2001) ("a court
may take judicial notice of matters of public record").

16. On October 15, 2009, GLB filed a complaint on plaintiffs' behalf asserting federal question jurisdiction in the United States District Court for the District of Nevada, *Kim v. Kearney, et al.*, Case No. 2:09-cv-02008-RFB-GWF ("the Federal Action"). Compl. ¶ 17.

On March 2, 2010, GLB filed an amended complaint on plaintiffs' behalf in the Federal Action. Compl. ¶ 18. The amended complaint alleged state law claims against Damus for legal malpractice, negligence, and unjust enrichment based on his failure to file an action to prevent the foreclosure of their property, and it asserted the federal court had supplemental jurisdiction over those claims. *Id.*; Ex. D, Am. Compl. ¶¶ 200–223, 389–396, 406–407.

C. Damus Successfully Moves for His Dismissal.

On October 5, 2010, Damus moved the federal court to dismiss the claims against him for lack of subject matter jurisdiction. Compl. ¶ 22; Ex. E, Damus's Mot. to Dismiss. Damus argued that the claims against him did not arise out of the same transaction or occurrence as plaintiffs' federal securities fraud claims alleged against the other defendants in the Federal Action. Ex. E, Damus's Mot. to Dismiss at pp. 8–13. Damus also argued that the claims against him were premature because "until the underlying dispute [was] resolved it [was] too early to know whether Plaintiffs [had] suffered any damages as a result of any alleged conduct by Damus, and the claims against Damus should be dismissed." *Id.* at p. 11.

The complaint erroneously alleges GLB is "now known as Gibson Lowry, LLP." GLB is, however, a separate and distinct entity from Gibson Lowry. Compare Ex. B, Secretary of State Business Entity Information for GLB with Ex. C, Secretary of State Business Entity Information for Gibson Lowry; *Viega GmbH v. Eighth Jud. Dist. Ct.*, 130 Nev. Adv. Op. 40, 328 P.3d 1152, 1157 (2014) (holding "corporate entities are presumed separate" under Nevada law).

1 On October 22, 2010, Dickinson Wright³ filed plaintiffs'
2 opposition to Damus's motion to dismiss. Compl. ¶ 23.

3 On December 6, 2010, the federal court granted his motion to
4 dismiss. Compl. ¶ 25; Ex. F, Civil Docket for Case No. 2:09-cv-02008, at
5 ECF No. 117. The dismissal of plaintiffs' claims against Damus was a non-
6 final and non-appealable order, and the Federal Action remained pending.
7 *Id.*⁴ Thereafter, Dickinson Wright told plaintiffs that their claims against
8 Damus could be brought *at the end of* the Federal Action. Compl. ¶ 39.

9 **D. The Conclusion of the Federal Action and Dickinson Wright's**
10 **Termination of Its Representation of Plaintiffs.**

11 Following Damus's dismissal, the Federal Action proceeded
12 through motion practice and two separate appeals, which resulted in a
13 judgment against one of the defendants, dismissal of some defendants,
14 judgment in favor of some defendants, and settlements with and stipulated
15 dismissals of other defendants. Ex. F, Civil Docket for Case No. 2:09-cv-
16 02008, at ECF Nos. 123, 125, 135, 213, 214, 245, 258, 369, 370, 374, and 416.

17 On July 30, 2015, Dickinson Wright informed plaintiffs that an
18 action against Damus had not been filed in state court and clearly told
19 them that they should contact another lawyer if they still wished to file an
20

21 ³ In August 2010, Steven Gibson and Jodi Donetta Lowry joined Dickinson
22 Wright. Ex. F, Civil Docket for Case No. 2:09-cv-02008, at ECF No. 84; *see*
23 *also* Compl. ¶ 1. Mr. Gibson has not been served in this case. Referencing
24 Mr. Gibson in this motion should not be construed as an appearance on his
25 behalf. Nonetheless, the same arguments and result should apply to him
26 under the doctrines of res judicata and collateral estoppel.

27 ⁴ "Under the final judgment rule embodied in 28 U.S.C. § 1291, parties may
28 appeal only the 'final decisions of the district courts.' A final judgment
under § 1291 is 'a decision by the District Court that ends the litigation on
the merits and leaves nothing for the court to do but execute the
judgment.'" *Dannenberg v. Software Toolworks Inc.*, 16 F.3d 1073, 1074 (9th
Cir. 1994) (dismissing appeal of interlocutory order).

1 action against Damus, and terminated the firm's representation of them.
2 Compl. ¶ 29; Ex. A, Email from Vartanian to Kim, dated July 30, 2015.⁵ The
3 complaint does not allege that Dickinson Wright or any of the other
4 defendants represented plaintiffs after this point in time. And, on
5 September 3, 2015, another attorney, Joseph Geller, appeared on plaintiffs'
6 behalf in the Federal Action. Ex. F, Civil Docket for Case No. 2:09-cv-02008,
7 at ECF No. 425.

8 The Federal Action remained pending until September 4, 2015,
9 when the federal court entered a final order dismissing it with prejudice.
10 Ex. F, Civil Docket for Case No. 2:09-cv-02008, at ECF No. 426.⁶

11 **E. Plaintiffs' Claims against the Defendants in this Action.**

12 On June 12, 2017, plaintiffs filed this action against defendants
13 asserting claims for (1) legal malpractice, (2) intentional and negligent
14 misrepresentation, and (3) breach of fiduciary duties, all based on their
15 alleged failure to file a complaint against Damus in state court before the
16 statute of limitations expired, Compl. ¶¶ 25–55, although the statute had
17 not run, as discussed below.

18 Plaintiffs mistakenly allege that "[a]ny claim against Damus for
19 malpractice should have been brought on or before the termination date
20 two years later," or by September, 2011. Compl. ¶ 27; *see also* Compl. ¶ 37
21 ("[a] claim against defendant Damus had to [be] brought, pursuant to
22 statute, on or before September of 2011"), which is also addressed below.

23 ⁵ Mr. Gibson left Dickinson Wright in March 2014 and did not represent the
24 plaintiffs after his departure from the firm. Ex. G, Order Granting Motion
25 to Withdraw as Counsel.

26 ⁶ The Court can take judicial notice of the pleadings and docket entries in
27 the federal action in considering a motion to dismiss. *Breliant*, 109 Nev. at
28 847; 858 P.2d at 1261 ("the court may take into account matters of public
record [and] orders . . . when ruling on a motion to dismiss"); *Lee*, 250 F.3d
at 689 ("a court may take judicial notice of matters of public record").

1 **III. ARGUMENT**

2 **A. The Standard for this Motion to Dismiss.**

3 A motion to dismiss under Nevada Rule of Civil Procedure
4 12(b)(5) tests the legal sufficiency of the pleadings. Although all factual
5 allegations are taken as true on a motion to dismiss for failure to state a
6 claim, *Blanchard v. Blanchard*, 108 Nev. 908, 839 P.2d 1320, 1321 (1992), the
7 Court "need not accept as true allegations contradicting documents that are
8 referenced in the complaint," *Lazy Y Ranch*, 546 F.3d at 588, or "allegations
9 that contradict the complaint's exhibits, documents incorporated by
10 reference, or matters properly subject to judicial notice." *Dettling*, 948 F.
11 Supp. 2d at 1123.

12 The Court may properly consider the entirety of documents
13 incorporated or referenced in the complaint without converting the motion
14 into one for summary judgment. *Breliant*, 109 Nev. at 847, 858 P.2d at 1261
15 ("the court may take into account matters of public record, orders, items
16 present in the record of the case, and any exhibits attached to the complaint
17 when ruling on a motion to dismiss for failure to state a claim"); *Branch v.*
18 *Tunnell*, 14 F.3d 449, 454 (9th Cir. 1994), *overruled on other grounds*, *Galbraith*
19 *v. Cnty. of Santa Clara*, 307 F.3d 1119, 1121 (9th Cir. 2002).

20 In considering a Rule 12(b)(5) motion, the Court's "task is to
21 determine whether . . . the challenged pleading sets forth allegations
22 sufficient to make out the elements of a right to relief." *Vacation Village, Inc.*
23 *v. Hitachi Am., Ltd.*, 110 Nev. 481, 484 874 P.2d 744, 746 (1994). "The test for
24 determining whether the allegations give fair notice of the nature and basis
25 of a legally sufficient claim and the relief requested." *Id.* Accordingly, the
26 question for the Court at this stage is whether the complaint asserts facts
27 that, if proven, would support recovery against Dickinson Wright under
28 Nevada law. As will be demonstrated below, it does not. Therefore, the

1 Court should grant this motion and dismiss plaintiffs' complaint with
2 prejudice.

3 **B. The Statute of Limitations for Plaintiffs' Claims against**
4 **Damus was Tolloed During the Pendency of the Federal**
5 **Action Pursuant to 28 U.S.C. § 1367(d).**

6 28 U.S.C. § 1367(d) provides: "The period of limitations for any
7 claim asserted under subsection (a) [supplemental jurisdiction]⁷, and for
8 any other claim in the same action that is voluntarily dismissed at the same
9 time as or after the dismissal of the claim under subsection (a), shall be
10 tolled while the claim is pending and for a period of 30 days after it is
11 dismissed unless State law provides for a longer tolling period."

12 Although the Nevada Supreme Court has not yet interpreted
13 the meaning of "tolled" under § 1367(d), courts elsewhere have held that §
14 1367(d) suspends the limitations period and pauses its clock until thirty
15 days after all federal proceedings, *including* appellate proceedings, are
16 concluded. *In re Vertrue Inc. Mktg. & Sales Practices Litig.*, 719 F.3d 474, 481
17 (6th Cir. 2013) (holding "that the suspension approach properly gives effect
18 to both § 1367(d) and the state statute of limitations," whereas the other
19 interpretations do not); *Turner v. Kight*, 406 Md. 167, 173, 957 A.2d 984, 987
20 (2008) (holding "that §1367(d) serves to suspend the running of a State
21 statute of limitations from the time the State-law claim is filed in U.S.
22 District Court until 30 days after (1) a final judgment is entered by the U.S.
23 District Court dismissing the pendent State-law claim, or (2) if an appeal is

24 ⁷ 28 U.S.C. § 1367(a) states: "Except as provided in subsections (b) and (c)
25 or as expressly provided otherwise by Federal statute, in any civil action of
26 which the district courts have original jurisdiction, the district courts shall
27 have supplemental jurisdiction over all other claims that are so related to
28 claims in the action within such original jurisdiction that they form part of
the same case or controversy under Article III of the United States
Constitution. Such supplemental jurisdiction shall include claims that
involve the joinder or intervention of additional parties."

1 noted from that judgment, issuance of an order of the U.S. Court of
2 Appeals dismissing the appeal or a mandate affirming the dismissal of
3 those claims by the District Court"); *see also Goodman v. Best Buy, Inc.*, 777
4 N.W.2d 755, 761–62 (Minn. 2010) (applying suspension approach); *Oleski v.*
5 *Dep't of Pub. Welfare*, 822 A.2d 120, 126 (Pa. Commw. Ct. 2003) ("Under
6 Section 1367(d) the period of limitations was tolled from the July 2, 1998
7 removal to federal district court until the October 21, 1999 dismissal plus
8 thirty days. This tolling of the statute of limitations for approximately one
9 year and four months meant that the complaint filed in September 2000, if
10 viewed as an initial complaint, was timely.").

11 **C. Plaintiffs' Claims against Dickinson Wright Fail as a Matter**
12 **of Law Because the Statute of Limitations did not Expire**
13 **Until *Long After* the Firm Terminated Its Representation of**
14 **Plaintiffs.**

15 The statute of limitations for plaintiffs' legal malpractice claim
16 against Damus is two years. NRS 11.207(1) ("An action against an attorney
17 . . . to recover damages for malpractice, whether based on a breach of duty
18 or contract, must be commenced . . . within 2 years after the plaintiff
19 discovers or through the use of reasonable diligence should have
20 discovered the material facts which constitute the cause of action"). The
21 statute of limitations for plaintiffs' negligence claims against Damus is also
22 two years. NRS 11.190(4)(e); *see also Garner v. Bank of Am. Corp.*, No. 2:12-
23 CV-02076-PMP, 2014 WL 1945142, at *4 (D. Nev. May 13, 2014). The statute
24 of limitations for plaintiffs' unjust enrichment claim against Damus is four
25 years. *In re Amerco Derivative Litig.*, 127 Nev. 196, 228, 252 P.3d 681, 703
(2011) (citing NRS 11.190(2)(c)).

26 Here, plaintiffs allege that the statute of limitations for their
27 claims against Damus began running in September 2009 when they
28 terminated him. Compl. ¶ 27. Accepting this allegation as true and

1 applying tolling under 28 U.S.C. § 1367(d), the statute of limitations began
2 running in September 2009, but it *was suspended* from March 2010 when the
3 amended complaint, which included the claims against Damus, was filed
4 in the Federal Action until thirty days after the that action was dismissed
5 with prejudice on September 4, 2015. At that time the statute began to run
6 again until it ran on plaintiffs' legal malpractice and negligence claims in
7 April 2017. They could have commenced an action against Damus during
8 that 18 month interregnum, as they had been advised by Dickinson Wright
9 on July 30, 2015 to do through another lawyer. (The statute on plaintiffs'
10 claim for unjust enrichment will run in April 2019).

11 Under 28 U.S.C. § 1367(d), the statute of limitations was tolled
12 during the pendency of the Federal Action and did not run until 18 months
13 *after* Dickinson Wright terminated its representation and advised the
14 plaintiffs to contact another lawyer if they wished to pursue their claims
15 against Damus in state court. Comp. ¶ 29; Ex. A, Email from Vartanian to
16 Kim, dated July 30, 2015.

17 **D. Plaintiffs' Legal Malpractice Claim Against Damus Did Not**
18 **Accrue until the Conclusion of the Federal Action.**

19 "In Nevada, legal malpractice is premised on an attorney-client
20 relationship, a duty to the client by the attorney, breach of that duty, and
21 the breach as proximate cause of the client's damages." *Semenza v. Nev.*
22 *Med. Liab. Ins. Co.*, 104 Nev. 666, 667–68, 765 P.2d 184, 185 (1998) (citation
23 omitted). A legal malpractice action "does not accrue until the plaintiff
24 knows, or should know all facts relevant to the foregoing elements and
25 damage has been sustained." *Id.* 104 Nev. at 668, 765 P.2d at 185–86
26 (citation omitted). "[W]here damage has not been sustained or where it is
27 too early to know whether damage has been sustained, a legal malpractice
28 action is premature and should be dismissed." *Id.* 104 Nev. at 668, 765 P.2d
at 186.

1 In *Semenza*, the Nevada Supreme Court specifically held
2 "[w]here there has been no final adjudication of the client's case in which
3 the malpractice allegedly occurred, the element of injury or damages
4 remains speculative and remote, thereby making premature the cause of
5 action for professional negligence." *Id.*; *Hewitt v. Allen*, 118 Nev. 216, 221,
6 43 P.3d 345, 348 (2002) ("In the context of litigation malpractice, that is legal
7 malpractice committed in the representation of a party to a lawsuit,
8 damages do not begin to accrue until the underlying legal action has been
9 resolved."); *Kopicko v. Young*, 114 Nev. 1333, 1337, 971 P.2d 789, 791 (1998)
10 (holding "the ultimate malpractice action against Young did not accrue
11 until dismissal because no legal damages had yet been sustained as a result
12 of the alleged negligence").

13 The Nevada Supreme Court has also held "[t]he two-year
14 statute of limitations in NRS 11.207 . . . is tolled against a cause of action for
15 attorney malpractice, pending the outcome of the underlying lawsuit in
16 which the malpractice allegedly occurred." *Brady, Vorwerck, Ryder &*
17 *Caspino v. New Albertson's, Inc.*, 130 Nev. Adv. Op. 68, 333 P.3d 229, 235
18 (2014).

19 Here, the underlying federal litigation in which Damus
20 allegedly committed malpractice did not conclude until September 4, 2015
21 when it was dismissed with prejudice. Ex. F, Civil Docket for Case No.
22 2:09-cv-02008, at ECF No. 426. Therefore, plaintiffs' legal malpractice claim
23 did not accrue until that date; they still have until September 4, 2017 to file
24 an action against Damus. For this reason, the claims against Dickinson
25 Wright are not actionable, as a matter of law, and should be dismissed,
26 with prejudice.

1 **E. The Court Should Dismiss the Complaint Based on the**
2 **Attorney Judgment Rule.**

3 It is black-letter law that attorneys cannot be liable for legal
4 malpractice when the advice they give concerns a proposition of state law
5 for which no settled answer has been provided by the Nevada Supreme
6 Court. 7 Am. Jur. 2d Attorneys at Law § 199 ("An attorney is not liable for
7 a mistaken opinion on a point of law that has not been settled by a court of
8 last resort and on which reasonable doubt may well be entertained by
9 informed lawyers."); 3 R. Mallen & J. Smith, Legal Malpractice §18.1 at 2
10 (5th ed 2000) ("the rule that an attorney is not liable for an error of
11 judgment on an unsettled proposition of law is universally recognized");
12 *Bergstrom v. Noah*, 266 Kan. 847, 885, 974 P.2d 531, 560 (1999) (applying
13 attorney judgment rule); *Biomet Inc. v. Finnegan Henderson LLP*, 967 A.2d
14 662, 667–68 (D.C. 2009) (holding "[a]n attorney is not liable for an error of
15 judgment regarding an unsettled proposition of law' and that if 'reasonable
16 attorneys could differ with respect to the legal issues presented, the
17 second-guessing after the fact of . . . professional judgment [i]s not a
18 sufficient foundation for a legal malpractice claim").

19 The Nevada Supreme Court has not determined the effect of 28
20 U.S.C. § 1367(d)'s tolling rule on Nevada's statute of limitations. Thus, as a
21 matter of law,⁸ plaintiffs cannot establish that Dickinson Wright committed
22 malpractice by advising them that they could sue Damus at the conclusion
23 of the Federal Action. For this reason, the Court should also apply the
24 attorney judgment rule as a basis for dismissal of the complaint.

25 ⁸ *Nelson v. Quarles & Brady, LLP*, 997 N.E.2d 872, 880–81 (Ill. App. Ct. 2013)
26 ("although the question of whether a lawyer has breached a duty to his
27 client presents a factual question courts have held that the issue may be
28 decided as a matter of law under the doctrine of judgmental immunity
which provides that 'an attorney will generally be immune from liability,
as a matter of law, for acts or omissions during the conduct of litigation,
which are the result of an honest exercise of professional judgment").

1 **F. Even if the Court Finds that the Statute of Limitations has**
2 **Not Been Tolloed, Plaintiffs' Claims against Dickinson Wright**
3 **are Still Time Barred.**

4 Under 11.207(1), "An action against an attorney . . . to recover
5 damages for malpractice, whether based on a breach of duty or contract,
6 must be commenced within 4 years after the plaintiff sustains damage or
7 within 2 years after the plaintiff discovers or through the use of reasonable
8 diligence should have discovered the material facts which constitute the
9 cause of action, *whichever occurs earlier.*" *Id.* (emphasis added).

10 NRS 11.207 applies to each of plaintiffs' claims because it "is
11 applicable to legal malpractice claims, *whether based on breach of contractual*
12 *obligations or breach of fiduciary duties.*" *Stalk v. Mushkin*, 125 Nev. 21, 25, 199
13 P.3d 838, 841 (2009) (emphasis added); *see also Stumpf v. Albracht*, 982 F.2d
14 275, 278 (8th Cir. 1992) (holding statute of limitations for malpractice
15 applied to the fraud claim because "[i]f parties were permitted to
16 circumvent the statute of limitations via artful pleading, the statute of
17 limitations would serve no purpose"); *Quintilliani v. Mannerino*, 62 Cal.
18 App. 4th 54, 57, 72 Cal. Rptr. 2d 359, 368 (1998) (holding statute of
19 limitations for legal malpractice applied to plaintiff's claim for negligent
20 misrepresentation where plaintiff had intermingled both legal and nonlegal
21 misrepresentations).

22 If the Court finds that the Federal and Nevada tolling rules do
23 not apply, then plaintiffs' claims against Dickinson Wright are nevertheless
24 time-barred under NRS 11.207. The complaint alleges the plaintiffs
25 sustained damages in September 2011, which is the date the plaintiffs
26 allege a claim against Damus had to be brought. Compl. ¶¶ 20, 27, 37.
27 Moreover, the plaintiffs knew Dickinson Wright had not filed claims
28 against Damus in state court after they were dismissed in the Federal
Action on December 6, 2010 because the complaint alleges "Defendants

1 represented to Plaintiffs that a claim against Damus could be brought at the
2 end of the United States District Court case." Compl. ¶ 39. But the
3 complaint in this case was not filed until June 12, 2017, which is more than
4 4 years after plaintiffs allegedly sustained damages in September 2011 and
5 more than 2 years after plaintiffs knew or should have known of the
6 material facts which constitute their alleged malpractice claims, i.e.,
7 Dickinson Wright had not re-filed their claims against Damus after the
8 federal court dismissed them in December 2010. Thus on the facts pleaded
9 and established in the documents referred to in their pleading, plaintiffs'
10 claims are time-barred under NRS 11.207.

11 **IV. CONCLUSION**

12 Therefore, based on the allegations in the plaintiffs' complaint
13 and applicable law, this action should be dismissed, with prejudice.

14 MORRIS LAW GROUP

15
16 By: 

17 Steve Morris, NV Bar No. 1543
18 Ryan M. Lower, NV Bar No. 9108
19 411 E. Bonneville Ave., Ste. 360
20 Las Vegas, Nevada 89101

21 Attorneys for Defendants
22 Dickinson Wright, PLLC,
23 Jodi Donetta Lowry, Jonathan M.A.
24 Salls, Eric Dobberstein, and Michael G.
25 Vartanian
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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I certify that I am an employee of MORRIS LAW GROUP and that on the date below, I caused the following document to be served via the Court's Odyssey E-Filing system: **DICKINSON WRIGHT'S MOTION TO DISMISS**. The date and time of the electronic proof of service is in place of the date and place of deposit in the mail.

TO:

Brandon L. Phillips, NV Bar No. 12264
BRANDON L. PHILLIPS, ATTORNEY AT LAW, PLLC
1455 E. Tropicana Ave., Suite 750
Las Vegas, Nevada 89169
blb@abetterlegalpractice.com

Attorneys for Plaintiffs

DATED this 8th day of August, 2017.

By: Patty Cannon

EXHIBIT A

EXHIBIT A

Subject: RE: Did you check that Mr. Gibson filed a State Court case?
Date: 7/30/2015 8:58 AM
From: "Michael G. Vartanian" <MVartanian@dickinson-wright.com>
To: "Tae Si Kim" <taesikim2001@gmail.com>
Cc: "Eric Dobberstein" <EDobberstein@dickinson-wright.com>

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 satisfy 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. Vortanian,

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,

Michael G. Vartanian Member

350 S Main Street
Suite 300
Ann Arbor MI 48104

Profile	V-Card
---------	--------

Phone 734-623-1690
Mobile 313-320-7525
Fax 734-623-1625
Email MVaranian@clintonsonwright.com

DICKINSON WRIGHT INC
 4010 LAMAR AVENUE SUITE 1000 DENVER COLORADO 80202

The information contained in this e-mail and any attachments is confidential, intended only for the named recipient(s), and may be legally privileged. If you are not the intended recipient, please delete the e-mail and any attachments, destroy any printouts that you may have made and notify us immediately by return e-mail.

Neither this transmission nor any attachment shall be deemed for any purpose to be a "signature" or "signed" under any electronic transmission acts, unless otherwise specifically stated herein. Thank you.

EXHIBIT B

EXHIBIT B

GIBSON LOWRY BURRIS LLP

Business Entity Information

Status:	Withdrawn	File Date:	8/6/2008
Type:	Domestic Limited-Liability Partnership	Entity Number:	E0500382008-1
Qualifying State:	NV	List of Officers Due:	8/31/2010
Managed By:		Expiration Date:	
NV Business ID:	NV20081393632	Business License Exp:	

Registered Agent Information

Name:	STEVEN A. GIBSON	Address 1:	10645 SUNBLOWER AVE.
Address 2:		City:	LAS VEGAS
State:	NV	Zip Code:	89135
Phone:		Fax:	
Mailing Address 1:		Mailing Address 2:	
Mailing City:		Mailing State:	NV
Mailing Zip Code:			
Agent Type:	Noncommercial Registered Agent		

Financial Information

No Par Share Count:	0	Capital Amount:	\$ 0
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No stock records found for this company

☒ Officers

☐ Include Inactive Officers

Managing Partner - STEVEN A GIBSON, CHARTERED

Address 1:	10645 SUNBLOWER AVE.	Address 2:	
City:	LAS VEGAS	State:	NV
Zip Code:	89135	Country:	
Status:	Active	Email:	

☒ Actions\Amendments

Action Type:	Registration of LLP		
Document Number:	20080527301-88	# of Pages:	2
File Date:	8/6/2008	Effective Date:	
(No notes for this action)			
Action Type:	Initial List		
Document Number:	20080543853-98	# of Pages:	1
File Date:	8/14/2008	Effective Date:	
(No notes for this action)			

Action Type:	Amendment		
Document Number:	20080687364-14	# of Pages:	1
File Date:	10/20/2008	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20090649469-99	# of Pages:	1
File Date:	8/28/2009	Effective Date:	
(No notes for this action)			
Action Type:	Withdrawal		
Document Number:	20110269135-50	# of Pages:	1
File Date:	4/11/2011	Effective Date:	
(No notes for this action)			

NEVADA SECRETARY OF STATE
Barbara K. Cegavske

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[SOS INFORMATION](#)[ELECTIONS](#)[BUSINESSES](#)[LICENSING](#)[INVESTOR INFORMATION](#)[ONLINE SERVICES](#)[My Data Reports](#) [Commercial Recordings](#) [Licensing](#)**Entity Actions for "GIBSON LOWRY BURRIS LLP"**Sort by:

⌂ descending ⌂ ascending order

1 - 5 of 5 actions

- Actions\Amendments			
Action Type:	Withdrawal		
Document Number:	20110269135-50	# of Pages:	1
File Date:	4/11/2011	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20090649469-99	# of Pages:	1
File Date:	8/28/2009	Effective Date:	
(No notes for this action)			
Action Type:	Amendment		
Document Number:	20080687364-14	# of Pages:	1
File Date:	10/20/2008	Effective Date:	
(No notes for this action)			
Action Type:	Initial List		
Document Number:	20080543853-98	# of Pages:	1
File Date:	8/14/2008	Effective Date:	
(No notes for this action)			
Action Type:	Registration of LLP		
Document Number:	20080527301-88	# of Pages:	2
File Date:	8/6/2008	Effective Date:	
(No notes for this action)			

[Return to Entity Details for "GIBSON LOWRY BURRIS LLP"](#)

EXHIBIT C

EXHIBIT C

GIBSON LOWRY LLP

Business Entity Information

Status:	Active	File Date:	3/6/2014
Type:	Domestic Limited-Liability Partnership	Entity Number:	E0120792014-8
Qualifying State:	NV	List of Officers Due:	3/31/2018
Managed By:		Expiration Date:	
NV Business ID:	NV20141163512	Business License Exp:	3/31/2018

Additional Information

Central Index Key:	
--------------------	--

Registered Agent Information

Name:	DAVID G. LEGRAND	Address 1:	6180 BRENT THURMAN WAY, SUITE 100
Address 2:		City:	LAS VEGAS
State:	NV	Zip Code:	89148
Phone:		Fax:	
Mailing Address 1:		Mailing Address 2:	
Mailing City:		Mailing State:	NV
Mailing Zip Code:			
Agent Type:	Noncommercial Registered Agent		

Financial Information

No Par Share Count:	0	Capital Amount:	\$ 0
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No stock records found for this company



Officers

Include Inactive Officers

Managing Partner - STEVEN A GIBSON

Address 1:	7495 WEST AZURE DRIVE, SUITE 233	Address 2:	
City:	LAS VEGAS	State:	NV
Zip Code:	89130	Country:	USA
Status:	Active	Email:	



Actions\Amendments

Action Type:	Registration of LLP		
Document Number:	20140170739-24	# of Pages:	1
File Date:	3/6/2014	Effective Date:	

(No notes for this action)

Action Type:	Initial List		
Document Number:	20140189166-88	# of Pages:	1
File Date:	3/14/2014	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20150145357-93	# of Pages:	1
File Date:	3/31/2015	Effective Date:	
(No notes for this action)			
Action Type:	Amendment		
Document Number:	20150199294-62	# of Pages:	1
File Date:	4/29/2015	Effective Date:	4/29/2015
(No notes for this action)			
Action Type:	Amended List		
Document Number:	20150210740-32	# of Pages:	1
File Date:	5/7/2015	Effective Date:	
(No notes for this action)			
Action Type:	Amendment		
Document Number:	20160027515-39	# of Pages:	1
File Date:	1/20/2016	Effective Date:	1/20/2016
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20160144219-20	# of Pages:	1
File Date:	3/30/2016	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20170137306-50	# of Pages:	1
File Date:	3/30/2017	Effective Date:	
(No notes for this action)			

EXHIBIT D

EXHIBIT D

1 STEVEN A. GIBSON, ESQ.
Nevada Bar No. 6656
2 sgibson@gibsonlowry.com
J. SCOTT BURRIS, ESQ.
3 Nevada Bar No. 10529
4 sburris@gibsonlowry.com

5 **GIBSON LOWRY BURRIS LLP**

6 City Center West
7201 West Lake Mead Boulevard
Suite 503
7 Las Vegas, Nevada 89128
Telephone 702.541.7888
8 Facsimile 702.541.7899

9
10 Attorney for Plaintiffs
Tae-Si Kim and Jin-Sung Hong

11 **UNITED STATES DISTRICT COURT**
12 **DISTRICT OF NEVADA**
13

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

16 Plaintiffs,

17 v.

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

26 Defendants.
27
28

Case No.:

Dept. No.:

FIRST AMENDED COMPLAINT

(Jury Trial Demanded)

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

4 **NATURE OF ACTION**

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

24 In 2006, prior to receiving a sham deed for their property, Plaintiffs hired legal counsel,
25 James L. Zemelman, Esq. of Alverson Taylor Mortensen & Sanders, to protect Plaintiffs' rights.
26 However, Mr. Zemelman merely relied on the misrepresentations of dubious individuals—who
27 Mr. Zemelman knew or should have known were untrustworthy—instead of confirming whether
28 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

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

13 JURISDICTION

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

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

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

27 4. Personal jurisdiction over Defendants is proper because there is no alternative
28 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").

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

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

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

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

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

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

11 25. RE/MAX is a franchisor of RME.

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

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

15 **FACTS COMMON TO ALL CLAIMS FOR RELIEF**

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

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

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

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

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

6 32. On June 24, 2005, Mr. Hong entered into a contract to purchase parcel number
7 177-19-801-008¹ (the "Subject Property") (1.25 acres) for \$435,000.00 by August 12, 2005, and
8 Mr. Hong tendered a \$10,000.00 non-refundable deposit for the sellers, Santos & Karma Reyes.

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

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

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

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

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

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

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

28

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

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

- 3 a. "We will do *whatever it takes* to ensure that you acquire the land."
4 b. "The Option Agreement was written by our lawyer."
5 c. "I don't want you to worry about this; we guarantee you that this will work
6 out fine so long you pay the \$315,000.00 on time."
7 d. "Mr. Kearney is a very trustworthy person, I've been working with him for
8 years, he's very successful and Kearney is the number two broker in Las
9 Vegas."
10 e. "This is a small amount of money for Kearney and Kearney could get this
11 kind of money with a single phone call to the bank."

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

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

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

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

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

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

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

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

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

14 **B. The Securities Fraud Scheme**

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

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

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

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

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

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

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

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

1 58. In reasonable reliance on the purportedly expert advice, the instructions, the
2 RE/MAX Agency Misrepresentation, the Value Misrepresentation, the Timing
3 Misrepresentation, and the Conventional Financing Misrepresentation, Mr. Hong paid a
4 \$10,000.00 non-refundable deposit to First American Title Company ("FATCO") for the
5 purchase of the Subject Property (Ex. 6); and Mr. Hong was required to close on the Subject
6 Property by August 12, 2005.

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

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

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

18 62. Mr. Reed and Mrs. Reed (in their own self-interests and as agents for each other
19 and pursuant to a partnership with RE/MAX) advised and instructed, pursuant to Mr. Reed's and
20 Mrs. Reed's own self-interests, that Mr. Hong must obtain alternate financing, which was a
21 breach of Mr. Reed's, Mrs. Reed's, RE/MAX's fiduciary duties because Mr. Reed and Mrs.
22 Reed (in their own self-interests and as agents for each other and pursuant to a partnership with
23 RE/MAX) intended to engage in predacious conduct to obtain commissions of nearly
24 \$18,000.00 despite the costs or risks to Plaintiffs.

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

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

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

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

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

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

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

28 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

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

3 71. On approximately August 12, 2005, Kearney and Napoli purchased the Note for
4 \$100,000.00 for a term of 30 days in exchange for 7 points (\$7,000.00) and 10% interest to assist
5 Mr. Reed, Mrs. Reed, RE/MAX, and Plaintiffs with acquiring the Subject Property for Plaintiffs.
6 (Ex. 7.)

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

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

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

21 75. Mr. Reed and Mrs. Reed (in their own self-interests and as agents for each other
22 and pursuant to a partnership with RE/MAX) and Kearney instructed Plaintiffs to pay the
23 \$17,394.00 directly to Kearney, as opposed to FATCO, by August 12, 2005 or else Plaintiffs
24 would lose the Subject Property and the \$10,000.00 deposit.

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

28 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

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

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

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

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

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

19 **C. The Unorthodox RE/MAX Option Agreement**

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

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

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

28 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

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

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

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

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

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

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

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

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

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

- 6 a. providing notice and a "non-refundable sum of Ten Thousand Dollars" (Ex. 1
7 at ¶ 4), which Hong completed by March 14, 2006; and
8 b. paying "the remaining principal and any interest accrued on the Note as of the
9 date of closing, and no more" (Ex. 1 at ¶ 6), which Hong completed by March
10 14, 2006.

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

- 13 a. Kearney, "the Optionor[,] shall open an escrow (the "Escrow") with First
14 American Title Company" (Ex. 1 at ¶ 5), which Kearney failed to do;
15 b. "Kearney shall convey the [Subject] Property to HONG or HONG'S nominee
16 by grant, bargain and sale deed as customary in Nevada" (Ex. 1 at ¶ 5), which
17 Kearney failed to do;
18 c. "At close of escrow, Kearny shall cause Escrow Agent to issue to Hong,
19 Escrow Agent's standard CLTA owner's policy of title insurance . . . with
20 coverage in the amount of the sum of no less than \$435,000 . . . insuring good
21 and marketable title" (Ex. 1 at ¶ 5), which Kearney failed to do; and
22 d. Kearney was required to convey the Subject Property to Mr. HONG after
23 paying off the Cumorah loan (Ex. 1 at ¶ 6), which Kearney failed to do.

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

27 96. In exchange, Mr. Reed and Mrs. Reed (in their own self-interests and as agents
28 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

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

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

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

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

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

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

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

5 103. Kearney used the combined payments from Hong (\$10,000.00 and \$17,394.00,
6 respectively) and the Note (Ex. 7, \$100,000.00) towards the purchase price (\$435,000.00) plus
7 additional closing costs (\$3,329.27), which should have resulted in a net principal balance of
8 \$310,935.27, not \$315,000.00.

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

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

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

17 107. FATCO had actual notice of the Cumorah lien.

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

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

22 110. On August 15, 2005, Mr. Reed and Mrs. Reed (in their own self-interests and as
23 agents for each other and pursuant to a partnership with RE/MAX) delivered, via the U.S. Mails,
24 a letter with the RE/MAX logo, congratulating Mr. Hong "on the purchase of your land." (Ex.
25 9.)

26 111. Mr. Hong had not "purchased" the land as misstated in the RE/MAX letter. (Ex.
27 9.)

28 112. 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.

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

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

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

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

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

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

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

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

18 120. Both the Reyes Deed and the Declaration of Value state the Grantee/Buyer as
19 Adam Kearney, but the Reyes Deed and the Declaration of Value show Mr. Hong's address:
20 2514 Breezy Cove, Las Vegas, NV. (Ex. 10.)

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

23 122. On August 15, 2005 at 3:06 p.m., FATCO requested filing of Cumorah's Deed of
24 Trust ("First DOT"), which Kearney had previously signed as the "Borrower" on August 11,
25 2005, for property mistakenly identified as parcel number 177-19-701-008 ("Miranto
26 Property");² and described incorrectly as, presumably, the Miranto Property (not the Subject
27 Property). (Ex. 11.)

28 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.

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

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

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

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

7 **E. Plaintiffs' Full Payments for the Subject Property**

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

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

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

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

23 131. On March 14, 2006, Plaintiffs acquired \$330,000.00 and Plaintiffs provided
24 notice of intent to exercise the option and pay off Kearney's loan from Cumorah and the
25 \$10,000.00 commission, expecting Kearney to open escrow to clear the title to and transfer the
26 Subject Property with title insurance, as required by the terms of the RE/MAX Option
27 Agreement and/or the promise allegedly supporting the Assignment.

28 132. 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.)

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

6 134. Mr. Reed and Mrs. Reed (in their own self-interests and as agents for each other
7 and pursuant to a partnership with RE/MAX) and Kearney instructed Plaintiffs to deliver the
8 \$330,000.00 directly to Kearney, based on the Escrow Misrepresentation, for the purpose of
9 accomplishing a fraud against the Plaintiffs.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 **F. Concealment**

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

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

26 151. On approximately March 15, 2006, Mr. Reed and Mrs. Reed (in their own self-
27 interests and as agents for each other and pursuant to a partnership with RE/MAX) and Kearney
28 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.

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

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

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

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

24 156. Subsequently, on June 26, 2006, via the telephone, Mr. Reed and Mrs. Reed (in
25 their own self-interests and as agents for each other and pursuant to a partnership with RE/MAX)
26 and Kearney, in a concert of action, reassured Plaintiffs again that all money for the purchase of
27 the property had been received and transferred to appropriate parties and the property was clear
28 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 174. Mr. Zemelman and ATM&S failed to ensure that the Cumorah loan had been
27 paid.
28

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

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

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

11 178. In fact, Kearney had absconded with Plaintiffs' \$315,000.00 principal and the
12 \$10,000.00 commissions, and the \$2,300.00 fees.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 219. By September of 2009, Damus's draft complaint failed to address, at a minimum,
23 Plaintiffs' rights to the Subject Property arising out of Plaintiffs' protection pursuant to NRS
24 111.325 ("bona fide purchaser[s]") and the covenants of the June 27, 2006 Grant, Bargain, and
25 Sale Deed.

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

28 221. Plaintiffs terminated Damus.

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

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

6 **FIRST CAUSE OF ACTION**

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

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

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

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

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

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

24 228. Mr. Reed, Mrs. Reed, and RME (as co-conspirators, partners, and pursuant to a
25 concert of action with each other and RE/MAX) knew or should have known that the RE/MAX
26 Misrepresentations were false at the time when Mr. Reed, Mrs. Reed, and RME (as co-
27 conspirators, partners, and pursuant to a concert of action with each other and RE/MAX) made
28 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.

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

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

6 **THIRD CAUSE OF ACTION**

7 **CONSPIRACY TO COMMIT FEDERAL SECURITIES FRAUD**

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

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

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

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

18 **FOURTH CAUSE OF ACTION**

19 **NEVADA STATE SECURITIES FRAUD (NRS 90.660)**

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

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

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

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

26 246. Plaintiffs have been damaged by Mr. Reed's and Mrs. Reed's (as co-conspirators,
27 partners, and pursuant to a concert of action with each other and RE/MAX) fraudulent sale of the
28 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.

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

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

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

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

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

18 **TENTH CAUSE OF ACTION**

19 **FRAUD IN THE INDUCEMENT**

20 **(Against Kearney)**

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

22 273. Kearney made the Clear Title Misrepresentation (the “Kearney Contract
23 Misrepresentation”), which was false and material to the transaction.

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

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

28 276. Plaintiffs justifiably relied on the Kearney Contract Misrepresentations.

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

3 **ELEVENTH CAUSE OF ACTION**

4 **FRAUDULENT CONCEALMENT**

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

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

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

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

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

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

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

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

27 285. As a result of the concealment or suppression of the facts, the Plaintiffs sustained
28 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

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

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

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

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

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

19 **FIFTEENTH CAUSE OF ACTION**

20 **NEGLIGENT MISREPRESENTATION**

21 **(Against Kearney)**

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

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

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

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

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

2 **SIXTEENTH CAUSE OF ACTION**

3 **CIVIL CONSPIRACY**

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

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

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

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

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

17 **SEVENTEENTH CAUSE OF ACTION**

18 **CONCERT OF ACTION**

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

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

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

27 311. Plaintiffs were damaged as a result of the acts of the coconspirators in an amount
28 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.

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

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

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

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

14 **TWENTY-SECOND CAUSE OF ACTION**

15 **NEGLIGENT UNDERTAKING TO PERFORM SERVICES**

16 **(Against Ms. Thomas and FATCO)**

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

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

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

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

26 **TWENTY-THIRD CAUSE OF ACTION**

27 **BREACH OF FIDUCIARY DUTIES**

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

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

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

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

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

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

14 **TWENTY-FOURTH CAUSE OF ACTION**

15 **BREACH OF FIDUCIARY DUTIES**

16 **(Against Kearney)**

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

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

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

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

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

25 **TWENTY-FIFTH CAUSE OF ACTION**

26 **BREACH OF FIDUCIARY DUTIES**

27 **(Against ATM&S and Zemelman)**

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

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

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

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

7 **TWENTY-SIXTH CAUSE OF ACTION**

8 **BREACH OF CONTRACT**

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

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

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

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

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

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

28 354. 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'

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

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

8 356. Plaintiffs have been damaged in the amount of the money Plaintiffs delivered for
9 the Property, totaling \$438,329.27, plus additional commissions of \$17,000.00, plus additional
10 costs, interest, and fees paid in connection with the Property, in an amount to be determined at
11 trial.
12

13 **TWENTY-SEVENTH CAUSE OF ACTION**

14 **BREACH OF THE DUTY OF GOOD FAITH AND FAIR DEALING**

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

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

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

22 359. Due to the subsequent foreclosure, Mr. Reed, Mrs. Reed, and RME (in their own
23 self-interests and as agents for each other and pursuant to a partnership with RE/MAX) and
24 Kearney essentially wasted Plaintiffs' earnest money deposit and fees totaling approximately
25 \$130,394.86.

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

28 361. 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.

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

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

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

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

14 **THIRTY-FIRST CAUSE OF ACTION**

15 **NEGLIGENT SUPERVISION**

16 **(Against FATCO)**

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

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

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

22 **THIRTY-SECOND CAUSE OF ACTION**

23 **NEGLIGENT SUPERVISION**

24 **(Against ATM&S)**

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

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

28 383. 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.

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

3 **THIRTY-SIXTH CAUSE OF ACTION**

4 **WRONGFUL FORECLOSURE**

5 **(Against Cumorah and Valley Foreclosure Services)**

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

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

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

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

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

16 **THIRTY-SEVENTH CAUSE OF ACTION**

17 **CONVERSION**

18 **(Against Cumorah and Valley Foreclosure Services)**

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

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

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

25 405. Cumorah and Valley Foreclosure Services wrongfully exerted control over
26 Plaintiffs' equitable/legal rights in the Subject Property in derogation, exclusion, or defiance of
27 such title or rights.
28

THIRTY-EIGHTH 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.

1 **FORTY-FIRST CAUSE OF ACTION**

2 **Breach of Covenants in a Warranty Deed**

3 **(Against Kearney)**

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

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

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

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

12 **PRAYER FOR RELIEF**

13 Plaintiffs pray for judgment against Defendants as follows:

- 14 1. For \$462,000.00;
- 15 2. For punitive damages;
- 16 3. For attorneys' fees and costs of suit incurred herein;
- 17 4. For pre- and post-judgment interest as allowed by law;
- 18 5. For equitable relief; and
- 19 6. For any other relief this Court may deem proper.
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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
OLSON, CANNON, GORMLEY &
DESRUISSEAU
9950 West Cheyenne Avenue
Las Vegas, Nevada 89129
Telephone: 702.384.4012
Facsimile: 702.383.0701
Counsel for Defendants
Edward C. Reed; Barbara R. Reed; and
Reed Team, d/b/a RE/MAX Extreme

Jonathan B. Owens, Esq.
jowens@alversontaylor.com
Andres Camacho, Esq.
acamacho@alversontaylor.com
ALVERSON, TAYLOR,
MORTENSEN & SANDERS
7401 West Charleston Boulevard
Las Vegas, Nevada 89117
Telephone: 702.384.7000
Facsimile: 702.385.7000
Counsel for Defendant
Alverson, Taylor, Mortensen &
Sanders

Mark M. Jones, Esq.
m.jones@kempjones.com
Spencer H. Gunnerson, Esq.
s.gunnerson@kempjones.com
KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Pkwy., 17th Floor
Las Vegas, Nevada 89169
Counsel for Defendants
First American Title Insurance Company
and Gina Thomas

William Kelly, Esq.
KELLY, STACY & RITA, LLC
999 18th Street, Ste.3000
Denver, Colorado 80202
Facsimile: 303.446.9111
Counsel for Defendant
RE/MAX International

By: Priyanka Menon
An employee of Gibson Lowry Burris LLP

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

Electronically Filed
Jun 21 2018 10:06 a.m.

Elizabeth A. Brown

DISTRICT COURT CASE
Clerk of Supreme Court

NO. A-756785

**APPELLANTS' APPENDIX
VOLUME III OF IV**

BRANDON L. PHILLIPS, ESQ

Nevada Bar No. 12264

BRANDON L. PHILLIPS, ATTORNEY AT LAW, PLLC

1455 E. Tropicana Ave., Suite 750

Las Vegas, Nevada 89119

(702) 795-0097, (702) 795-0098 fax

blp@abetterlegalpractice.com

Attorney for Appellants, Tae-Si Kim and Jin-Sung Hong

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