

IN THE SUPREME COURT OF THE STATE OF NEVADA

LEO KRAMER; AND AUDREY KRAMER
Appellants,

NO. 82379

VS

NATIONAL DEFAULT SERVICING
CORPORATION; ALYSSA MCDERMOTT;
AND BRECKENRIDGE PROPERTY FUND
2016, LLC,

Respondents.

FILED

APR 02 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *D. Richards*
DEPUTY CLERK

RECORD ON APPEAL

VOLUME III

Leo Kramer and Audrey Kramer
2364 Redwood Road
Hercules, CA 94547

In Proper Person

Ace C. Van Patten, Esq.
Tiffany & Bosco, P.A.
10100 W. Charleston Blvd
Ste. 220
Las Vegas, Nevada 89135
Attorney for Nat'l Default Serv.

Matthew Schriever, Esq.
Hutchison & Steffen
10080 W. Alta Drive, Ste 200
Las Vegas, Nevada 89145
Attorney for McDermott,
Wedgewood and Breckenridge
Property Fund 2016

21-09602

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

INDEX TO RECORD ON APPEAL

	<u>PAGE NO.</u>	<u>VOLUME</u>
Affidavit of Service Filed: June 20, 2018	120 - 121	I
Affidavit of Service Filed: June 20, 2018	118 - 119	I
Amended Certificate of Service Filed: May 28, 2019	1213 - 1214	IV
Amended Memorandum of Costs and Disbursements Filed: January 11, 2021	5033 - 5035	XI
Answer to First Amended Complaint Filed: May 17, 2019	1173 - 1185	IV
Answer to First Amended Complaint Filed: May 29, 2019	1215 - 1219	IV
Breckenridge Property Fund 2016 LLC's Joinder to National Default Servicing Corporation's Motion for Summary Judgment Filed: February 21, 2020	4360- 4364	X
Breckenridge Property Fund 2016 LLC's Opposition to Plaintiff's Motion for Summary Judgment Filed: April 8, 2020	4728 - 4738	XI
Breckenridge Property Fund 2016 LLC's Joinder to National Default Servicing Corporation's Opposition to Motion for Leave to Amend Complaint to Include Fraud Cause of Action Due to Newly Discovered Material Evidence Filed: February 3, 2020	3774 - 3776	VIII

CONTINUED INDEX TO RECORD ON APPEAL

	<u>PAGE NO.</u>	<u>VOLUME</u>
Breckenridge Property Fund 2016, LLC's Joinder to National Default Servicing Corporation's Reply in Support of Motion for Summary Judgment Filed: March 20, 2020	4529 - 4531	X
Case Appeal Statement Filed: October 9, 2020	4928 - 4930	XI
Case Appeal Statement Filed: January 19, 2021	5081 - 5082	XI
Case Management and Trial Scheduling Order Filed: August 8, 2019	2352 - 2354	VI
Certificate of Mailing Filed: October 9, 2020	4927	XI
Civil Cover Sheet Filed: June 8, 2018	1	I
Clerk's Certificate Filed: December 3, 2020	4999 - 5002	XI
Clerk's Certificate	5092	XI
Complaint Filed: June 8, 2018	2 - 115	I
Declaration of Counsel in Support of Opposition to Plaintiff's Motion for Summary Judgment Filed: May 2, 2019	1169 - 1172	IV

CONTINUED INDEX TO RECORD ON APPEAL

	<u>PAGE NO.</u>	<u>VOLUME</u>
Declaration of Audrey Kramer in Support of Plaintiffs Leo Kamer and Audrey Kramer's Motion for Summary Judgment Filed: March 24, 2020	4713 - 4716	XI
Declaration of Ace C. Van Patten, Esq. Filed: February 20, 2020	3821 - 3824	VIII
Declaration of Audrey Kramer in Support of Plaintiff's Leo Kramer, and Audrey Kramer's Opposition to National Default Servicing Corporation's Motion for Summary Judgment Filed: March 5, 2020	4516 - 4518	X
Declaration of Audrey Kramer in Support of Plaintiff's Motion for Leave to File Motion for Summary Filed: April 28, 2020	4877 - 4879	XI
Defendant's Joint Case Conference Filed: August 1, 2019	2342 - 2351	VI
Demand for Jury Trial Filed: July 30, 2019	2340 - 2341	VI
Early Case Conference Report Pursuant to NRCp 16.1 Filed: March 29, 2019	1136 - 1141	III
ExParte Motion for Continuance Filed: February 1, 2019	1075 - 1077	III

CONTINUED INDEX TO RECORD ON APPEAL

	<u>PAGE NO.</u>	<u>VOLUME</u>
1 First Amended Complaint 2 Filed: October 29, 2018	575 - 765	II
3 4 Individual Case Conference Report 5 Filed: July 22, 2019	2321 - 2339	VI
6 7 Joinder to National Default Servicing Corp 8 Motion to Dismiss 9 Filed: July 2, 2018	182 - 184	I
10 11 Joint Case Conference Report 12 Filed: July 15, 2019	2303 - 2320	VI
13 14 Memorandum of Costs and Disbursements 15 Filed: October 19, 2020	4956 - 4958	XI
16 17 Motion to Dismiss 18 Filed: July 2, 2018	146 - 181	I
19 20 Motion to Dismiss First Amended 21 Complaint 22 Filed: November 19, 2018	766 - 774	II
23 24 National Default Servicing 25 Corporation's Motion for Summary 26 Judgment 27 Filed: February 20, 2020	3830 - 4359	IX
28 National Default Servicing Corporation's Motion to Dismiss First Amended Complaint Filed: January 17, 2019	994 - 1072	III
National Default Services Corp. Motion to Dismiss Filed: June 25, 2018	122 - 145	I

CONTINUED INDEX TO RECORD ON APPEAL

	<u>PAGE NO.</u>	<u>VOLUME</u>
National Default Servicing Corporation's Objection to the Plaintiff's Request for Judicial Notice of: Expert/Fact Witness, William J. Paatalo;s Amended Updated Curriculum Vitae, Executed Declaration and Forensic Report and Exhibits and Judicial Notice of: Widely Publicized Government Documents Within the Public Domain in Reference to JP Morgan Chase Bank's Pursuant to NRS 47.130 Matters of Fact; In Support of Plaintiff's Motion for Leave to Amend Plaintiff's First Amended Complaint and Request for Evidentiary Hearing Filed: January 23, 2020	3554 - 3557	VIII
National Default Servicing Corporation's Motion in Limine to Exclude and Disqualify William J. Paatalo Filed: December 23, 2019	2381 - 3159	VI
National Default Servicing Corporation's Opposition to Motion for Leave to Amend Complaint to Include Fraud Cause of Action Due to Newly Discovered Material Evidence Filed: January 23, 2020	3522 - 3553	VII
National Default Servicing Corporations Reply in Support of Motion for Summary Judgment Filed: March 23, 2020	4519 - 4528	X
National Default Servicing Corporation's Request for Judicial Notice Filed: February 20, 2020	3825 - 3829	VIII

CONTINUED INDEX TO RECORD ON APPEAL

	<u>PAGE NO.</u>	<u>VOLUME</u>
National Default Servicing Corp. Reply to Plaintiff's Opposition Filed: January 16, 2020	3511 - 3521	VII
National Default Servicing Corporation's Opposition to Motion to Strike Filed: January 29, 2020	3558 - 3565	VIII
Notice of Entry of Order Filed: January 11, 2021	5021 - 5032	XI
Notice of Taking Deposition of Audrey Kramer Filed: August 22, 2019	2376 - 2380	VI
Notice of Taking Deposition of Leo Kramer Filed: August 22, 2019	2371 - 2375	VI
Notice of Appeal Filed: October 6, 2020	4924 - 4926	XI
Notice of Taking Deposition of Person Most Knowledgeable for Chaffin Real Estate Services Filed: August 22, 2019	2367 - 2370	VI
Notice of Taking Deposition of Lee Anne Chaffin Filed: August 22, 2019	2363 - 2366	VI
Notice of Taking Deposition of Deborah Taylor Filed: August 22, 2019	2359 - 2362	VI

CONTINUED INDEX TO RECORD ON APPEAL

	<u>PAGE NO.</u>	<u>VOLUME</u>	
3			
4			
5	Notice of Taking Deposition of	2355 - 2358	VI
6	Daniel Starling		
6	Filed: August 22, 2019		
7	Notice of Errata Regarding Certificate	562 - 565	II
8	of Service Attached to Request for		
9	Submission of Motion to Dismiss Filed		
9	and Served on August 2, 2018		
10	Filed: August 3, 2018		
11	Notice of Non - Opposition to	924 - 926	III
12	Defendant's Motion to Dismiss		
12	First Amended Complaint		
13	Filed: December 21, 2018		
14	Notice of Entry of Stipulation and Order	1130 - 1135	III
15	to Continue Hearing		
15	Filed: March 18, 2019		
16	Notice of Appeal	5064 - 5080	XI
17	Filed: January 14, 2021		
18	Notice of Intent to Take Default	1206 - 1212	IV
19	Filed: May 28, 2019		
20	Objection to Plaintiff's Early Case	1142 - 1148	III
21	Conference Report		
21	Filed: April 22, 2019		
22	Opposition to Plaintiffs' Notice of	1397 - 1400	IV
23	Motion and Motion to Strike Opposition		
24	to Summary Judgment Filed by Breckenridge		
24	Property Fund 2016, LLC, Alyssa McDermott,		
25	and Wedgwood		
25	Filed: June 24, 2019		

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

8

CONTINUED INDEX TO RECORD ON APPEAL

	<u>PAGE NO.</u>	<u>VOLUME</u>
Opposition to Plaintiff's Late Filed Motion for Summary Judgment Filed: April 8, 2020	4739 - 4772	XI
Order Granting Telephonic Extension Filed: March 11, 2021	5091	XI
Order Filed: December 16, 2020	5005 - 5014	XI
Order Granting Motion to Dismiss Plaintiff's Complaint Filed: October 24, 2018	571 - 574	II
Order Denying Motion to Strike Portions of NDSC's First Supplemental Disclosures Filed: June 18, 2020	4921 - 4923	XI
Order - Motion for Leave to Amend Complaint to Include Fraud Case of Action Filed: December 16, 2020	5015 - 5016	XI
Notice of Entry of Order Granting National Default Servicing Corporation's Motion in Limine to Exclude and Disqualify William J. Paatalo Filed: January 11, 2021	5017 - 5020	XI
Order Granting In Part and Denying in Part Defendants' Motions to Dismiss Filed: May 24, 2019	1201 - 1205	IV

CONTINUED INDEX TO RECORD ON APPEAL

	<u>PAGE NO.</u>	<u>VOLUME</u>
Order Granting National Default Servicing Corporation's Motion in Limine to Exclude and Disqualify William J. Paatalo Filed: December 16, 2020	5003 - 5004	XI
Order Granting Continuance Filed: June 9, 2020	4918 - 4920	XI
Order Dismissing Appeal Filed: November 9, 2020	4960 - 4961	XI
Order Directing Transmission of Record Filed: February 22, 2021	5085 - 5086	XI
Pages 787 - 798 (Duplicate) Copied in error		
Plaintiff's Corrected Proposed Second Amended Complaint Filed: January 30, 2020	3566 - 3773	VIII
Plaintiff Leo Kramer and Audrey Kramer's Motion for Leave to File Motion for Summary Judgment; Memorandum of Points and Authorities Thereof; Declaration of Audrey Kramer Filed: April 28, 2020	4861 - 4876	XI
Plaintiff's Objection to Judge's Order Granting in Part and Denying in Part Defendant's Motions to Dismiss Plaintiffs' First Amended Complaint Filed: June 10, 2019	1243 - 1276	IV

CONTINUED INDEX TO RECORD ON APPEAL

	<u>PAGE NO.</u>	<u>VOLUME</u>
1		
2		
3		
4		
5	Plaintiff's Objection to Order Granting	4948 - 4954
6	National Default Servicing Corporation's	
7	Motion in Limine to Exclude and Disqualify	XI
8	William J Paatalo by Mr. Ace C Van Patten	
9	and National Default Servicing	
10	Filed: October 12, 2020	
11	Plaintiff's Reply to Defendant	3779 - 3793
12	National Default	
13	Servicing Corporation's Opposition	VIII
14	to Motion for Leave to Amend	
15	Complaint to Include Fraud Cause	
16	of Action Due to Newly Discovered	
17	Material Evidence; Memorandum of	
18	Points and Authorities in Support Thereof	
19	Filed: February 5, 2020	
20	Plaintiff's Objection to Order on the Motion	4938 - 4947
21	for Summary Judgment by Mr. Ace C .	
22	VanPatten and National Default Servicing	XI
23	Filed: October 12, 2020	
24	Plaintiff's Notice of Motion and Motion	3493 - 3510
25	and Motion to Strike Portions of	
26	Defendant, National Default Servicing	VII
27	Corporation's First Supplemental Disclosure	
28	of Documents and Witnesses: Memorandum	
	of Points and Authorities in Support Thereof	
	Declaration of Audrey Kramer filed Concurrent	
	Herewith	
	Filed: January 15, 2020	
	Plaintiff's Objection to Order Granting	5036 - 5049
	National Default Servicing Corporation's	
	Motion in Limine to Exclude and Disqualify	XI
	William J. Paatalo	
	Filed: January 12, 2021	

CONTINUED INDEX TO RECORD ON APPEAL

	<u>PAGE NO.</u>	<u>VOLUME</u>
Plaintiff's Opposition to Defendant National Default Servicing Corporation's Motion to Dismiss Plaintiff's First Amended Complaint; Declaration of Audrey Kramer Filed Concurrent Herewith: Memorandum of Points and Authorities in Support Thereof Filed: February 4, 2019	1078 - 1125	III
Plaintiff's Objection to Order Granting National Default Servicing Corporation's Motion in Limine to Exclude and Disqualify William J. Paatalo on Plaintiff's Motion for Leave to Amend Complaint to Add JPMorgan Chase Bank N.A. and to include Fraud Cause of Action Due to Newly Discovered Material Evidence by Mr. Ace C. VanPatten and National Default Servicing Filed: October 12, 2020	4931 - 4937	XI
Plaintiff's Objection to Defendant National Default Servicing Corporation's Second Supplemental Disclosure of Documents and Witnesses and Notice of Motion and Motion to Strike Portions of the Second Supplemental Disclosure of Documents and Witnesses; Memorandum of Points Authorities in Support Thereof Filed: February 25, 2020	4365 - 4378	X
Plaintiff's Leo Kramer and Audrey Kramer's Opposition to National Default Servicing Corporation's Motion for Summary Judgment; Memorandum of Points and Authorities in Support Thereof: Declaration of Audrey Kramer Filed: March 5, 2020	4379 - 4515	X

CONTINUED INDEX TO RECORD ON APPEAL

	<u>PAGE NO.</u>	<u>VOLUME</u>
Plaintiff's Objection to Order Granting National Default Servicing Corporation's Motion in Limine to Exclude Fraud Cause of Action on Plaintiff's Motion for Leave to Amend to include JPMorgan Chase Bank, N.A. based on Newly Discovered Evidence of Fraud Filed: January 12, 2021	5050 - 5063	XI
Plaintiff's Objection to Notice of Non- Opposition Filed by Defendants, Alyssa McDermott, Wedgwood Inc., and Breckenridge Property Fund 2016 LLC; Memorandum of Points and Authorities in Support Thereof: Declaration of Audrey Kramer filed Concurrently Herewith Filed: January 4, 2019	951 - 987	III
Plaintiff's Opposition to Defendants, Alyssa McDermott, Wedgwood Inc., and Breckenridge Property Fund 2016, LLC's Motion to Dismiss Plaintiff's Complaint Declaration of Audrey Kramer filed Concurrent herewith: Memorandum of Points and Authorities in Support Thereof Filed: July 17, 2018	338 - 551	II
Plaintiff's Request for Production of Documents Set One Filed: December 21, 2018	927 - 939	III

CONTINUED INDEX TO RECORD ON APPEAL

	<u>PAGE NO.</u>	<u>VOLUME</u>
Plaintiff's Notice of Motion and Motion for Leave to Amend Complaint to Include Fraud Cause of Action Due to Newly Discovered Material Evidence; Plaintiff's Request Evidentiary Hearing in Support of Fraud; Declaration of Audrey Kramer filed concurrently herewith; Memorandum of Points and Authorities in Support Thereof Filed: January 9, 2020	3353 - 3414	VII
Plaintiff's Opposition to Defendants, Alyssa McDermott, Wedgewood Inc., and Breckenridge Property Fund 2016 LLC's Motion to Dismiss Plaintiff's First Amended Complaint; Memorandum of Points and Authorities in Support Thereof; Declaration of Daniel Starling; Declaration of Lee Anne Chaffin; and Declaration of Audrey Kramer Filed Concurrently Herewith; Further Plaintiff's Request for Discovery in this Matter Filed: December 21, 2018	823 - 920	III
Plaintiff's Request for Judicial Notice of : Expert/Fact Witness, William J. Paatalo;s Amended Updated Curriculum Vitae, Executed Declaration and Forensic Report and Exhibits and Judicial Notice of: Widely Publicized Government Documents Within the Public Domain in Reference to JP Morgan Chase Bank's Pursuant to NRS 47.130 Matters of Fact; In Support of Plaintiff's Motion for Leave to Amend Plaintiff's First Amended Complaint and Request for Evidentiary Hearing Filed: January 9, 2020	3224 - 3352	VII

CONTINUED INDEX TO RECORD ON APPEAL

	<u>PAGE NO.</u>	<u>VOLUME</u>
Plaintiff's Opposition to Defendant National Default Servicing Corporation's Motion to Dismiss Plaintiff's Complaint Declaration of Audrey Kramer filed Concurrent herewith: Memorandum of Points and Authorities in Support Thereof Filed: July 5, 2018	185 - 337	I
Plaintiff's Objection to National Default Servicing Corporation's Memorandum of Costs and Disbursements Filed: November 10, 2020	4962 - 4979	XI
Plaintiff's Response to Defendant National Default Corporation's Objection to the Plaintiff's Request for Judicial Notice of : Expert/Fact Witness, William J. Paatalo;s Amended Updated Curriculum Vitae, Executed Declaration and Forensic Report and Exhibits and Judicial Notice of: Widely Publicized Government Documents Within the Public Domain in Reference to JP Morgan Chase Bank's Pursuant to NRS 47.130 Matters of Fact; In Support of Plaintiff's Motion for Leave to Amend Plaintiff's First Amended Complaint and Request for Evidentiary Hearing; Memorandum of Points and Authorities in Support Thereof Filed: February 5, 2020	3794 - 3807	VIII
Plaintiff's Leo Kramer and Audrey Kramer in Pro Se, Respectfully Request that the \$320.00 Jury Fee Deposit Plaintiff's Posted on July 30, 2019 be Returned to Plaintiffs Filed: November 19, 2020	4994 - 4997	XI

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

16

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

17

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

19

CONTINUED INDEX TO RECORD ON APPEAL

	<u>PAGE NO.</u>	<u>VOLUME</u>
1 Remittitur 2 Filed: December 3, 2020	4998	XI
3 4 5 Reply in Support of Motion to Dismiss 6 Filed: August 2, 2018	555 - 561	II
7 8 Reply in Support of Motion to Dismiss 9 First Amended Complaint 10 Filed: January 4, 2019	988 - 993	III
11 Request to Submit Motion to Dismiss 12 First Amended Complaint 13 Filed: December 21, 2018	921 - 923	III
14 Request for Submission 15 Filed: June 8, 2020	4916 - 4917	XI
16 Request for Transcripts 17 Filed: February 23, 2021	5087 - 5090	XI
18 Request for Submission of National 19 Default Servicing Corporation's 20 Motion to Dismiss 21 Filed: August 20, 2018	566 - 568	II
22 Request for Submission 23 Filed: August 18, 2018	552 - 554	II
24 Response to Plaintiff's Objection 25 to Breckenridge Property Fund 2016 26 LLC's Joinder to National Default 27 Servicing Corporation's Reply in Support 28 of Motion Filed: April 17, 2020	4773 - 4777	XI

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CONTINUED INDEX TO RECORD ON APPEAL

	<u>PAGE NO.</u>	<u>VOLUME</u>
Response to Plaintiff's Motion for Leave to File Motion for Summary Judgment Filed: May 6, 2020	4880 - 4883	XI
Setting Memo Filed: March 26, 2020	4717 - 4718	XI
Setting Memo Filed: August 30, 2018	569 - 570	II
Setting Memo Filed: January 18, 2019	1073 - 1074	III
Stipulation and Order Filed: February 5, 2020	3777 - 3778	VIII
Stipulation and Order to Continue Hearing Filed: March 6, 2019	1126 - 1129	III
Summons (Issued)	116 - 117	I

FILED

2018 DEC 21 PM 3:29

TANYA SOLIDINE
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT

Victoria Tama

1 LEO KRAMER
2 AUDREY KRAMER
3 2364 REDWOOD ROAD
4 HERCULES, CA 94547
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PLAINTIFFS IN PRO PER

IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF LYON

LEO KRAMER,
AUDREY KRAMER,

Plaintiffs,

vs.

NATIONAL DEFAULT SERVICING
CORPORATION, ALYSSA MC DERMOTT,
WEDGWOOD INC., BRECKENRIDGE
PROPERTY FUND 2016 LLC, and DOES 1
THROUGH 50 INCLUSIVE,

Defendants.

Case No.: 18-CV-00663

PLAINTIFFS, AUDREY KRAMER AND
LEO KRAMER'S SPECIAL
INTERROGATORIES SET ONE

PROPOUNDING /ASKING PARTY:

Plaintiffs, Audrey Kramer and Leo Kramer

RESPONDING/ANSWERING PARTY:

Defendant, Breckenridge Property Fund 2016 LLC

SET NO:

ONE

1 **TO DEFENDANT, AND THE ATTORNEY OF RECORD IN THE ABOVE-**
2 **CAPTIONED MATTER:**

3 Pursuant to Nevada Rules of Civil Procedure 33, Plaintiffs, Audrey Kramer and Leo
4 Kramer, ("**Propounding Party**") hereby demand that, Defendant, BRECKENRIDGE
5 PROPERTY FUND 2016 LLC, ("**Responding Party**") responds under oath and in writing to the
6 following Special Interrogatories SET ONE (1) no later than thirty (30) days from the date of
7 service hereof.
8

9 These Special Interrogatories are being propounded on the grounds that each is relevant to
10 the subject matter of this action or is reasonably calculated to lead to the discovery of admissible
11 evidence.
12

13 **GENERAL INSTRUCTIONS**

14 If any of these Interrogatories cannot be answered in full, then you should answer to the
15 extent possible and specify the reasons for your inability to answer the remainder.

16 The person or persons answering these Interrogatories must furnish such information as is
17 known or is available to him/her upon reasonable investigation regardless of whether you obtained
18 this information directly, or whether this information was obtained by and made known to you by
19 any of your attorneys or other agents or representatives.
20

21 If you object to any part of an Interrogatory, state precisely your objection and answer, to
22 the best of your ability, the remaining portion of that Interrogatory. If any discovery request is
23 objected to as inquiring into privileged matter, set forth fully in the objection the facts upon which
24 you base your objection. If you object to the scope or time period of an Interrogatory and refuse to
25 answer for that scope or time period, state your objection and answer the Interrogatory within what
26 you believe is the appropriate scope for the appropriate time period.
27
28

1 These Special Interrogatories shall be deemed continuing and supplemental answers shall
2 be required if you directly or indirectly obtain further information after your initial response this
3 Special Interrogatories.

4 Each Special Interrogatory solicits all information obtainable by Defendant,
5 BRECKENRIDGE PROPERTY FUND 2016 LLC, ("**RESPONDING PARTY**"), from his
6 attorneys, investigators, agents, employees and representatives. If you respond to any set of these
7 Special Interrogatories on the basis that you lack sufficient information to respond, describe any
8 and all efforts you made to inform yourself of the facts and circumstances necessary to respond.
9

10
11 **DEFINITIONS**

12
13 "YOU" and "YOUR" shall include YOU, Defendant, **BRECKENRIDGE**
14 **PROPERTY FUND 2016 LLC**, shall mean YOU and all YOUR agents, employees, subsidiaries,
15 YOUR attorneys, YOUR accountants, YOUR investigators, consultants, and anyone else working
16 on YOUR behalf.

17 "PERSON" shall include a natural person, firm, organization, partnership, business,
18 trust, limited liability company, corporation, or public entity.

19
20 "DEFENDANT" shall mean YOU Defendant, **BRECKENRIDGE PROPERTY**
21 **FUND 2016 LLC**.

22 "**RESPONDING PARTY**" shall mean YOU Defendant, **BRECKENRIDGE PROPERTY FUND**
23 **2016 LLC**.

24 "DOCUMENT(S)" shall include all written and/or graphic materials and/or sound
25 recordings, however produced or reproduced, of any kind and description, including the original
26 and all duplicates or copies. In that regard, the "DOCUMENT(S)" means any "writing"
27 including facsimiles, electronic records, film records or other reproductions in the responding
28

1 party's possession or known to the responding party on usual inquiry. If a document has been
2 prepared in more than one copy and any copy was not or is no longer identical to the original by
3 reason of simultaneous or subsequent notation or modification of any kind, each non-identical
4 copy must be included.

5. 6 "DOCUMENT(S)" herein also mean any written, recorded, or graphic material of any
7 kind, whether prepared by you or by any other person that is in your possession, custody, or
8 control. The term includes agreements; contracts; letters; telegrams; inter-office communications;
9 memoranda; reports; records; instructions; specifications; notes; notebooks; scrapbooks; diaries;
10 plans; drawings; sketches; blueprints; diagrams; photographs; photocopies; charts; graphs;
11 descriptions; drafts, whether or not they resulted in a final document; minutes of meetings,
12 conferences, and telephone or other conversations or communications; invoices; purchase orders;
13 bills of lading; recordings; published or unpublished speeches or articles; publications; transcripts
14 of telephone conversations; phone mail; electronic-mail; ledgers; financial statements; microfilm;
15 microfiche; tape or disc recordings; and computer print-outs.

- 6.17 The term "DOCUMENT" also includes electronically stored data from
18 which information can be obtained either directly or by translation through detection devices or
19 readers; any such document is to be produced in a reasonably legible and usable form. The term
20 "document" includes all drafts of a document and all copies that differ in any respect from the
21 original, including any notation, underlining, marking, or information not on the original. The
22 term also includes information stored in, or accessible through, computer or other information
23 retrieval systems (including any computer archives or back-up systems), together with instructions
24 and all other materials necessary to use or interpret such data compilations.

7. 1 Without limitation on the term "control" as used in the preceding paragraph, a
2 document is deemed to be in your control if you have the right to secure the document or a copy
3 thereof from another person.

8. 4 Additionally, "**DOCUMENT(S)**" shall include all written and/or graphic
5 materials and/or sound recordings, however produced or reproduced, of any kind and description,
6 including the original and all duplicates or copies. In that regard, the "**DOCUMENT(S)**" means
7 any "writing" including facsimiles, electronic records, film records or other reproductions in the
8 responding party's possession or known to the responding party on usual inquiry. If a document
9 has been prepared in more than one copy and any copy was not or is no longer identical to the
10 original by reason of simultaneous or subsequent notation or modification of any kind, each non-
11 identical copy must be included.

9. 14 "**DOCUMENT(S)**" herein also means and includes without limitation all
15 correspondence, memoranda, certificates, notes, books, manuals, pamphlets, brochures,
16 advertisements, books of account, balance sheets, financial statements, profit and loss statements,
17 working papers, schedules, diaries, calendars, logs, time records, equipment records, microfilms,
18 transcripts, recordings, tapes, telexes, telegrams, files, proposals, bids, offers, contracts,
19 agreements, change orders, worksheets, drawings, blue prints, designs, specifications, time cards,
20 compilations, graphs, charts, bills, statements, invoices, receipts, bills of lading, shipping records,
21 confirmations, applications, purchase orders, checks, checkbooks and other checking records,
22 photographs, formulae, prescriptions, studies, projections, reports, computer programs,
23 information contained in computer banks, tapes cards, printouts and drafts to the extent they differ
24 from the originals, and all other records and papers of any nature whatsoever.

10. 26 "**IDENTIFY**" as used herein with regard to a person or an entity means identify
27 specifically by name, the last-known address, last-known telephone number, e-mail address, and
28

1 any other identifying characteristics known to "YOU". The word "IDENTIFY" as used herein
2 with regard to a **DOCUMENT** means to identify specifically by describing the **DOCUMENT**,
3 including the medium in which it is currently stored, its current location, and any other identifying
4 characteristics known to YOU.

11. 5 "RELATING TO" and "RELATE TO" shall mean and include referring to, alluding
6 to, responding to, pertaining to, connected with, commenting on, reviewing any aspects of, about,
7 regarding, showing, describing, discussing, mentioning, concerning, respecting, analyzing,
8 constituting, or evidencing.

12. 10 "COMMUNICATION" shall mean any and all COMMUNICATION of any kind,
11 whether oral or written, including, without limitation, letters, correspondence, notes,
12 transcriptions, face-to-face meetings, telephone conversations, e-mails, facsimile transmissions,
13 tape recordings, computer transmission of any type.

15 "CONTRACT" Shall mean any agreement YOU had with NATIONAL DEFAULT
16 SERVICING CORPORATION regarding the purchase of the subject property.

17 Additionally, "CONTRACT" also Shall also mean any agreement YOU had with JP
18 Morgan Chase Bank, N.A. regarding the purchase of the subject property.

19 "SUBJECT PROPERTY" Shall mean: 1740 Autumn Glen Street, Fernley, NV 89408,
20 ("the subject property").and more fully legally described as:

22 Lot 62, SD UPLAND RANCH ESTATE UNIT NO. 7. ACCORDING TO MAP THEREOF,
23 FILED AS DOCUMENT NO 315377, ON MARCH 9, 2004, COUNTY OF LYON, STATE
24 OF NEVADA, Bearing APN: 022-052-02 in Lyon County, State of Nevada

SPECIAL INTERROGATORIES

SPECIAL INTERROGATORIES NO. 1:

State each and every fact pertaining to any and all financial transact YOU had with NATIONAL DEFAULT SERVICING CORPORATION regarding the Subject property.

SPECIAL INTERROGATORIES NO. 2:

State each and every fact pertaining to any and all financial transact YOU had with JPMorgan Chase Bank, N.A., regarding the Subject property.

SPECIAL INTERROGATORIES NO. 3:

Please identify each and every document, letter, memorandum, or other records, whether in electronic or other form, which you contend YOU conducted Title Search on the Subject property.

SPECIAL INTERROGATORIES NO. 4:

Please identify each and every document, letter, memorandum, or other records, whether in electronic or other form, which YOU tender ant and all negotiable instruments for the subject property.

SPECIAL INTERROGATORIES NO. 5:

State each and every fact pertaining to any and all instances YOU had possession of the Subject property.

SPECIAL INTERROGATORIES NO. 6:

Please identify each and every document, letter, memorandum, or other records, whether in electronic or other form, which YOU were under investigation for mortgage fraud in the State of Nevada.

1 **SPECIAL INTERROGATORIES NO. 7:**

2 Please identify each and every document, letter, memorandum, or other records, whether in
3 electronic or other form, which YOU were under investigation for mortgage fraud in any State in
4 the United States of America other than the State of Nevada.

5 **SPECIAL INTERROGATORIES NO. 8:**

6 Please identify each and every document, letter, memorandum, or other records, whether in
7 electronic or other form, which anyone associated with YOU was under investigation for mortgage
8 fraud in any State in the United States of America other than the State of Nevada.

9 **SPECIAL INTERROGATORIES NO. 9:**

10 Please identify each and every document, letter, memorandum, or other records, whether in
11 electronic or other form, which anyone associated with YOU was under investigation for mortgage
12 fraud in the State of Nevada.

13 **SPECIAL INTERROGATORIES NO. 10:**

14 Is your response to each request for Admission served with these interrogatories an
15 unqualified admission? if not, for each responses that is not an unqualified admission:

16 (a) state the number of the request.

17 (b) state all facts upon which you base your response.

18 (c) state the names, addresses, and telephone numbers of all persons who have knowledge
19 of those facts: and

20 (d) identify all documents and other tangible things that support your responses and state
21 the name, address, and telephone number of the person who has each document or
22 thing.

1 **SPECIAL INTERROGATORIES NO. 11:**

2 For each document identified in response to interrogatory number 6,7, 8, and 9, please
3 state whether such document is within your possession, custody, or control and if not state to the
4 best of your knowledge who does have possession, custody, or control of such document.
5

6 **SPECIAL INTERROGATORIES NO. 12:**

7 Please identify each and every document, letter, memorandum, or other records, whether in
8 electronic or other form, pertaining to the business tax YOU filed with the Internal Revenue
9 Service from 2014 to 2017.

10 **INTERROGATORIES NO. 13:**

11 Please set forth a detailed description of any instances pursuant to which YOU have
12 provided false information to the IRS.
13

14 **INTERROGATORIES NO. 14:**

15 Please set forth a detailed description of any instances pursuant to which YOU have
16 provided false information to any taxing agency in the State of Nevada.

17 **INTERROGATORIES NO. 15:**

18 Identify each person whom YOU intend to call as an expert witness to testify at the trial of
19 this matter. For each witness identified, please provide the following information:
20

- 21 (a) A description of the subject matter upon which he or she is expected to testify;
22 (b) A summary of the grounds for the witness's opinion;
23 (c) A list of the data or other information considered or relied upon by the witness in
24 formulating his/her opinion;
25 (d) A description of the opinions held and/or formulated by the witness;
26 (e) A description of any exhibits to be used as a summary of or support for the opinions;
27 (f) A current copy of the witness's curriculum vitae; and
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

(g) A list of all cases in which the witness has testified—either at trial or in deposition—in
the preceding five years.


Dated: December 19, 2018

Respectfully Submitted,


AUDREY KRAMER, In Pro per

Dated: December 19, 2018

Respectfully Submitted,


LEO KRAMER, In Pro per

PROOF OF SERVICE
[C.C.P. §1013]

The UPS Store

1511 Sycamore Ave. Ste M
Hercules, CA 94547

store2796@theupsstore.com



STATE OF CALIFORNIA)
) ss:
COUNTY OF CONTRA COSTA)

I am employed in the County of Contra Costa, State of California. I am over the age of 18 and not a party to the within action; my business address is _____

On December 20, 2018, I served the foregoing document entitled:

PLAINTIFFS, AUDREY KRAMER AND LEO KRAMER'S SPECIAL INTERROGATORIES SET ONE

on all parties in this action as follows:

PLEASE SEE ATTACHED SERVICE LIST

☒ **By Mail.** By placing a true copy thereof enclosed in a sealed envelope. I am "readily familiar" with the firm's practice of collection and processing for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with first class postage thereon fully paid at San Diego, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or the postage meter is more than one day after day of deposit for mailing in this Proof of Service.

☐ **By Telefax.** I transmitted said document by telefax to the offices of the addressees at the telefax numbers on the attached Service List.

☐ **By Personal Service.** I delivered such envelope by hand to the addressee(s).

☐ **By Overnight Courier.** I caused the above-referenced document(s) to be delivered to an overnight courier service for next day delivery to the addressee(s) on the attached Service List.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on December 20, 2018, at Hercules, California.

Corina DiGrazia

Name of Declarant


Signature of Declarant

CERTIFICATE OF SERVICE LIST:

John T. Steffen
Mathew K. Schriever
Hutchison & Steffen
1008 West Alta Drive, Suite 200
Las Vegas, NV 89145

Casey J. Nelson
Wedgewood, LLC
2320 Potosi Street, Suite 130
Las Vegas, Nevada 89146

Attorneys for Defendants,
ALYSSA MC DERMOTT, WEDGWOOD INC., BRECKENRIDGE PROPERTY
FUND 2016 LLC

Kevin S. Soderstrom
Tiffany & Bosco, P.A.
10100 W. Charleston Boulevard, Ste. 220
Las Vegas, NV 89107

Attorneys for Defendant,
NATIONAL DEFAULT SERVICING CORPORATION

FILED

2016 DEC 21 PM 3:29

STANVA S. GORDON
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT

Victoria Toran

LEO KRAMER
AUDREY KRAMER
2364 REDWOOD ROAD
HERCULES, CA 94547
PLAINTIFFS IN PRO PER

IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF LYON

Case No.: 18-CV-00663

PLAINTIFF'S REQUEST FOR
PRODUCTION OF DOCUMENTS SET ONE

LEO KRAMER,
AUDREY KRAMER,

Plaintiffs,

vs.

NATIONAL DEFAULT SERVICING
CORPORATION, ALYSSA MC DERMOTT,
WEDGWOOD INC., BRECKENRIDGE
PROPERTY FUND 2016 LLC, and DOES 1
THROUGH 50 INCLUSIVE,

Defendants.

PROPOUNDING /ASKING PARTY: Plaintiffs, Audrey Kramer and Leo Kramer

RESPONDING/ANSWERING PARTY: Defendant, Breckenridge Property Fund 2016 LLC

SET: One

1 **TO DEFENDANT, BRECKENRIDGE PROPERTY FUND 2016 LLC, AND THE**
2 **ATTORNEY OF RECORD IN THE ABOVE-CAPTIONED MATTER:**

3 Pursuant to Nevada Rules of Civil Procedure 34, Plaintiffs, Audrey Kramer and Leo
4 Kramer, ("**Propounding Party**") hereby demand that, Defendant, BRECKENRIDGE
5 PROPERTY FUND 2016 LLC, ("**Responding Party**") responds under oath and in writing to the
6 following Demand for Inspection and Production of Documents **SET ONE (1)** no later than **(30)**
7 days from the date of service.
8

9 **ALL DOCUMENTS SHOULD BE PRODUCED AT: 2364 REDWOOD ROAD**
10 **HERCULES, CA 94547 on January 28, 2019 AT 10:00 A.M.**

11 The documents to be produced are described herein and are believed to be in the
12 possession, custody and/or control of the DEFENDANT, BRECKENRIDGE PROPERTY FUND
13 2016 LLC, his agents, representatives, employees, custodian of records, or attorneys of record, and
14 are not privileged and are reasonably calculated to lead to the discovery of admissible evidence.
15

16 Demand is expressly made that DEFENDANT, BRECKENRIDGE PROPERTY FUND
17 2016 LLC comply with the provisions of Nevada Rules of Civil Procedure 34, which requires the
18 Responding Party to respond and produce for inspection, within thirty **(30)** days of service hereof,
19 the documents, and that the response which accompanies said documents contain certain
20 statements of compliance, representations or objection to each category of the demands.
21

22 Further, demand is hereby made that if Defendant, BRECKENRIDGE PROPERTY FUND
23 2016 LLC objects to any of the items or categories of items set forth in this Demand for Inspection
24 and Production of Documents, pursuant to Nevada Rules of Civil Procedure 34, the Defendant,
25 BRECKENRIDGE PROPERTY FUND 2016 LLC's response shall identify with particularity any
26 document or other thing within any category of item in the demand to which an objection is being
27
28

1 made and set forth clearly the extent of, and the specific ground for, the objection. Failure to do so
2 will be deemed a waiver of all such objections.

3 If you cannot provide the documents requested within thirty (30) days, please explain why
4 and provide the names and addressees of all persons and entities who have access to, or possession
5 of, the requested documents.
6

7 Plaintiffs hereby request that you certify, pursuant to NRCP 11, that each such document
8 provided by you is a true, correct, accurate and complete copy of the original document and that
9 such document contains all the pages of each original document without modification or deletion,
10 to allow Plaintiffs to make a determination as to the authenticity of genuineness of each such
11 document. You are requested to identify, describe or produce all tangible things which constitute
12 or contain matters within the scope of NRCP 26(b) which are in your possession, custody or
13 control, or in that of your counsel, or may reasonably be acquired by you or your counsel, which
14 may support any of the allegations in the pleadings.
15

16
17 **GENERAL INSTRUCTIONS FOR REQUEST FOR PRODUCTION**

18 **DOCUMENT REQUESTED:** The request set out below ("Requests") call for documents in
19 Defendant, BRECKENRIDGE PROPERTY FUND 2016 LLC's, actual or constructive
20 possessions, custody, control or care, including, but not limited to, those documents in the actual
21 or constructive possessions, custody, control or care, of any lawyer, agent, or other representative
22 of Defendant, BRECKENRIDGE PROPERTY FUND 2016 LLC. If after providing the
23 Responses and Production called for by these Requests, Defendant, BRECKENRIDGE
24 PROPERTY FUND 2016 LLC become aware of any documents called for by the Request which
25 was not previously provided, Defendant, BRECKENRIDGE PROPERTY FUND 2016 LLC is
26
27
28

1 requested to promptly provide a copy of that document to Plaintiffs, Audrey Kramer and Leo
2 Kramer on the above date.

3 **DOCUMENT WITHHELD:** If any document is withheld under a claim of privilege or other
4 protection, as to aid the Court and the parties hereto in determining the validity of the claim of
5 privilege or other protection, Defendant, BRECKENRIDGE PROPERTY FUND 2016 LLC is
6 requested to provide the following information with respect to each withheld document:
7

- 8 1. The identity of the person(s) who prepared the document, who signed it, and over whose
9 name it was sent or issued;
- 10 2. The identity of the person(s) to whom the document was directed;
- 11 3. The nature and substance of the document with sufficient particularity to enable the Court
12 and Plaintiffs, Audrey Kramer and Leo Kramer or Counsel to identify the document;
- 13 4. The date of the document;
- 14 5. The identity of the person who has custody of, or control over, the document and each
15 copy thereof;
- 16 6. The identity of each person to whom a copy of the document was furnished;
- 17 7. The number of pages of the documents;
- 18 8. The basis on which any privilege or other protection is claimed; and
- 19 9. Whether any non-privilege matter is included in the document.

20
21
22 **PARTIAL PRODUCTION:** If Defendant, BRECKENRIDGE PROPERTY FUND 2016 LLC,
23 object to a particular Request, or any portion of any Request, Defendant, BRECKENRIDGE
24 PROPERTY FUND 2016 LLC must produce all documents called for but not subject to the
25 objection. Whenever a document is not produced in full, and describe, to the best of Defendant,
26 BRECKENRIDGE PROPERTY FUND 2016 LLC's knowledge, information, and belief and with
27 as much particularity as possible, those portions of the document which are not produced.
28

1 **ORDERLY RESPONSE:** Plaintiffs, Audrey Kramer and Leo Kramer, request DEFENDANT,
2 BRECKENRIDGE PROPERTY FUND 2016 LLC, produce the documents called for herein either
3 as they are kept in the usual course of Defendant, BRECKENRIDGE PROPERTY FUND 2016
4 LLC's affairs, or organize them in such a manner as will facilitate their identification with the
5 particular Request(s) to which the documents are responsive.
6

7
8 **DEFINITIONS**

9 1. "YOU" and "YOUR" shall include YOU, Defendant, BRECKENRIDGE
10 PROPERTY FUND 2016 LLC, shall mean YOU and all YOUR agents, employees, subsidiaries,
11 YOUR attorneys, YOUR accountants, YOUR investigators, consultants, and anyone else working
12 on YOUR behalf.

13 2. "PERSON" shall include a natural person, firm, organization, partnership, business,
14 trust, limited liability company, corporation, or public entity.

15 3. "DEFENDANT" shall mean YOU Defendant, BRECKENRIDGE PROPERTY
16 FUND 2016 LLC.

17 4. "RESPONDING PARTY" shall mean YOU Defendant, BRECKENRIDGE
18 PROPERTY FUND 2016 LLC.

19 5. "DOCUMENT(S)" shall include all written and/or graphic materials and/or sound
20 recordings, however produced or reproduced, of any kind and description, including
21 the original and all duplicates or copies. In that regard, the "DOCUMENT(S)" means any
22 "writing" including facsimiles, electronic records, film records or other reproductions in the
23 responding party's possession or known to the responding party on usual inquiry. If a document
24 has been prepared in more than one copy and any copy was not or is no longer identical to the
25
26
27
28

1 original by reason of simultaneous or subsequent notation or modification of any kind, each non-
2 identical copy must be included.

3 6. "DOCUMENT(S)" herein also mean any written, recorded, or graphic material of any
4 kind, whether prepared by you or by any other person that is in your possession, custody, or
5 control. The term includes agreements; contracts; letters; telegrams; inter-office communications;
6 memoranda; reports; records; instructions; specifications; notes; notebooks; scrapbooks; diaries;
7 plans; drawings; sketches; blueprints; diagrams; photographs; photocopies; charts; graphs;
8 descriptions; drafts, whether or not they resulted in a final document; minutes of meetings,
9 conferences, and telephone or other conversations or communications; invoices; purchase orders;
10 bills of lading; recordings; published or unpublished speeches or articles; publications; transcripts
11 of telephone conversations; phone mail; electronic-mail; ledgers; financial statements; microfilm;
12 microfiche; tape or disc recordings; and computer print-outs.

13 7. The term "DOCUMENT" also includes electronically stored data from
14 which information can be obtained either directly or by translation through detection devices or
15 readers; any such document is to be produced in a reasonably legible and usable form. The term
16 "document" includes all drafts of a document and all copies that differ in any respect from the
17 original, including any notation, underlining, marking, or information not on the original. The
18 term also includes information stored in, or accessible through, computer or other information
19 retrieval systems (including any computer archives or back-up systems), together with instructions
20 and all other materials necessary to use or interpret such data compilations.

21 8. Without limitation on the term "control" as used in the preceding paragraph, a
22 document is deemed to be in your control if you have the right to secure the document or a copy
23 thereof from another person.

24 9. Additionally, "DOCUMENT(S)" shall include all written and/or graphic materials
25
26
27
28

1 and/or sound recordings, however produced or reproduced, of any kind and description, including
2 the original and all duplicates or copies. In that regard, the "**DOCUMENT(S)**" means any
3 "writing" including facsimiles, electronic records, film records or other reproductions in the
4 responding party's possession or known to the responding party on usual inquiry. If a document
5 has been prepared in more than one copy and any copy was not or is no longer identical to the
6 original by reason of simultaneous or subsequent notation or modification of any kind, each non-
7 identical copy must be included.

9 10. "**DOCUMENT(S)**" herein also means and includes without limitation all
10 correspondence, memoranda, certificates, notes, books, manuals, pamphlets, brochures,
11 advertisements, books of account, balance sheets, financial statements, profit and loss statements,
12 working papers, schedules, diaries, calendars, logs, time records, equipment records, microfilms,
13 transcripts, recordings, tapes, telexes, telegrams, files, proposals, bids, offers, contracts,
14 agreements, change orders, worksheets, drawings, blue prints, designs, specifications, time cards,
15 compilations, graphs, charts, bills, statements, invoices, receipts, bills of lading, shipping records,
16 confirmations, applications, purchase orders, checks, checkbooks and other checking records,
17 photographs, formulae, prescriptions, studies, projections, reports, computer programs,
18 information contained in computer banks, tapes cards, printouts and drafts to the extent they differ
19 from the originals, and all other records and papers of any nature whatsoever.

21 11. "**IDENTIFY**" as used herein with regard to a person or an entity means identify
22 specifically by name, the last-known address, last-known telephone number, e-mail address, and
23 any other identifying characteristics known to "**YOU**". The word "**IDENTIFY**" as used herein
24 with regard to a **DOCUMENT** means to identify specifically by describing the **DOCUMENT**,
25 including the medium in which it is currently stored, its current location, and any other identifying
26 characteristics known to **YOU**.
27
28

1 12. "RELATING TO" and "RELATE TO" shall mean and include referring to, alluding
2 to, responding to, pertaining to, connected with, commenting on, reviewing any aspects of, about,
3 regarding, showing, describing, discussing, mentioning, concerning, respecting, analyzing,
4 constituting, or evidencing.

5 13. "COMMUNICATION" shall mean any and all COMMUNICATION of any kind,
6 whether oral or written, including, without limitation, letters, correspondence, notes,
7 transcriptions, face-to-face meetings, telephone conversations, e-mails, facsimile transmissions,
8 tape recordings, computer transmission of any type.

10 14. "CONTRACT" Shall mean any agreement YOU had with NATIONAL DEFAULT
11 SERVICING CORPORATION regarding the purchase of the subject property.

12 15. Additionally, "CONTRACT" also Shall also mean any agreement YOU had with JP
13 Morgan Chase Bank, N.A. regarding the purchase of the subject property.

14 16. "SUBJECT PROPERTY" Shall mean: 1740 Autumn Glen Street, Fernley, NV 89408,
15 ("the subject property").and more fully legally described as:
16

17 Lot 62, SD UPLAND RANCH ESTATE UNIT NO. 7. ACCORDING TO MAP THEREOF,
18 FILED AS DOCUMENT NO 315377, ON MARCH 9, 2004, COUNTY OF LYON, STATE
19 OF NEVADA, Bearing APN: 022-052-02 in Lyon County, State of Nevada

20 **REQUESTS FOR PRODUCTION**

21 **REQUEST FOR PRODUCTION NO.1:**

22 Produce any and all original DOCUMENT(S) to be copied pertaining to any and all records of
23 financial bank accounts where YOU authorized a check to written for the purchase of the "Subject
24 Property.

25 **REQUEST FOR PRODUCTION NO.2:**

26 Any and all documents on which you relied or identified in your Answers to Interrogatories, or
27 which relate to your Answers to or the subject matter of the Interrogatories.
28

REQUEST FOR PRODUCTION NO.3:

All documents that contain information about, refer to, or relate to your claim of due diligence Title Search before the contract.

REQUEST FOR PRODUCTION NO.4:

Any and all correspondence between you and the All the Defendants in this case in the past five years, including letters, emails, text messages, and any other written or electronic communications pertaining to purchase of real property in the State of Nevada.

REQUEST FOR PRODUCTION NO.5:

Any and all correspondence between you and the All the Defendants in this case in the past five years, including letters, emails, text messages, and any other written or electronic communications pertaining to purchase of real property in any State in the United States other than the State of Nevada.

REQUEST FOR PRODUCTION NO.6:

Any and all correspondence between you and the All the Defendants in this case in the past five years, including letters, emails, text messages, and any other written or electronic communications pertaining to purchase of real property in any of the United States Territories.

REQUEST FOR PRODUCTION NO.7:

Any and all correspondence between you and any and All Defendants in this case in the past five years, including letters, emails, text messages, and any other written or electronic communications YOU had with NATIONAL DEFAULT SERVICING CORPORATION pertaining to purchase of the Subject Property.

REQUEST FOR PRODUCTION NO.8:

Any and all correspondence between you and any and All the Defendants in this case in the past five years, including letters, emails, text messages, and any other written or electronic communications YOU had with JPMorgan Chase Bank, N.A., pertaining to purchase of the Subject Property

REQUEST FOR PRODUCTION NO.9:

Any and all correspondence between you and any and All the Defendants in this case in the past five years, including letters, emails, text messages, and any other written or electronic communications for which YOU are a bona fide purchaser of the Subject Property.

REQUEST FOR PRODUCTION NO.10:

All documents containing any statements made to you by anyone with personal knowledge of the facts at issue in this case.

REQUEST FOR PRODUCTION NO.11:

All documents related to any Investigation against YOU, in the States of Nevada or in any other jurisdiction, whether or not they resulted in a fine, for the past ten years

REQUEST FOR PRODUCTION NO.12:

Produce any and all original DOCUMENT(S) to be copied pertaining to YOUR purchase of the Subject property.

REQUEST FOR PRODUCTION NO.13:

Produce any and all original DOCUMENT(S) to be copied pertaining to YOUR title search of the subject property prior to YOUR alleged purchase of the Subject Property.

REQUEST FOR PRODUCTION NO.14:

Produce any and all original DOCUMENT(S) to be copied pertaining to any and all property purchased by "YOU" Breckenridge Property Fund 2016 LLC, within the part.five years.

REQUEST FOR PRODUCTION NO.15:

1 Produce any and all original DOCUMENT(S) to be copied pertaining to Financial records
2 pertaining to the Purchase of the Subject property.

3 **REQUEST FOR PRODUCTION NO.16:**

4 Produce any and all original DOCUMENT(S) to be copied pertaining to any loans that YOU
5 claimed or are claiming towards YOUR purchase of the Subject property.

6 **REQUEST FOR PRODUCTION NO.17:**

7 All bank statements, cancelled checks and check registers for any checking accounts in your name
8 alone or jointly with any person, firms, partnerships, companies, corporations, or limited
9 partnerships since 2015.
10


11 Dated: December 19, 2018

Respectfully Submitted,

13 
14 AUDREY KRAMER, Pro se Plaintiff

16
17 Dated: December 19, 2018

Respectfully Submitted,

19 
20 LEO KRAMER, Pro se Plaintiff
21
22
23
24
25
26
27
28

PROOF OF SERVICE
[C.C.P. §1013]

The UPS Store

1511 Sycamore Ave. Ste M
Hercules, CA 94547

store2796@theupsstore.com



STATE OF CALIFORNIA)
) ss:
COUNTY OF CONTRA COSTA)

I am employed in the County of Contra Costa, State of California. I am over the age of 18 and not a party to the within action; my business address is _____

On December 20, 2018, I served the foregoing document entitled:

PLAINTIFFS, AUDREY KRAMER and LEO KRAMER'S REQUEST FOR PRODUCTION SET ONE

on all parties in this action as follows:

PLEASE SEE ATTACHED SERVICE LIST

☒ **By Mail.** By placing a true copy thereof enclosed in a sealed envelope. I am "readily familiar" with the firm's practice of collection and processing for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with first class postage thereon fully paid at San Diego, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or the postage meter is more than one day after day of deposit for mailing in this Proof of Service.

☐ **By Telefax.** I transmitted said document by telefax to the offices of the addressees at the telefax numbers on the attached Service List.

☐ **By Personal Service.** I delivered such envelope by hand to the addressee(s).

☐ **By Overnight Courier.** I caused the above-referenced document(s) to be delivered to an overnight courier service for next day delivery to the addressee(s) on the attached Service List.

I declare under penalty of perjury under the laws of the State of California and under the laws of the State of Nevada that the foregoing is true and correct.

Executed on December 20, 2018, at Hercules, California.

Corina DiGrazia

Name of Declarant


Signature of Declarant

CERTIFICATE OF SERVICE LIST:

John T. Steffen
Mathew K. Schriever
Hutchison & Steffen
1008 West Alta Drive, Suite 200
Las Vegas, NV 89145

Casey J. Nelson
Wedgewood, LLC
2320 Potosi Street, Suite 130
Las Vegas, Nevada 89146

Attorneys for Defendants,
ALYSSA MC DERMOTT, WEDGWOOD INC., BRECKENRIDGE PROPERTY
FUND 2016 LLC

Kevin S. Soderstrom
Tiffany & Bosco, P.A.
10100 W. Charleston Boulevard, Ste. 220
Las Vegas, NV 89107

Attorneys for Defendant,
NATIONAL DEFAULT SERVICING CORPORATION

FILED

2018 DEC 21 PM 3:28

TANYA SCHEIDT
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT

Victoria Toran

1 LEO KRAMER
2 AUDREY KRAMER
3 2364 REDWOOD ROAD
4 HERCULES, CA 94547
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PLAINTIFFS IN PRO PER

IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF LYON

LEO KRAMER,
AUDREY KRAMER,

Plaintiffs,

vs.

NATIONAL DEFAULT SERVICING
CORPORATION, ALYSSA MC DERMOTT,
WEDGWOOD INC., BRECKENRIDGE
PROPERTY FUND 2016 LLC, and DOES 1
THROUGH 50 INCLUSIVE,

Defendants.

Case No.: 18-CV-00663

**PLAINTIFFS, AUDREY KRAMER AND
LEO KRAMER'S REQUEST FOR
ADMISSIONS SET ONE**

PROPOUNDING /ASKING PARTY:

Plaintiffs, Audrey Kramer and Leo Kramer

RESPONDING/ANSWERING PARTY:

Defendant, Breckenridge Property Fund 2016 LLC

SET NO:

ONE

1 **TO DEFENDANT, AND THE ATTORNEY OF RECORD IN THE ABOVE-**
2 **CAPTIONED MATTER:**

3 Pursuant to Nevada Rules of Civil Procedure 36, Plaintiffs, Audrey Kramer and Leo
4 Kramer, ("**Propounding Party**") hereby demand that, Defendant, BRECKENRIDGE
5 PROPERTY FUND 2016 LLC, ("**Responding Party**") responds under oath and in writing to the
6 following REQUEST FOR ADMISSIONS SET ONE (1) no later than thirty (30) days from the
7 date of service hereof.
8

9 These Request for Admissions are being propounded on the grounds that each is relevant
10 to the subject matter of this action or is reasonably calculated to lead to the discovery of
11 admissible evidence.
12

13 **GENERAL INSTRUCTIONS**

14 If any of these Request for Admissions cannot be answered in full, then you should answer
15 to the extent possible and specify the reasons for your inability to answer the remainder.

16 The person or persons answering these Request for Admissions must furnish such
17 information as is known or is available to him/her upon reasonable investigation regardless of
18 whether you obtained this information directly, or whether this information was obtained by and
19 made known to you by any of your attorneys or other agents or representatives.
20

21 If you object to any part of an Interrogatory, state precisely your objection and answer, to
22 the best of your ability, the remaining portion of that Interrogatory. If any discovery request is
23 objected to as inquiring into privileged matter, set forth fully in the objection the facts upon which
24 you base your objection. If you object to the scope or time period of an Interrogatory and refuse to
25 answer for that scope or time period, state your objection and answer the Interrogatory within what
26 you believe is the appropriate scope for the appropriate time period.
27
28

1 These Request for Admissions shall be deemed continuing and supplemental answers shall
2 be required if you directly or indirectly obtain further information after your initial response this
3 Request for Admissions.

4 Each Request for Admissions solicits all information obtainable by Defendant,
5 BRECKENRIDGE PROPERTY FUND 2016 LLC, ("**RESPONDING PARTY**"), from his
6 attorneys, investigators, agents, employees and representatives. If you respond to any set of these
7 Request for Admissions on the basis that you lack sufficient information to respond, describe any
8 and all efforts you made to inform yourself of the facts and circumstances necessary to respond.
9

10 **DEFINITIONS**

11
12
1. 13 "**YOU**" and "**YOUR**" shall include **YOU**, Defendant, **BRECKENRIDGE**
14 **PROPERTY FUND 2016 LLC**, shall mean **YOU** and all **YOUR** agents, employees, subsidiaries,
15 **YOUR** attorneys, **YOUR** accountants, **YOUR** investigators, consultants, and anyone else working
16 on **YOUR** behalf.

2. 17 "**PERSON**" shall include a natural person, firm, organization, partnership, business,
18 trust, limited liability company, corporation, or public entity.

3. 19 "**DEFENDANT**" shall mean **YOU** Defendant, **BRECKENRIDGE PROPERTY**
20 **FUND 2016 LLC**.

21
22 "**RESPONDING PARTY**" shall mean **YOU** Defendant, **BRECKENRIDGE PROPERTY FUND**
23 **2016 LLC**.

4. 24 "**DOCUMENT(S)**" shall include all written and/or graphic materials and/or sound
25 recordings, however produced or reproduced, of any kind and description, including the original
26 and all duplicates or copies. In that regard, the "**DOCUMENT(S)**" means any "writing"
27 including facsimiles, electronic records, film records or other reproductions in the responding
28

1 party's possession or known to the responding party on usual inquiry. If a document has been
2 prepared in more than one copy and any copy was not or is no longer identical to the original by
3 reason of simultaneous or subsequent notation or modification of any kind, each non-identical
4 copy must be included.

- 5
6 **"DOCUMENT(S)"** herein also mean any written, recorded, or graphic material of any
7 kind, whether prepared by you or by any other person that is in your possession, custody, or
8 control. The term includes agreements; contracts; letters; telegrams; inter-office communications;
9 memoranda; reports; records; instructions; specifications; notes; notebooks; scrapbooks; diaries;
10 plans; drawings; sketches; blueprints; diagrams; photographs; photocopies; charts; graphs;
11 descriptions; drafts, whether or not they resulted in a final document; minutes of meetings,
12 conferences, and telephone or other conversations or communications; invoices; purchase orders;
13 bills of lading; recordings; published or unpublished speeches or articles; publications; transcripts
14 of telephone conversations; phone mail; electronic-mail; ledgers; financial statements; microfilm;
15 microfiche; tape or disc recordings; and computer print-outs.

- 6.17 The term **"DOCUMENT"** also includes electronically stored data from
18 which information can be obtained either directly or by translation through detection devices or
19 readers; any such document is to be produced in a reasonably legible and usable form. The term
20 "document" includes all drafts of a document and all copies that differ in any respect from the
21 original, including any notation, underlining, marking, or information not on the original. The
22 term also includes information stored in, or accessible through, computer or other information
23 retrieval systems (including any computer archives or back-up systems), together with instructions
24 and all other materials necessary to use or interpret such data compilations.

7. 1 Without limitation on the term "control" as used in the preceding paragraph, a
2 document is deemed to be in your control if you have the right to secure the document or a copy
3 thereof from another person.

8. 4 Additionally, "**DOCUMENT(S)**" shall include all written and/or graphic
5 materials and/or sound recordings, however produced or reproduced, of any kind and description,
6 including the original and all duplicates or copies. In that regard, the "**DOCUMENT(S)**" means
7 any "writing" including facsimiles, electronic records, film records or other reproductions in the
8 responding party's possession or known to the responding party on usual inquiry. If a document
9 has been prepared in more than one copy and any copy was not or is no longer identical to the
10 original by reason of simultaneous or subsequent notation or modification of any kind, each non-
11 identical copy must be included.
12

9. 13 "**DOCUMENT(S)**" herein also means and includes without limitation all
14 correspondence, memoranda, certificates, notes, books, manuals, pamphlets, brochures,
15 advertisements, books of account, balance sheets, financial statements, profit and loss statements,
16 working papers, schedules, diaries, calendars, logs, time records, equipment records, microfilms,
17 transcripts, recordings, tapes, telexes, telegrams, files, proposals, bids, offers, contracts,
18 agreements, change orders, worksheets, drawings, blue prints, designs, specifications, time cards,
19 compilations, graphs, charts, bills, statements, invoices, receipts, bills of lading, shipping records,
20 confirmations, applications, purchase orders, checks, checkbooks and other checking records,
21 photographs, formulae, prescriptions, studies, projections, reports, computer programs,
22 information contained in computer banks, tapes cards, printouts and drafts to the extent they differ
23 from the originals, and all other records and papers of any nature whatsoever.
24

10. 25 "**IDENTIFY**" as used herein with regard to a person or an entity means identify
26 specifically by name, the last-known address, last-known telephone number, e-mail address, and
27
28

1 any other identifying characteristics known to "YOU". The word "IDENTIFY" as used herein
2 with regard to a **DOCUMENT** means to identify specifically by describing the **DOCUMENT**,
3 including the medium in which it is currently stored, its current location, and any other identifying
4 characteristics known to **YOU**.

11. 5 "RELATING TO" and "RELATE TO" shall mean and include referring to, alluding
6 to, responding to, pertaining to, connected with, commenting on, reviewing any aspects of, about,
7 regarding, showing, describing, discussing, mentioning, concerning, respecting, analyzing,
8 constituting, or evidencing.

12. 10 "COMMUNICATION" shall mean any and all COMMUNICATION of any kind,
11 whether oral or written, including, without limitation, letters, correspondence, notes,
12 transcriptions, face-to-face meetings, telephone conversations, e-mails, facsimile transmissions,
13 tape recordings, computer transmission of any type.

15 "CONTRACT" Shall mean any agreement YOU had with NATIONAL DEFAULT
16 SERVICING CORPORATION regarding the purchase of the subject property.

17 Additionally, "CONTRACT" also Shall also mean any agreement YOU had with JP
18 Morgan Chase Bank, N.A. regarding the purchase of the subject property.

19 "SUBJECT PROPERTY" Shall mean: 1740 Autumn Glen Street, Fernley, NV 89408,
20 ("the subject property").and more fully legally described as:

21
22 **Lot 62, SD UPLAND RANCH ESTATE UNIT NO. 7. ACCORDING TO MAP THEREOF,**
23 **FILED AS DOCUMENT NO 315377, ON MARCH 9, 2004, COUNTY OF LYON, STATE**
OF NEVADA, Bearing APN: 022-052-02 in Lyon County, State of Nevada

24
25 ///

26
27 ///

**REQUESTS FOR ADMISSIONS
RELATED TO THE GENUINENESS OF DOCUMENTS**

1. Admit that any document you claim you have regarding the subject property and Disclosure Statements you claim you obtained from NATIONAL DEFAULT SERVICING CORPORATION are not genuine.
2. Admit that the documents you provided in court to establish your purported purchase of the subject property are not genuine.

**REQUESTS FOR ADMISSIONS
NOT RELATED TO THE GENUINENESS OF DOCUMENTS**

REQUEST FOR ADMISSIONS

REQUEST FOR ADMISSIONS NO. 1:

Admit that you and the remaining Defendants were never parties to any contract or other agreement regarding the subject property.

REQUEST FOR ADMISSIONS NO. 2:

Admit that you and Defendant, NATIONAL DEFAULT SERVICING CORPORATION were aware that JPMorgan Chase N.A., was not the holder of Plaintiffs' Note in Due Course.

REQUEST FOR ADMISSIONS NO. 3:

Admit that you and Defendant, NATIONAL DEFAULT SERVICING CORPORATION were aware not indebted to JPMorgan Chase N.A., on the revolving line of Credit.

REQUEST FOR ADMISSIONS NO. 4:

Admit that you and Defendant, NATIONAL DEFAULT SERVICING CORPORATION did not comply with Notice requirements for the State of Nevada before filing the Notice of Default.

REQUEST FOR ADMISSIONS NO. 5:

Admit that you and Defendant, NATIONAL DEFAULT SERVICING CORPORATION is not a duly appointed trustee.

REQUEST FOR ADMISSIONS NO. 6:

Admit that you were aware of Plaintiff's claims against Defendant, NATIONAL DEFAULT SERVICING CORPORATION and JPMorgan Chase N.A., before the contract regarding the subject property

1 **REQUEST FOR ADMISSIONS NO. 7:**

2 Admit that you conducted more than one real estate transactions with NATIONAL DEFAULT
3 SERVICING CORPORATION and JPMorgan Chase N.A. within the past five years.

4 **REQUEST FOR ADMISSIONS NO. 8:**

5 Admit that you conducted you conducted Title Search of the subject property within the last two
6 years.

7
8 **REQUEST FOR ADMISSIONS NO. 9:**

9 Admit that an individual associated with You have been investigated for Mortgage Fraud.

10
11 **REQUEST FOR ADMISSIONS NO. 10:**

12 Admit that YOU have been investigated for Mortgage Fraud

13
14 **REQUEST FOR ADMISSIONS NO. 11:**

15 Admit that YOU did not tender any negotiable instrument to NATIONAL DEFAULT
16 SERVICING CORPORATION and JPMorgan Chase N.A. for the purchase of the subject
17 property.

18 **REQUEST FOR ADMISSIONS NO. 12:**

19 Admit that YOU did not tender any negotiable instrument to NATIONAL DEFAULT
20 SERVICING CORPORATION for the purchase of the subject property.

21
22 **REQUEST FOR ADMISSIONS NO. 13:**

23 Admit that YOU Plaintiffs are entitled to quiet title on the subject property.

24 **REQUEST FOR ADMISSIONS NO. 14:**

25 Admit that you are entitled to refund of any money paid to NATIONAL DEFAULT SERVICING
26 CORPORATION for the subject property.

1 REQUEST FOR ADMISSIONS NO. 15:

2 Admit that you are entitled to refund of any money you paid to JPMorgan Chase Bank, N.A for
3 the subject property.

4
5
6 Dated: December 19, 2018

Respectfully Submitted,

7
8 
9 AUDREY KRAMER, In Pro per

10
11
12 Dated: December 19, 2018

Respectfully Submitted,

13
14 
15 LEO KRAMER, In Pro per
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE
[C.C.P. §1013]

The UPS Store
1511 Sycamore Ave. Ste M
Hercules, CA 94547
store2796@theupsstore.com



STATE OF CALIFORNIA)
) ss:
COUNTY OF CONTRA COSTA)

I am employed in the County of Contra Costa, State of California. I am over the age of 18 and not a party to the within action; my business address is _____

On December 20, 2018, I served the foregoing document entitled:

**PLAINTIFFS, AUDREY KRAMER AND LEO KRAMER'S REQUEST FOR
ADMISSIONS SET ONE**

on all parties in this action as follows:

PLEASE SEE ATTACHED SERVICE LIST

☒ **By Mail.** By placing a true copy thereof enclosed in a sealed envelope. I am "readily familiar" with the firm's practice of collection and processing for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with first class postage thereon fully paid at San Diego, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or the postage meter is more than one day after day of deposit for mailing in this Proof of Service.

☐ **By Telefax.** I transmitted said document by telefax to the offices of the addressees at the telefax numbers on the attached Service List.

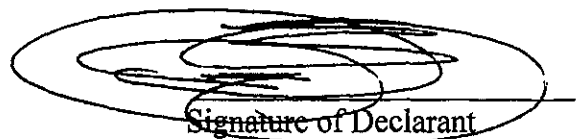
☐ **By Personal Service.** I delivered such envelope by hand to the addressee(s).

☐ **By Overnight Courier.** I caused the above-referenced document(s) to be delivered to an overnight courier service for next day delivery to the addressee(s) on the attached Service List.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on December 20, 2018, at Hercules, California.

Corina DiGrazia
Name of Declarant


Signature of Declarant

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE LIST:

John T. Steffen
Mathew K. Schriever
Hutchison & Steffen
1008 West Alta Drive, Suite 200
Las Vegas, NV 89145

Casey J. Nelson
Wedgewood, LLC
2320 Potosi Street, Suite 130
Las Vegas, Nevada 89146

Attorneys for Defendants,
ALYSSA MC DERMOTT, WEDGWOOD INC., BRECKENRIDGE PROPERTY
FUND 2016 LLC

Kevin S. Soderstrom
Tiffany & Bosco, P.A.
10100 W. Charleston Boulevard, Ste. 220
Las Vegas, NV 89107

Attorneys for Defendant,
NATIONAL DEFAULT SERVICING CORPORATION

FILED

2018 DEC 21 PM 3:28

TANYA STEIN
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT

Victoria Toran

1 LEO KRAMER
2 AUDREY KRAMER
3 2364 REDWOOD ROAD
4 HERCULES, CA 94547

5 PLAINTIFFS IN PRO PER

6 THIRD JUDICIAL DISTRICT COURT
7 LYON COUNTY, NEVADA

8
9 LEO KRAMER,
10 AUDREY KRAMER,

11 Plaintiffs,

12 vs.

13 NATIONAL DEFAULT SERVICING
14 CORPORATION, ALYSSA MC DERMOTT,
15 WEDGWOOD INC., BRECKENRIDGE
16 PROPERTY FUND 2016 LLC, and DOES 1
17 THROUGH 50 INCLUSIVE,

18 Defendants.

) Case No.: 18-CV-00663

) PLAINTIFFS' OPPOSITION TO
) DEFENDANTS, ALYSSA MC DERMOTT,
) WEDGWOOD INC., AND
) BRECKENRIDGE PROPERTY FUND 2016
) LLC'S MOTION TO DISMISS
) PLAINTIFFS' FIRST AMENDED
) COMPLAINT; MEMORANDUM OF
) POINTS AND AUTHORITIES IN SUPPORT
) THEREOF; DECLARATION OF DANIEL
) STARLING; DECLARATION OF LEE
) ANNE CHAFFIN; AND DECLARATION OF
) AUDREY KRAMER FILED
) CONCURRENTLY HERewith;

) FURTHER; PLAINTIFFS REQUEST
) DISCOVERY IN THIS MATTER

) Date: TBA
) Time: TBA
) Dept: I

19
20
21
22
23
24 Plaintiffs Leo Kramer and Audrey Kramer, ("Plaintiffs"), hereby respectfully submit the
25 following memorandum of points and authority opposing the motion to dismiss Plaintiffs' First
26 Amended Complaint by Defendants, ALYSSA MC DERMOTT, WEDGWOOD INC., and
27 BRECKENRIDGE PROPERTY FUND 2016 LLC.
28

1 This Opposition is based upon the memorandum of points and authority contained herein, the
2 pleadings and papers on file with the court, and any oral argument that this Honorable Court may hear
3 on the date set for the hearing in this matter.

4
5 MEMORANDUM OF POINTS AND AUTHORITIES

6 I
7 INTRODUCTION

8 This case touch and concern Plaintiffs' real property commonly described as 1740 Autumn
9 Glen Street, Fernley, NV 89408 ("Subject property"). Plaintiffs alleges that a wrongful and unlawful
10 foreclosure of their real property occurred or a power of sale was exercised by Defendants and at the
11 time of foreclosure or exercise of the power of sale, no breach of condition or failure of performance
12 existed that would have authorized such action. See, *Collins v. Union Federal Sav. & Loan Ass'n*, 662
13 P.2d 610, 623 (Nev. 1983). Plaintiffs did not breach any condition of mortgage agreement or
14 revolving line of credit sufficient to permit a non-judicial foreclosure proceedings against them in the
15 State of Nevada.

16
17 Plaintiffs were NOT given Notice of Default prior to conducting the non-judicial foreclosure
18 of Plaintiffs' real property. Further, in conducting the Sale of Plaintiffs' real property, National
19 Default Servicing Corporation ("NDSC") failed to give Plaintiffs Notice of the Default and failed to
20 adhere to Nev. Rev. Stat. § 107.090 which requires that a copy of the Notice of Default ("NOD") must
21 be sent to each person who has a recorded request for a copy and each person with an interest or
22 claimed interest in the property by registered or certified mail within ten days after the NOD is
23 recorded. (Nev. Rev. Stat. § 107.090). Furthermore, Plaintiffs contend that the service of this Notice
24 of Default failed to comply with the requirements of Nevada law, which requires the servicer or owner
25 of the loan to send the borrower a notice that contains information about the account, including the
26 total amount needed to cure the default, and includes information about foreclosure prevention
27 alternatives, among other things. (Nev. Rev. Stat. § 107.500). As such, the alleged sale of Plaintiffs'
28

1 real property was unlawful and void *ab initio* and the purported sale of Plaintiffs' real property has no
2 enforceable legal status and any legal document that is taken to have conveyed or assigned any interest
3 in Plaintiffs' real property to Defendants, ALYSSA MC DERMOTT, WEDGWOOD INC., or
4 BRECKENRIDGE PROPERTY FUND 2016 LLC, was never valid or enforceable from the start, or
5 from the moment of its purported existence.

6 Additionally, Defendants, ALYSSA MC DERMOTT, WEDGWOOD INC., and
7 BRECKENRIDGE PROPERTY FUND 2016 LLC, who claimed to have purchased the subject
8 property as evidenced in the declarations of Daniel Starling; Lee Anne Chaffin; and of Audrey Kramer
9 filed concurrently herewith, **are NOT** bona fide purchasers. ALYSSA MC DERMOTT,
10 WEDGWOOD INC., and BRECKENRIDGE PROPERTY FUND 2016 LLC who claimed to have
11 purchased the subject property **did NOT** purchase the property in good faith because Defendants and
12 each of them had actual knowledge, constructive notice of, or reasonable cause to know that there
13 exists a defect in, or adverse rights, title or interest to, Plaintiffs' real property, as such Defendants and
14 each of them **is NOT** a bona fide purchaser of Plaintiffs' real property. Further, Defendants have
15 refused to respond to Plaintiffs' discovery request that sought to obtain admissible evidence to
16 demonstrate that Defendant, BRECKENRIDGE PROPERTY FUND 2016 LLC and the remaining
17 Defendants had actual knowledge, constructive notice of, or reasonable cause to know that there exists
18 a defect in, or adverse rights, title or interest to, Plaintiffs' real property located at: 1740 Autumn Glen
19 Street, Fernley, NV 89408.

20 Moreover, because Defendants, ALYSSA MC DERMOTT, WEDGWOOD INC., and
21 BRECKENRIDGE PROPERTY FUND 2016 LLC who claimed to have purchased the subject
22 property as evidenced in the declarations of Daniel Starling; Lee Anne Chaffin; and of Audrey Kramer
23 filed concurrently herewith, Plaintiffs are entitled to Quiet Title against ALYSSA MC DERMOTT,
24 WEDGWOOD INC., and BRECKENRIDGE PROPERTY FUND 2016 LLC. Moreover, the conduct
25 of Defendants including NATIONAL DEFAULT SERVICING CORPORATION and others constitute
26
27
28

1 willful oppression and malice and violated Nev. Rev. Stat. § 107.500; Nev. Rev. Stat. § 107.090; NRS
2 205.395 and other Nevada Foreclosure Laws.

3 Accordingly, ALYSSA MC DERMOTT, WEDGWOOD INC., and BRECKENRIDGE
4 PROPERTY FUND 2016 LLC's motion to dismiss Plaintiffs' First Amended Complaint must be
5 denied in its entirety and Discovery on the underline disputes must proceed in the interest of justice.

6
7 **II**
STATEMENT OF FACTS

8 On or about June 2, 2005, Leo Kramer and Audrey Kramer, the Plaintiffs', as husband and
9 wife, as joint tenants, purchased property located at 1740 Autumn Glenn Street in Fernley Nevada,
10 County of Lyon (APN 022-052-02). The aforementioned property is the subject of Plaintiffs'
11 Complaint. The purchase price of the subject property was \$204,448, whereby, Plaintiffs' made a
12 down payment of approximately 20% (\$40,948) and obtained a mortgage loan from Paul Financial,
13 LLC in the amount of \$163,500, to complete the purchase transaction. Paul Financial, LLC issued
14 Plaintiffs a Deed of Trust accordingly.

15
16 On or about April 4, 2008, Plaintiffs later obtained a Revolving Line of Credit through
17 Washington Mutual Bank (WaMu) with a maximum credit limit of \$176,000. Plaintiffs at NO time
18 ever accessed the maximum credit limit of \$176,000, which was contracted in accordance with
19 Plaintiffs' Credit Agreement Contract with WaMu. Within 6 months after Plaintiffs entered into the
20 Credit Agreement with WaMu, the Credit Agreement Contract was BREACHED by WaMu as
21 Plaintiffs were unable to access the maximum credit limit of \$176,000, as was agreed upon within the
22 WaMu Credit Agreement. **SEE EXHIBIT A** WaMu Bank became a defunct lending institution
23 upon the FDIC taking receivership of WaMu on Sept 25, 2008. Succinctly, the Credit Agreement
24 Contract Plaintiffs had with WaMu was for all practical purposes a '**Breach of Contract**' because
25 WaMu failed to perform its obligation under the revolving line of credit agreement.
26
27
28

1 Plaintiffs have at all times been the only names on the Deed of Trust, and Plaintiffs maintain
2 they have never conveyed their property, nor has assignment been lawfully conveyed, to anyone else.

3 On or about June 12, 2018, Plaintiff, Audrey Kramer received a call from Mr. Casey Nelson,
4 ("Mr. Nelson") who identified himself as in-house counsel for Breckenridge Property Fund 2016,
5 LLC. ("Breckenridge") Mr. Nelson told Plaintiff in the first paragraph of his email letter the
6 following, *"I did not accept service on behalf of Alyssa McDermott* ("Ms. McDermott") *or*
7 *Wedgwood Inc* ("Wedgewood"), *as the process server did not attempt to serve these parties"*. SEE
8 **EXHIBIT B**

9
10 In fact, several attempts had been made, at the same time Breckenridge was being served, to
11 serve Plaintiffs' complaint to Ms. McDermott & Wedgewood at an address in the Reno, NV area
12 which was found through a Google search. However, these service attempts were to no avail, and Ms.
13 McDermott and Wedgewood were never served.

14 Plaintiffs included Ms. McDermott and Wedgewood in their initial complaint because Ms.
15 McDermott identified and purported herself to Plaintiffs, Plaintiffs' tenant/s and Plaintiffs' property
16 management company that she was the new owner of Plaintiff's property. Additionally, a woman who
17 identified herself as Ms. Carmen Aguilera also identified herself as the new owner of Plaintiffs'
18 property. Ms. Aguilera later identified herself as the Asset Manager for Wedgewood Inc. SEE
19 **EXHIBIT/S C**

20
21 Plaintiffs informed Mr. Nelson in their reply email to him that if he would provide an affidavit
22 stating McDermott & Wedgewood Inc. did not have an interest in the subject property, Plaintiffs
23 would drop them from the complaint. This is noted on the last page in the last paragraph of Plaintiff's
24 reply email to Mr. Nelson. **SEE EXHIBIT D**

25
26 Mr. Nelson never agreed, nor did he provide such affidavit, instead Mr. Nelson obtained outside-
27 counsel to represent Breckenridge, Ms. McDermott & Wedgewood, (even though they were never
28

1 actually served) leaving Plaintiffs with the distinct impression that perhaps there was a reason he
2 would not or could not provide an affidavit attesting to (the facts as he had stated in his email letter).

3 Plaintiffs further believe based on the phone conversation Plaintiff had with Mr. Nelson that he
4 had a very substantial inside-relationship with National Default Servicing Corp. (the foreclosing agent
5 of Plaintiffs' property). Mr. Nelson was quite boastful of the inside knowledge he had in terms of the
6 close inter-workings of Chase Bank & NDSC, stating he had completed in excess of 300 transactions
7 with them. Plaintiff got the overwhelming impression the relationship between Mr. Nelson, Chase
8 Bank and NDSC was more than just that of occasional business acquaintances.

10 Defendant states in their Motion to Dismiss that Plaintiffs have not provided a cause of action
11 in which they can prevail on; however, in both the phone conversation and in Mr. Nelson's email letter
12 he reiterates in paragraph (2) the following:

13 *"At best, you can reasonably seek to quiet title against Breckenridge as the purchaser, arguing that*
14 *title didn't vest in our favor,..."* SEE EXHIBIT B

15 Defendant Breckenridge argues in their "Motion To Dismiss" that Plaintiffs do not have a right
16 to pursue justice, stating the following reasons, "The Plaintiffs' default is evident by the bankruptcy
17 court docket, the recorded Notice Of Default ("NOD"), the recorded Notice Of Trustee Sale
18 ("NOTS"), and the federal court order".

20 **Plaintiffs reply with the following:**

- 21 1) Plaintiffs obtained and had legal representation regarding their Bankruptcy ("BK") and
22 maintain that no debt was owed to WaMu or Chase per Plaintiffs' Revolving Line of Credit
23 Agreement with WaMu; Chase had no legal documentation or right to submit a Proof of
24 Claim against Plaintiffs' property.
- 25 2) Plaintiffs were never properly served with the Notice of Default ("NOD"), under Nevada
26 Foreclosure Statute, which makes the NOD & NOTS VOID on their face. Additionally,
27 Chain of Title was never lawfully transferred, to Chase Bank or NDSC, and thus neither
28

1 party has authority to foreclose on Plaintiffs' property. Chase nor NDSC has ever provided
2 proof of documentation showing possession of the Plaintiffs' **Original** 'Credit Agreement'
3 or 'Deed of Trust', which is required by law in order to lawfully foreclose. And further, the
4 WaMu Credit Agreement does not provide for a non-judicial foreclosure. See page 4, Sect.
5 C of the WaMu Credit Agreement.

6 **SEE EXHIBIT A**

- 7
8 3) The 'federal court' order Defendant's reference is currently under appeal for procedural
9 deficits/errors, and Plaintiffs firmly believe they will ultimately prevail in the 9th Circuit
10 Court of Appeals, whereby the federal court ruling will be overturned. **Appeal Case # 18-**
11 **15959**

12 All of the above reasons support why Breckenridge is not and cannot be a bona fide Purchaser
13 of Plaintiffs' property.

14 Plaintiffs maintain that because Breckenridge had representation by in-house counsel, Casey
15 Nelson, who touted that he was responsible for (in excess of 300+) foreclosure purchase transactions, it
16 stands to reason he would have performed due diligence in reviewing the Chain of Title of the subject
17 property, whereby, as an experienced lawyer specializing in real estate foreclosures, he would have
18 seen the defects in the chain of title. It also stands to reason, given Mr. Nelson's long history with
19 Chase Bank & NDSC, and in an abundance of caution, that he would have inquired as to all details of
20 the subject property, especially inquiring if there was any pending litigation on the subject property. In
21 a Google search Plaintiffs discovered numerous law suits involving Breckenridge and homeowners of
22 foreclosed properties that were acquired by Breckenridge. Given the numerous law suits Breckenridge
23 has been involved with, one would think it prudent to inquire about pending litigation before bidding
24 on foreclosed properties.

25 Defendant, Breckenridge, states in their own Motion to Dismiss that 'Plaintiffs have no viable
26 claims against them and that Plaintiffs have not stated a claim for relief against the Defendants and the
27
28

1 Complaint should be dismissed'. Defendants further state, "The Complaint is devoid of any facts that
2 state a claim for relief against these Defendants". As stated previously, Plaintiffs strongly maintain
3 Breckenridge is not a bona fide encumbrancer of the subject property because the property was stolen
4 from Plaintiffs through false and fraudulent documents which were filed without knowledge to
5 Plaintiffs' against their property. Further, Breckenridge is not a bona fide purchaser of Plaintiffs' real
6 property because defendants had actual knowledge, constructive notice of, or reasonable cause to know
7 that there exists a deficit in, or adverse rights, title or interest to, plaintiffs' real property.
8

9 Additionally, no true Assignment of Title was ever given to JPMorgan Chase Bank. On or
10 about April 4, 2018, Chase Bank self-fabricated a false fraudulent Assignment of Title, which was
11 signed by Debbie Swazer, Vice President of Chase Bank, as attorney in fact for the FDIC. This
12 fraudulent false document was recorded against Plaintiffs' property on April 10, 2018, nearly 7
13 months after they recorded a Notice Of Default against Plaintiffs' property. Given the FDIC is still in
14 existence, it is inconceivable the FDIC would permit any Bank to sign on it's behalf 'as attorney in
15 fact'. This last minute fraudulent self-assignment of title which Chase fabricated 10 years after they
16 acquired WaMu and 7 months post the filing of the unlawful NOD is further indication of the lengths
17 Chase will stoop to in order to steal homes they have no right to. Talk about unclean hands! SEE

18
19 **EXHIBIT E**

20 The Court cannot and should not ignore the extremely well-known and publicly-documented
21 articles exposing the facts that Chase Bank and other dubious cohorts (relating to the banking industry)
22 have committed millions of fraudulent foreclosures by fabricating documents and using robo-signers in
23 order to carry out willful and unlawful foreclosures against homeowners at large. Federal Regulators
24 have fined BILLIONS OF DOLLARS AGAINST CHASE BANK FOR COMMITTING FRAUD,
25 ROBO-SIGNING, SUBMITTING FALSE DOCUMENTATION & CONDUCTING UNLAWFUL
26 FORECLOSURES. But these horrendous fines did not stop Chase Bank; 'JPMorgan Chase Fined \$48
27 Million For Failing To Comply With Robo-signing Settlement'. 'The Department of Justice
28

1 reaches an additional \$50 MILLION DOLLARS SETTLEMENT with Chase Bank, who
2 admitted to continuing to commit similar crimes against consumers in bankruptcy courts around
3 the country'. SEE EXHIBIT F

4 The Notice of Default ("NOD") filed against Plaintiffs' property on October 6, 2017, by
5 NDSC, was never served to Plaintiffs as Nevada State Foreclosure Laws require, which means the
6 ("NOD") was **VOID**, as was the Notice of Trustee Sale ("NOTS") **VOID**, as was the Trustee Sale
7 itself **VOID**. Therefore, Breckenridge is not and cannot be a lawful bona fide encumbrancer of the
8 subject property.
9

10 Additionally, Mr. Casey Nelson, in-house counsel for Breckenridge told Plaintiff, Audrey
11 Kramer, via phone that he was very familiar with the foreclosure practices of Chase Bank and NDSC,
12 stating he was involved in 300+ foreclosures. As an in-house lawyer it would stand to reason Mr.
13 Nelson would have or should have performed a precursory review of the recorded documents filed
14 against Plaintiffs' property before placing a bid. And as an experienced lawyer, Mr. Nelson would
15 have clearly discovered there were deficits in the assignments of title and that assignments of title had
16 several discrepancies. At the very least "NDSC" should have disclosed to Breckenridge, or
17 Breckenridge should have asked, of any pending litigation against the subject property.
18

19 "NDSC", who is hired by and works for Chase Bank, as a foreclosing arm of the Bank, has
20 unclean hands in Plaintiffs' wrongful foreclosure. And it stands to reason upon review of the Cashier
21 Checks obtained by Alyssa McDermott on May 10, 2018 and May 17, 2018, prior to the federal court
22 ruling and the actual UNLAWFUL Trustee Sale of Plaintiffs' property, which took place on April 18,
23 2018, that Breckenridge's hands are also unclean. Breckenridge knew or should have known that there
24 was litigation on the property and thus is not a bona fide encumbrancer and has **NO** right to Plaintiffs'
25 property. SEE EXHIBIT/S G
26
27
28

1 Plaintiffs wish for this court to know that the subject property is very unique to them, as
2 Plaintiffs' are in their mid 60's, with serious health issues and the property was intended to be their
3 retirement home. Plaintiffs maintain that they have at all times been the sole owners of the property
4 and their names 'solely' have appeared on the Deed of Trust. Plaintiffs further maintain that they have
5 never conveyed their property, nor has assignment of Plaintiffs' Deed Of Trust, beyond that of Paul
6 Financial, LLC or WaMu, ever been 'lawfully' conveyed to anyone else. **PLEASE NOTE:** This fact
7 is noted and acknowledge in an affidavit signed by Von Mai, Vice President of JPMorgan Bank, dated
8 6/24/2014 (*the document was never officially recorded*), However, this affidavit was found as an
9 attachment to the Notice of Default signed by Ivan Mora, Trustee Sales Supervisor for NDSC on
10 10/5/2017 and recorded on 10/6/2017 DOC # 571145.

12 **SEE EXHIBIT H**

13 Plaintiffs pray this most honorable court will conduct a **very** careful review of the documents
14 which have been recorded in Lyon County's Records Office against the subject property. Plaintiffs
15 firmly believe that upon **careful** review of the actual documents recorded against the subject property
16 this court will see the blatant fabrication of fraudulent documents filed with the Lyon County
17 Recorder's Office in an attempt to **willfully, knowingly and unlawfully**, foreclose and steal Plaintiffs'
18 home out from under them. Defendants have indeed committed fraud in order to unlawfully foreclose
19 on Plaintiffs' property. **SEE EXHIBIT/S I**

21 Once again, it is an extremely well-known fact that Chase Bank and other dubious cohorts
22 relating to the banking industry have committed fraudulent foreclosures by fabricating documents and
23 using robo-signers in order to carry out unlawful foreclosures. Federal Regulators have fined over \$43
24 billion dollars against Chase bank for committing fraud, robo-signing, submitting false documentation
25 & conducting unlawful forecloses. but that did not stop chase bank, as an additional \$500 million
26 dollars in fines were levied against Chase Bank for continuing to commit these same crimes.
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

III
ARGUMENT

A. THE COURT SHOULD DENY DEFENDANTS' ALYSSA MCDERMOTT, WEDGWOOD INC., AND BRECKENRIDGE PROPERTY FUND 2016 LLC'S MOTION TO DISMISS BECAUSE PLAINTIFFS' COMPLAINT HAS SET FORTH ALLEGATIONS SUFFICIENT TO MAKE OUT THE ELEMENTS OF A RIGHT TO RELIEF

Standard of Review

In reviewing a motion to dismiss for failure to state a claim, a court must determine whether or not the challenged pleading sets forth allegations sufficient to make out the elements of a right to relief. *Edgar v. Wagner*, 101 Nev. 226, 227, 699 P.2d 110,111 (1985). A claimant must set forth factual allegations, either direct or inferential, regarding each material element necessary to sustain recovery under an actionable legal theory to successfully oppose a motion to dismiss for failure to state a claim upon which relief may be granted. See, *Remco Distributors, Inc., v. Oreck Corp.*, 814 F.Supp. 171, 174, (D. Mass. 1992). "The test for determining whether the allegations of a complaint are sufficient to assert a claim for relief is whether the allegations give fair notice of the nature and basis of a legally sufficient claim and the relief requested." *Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 858 P.2d 1258 (1993).

A pleading must contain a "short and plain statement of claim showing that the pleader is entitled to relief." The complaint must give a defendant "fair notice" of what the claim is and the grounds upon which it rests. *Bell Atlantic v. Twombly*, 550 U.S. 544, 555 (2007). In the case at bar, it is irrefutable that Plaintiffs' complaint has given Alyssa McDermott, Wedgwood Inc., and Breckenridge as well as the remaining Defendant(s) "fair notice" of what Plaintiffs' claim is and the grounds upon which it rests. Plaintiffs were not and are not in breach of any mortgage note and Defendants have no standing to cause the non-judicial foreclosure of Plaintiffs' real property and retirement home. Further, Breckenridge Property Fund 2016 LLC is not a bona fide purchaser of

1 Plaintiffs' real property because Breckenridge Property Fund 2016 LLC was aware of or should have
2 been aware of the dispute and lawsuit pertaining to the Plaintiffs' real property commonly described
3 as: 1740 Autumn Glenn Street in Fernley Nevada, County of Lyon (APN 022-052-02). Furthermore,
4 the Cashier Checks obtained on May 10 & 17, 2018, which Alyssa McDermott, Wedgwood Inc., and
5 Breckenridge sent to Plaintiffs and Plaintiffs' tenant, purported to be part of the fund allegedly used to
6 purchase of Plaintiffs' real property, was issued prior to the actual Unlawful Trustee Sale of Plaintiffs'
7 property on May 18, 2018, further demonstrating that, Alyssa McDermott, Wedgwood Inc., and
8 Breckenridge, are insiders and not innocent third parties as Attorneys for the Defendants willfully and
9 wantonly misrepresented to this Honorable Court.
10

11 In reviewing a motion to dismiss for failure to state a claim, a court must determine whether or
12 not the challenged pleading sets forth allegations sufficient to make out the elements of a right to relief.
13 *Edgar v. Wagner*, 101 Nev. 226, 227, 699 P.2d 110, 111 (1985). A claim must set forth factual
14 allegations, either direct or inferential, regarding each material element necessary to sustain recovery
15 under an actionable legal theory to successfully oppose a motion to dismiss for failure to state a claim
16 upon which relief may be granted. See, *Remco Distributors, Inc., v. Oreck Corp.*, 814 F.Supp. 171,
17 174, (D. Mass. 1992). "The test for determining whether the allegations of a complaint are sufficient to
18 assert a claim for relief is whether the allegations give fair notice of the nature and basis of a legally
19 sufficient claim and the relief requested. " *Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 858
20 P.2d 1258 (1993). Here, it is irrefutable that, in the present case, Plaintiffs, Audrey Kramer and Leo
21 Kramer have met their burden under Nevada law and *stare decisis* in the state of Nevada including
22 decisions of the United States Supreme Court.
23
24
25
26
27
28

1 B. THE NOTICE OF DEFAULT FAILED TO COMPLY WITH NEVADA FORECLOSURE
2 LAW, THEREFORE IS VOID AB INITIO.

3 Plaintiffs alleges that a wrongful and unlawful foreclosure of their real property occurred or a
4 power of sale was exercised by Defendants and at the time of foreclosure or exercise of the power of
5 sale, no breach of condition or failure of performance existed that would have authorized such action.
6 See, *Collins v. Union Federal Sav. & Loan Ass'n*, 662 P.2d 610, 623 (Nev. 1983).

7 In conducting the Sale of Plaintiffs' real property, National Default Servicing Corp. defendant
8 failed to give Plaintiffs Notice of the Default and failed to adhere to Nev. Rev. Stat. § 107.090 which
9 requires that a copy of the Notice of Default (NOD) must be sent to each person who has a recorded
10 request for a copy and each person with an interest or claimed interest in the property by registered or
11 certified mail within ten days after the NOD is recorded. (Nev. Rev. Stat. § 107.090). Furthermore,
12 Plaintiffs contend that the service of this Notice of Default failed to comply with the requirements of
13 Nevada law, which requires the servicer or owner of the loan to send the borrower a notice that
14 contains information about the account, including the total amount needed to cure the default, and
15 includes information about foreclosure prevention alternatives, among other things. (Nev. Rev. Stat. §
16 107.500). As such, the NOTICE OF DEFAULT was unlawfully recorded and is void *ab initio* and
17 cannot form lawful basis for the subsequent Notice of Trustee's Sale and the Trustee's Deed upon
18 Sale.
19
20
21

22 C. ALYSSA MC DERMOTT, WEDGWOOD INC., BRECKENRIDGE PROPERTY FUND
23 2016 LLC ARE NOT BONAFAIDE PURCHASER BECAUSE DEFENDANTS HAD
24 ACTUAL KNOWLEDGE, CONSTRUCTIVE NOTICE OF, OR REASONABLE CAUSE TO
25 KNOW THAT THERE EXISTS A DEFECIT IN, OR ADVERSE RIGHTS, TITLE OR
26 INTEREST TO, PLAINTIFFS' REAL PROPERTY.

27 Alyssa McDermott, Wedgwood Inc., or Breckenridge Property Fund 2016 LLC cannot be a
28 bona fide purchaser or *encumbrancer for value* through a forged deed, or defective Notice of Default

1 that, as here, did not comport with Nevada Foreclosure law. Plaintiffs' First Amended Complaint has
2 demonstrated that there is a triable issue of fact as to whether the deed conveying Alyssa McDermott,
3 Wedgwood Inc., or Breckenridge Property Fund 2016 LLC 's interest in Plaintiffs' real property was
4 lawful under Nevada Law. Additionally, ALYSSA MC DERMOTT, WEDGWOOD INC., and
5 BRECKENRIDGE PROPERTY FUND 2016 LLC who claimed to have purchased the subject
6 property did NOT purchase the property in good faith because Defendants and each of them had actual
7 knowledge, constructive notice of, or reasonable cause to know that there exists a defect in, or adverse
8 rights, title or interest to, the real property as such Defendants and each of them is NOT a bona fide
9 purchaser of Plaintiffs' real property.
10

11 Plaintiff, Audrey Kramer received a call from Mr. Casey Nelson, who identified himself as in-
12 house counsel for Breckenridge Property Fund 2016, LLC, Defendants had actual knowledge,
13 constructive notice of, or reasonable cause to know that there was litigation between Plaintiffs and
14 Defendant, National Default Servicing Corp as well as JPMorgan Chase Bank and Mortgage
15 Electronic Registration Systems Inc and that there exists a deficit in, or adverse rights, title or interest
16 to, plaintiffs' real property. Further, Defendants, Alyssa McDermott, Wedgwood Inc., and/or
17 Breckenridge Property Fund 2016 LLC had a very substantial inside-relationship with National
18 Default Servicing Corp. (the foreclosing agent of Plaintiffs' property). Mr. Nelson was quite boastful
19 of the knowledge he had in terms of the intimate inter-workings of JPMorgan Chase Bank and
20 National Default Servicing Corp and about the controversy surrounding Plaintiffs' real property, as
21 well as, stating he had completed in excess of 300 transactions with National Default Servicing Corp
22 and JPMorgan Chase Bank. Further, Defendants have refused to respond to Plaintiffs' discovery
23 request that sought to obtain admissible evidence to demonstrate that Defendant, BRECKENRIDGE
24 PROPERTY FUND 2016 LLC and the remaining Defendants had actual knowledge, constructive
25 notice of, or reasonable cause to know that there exists a defect in, or adverse rights, title or interest to,
26 Plaintiffs' real property located at: 1740 Autumn Glen Street, Fernley, NV 89408.
27
28

1 D. PLAINTIFFS HAVE SUFFICIENTLY ALLEGED THAT DEFENDANTS, NATIONAL
2 DEFAULT SERVICING CORPORATION, ALYSSA MC DERMOTT, WEDGWOOD INC.,
3 BRECKENRIDGE PROPERTY FUND 2016 LLC ACTED JOINTLY, AIDED AND
4 ABETTED AND/OR PARTICIPATED IN A CONSPIRACY TO CAUSE THE UNLAWFUL,
5 FRAUDULENT, AND WILLFUL OPPRESSIVE NON-JUDICIAL FORECLOSURE OF
6 PLAINTIFFS' REAL PROPERTY

7 National Default Servicing Corporation and JPMorgan Chase Bank, Alyssa McDermott,
8 Wedgwood Inc., and Breckenridge Property Fund 2016 LLC's fraudulent and racketeering conducts
9 are widespread mandating the intervention of the Offices of States Attorney General across United
10 States. Further, Mr. Casey Nelson, an Officer of the Court, and in-house counsel for Breckenridge is
11 duly aware of the fraudulent and intentional misrepresentation and unlawful conducts of National
12 Default Servicing Corporation and JPMorgan Chase as well as the complicity of in the fraud
13 racketeering conduct by Alyssa McDermott, Wedgwood Inc., and Breckenridge Property Fund 2016
14 LLC which would further be illuminated discovery instruments, such as request for admissions,
15 request for production of documents, interrogatories, and deposition of National Default Servicing
16 Corporation and JPMorgan Chase Bank, Alyssa McDermott, Wedgwood Inc., and Breckenridge
17 Property Fund 2016 LLC.

18 Further, Mr. Casey Nelson informed Plaintiff, Audrey Kramer, via phone that he was very
19 familiar with the foreclosure practices of Chase Bank and NDSC, stating he was involved in 300+
20 foreclosures. Breckenridge is not a bona fide encumbrancer and has **NO** right to Plaintiffs' property.

21 In practice, a complaint must contain either direct or inferential allegations respecting all the
22 material elements to sustain a recovery under some viable legal theory. *Jones v. Sherrill*, 827 F.2d
23 1102, 1103 (6th Cir.1987) citing *Car Carriers, Inc. v. Ford Motor Co.*, 745 F.2d 1101, 1106 (7th
24 Cir.1984) (quoting *In Re: Plywood Antitrust Litigation*, 655 F.2d 627, 641 (5th Cir.1981), cert.
25 dismissed, 462 U.S. 1125, 103 S.Ct. 3100, 77 L.Ed.2d 1358 (1983)), cert. denied, 470 U.S. 1054, 105
26 S.Ct. 1758, 84 L.Ed.2d 821 (1985); see also, 5 C. Wright & A. Miller, *Federal Practice & Procedure* §
27 1216 at 121-23 (1969). The United States Court of Appeals for the Sixth Circuit recently stated:
28

1 [W]e are not holding the pleader to an impossibly high standard; we recognize the policies
2 behind Rule 8 and the concept of notice pleading. A plaintiff will not be thrown out of
court for failing to plead facts in support of every arcane element of his claim..”

3 See also Scheid v. Fanny Farmer Candy Shops, Inc. 859 F.2d 434 (6th Cir.1988); McGregor v.
4 Industrial Excess Landfill, Inc., 856 F.2d 39 (6th Cir.1988), quoting, O'Brian v.DiGrazia, 544 F.2d
5 543, 546 n. 3 (1st Cir.1976).

6 Rule 8(a)(2) does not require detail a plaintiff cannot provide, so a plaintiff should be able to
7 re-plead successfully. *EEOC v. Concentra Health Services, Inc.*, 496 F. 3d 773, 782 (7thCir. 2007).
8

9
10 E. DEFENDANTS' CLAIMED "BARS" AS TO THE ENTIRE ACTION ARE WILDLY
11 OVERSTATED AND IN ESSENCE DO NOT APPLY TO THIS COMPLAINT.

12 Defendants, Alyssa McDermott, Wedgwood Inc., and Breckenridge, posits a few “overarching”
13 theories as to why Plaintiffs’ Complaint should be dismissed. Plaintiffs contend that, none of Alyssa
14 McDermott, Wedgwood Inc., and Breckenridge’s argument bar Plaintiffs’ action. Plaintiffs were not
15 and are not in breach of any Mortgage Note. Furthermore, Plaintiffs were not and are not in breach of
16 any Revolving Line of Credit; as such, Defendants have no standing to cause the non-judicial
17 foreclosure of Plaintiffs’ real property and retirement home. Breckenridge Property Fund 2016 LLC
18 is not a bona fide purchaser of Plaintiffs’ real property because Breckenridge Property Fund 2016 LLC
19 was aware of the dispute and lawsuit pertaining to the Plaintiffs’ real property commonly described as:
20 1740 Autumn Glenn Street in Fernley Nevada, County of Lyon (APN 022-052-02). Further, Plaintiffs
21 challenging the underlying debt’s validity. The Notice of default, notice of Trustee’s sale and the
22 Trustee’ Deed upon sale were defective and unlawfully executed. As such, any subsequent trustee’s
23 sale and the trustee’s deed upon sale are void and unenforceable.
24

25
26 Prejudice. The Complaint adequately alleges fraud and error in the non-judicial foreclosure process,
27 such as recording the notice of the Notice of default, notice of Trustee’s sale and the Trustee’ Deed
28 upon sale by Defendants which are prejudicial to Plaintiffs.

1 **F. PLAINTIFFS' FIRST CAUSE OF ACTION FOR UNLAWFUL FORECLOSURE IS**
2 **ADEQUATELY PLED**

3 Plaintiffs' first cause of action for unlawful foreclosure against the defendants is adequately pled.
4 Plaintiffs were not and are not in breach of any mortgage note and Defendants have no standing to
5 cause the non-judicial foreclosure of Plaintiffs' real property and retirement home. Plaintiffs alleges
6 that a wrongful and unlawful foreclosure of their real property occurred or a power of sale was
7 exercised by Defendants and at the time of foreclosure or exercise of the power of sale, no breach of
8 condition or failure of performance existed that would have authorized such action. See, *Collins v.*
9 *Union Federal Sav. & Loan Ass'n*, 662 P.2d 610, 623 (Nev. 1983).

10 ALYSSA MC DERMOTT, WEDGWOOD INC., AND BRECKENRIDGE PROPERTY
11 FUND 2016 LLC'S are responsible in some manner for the injuries and damages to Plaintiffs so
12 alleged and that such injuries and damages were proximately caused by such Defendants, and each of
13 them. ALYSSA MC DERMOTT, WEDGWOOD INC., AND BRECKENRIDGE PROPERTY
14 FUND 2016 LLC' participated in the illegal, fraudulent, and willful oppressive non-judicial
15 foreclosure sale of Plaintiffs' real property.
16

17 Furthermore, ALYSSA MC DERMOTT, WEDGWOOD INC., and BRECKENRIDGE
18 PROPERTY FUND 2016 LLC who claimed to have purchased the subject property **did NOT** purchase
19 the property in good faith because Defendants and each of them had actual knowledge, constructive
20 notice of, or reasonable cause to know that there exists a defect in, or adverse rights, title or interest to,
21 the real property as such Defendants and each of them **is NOT** a bona fide purchaser of Plaintiffs' real
22 property. Defendants were aware of the dispute and lawsuit pertaining to the Plaintiffs' real property
23 commonly described as: 1740 Autumn Glenn Street in Fernley Nevada, County of Lyon (APN 022-
24 052-02). Additionally, Defendants, Alyssa McDermott, Wedgwood Inc., and Breckenridge were
25 participants in the filing of fraudulent real estate documents which touched and concerns Plaintiffs'
26 real property in their zeal to deprive Plaintiffs' of their pecuniary and beneficial interest in their real
27
28

1 property and retirement home. Moreover, Plaintiffs are challenging the underlying debt's validity.
2 The Notice of Default, Notice of Trustee's Sale and the Trustee' Deed Upon Sale were defective and
3 unlawfully executed. As such, any subsequent trustee's sale and the trustee's deed upon sale are void
4 and unenforceable.

5 Accordingly, Defendants, Alyssa McDermott, Wedgwood Inc., and Breckenridge's Motion to
6 dismiss Plaintiffs' complaint should be denied in its entirety because Plaintiffs' have viable claims
7 against the Defendants and Plaintiffs' First Amended complaint has given Alyssa McDermott,
8 Wedgwood Inc., and Breckenridge and each of them, including National Default Servicing
9 Corporation "fair notice" of what Plaintiffs' claim is and the grounds upon which Plaintiffs' claim for
10 wrongful foreclosure against each of them rests.
11

12
13 **G. PLAINTIFFS' SECOND CAUSE OF ACTION FOR QUIET TITLE AS A DIRECT**
14 **RESULT OF THE UNLAWFUL FORECLOSURE IS ADEQUATELY PLED**

15 Defendants, ALYSSA MC DERMOTT, WEDGWOOD INC., and BRECKENRIDGE PROPERTY
16 FUND 2016 LLC claimed to have purchased the subject property as evidenced in the declarations of
17 Daniel Starling; Lee Anne Chaffin; and of Audrey Kramer filed concurrently herewith, Plaintiffs are
18 entitled to Quiet Tile against ALYSSA MC DERMOTT, WEDGWOOD INC., and BRECKENRIDGE
19 PROPERTY FUND 2016 LLC and each of them.
20

21 In Nevada, a quiet title action may be brought "by any person against another who claims
22 an estate or interest in real property, adverse to the person bringing the action, for the purpose of
23 determining such adverse claim." NEV. REV. STAT. § 40.010. Here, ALYSSA MC DERMOTT,
24 WEDGWOOD INC., and BRECKENRIDGE PROPERTY FUND 2016 LLC and each of them claims
25 an estate or interest in Plaintiffs' real property, adverse to Plaintiffs, as such Plaintiffs are entitle to
26 bring a quiet title action against ALYSSA MC DERMOTT, WEDGWOOD INC., and
27 BRECKENRIDGE PROPERTY FUND 2016 LLC and each of them
28

1 "In a quiet title action, the burden of proof rests with the plaintiff to prove good title in
2 himself." Breliant v. Preferred Equities Corp., 918 P.2d 314, 318 (Nev. 1996). "Additionally, an action
3 to quiet title requires a plaintiff to allege that she has paid any debt owed on the property." Lalwani v.
4 Wells Fargo Bank, N.A., No. 2-11-cv-00084, 2011 WL 4574338, at *3 (D. Nev. Sep. 30, 2011) (citing
5 Ferguson v. Avelo Mortg., LLC, No. B223447, 2011 WL 2139143, at *2 (Cal.App.2d June 1, 2011)).
6 Here, Plaintiffs did not breach any condition of mortgage agreement or revolving line of credit
7 sufficient to permit the non-judicial foreclosure proceedings against them in the State of Nevada as
8 such, Defendants and each of them has no standing to commence the non-judicial foreclosure of
9 Plaintiffs' real property and has no standing to cause the sale of Plaintiffs' real property.
10

11 On or about June 2, 2005, Leo Kramer and Audrey Kramer, the Plaintiffs', as husband and
12 wife, as joint tenants, purchased property located at 1740 Autumn Glenn Street in Fernley Nevada,
13 County of Lyon (APN 022-052-02). The aforementioned property is the subject of Plaintiffs'
14 Complaint. The purchase price of the subject property was \$204,448, whereby, Plaintiffs' made a
15 down payment of approximately 20% (\$40,948) and obtained a mortgage loan from Paul Financial,
16 LLC in the amount of \$163,500, to complete the purchase transaction. Paul Financial, LLC issued
17 Plaintiffs a Deed of Trust accordingly.
18

19 On or about April 4, 2008, Plaintiffs later obtained a Revolving Line of Credit through
20 Washington Mutual Bank (WaMu) with a maximum credit limit of \$176,000. Plaintiffs at no time ever
21 accessed the maximum credit limit of \$176,000, which was contracted in accordance with Plaintiffs'
22 Credit Agreement Contract with WaMu. Within 6 months after Plaintiffs entered into the Credit
23 Agreement with WaMu, the Credit Agreement Contract, was BREACHED by WaMu because
24 Plaintiffs were unable to access the maximum credit limit of \$176,000.
25

26 Plaintiffs were not and are not in breach of any mortgage note. Further, Plaintiffs were not
27 and are not in breach of the Revolving line of credit. Defendants have no standing to cause the non-
28 judicial foreclosure of Plaintiffs' real property and retirement home. Additionally, Breckenridge

1 Property Fund 2016 LLC is not a bona fide purchaser of Plaintiffs' real property because Breckenridge
2 Property Fund 2016 LLC was aware of the dispute and lawsuit pertaining to the Plaintiffs' real
3 property commonly described as: 1740 Autumn Glenn Street in Fernley Nevada, County of Lyon
4 (APN 022-052-02).

5 Accordingly, Defendants, Alyssa McDermott, Wedgwood Inc., and Breckenridge's Motion to
6 dismiss Plaintiffs' First Amended Complaint should be denied in its entirety because Plaintiffs'
7 complaint and cause of action for quiet title has met the standard set forth in Rule 8. Additionally,
8 Plaintiffs' complaint has given Alyssa McDermott, Wedgwood Inc., and Breckenridge and each of
9 them, including National Default Servicing Corporation "fair notice" of what Plaintiffs' claim is and
10 the grounds upon which Plaintiffs' claim for Quiet Title against each of them rests.

12 **H. PLAINTIFFS' THIRD CAUSE OF ACTION FOR SLANDER OF TITLE AS A**
13 **DIRECT RESULT OF THE UNLAWFUL FORECLOSURE IS ADEQUATELY PLED**

14 Defendant, Alyssa McDermott, Wedgwood Inc., and Breckenridge Property Fund 2016 LLC
15 and National Default Servicing Corporation made false and malicious communications claiming that
16 Plaintiffs were indebted to JPMorgan Chase Bank when Defendants knew such statements to be false.
17 The truth is that Plaintiffs are not indebted to JPMorgan Chase Bank in any way. Plaintiffs contend
18 that a wrongful and unlawful foreclosure of their real property occurred or a power of sale was
19 exercised by Defendants and at the time of foreclosure or exercise of the power of sale, no breach of
20 condition or failure of performance existed that would have authorized such action. See, *Collins v.*
21 *Union Federal Sav. & Loan Ass'n*, 662 P.2d 610, 623 (Nev. 1983). Plaintiffs did not breach any
22 condition of mortgage agreement or revolving line of credit sufficient to permit the non-judicial
23 foreclosure proceedings against them in the State of Nevada.

26 Alyssa McDermott, Wedgwood Inc., and Breckenridge Property Fund 2016 LLC and National
27 Default Servicing Corporation Disparaged Plaintiffs' right in land by recording fraudulent NOTICE of
28 Default, Notice of Trustee's Sale and Trustee's Deed Upon Sale in public land. These fraudulent real

1 estate documents formed the basis for the unlawful and wrongful foreclosure of Plaintiffs' real
2 property. Defendants' conduct were the direct and proximate result in Plaintiffs' the defamation of
3 Plaintiffs in the state of Nevada and other injuries sustained by Plaintiffs according to proof at trial. In
4 the State of Nevada, claim for Slander of Title met when Defendants as here, makes false and
5 malicious communications; Disparaging to one's rights in land; and Plaintiff is damaged. Please see,
6 Robinson v. Ocwen Loan Servicing, LLC, Case No. 2:10-CV-321 JCM , 2010 WL 2834895, *2 (D.
7 Nev. 2010); Exec. Mgt., Ltd. v. Ticor Title Ins. Co., 962 P.2d 465, 478 (Nev. 1998).

8
9 Further, in Sumner Hill Homeowners' Association v. Rio Mesa Holdings, LLC, 205 Cal. App.
10 4th 999 (2012), the court observed: "The elements of the tort are (1) a publication, (2) without privilege
11 or justification, (3) falsity, and (4) direct pecuniary loss." Id. at 1030. Any claim by Defendants that
12 some privilege attaches to the recording of the Notices of Default and Notice of Sale is conditional at
13 best and cannot be resolved on demurrer. Gudger v. Menton, 21 Cal. 2d 537, 545 (1943). Here,
14 Alyssa McDermott, Wedgwood Inc., and Breckenridge Property Fund 2016 LLC and National Default
15 Servicing Corporation Disparaged Plaintiffs' right to their real property and Defendants did so without
16 any right or privilege. The Notice of Default, Notice of Trustee's Sale and the Trustee' Deed Upon
17 Sale were defective and unlawfully executed and unduly put cloud on the Title of Plaintiffs' real
18 property. As such, any subsequent trustee's sale and the trustee's deed upon sale are VOID AB
19 INITIO and unenforceable.

20
21 **I. PLAINTIFFS' FOURTH CLAIM DECLARATORY RELIEF AS A DIRECT**
22 **RESULT OF THE UNLAWFUL FORECLOSURE IS ADEQUATELY PLED**

23
24 Plaintiffs contend that a wrongful and unlawful foreclosure of their real property occurred or
25 a power of sale was exercised by Defendants and at the time of foreclosure or exercise of the power of
26 sale, no breach of condition or failure of performance existed that would have authorized such action.
27 See, Collins v. Union Federal Sav. & Loan Ass'n, 662 P.2d 610, 623 (Nev. 1983).

1 Injunctive and declaratory relief are remedies, not independent causes of action. Parker v.
2 Greenpoint Mortg. Funding Inc., No. 3:11-[SEP]cv-00039-ECR-RAM, 2011 WL 2923949, at *5 (D.
3 Nev. Jul. 15, 2011); In [SEP] Wal-Mart Wage & Hour Emp't Practices Litig., 490 F.Supp.2d 1091,
4 [SEP] 1130 (D. Nev. 2007). Here, an actual controversy has arisen and now exists between Plaintiffs and
5 Defendants concerning their respective rights and duties regarding the Note and Trust Deed. Plaintiffs
6 contend that Defendants are not bona fide purchasers of Plaintiffs' real property and had no standing
7 to institute the non-judicial foreclosure of Plaintiffs' real property with National Default Servicing
8 Corporation. Plaintiffs therefore request a judicial determination of the rights, obligations and interest
9 of the parties with regard to the Property, and such determination is necessary and appropriate at this
10 time under the circumstances so that all parties may ascertain and know their rights, obligations and
11 interests with regard to the Property. Plaintiffs request a determination of the validity of the Trust
12 Deeds as of the date the Notes were assigned without a concurrent assignment of the underlying Trust
13 Deeds. Plaintiffs request a determination of the validity of the NOD (Notice of Default). Plaintiffs
14 request a determination of whether any Defendants have authority to foreclose on the Property.
15 Plaintiffs request all adverse claims to the real property must be determined by a decree of this court.
16 Plaintiffs request the decree declare and adjudge that plaintiff is entitled to the exclusive possession of
17 the property. Plaintiffs request the decree declare and adjudge that plaintiffs owns in fee simple, and is
18 entitled to the quiet and peaceful possession of, the above-described real property. Plaintiffs request
19 the decree declare and adjudge that defendants, and each of them, and all persons claiming under
20 them, have no estate, right, title, lien, or interest in or to the real property or any part of the property.
21
22
23

24 Plaintiffs' Fourth Cause of action for Declaratory Relief as direct result of the unlawful non-
25 judicial foreclosure of Plaintiffs' real property are adequately pled. Accordingly, Defendants, Alyssa
26 McDermott, Wedgwood Inc., and Breckenridge's Motion to dismiss Plaintiffs' complaint should be
27 denied in its entirety because Plaintiffs' complaint and cause of action for Preliminary Injunction and
28 Declaratory Relief have met the standard set forth in Rule 8. Additionally, Plaintiffs' complaint has

1 given Alyssa McDermott, Wedgwood Inc., and Breckenridge and each of them, including National
2 Default Servicing Corporation "fair notice" of what Plaintiffs' claim is and the grounds upon which
3 Plaintiffs' claim against each of them rests.
4

5 **J. PLAINTIFFS' FIFTH CAUSE OF ACTION FOR CANCELLATION OF WRITTEN**
6 **INSTRUMENTS- SOT, NOD, NTS, and TDUS IS ADEQUATELY PLED**

7 Plaintiffs were NOT given Notice of Default prior to conducting the non-judicial foreclosure of
8 Plaintiffs' real property. Further, in conducting the Sale of Plaintiffs' real property, National Default
9 Servicing Corporation failed to give Plaintiffs Notice of the Default and failed to adhere to Nev. Rev.
10 Stat. § 107.090 which requires that a copy of the Notice of Default (NOD) must be sent to each person
11 who has a recorded request for a copy and each person with an interest or claimed interest in the
12 property by registered or certified mail within ten days after the NOD is recorded. (Nev. Rev. Stat. §
13 107.090). Furthermore, Plaintiffs contend that the service of this Notice of Default failed to comply
14 with the requirements of Nevada law, which requires the servicer or owner of the loan to send the
15 borrower a notice that contains information about the account, including the total amount needed to
16 cure the default, and includes information about foreclosure prevention alternatives, among other
17 things. (Nev. Rev. Stat. § 107.500). The unlawful Notice of Default formed the basis for the
18 subsequent Notice of Trustee's Sale and Trustee's Deed Upon Sale of Plaintiffs' real property. As
19 such, the alleged sale of Plaintiffs' real property was unlawful and void *ab initio* and the purported sale
20 of Plaintiffs' real property has no enforceable legal status and any legal document that is taken to have
21 conveyed or assigned any interest in Plaintiffs' real property to Defendants, ALYSSA MC
22 DERMOTT, WEDGWOOD INC., or BRECKENRIDGE PROPERTY FUND 2016 LLC, was never
23 valid or enforceable from the start, or from the moment of its purported existence.
24
25

26 If the wrongfully recorded substitution of trustee (SOT), Notice of Default (NOD), and
27
28

1 Notice of trustee's sale (NTS), Trustee's Deed Upon Sale, (TDUS), instruments are left outstanding,
2 Plaintiff will continue to suffer loss and damages. Plaintiff therefore seeks cancellation of the above
3 mentioned recorded instruments. Plaintiff is informed and believes, and therefore contend, that
4 NATIONAL DEFAULT SERVICING CORPORATION, ALYSSA MC DERMOTT, WEDGWOOD
5 INC., and BRECKENRIDGE PROPERTY FUND 2016 LLC acted willfully and with a conscious
6 disregard for Plaintiffs' rights and with a specific intent to injure Plaintiff, by causing the above
7 documents to be prepared and recorded without a factual or legal basis for doing so. On information
8 and belief, these acts by Defendants constitute willful oppression and malice and in violation ,Nev.
9 Rev. Stat. § 107.500; Nev. Rev. Stat. § 107.090; NRS 205.395 and other Nevada Foreclosure Laws by
10 virtue of Defendants' willful and wrongful conduct as herein alleged above, Plaintiffs are entitled to
11 general and special damages according to proof at trial, but not less than \$1,065,050. 00 as well as
12 punitive and exemplary damages as determined by this Court.
13

14 Additionally, Defendants, ALYSSA MC DERMOTT, WEDGWOOD INC., and
15 BRECKENRIDGE PROPERTY FUND 2016 LLC who claimed to have purchased the subject
16 property as evidenced in the declarations of Daniel Starling; Lee Anne Chaffin; and of Audrey Kramer
17 filed concurrently herewith. ALYSSA MC DERMOTT, WEDGWOOD INC., and BRECKENRIDGE
18 PROPERTY FUND 2016 LLC who claimed to have purchased the subject property **did NOT**
19 purchase the property in good faith because Defendants and each of them had actual knowledge,
20 constructive notice of, or reasonable cause to know that there exists a defect in, or adverse rights, title
21 or interest to, the real property as such Defendants and each of them **is NOT** a bona fide purchaser of
22 Plaintiffs' real property. Further, Defendants have refused to respond to Plaintiffs' discovery request
23 that sought to obtain admissible evidence to demonstrate that Defendant, BRECKENRIDGE
24 PROPERTY FUND 2016 LLC and the remaining Defendants had actual knowledge, constructive
25 notice of, or reasonable cause to know that there exists a defect in, or adverse rights, title or interest to,
26 Plaintiffs' real property located at: 1740 Autumn Glen Street, Fernley, NV 89408. As such,
27
28

1 Defendants, ALYSSA MC DERMOTT, WEDGWOOD INC., and BRECKENRIDGE PROPERTY
2 FUND 2016 LLC's motion to dismiss Plaintiffs' Complaint should be denied in its entirety.
3
4

5 IV
6 CONCLUSION

7 For the foregoing reasons, Plaintiff respectfully request this Court deny Defendants, Alyssa
8 McDermott, Wedgwood Inc., and Breckenridge's motion to dismiss or in the alternative grant
9 Plaintiffs leave to amend the First Amended Complaint.
10

11 Date: 12/19/2018
12

Date: 12/19/18

13 Leo Kramer
14 Leo Kramer, Pro se
15

Audrey Kramer
Audrey Kramer, Pro se
16
17
18
19
20
21
22
23
24
25
26
27
28

PLAINTIFFS IN PRO PER.

THIRD JUDICIAL DISTRICT COURT
LYON COUNTY, NEVADA

LEO KRAMER,
AUDREY KRAMER,

Plaintiffs,

vs.

NATIONAL DEFAULT SERVICING CORPORATION, ALYSSA MC DERMOTT, WEDGWOOD INC., BRECKENRIDGE PROPERTY FUND 2016 LLC, and DOES 1 THROUGH 50 INCLUSIVE,

Defendants.

Case No.: 18-CV-00663

DECLARATION OF AUDREY KRAMER IN
SUPPORT OF PLAINTIFFS' OPPOSITION
TO DEFENDANTS, ALYSSA MC
DERMOTT, WEDGWOOD INC., AND
BRECKENRIDGE PROPERTY FUND 2016
LLC'S MOTION TO DISMISS PLAINTIFFS'
FIRST AMENDED COMPLAINT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF;
DECLARATION OF DANIEL STARLING;
DECLARATION OF LEE ANNE CHAFFIN;
AND DECLARATION OF AUDREY
KRAMER FILED CONCURRENTLY
HEREWITH;

Date: TBA
Time: TBA
Dept: 1

DECLARATION OF AUDREY KRAMER

1 I, **AUDREY KRAMER** declare as follows:

- 2 1. I am over the age of 18 years.
- 3 2. I have personal knowledge of the above entitled matter and if called as a witness, I could
4 and would competently testify thereto.
- 5 3. I make this declaration in support of the attached or above motion to dismiss filed by
6 defendant, Breckenridge Property Fund 2016 LLC.
- 7 4. Plaintiffs' cause of action for unlawful foreclosure is a new cause of action that could not
8 have been included in the First complaint filed by Plaintiffs.
- 9 5. Plaintiffs were not and are still not in breach of the alleged \$176,000.00 revolving line of
10 credit that plaintiffs obtained from Washington Mutual Bank (WAMU).
- 11 6. Plaintiffs do not owe anything to Washington Mutual Bank, JPMorgan Chase Bank or any
12 of the Defendants in this lawsuit.
- 13 7. Plaintiffs could not and did not use the entire maximum credit limit amount of \$176,000.00
14 of the revolving line of credit.
- 15 8. Per the credit agreement, Plaintiffs were contracted to access up to \$176,000.00 of the
16 revolving line of credit, but could not and did not do so because WAMU Bank became
17 defunct, whereby Plaintiffs could not re-use the revolving line of credit as the credit
18 agreement contract provided. Thus, it was WAMU Bank who breached the credit
19 agreement, not Plaintiffs.
- 20 9. Neither JPMORGAN CHASE BANK nor WAMU BANK funded plaintiffs' initial
21 mortgage note and as such they have no standing to cause National Default Servicing
22 Corporation to sell Plaintiffs' real property.
- 23 10. On or about May 29, 2018, I was notified by our property management company, Chaffin
24 Real Estate Services, that our tenants residing in our property (1740 Autumn Glen, Fernley,
25 NV) were receiving harassing phone calls, notices and text messages from a person named
26 Alyssa McDermott claiming she was the purchaser and new owner of the subject property.
27 Ms. McDermott requested the tenants provide her with a copy of their lease. The tenants
28 stated they directed Ms. McDermott to contact the property management company and
provided contact information accordingly.
11. After being informed of this matter, as mentioned above, I contacted Western Title
Company in Fernley, NV and spoke with Ms. Kara Peterson. Upon doing a thorough
search, Ms. Peterson informed me that she did not see any recorded documentation of a sale
of our property.
12. On or about May 30, 2018, I called and left a voice message for Ms. Alyssa McDermott.
Ms. McDermott returned my call later that same day and informed me that she had
purchase our property at a foreclosure sale and was now the new owner. I told Ms.
McDermott no such sale had been recorded against our property and asked when she

1 purchased the property. Ms. McDermott replied, "Last Friday". I asked her the specific
2 date and she could not recall the actual date of the sale. I informed Ms. McDermott that she
3 should be aware there is pending litigation on the subject property currently in the '9th
Circuit Court of Appeals San Francisco'. Ms. McDermott replied, "That's fine", and then
hung up on me. I have had no further communications with Ms. McDermott.

4 13. On or about June 11, 2018, our property management company forwarded an email from
5 Mr. Casey Nelson, stating he was in-house counsel for Breckenridge Property Fund 2016,
6 LLC, who was allegedly the owner of the subject property. The following day I sent, via
email, a Cease & Desist letter to Mr. Nelson. **SEE EXHIBIT J (CEASE & DESIST
LETTER)**

7
8 14. On or about June 12, 2018, I received a phone call, followed up with an email, from Mr.
9 Casey Nelson, who identified himself as in-house counsel for Breckenridge Property Fund
10 2016, LLC. Mr. Nelson acknowledged in the phone call and in his email that he was in
11 receipt of our Cease & Desist letter and our complaint. Mr. Nelson asked that we drop
12 Alyssa McDermott and Wedgewood Inc. from our Complaint, stating that neither, Ms.
13 McDermott or Wedgewood Inc., has a monetary interest in the property. I informed Mr.
14 Nelson that Ms. McDermott had presented herself to me, our property manager and our
15 tenants that she was the purchaser and new owner of the property, and that at no time did
16 Ms. McDermott ever identify herself as an employee or representative of Breckenridge. I
17 did however tell Mr. Nelson that if he would give us a written affidavit affirming that Ms.
18 McDermott and Wedgewood Inc. did not have a monetary interest in the subject property
19 that we would drop them from our complaint. I also stated that if we found this assertion to
20 be false we reserved the right to amend our complaint accordingly. **SEE EXHIBIT D**
21 Mr. Nelson also told me that he had overseen in excess of 300 + purchase transactions and
22 was intimately familiar with JPMorgan Chase Bank & National Default Servicing
23 foreclosure sales. Mr. Nelson stated that Ms. McDermott and Wedgewood, of which he
24 represents as in-house counsel, should be dropped from Plaintiffs' complaint because they
25 were not party to Chase Bank or NDSC, further stating, "*Ms. McDermott was simply the*
26 *representative that appeared at the public foreclosure sale and placed the winning bid on*
27 *behalf of Breckenridge*". However, it is clear to Plaintiffs there is a intimate knowledge
28 and long standing relationship between Chase Bank, NDSC, Breckenridge, Wedgewood
Inc., Ms. McDermott and Mr. Nelson, not only by Mr. Nelson's own assertion on the phone
to me, but also evidenced by copies of checks Ms. McDermott presented to our tenants on
May 30, 2018. There were (4) checks, all drawn prior to the actual auction sale date of
May 18, 2018. It is evident that Ms. McDermott had inside information and did not appear
at the actual foreclosure auction on the court house steps. **SEE EXHIBIT G RE (4)**
CASHIER CHECKS: 5/10/2018 for \$100,000, 5/17/2018 for \$100,000, 5/17/18 for \$5,000
& 5/17/2018 for \$10,000.

1 I declare under penalty of perjury under the laws of the United States of America and under the
2 laws of the State of Nevada that the foregoing is true and correct.

3 Executed: on 12/19/18, at Contra Costa County, State of California

4 Audrey Kramer
5 AUDREY KRAMER
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

THIRD JUDICIAL DISTRICT COURT
LYON COUNTY, NEVADA

LEO KRAMER,
AUDREY KRAMER,

Plaintiffs,

vs.

NATIONAL DEFAULT SERVICING
CORPORATION, ALYSSA MC DERMOTT,
WEDGWOOD INC., BRECKENRIDGE
PROPERTY FUND 2016 LLC, and DOES 1
THROUGH 50, INCLUSIVE,

Defendants.

Case No.: 18-CV-00663

[PROPOSED] ORDER DENYING
DEFENDANTS, ALYSSA MC DERMOTT,
WEDGWOOD INC., BRECKENRIDGE
PROPERTY FUND 2016 LLC'S MOTION TO
DISMISS PLAINTIFFS' FIRST AMENDED
COMPLAINT

The Court has considered Plaintiffs opposition to Defendant, ALYSSA MC DERMOTT,
WEDGWOOD INC., BRECKENRIDGE PROPERTY FUND 2016 LLC's motion to dismiss
Plaintiffs First Amended Complaint.

IT IS HEREBY ORDERED that, good cause appearing, Defendants, ALYSSA MC DERMOTT,
WEDGWOOD INC., BRECKENRIDGE PROPERTY FUND 2016 LLC's, Motion to dismiss
Plaintiffs First Amended complaint is hereby **DENIED**.

IT IS SO ORDERED.

DATED: _____, 2018

The Hon. _____

JUDGE THIRD JUDICIAL DISTRICT COURT

PROOF OF SERVICE

The UPS Store

1511 Sycamore Ave. Ste M
Hercules, CA 94547
store2796@theupsstore.com



STATE OF CALIFORNIA)
) SS:
COUNTY OF ALAMEDA)

I am employed in the County of Contra Costa, State of California. I am over the age of 18 and not a party to the within action; my business address is _____
On December 20, 2018, I served the foregoing document entitled:

PLAINTIFFS' OPPOSITION TO DEFENDANTS, ALYSSA MC DERMOTT, WEDGWOOD INC., AND BRECKENRIDGE PROPERTY FUND 2016 LLC'S MOTION TO DISMISS PLAINTIFFS' FIRST AMENDED COMPLAINT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF; DECLARATION OF DANIEL STARLING; DECLARATION OF LEE ANNE CHAFFIN; AND DECLARATION OF AUDREY KRAMER FILED CONCURRENTLY HERewith;

FURTHER; PLAINTIFFS REQUEST DISCOVERY IN THIS MATTER

on all parties in this action as follows:

PLEASE SEE ATTACHED SERVICE LIST

X **Mail.** By placing a true copy thereof enclosed in a sealed envelope. I am "readily familiar" with the firm's practice of collection and processing for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with first class postage thereon fully paid at Alameda, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or the postage meter is more than one day after day of deposit for mailing in this Proof of Service.

____ **By Telefax.** I transmitted said document by telefax to the offices of the addressees at the telefax numbers on the attached Service List.

____ **By Personal Service.** I delivered such envelope by hand to the addressee(s).

____ **By Overnight Courier.** I caused the above-referenced document(s) to be delivered to an overnight courier service for next day delivery to the addressee(s) on the attached Service List.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on December 20, 2018 at Hercules, California.

Corina DiGrazia

Name of Declarant

Signature of Declarant

CERTIFICATE OF SERVICE LIST:

John T. Steffen
Mathew K. Schriever
Hutchison & Steffen
1008 West Alta Drive, Suite 200
Las Vegas, NV 89145

Casey J. Nelson
Wedgewood, LLC
2320 Potosi Street, Suite 130
Las Vegas, Nevada 89146

Attorneys for Defendants,
ALYSSA MC DERMOTT, WEDGWOOD INC., BRECKENRIDGE PROPERTY FUND 2016 LLC

Kevin S. Soderstrom
Tiffany & Bosco, P.A.
10100 W. Charleston Boulevard, Ste. 220
Las Vegas, NV 89107

Attorneys for Defendant,
NATIONAL DEFAULT SERVICING CORPORATION

EXHIBIT LIST:

- A- WASHINGTON MUTUAL CREDIT AGREEMENT-DEED OF TRUST DOCUMENT
- B- EMAIL FROM IN-HOUSE COUNSEL FOR BRECKENRIDGE, CASEY NELSON
- C- DECLARATIONS OF: AUDREY KRAMER-PLAINTIFF; LEE ANNE CHAFFIN-PLAINTIFFS' PROP. MGT.; DANIEL STARLING-PLAINTIFFS' TENANT
- D- PLAINTIFF, AUDREY KRAMER'S REPLY EMAIL TO CASEY NELSON-IN-HOUSE COUNSEL FOR BRECKENRIDGE
- E--CHASE 'FRAUDULENT' SELF-FABRICATED ASSIGNMENT
- F- ARTICLES REGARDING FINES AGAINST CHASE FOR FRAUD, ROBO-SIGNING & UNLAWFUL FORECLOSURES
- G- BRECKENRIDG PURCHASING DOCUMENTS INCLUDING PARTIAL PHOTO COPIES OF PURCHASING CHECKS
- H- NATIONAL DEFAULT SERVICING CORP. -NOTICE OF DEFAULT
- I- OUTLINE OF SUBJECT PROERTY TITLE DOCUMENTS FOR:
1740 AUTUMN GLEN STREET, FERNLEY, NV
- J- CEASE & DESIST LETTER TO BRECKENRIDGE

A

WASHINGTON MUTUAL CREDIT AGREEMENT-
DEED OF TRUST DOCUMENT

A

DOC # 425436

05/01/2008

02 11 PM

Official Record

Requested By
TICOR TITLE CO OF CA

Lyon County - NV

Mary C Milligan - Recorder

Page 1 of 10 Fee \$48.00

Recorded By NCM RPTT



0425436

APN: 22-052-02

The undersigned hereby affirms that there is no
Social Security Number contained in this document

Recording requested by and
when recorded return to
250 COMMERCE
2ND FLOOR
IRVINE, CA 92602
ATTN: SERVICELINK

APN SEE EXHIBIT 'A'



Washington
Mutual

WaMu Mortgage Plus

DEED OF TRUST

Loan Number 0792726861

THIS DEED OF TRUST is between
LEO F. KRAMER AND AUDREY E. KRAMER

whose address is

1740 AUTUMN GLEN ST. FERNLEY, NV 89408-7204

("Grantor"), CALIFORNIA RECONVEYANCE COMPANY a CALIFORNIA
corporation, the address of which is

9200 OAKDALE AVENUE CHATSWORTH, CA 91311

("Trustee"); and

WASHINGTON MUTUAL BANK, A FEDERAL ASSOCIATION, WHICH IS ORGANIZED AND
EXISTING UNDER THE LAWS OF THE UNITED STATES OF AMERICA AND WHOSE ADDRESS
IS 2273 N GREEN VALLEY PARKWAY, SUITE #14, HENDERSON, NV 89014 ("BENEFICIARY")
AND ITS SUCCESSORS OR ASSIGNS

1 Granting Clause Grantor hereby grants, bargains, sells and conveys to Trustee in
trust, with power of sale, the real property in LYON County, Nevada,
described below and all interest in it Grantor ever gets
SHOWN ON EXHIBIT 'A' ATTACHED HERETO AND MADE A PART HEREOF BY THIS
REFERENCE 1740 AUTUMN GLEN ST, FERNLEY, NV 89408 LYON

ACCOMMODATION ONLY THIS INSTRUMENT FILED FOR RECORD
BY TICOR TITLE COMPANY IS AN ACCOMMODATION
ONLY IT HAS NOT BEEN EXAMINED AS TO ITS EXECUTION
OR AS TO ITS EFFECTS UPON TITLE

580005539

Tax Parcel Number: SEE EXHIBIT 'A' together with all
appurtenances, insurance proceeds, and condemnation proceeds related to it; all income, rents

4387 (07/02/07) w8 4

Page 1 of 7

0792726861

and profits from it, all plumbing, lighting, air conditioning and heating apparatus and equipment, and all fencing, blinds, drapes, floor coverings, built-in appliances and other fixtures at any time installed on or in or used in connection with such real property

All of the property described above will be called the "Property" If any of the Property is personal property, this Deed of Trust is also a Security Agreement which grants Beneficiary, as secured party, a security interest in all such property Despite any other provision of this Deed of Trust, however, Beneficiary is not granted and will not have, a nonpurchase money security interest in household goods, to the extent such security interest would be prohibited by applicable law As used herein "State" shall refer to the state of Nevada

2 **Obligation Secured** This Deed of Trust is given to secure performance of each promise of Grantor contained herein and in a WaMu Mortgage Plus(TM) Agreement and Disclosure with Beneficiary with a maximum credit limit of \$176,000.00 (the "Credit Agreement"), including any extensions, renewals or modifications thereof and repayment of all sums borrowed by Grantor under the Credit Agreement, with interest from the date of each advance until paid at the rates provided therein. The Credit Agreement provides for variable and fixed rates of interest. Under the Credit Agreement, the Grantor may borrow, repay and re-borrow from time to time, up to the maximum credit limit stated above and all such advances shall be secured by the lien of this Deed of Trust. This Deed of Trust also secures payment of certain fees and charges payable by Grantor under the Credit Agreement, certain fees and costs of Beneficiary as provided in Section 9 of this Deed of Trust and repayment of money advanced by Beneficiary to protect the Property or Beneficiary's interest in the Property, including advances made pursuant to Section 6 below. The Credit Agreement provides that unless sooner repaid, the Debt is due and payable in full thirty (30) years from the date of this Deed of Trust (the "Maturity Date"). All amounts due under the Credit Agreement and this Deed of Trust are called the "Debt".

3 Representations of Grantor (Grantor represents that

(a) Grantor is the owner of the Property, which is unencumbered except by easements, reservations and restrictions of record not inconsistent with the intended use of the Property and any existing first mortgage or deed of trust given in good faith and for value, the existence of which has been disclosed in writing to Beneficiary, and

(b) ~~The Property is not presently and will not during the term of this Deed of Trust be used for any agricultural purposes.~~

4 Promises of Grantor Grantor promises

(a) To keep the Property in good repair and not to remove, alter or demolish any of the improvements on the Property, without first obtaining Beneficiary's written consent,

(b) To allow representatives of Beneficiary to inspect the Property at any reasonable hour and to comply with all laws, ordinances, regulations, covenants, conditions and restrictions affecting the Property.

(c) To pay on time all lawful taxes and assessments on the Property,

(d) To perform on time all terms, covenants and conditions of any prior mortgage or deed of trust covering the Property or any part of it and pay all amounts due and owing thereunder in a timely manner.

(e) To see to it that this Deed of Trust remains a valid lien on the Property superior to all liens except those described in Section 3(a) and to keep the Property free of all encumbrances which may impair Beneficiary's security. It is agreed that if anyone asserts the priority of any



0792726861

encumbrance other than those described in Section 3(a) over this Deed of Trust in any pleading filed in any action, the assertion alone shall be deemed to impair the lien of this Deed of Trust for purposes of this Section 4(e).

(f) To keep the improvements on the Property insured by a company satisfactory to Beneficiary against fire and extended coverage perils and against such other risks as Beneficiary may reasonably require, in an amount equal to the full insurable value of the improvements, and to deliver evidence of such insurance coverage to Beneficiary. Beneficiary shall be named as the loss payee on all such policies pursuant to a standard lender's loss payable clause. The amount collected under any insurance policy may be applied upon any indebtedness hereby secured in the same manner as payments under the Note or, at Beneficiary's sole option, released to Grantor. In the event of foreclosure or sale of the Property pursuant to the Trustee's power of sale, all rights of the Grantor in insurance policies then in force shall pass to the purchaser at the Sheriff's or Trustee's sale.

(g) To sign all financing statements and other documents that Beneficiary may request from time to time to perfect, protect and continue Beneficiary's security interest in the Property. Grantor irrevocably appoints Beneficiary as Grantor's attorney-in-fact to execute, file and record any financing statements or similar documents in Grantor's name and to execute all documents necessary to transfer title if there is a default, and

(h) To advise Beneficiary immediately in writing of any change in Grantor's name, address or employment.

5 Sale, Transfer or Further Encumbrance of Property. Loan is personal to Grantor and the entire Debt shall become immediately due and payable in full upon sale or other transfer of the Property or any interest therein by Grantor by contract of sale or otherwise including, without limit, any further encumbrance of the Property.

6 Curing of Defaults. If Grantor fails to comply with any of the covenants in Section 4, including all the terms of any prior mortgage or deed of trust, Beneficiary may take any action required to comply with any such covenants without waiving any other right or remedy it may have for Grantor's failure to comply. Repayment to Beneficiary of all the money spent by Beneficiary on behalf of Grantor shall be secured by this Deed of Trust, at Beneficiary's option, advance may be made against the Credit Agreement to pay amounts due hereunder, such shall not relieve Beneficiary from liability for failure to fulfill the covenants in Section 4. The amount spent shall bear interest at the rates from time to time applicable under the Credit Agreement and be repayable by Grantor on demand. Although Beneficiary may take action under this paragraph, Beneficiary is not obligated to do so.

7 Remedies For Default

(a) Prompt performance under this Deed of Trust is essential. If Grantor does not pay any installment of the Debt or other amount due hereunder on time or any other event occurs that entitles Beneficiary to declare the unpaid balance of the Debt due and payable in full under the Credit Agreement or if Grantor fails to comply with any other term, condition, obligation or covenant contained in the Credit Agreement or this Deed of Trust or any rider thereto or any other deed of trust, mortgage, trust indenture or security agreement or other instrument having priority over this Deed of Trust or if any representation of Grantor herein was false or misleading, the Debt and any other money whose repayment is secured by this Deed of Trust shall immediately become due and payable in full, at the options of Beneficiary and the total amount owed by Grantor shall thereafter bear interest at the rate(s) stated in the Credit Agreement. The parties agree that interest is to be compounded as set forth in this paragraph. Beneficiary may



0792726861

then or thereafter advise Trustee of the default and of Beneficiary's election to have the Property sold pursuant to Trustee's power of sale in accordance with applicable law and deliver to Trustee any documentation as may be required by law. After Trustee or Beneficiary gives any notices and the time required by applicable law, Trustee shall sell the Property, either in whole or in separate parcels or other part and in such order as Trustee may choose, at public auction to the highest bidder for cash in lawful money of the United States which will be payable at the time of sale all in accordance with applicable law. Anything in the preceding sentence to the contrary notwithstanding, Beneficiary may apply the Debt towards any bid at any such sale. Trustee may postpone any such sale by providing such notice as may be required by law. Unless prohibited by law, any person, including the Grantor, Beneficiary or Trustee, may purchase at any such sale. Trustee shall apply the proceeds of the sale as follows: (i) to the expenses of the sale, including a reasonable trustee's fee and lawyer's fee, (ii) to the obligations secured by this Deed of Trust, and (iii) the surplus, if any, shall go to the person(s) legally entitled thereto or, at Trustee's discretion, to the government or other official authorized by state law to accept such amounts.

(b) Trustee shall deliver to the purchaser at the sale its deed, without warranty, which shall convey to the purchaser the interest in the Property which Grantor had or had the power to convey at the time of execution of this Deed of Trust and any interest which Grantor subsequently acquired. The Trustee's deed shall recite the facts showing that the sale was conducted in compliance with all the requirements of law and of this Deed of Trust. This recital shall be prima facie evidence of such compliance and conclusive evidence of such compliance in favor of bona fide purchasers and encumbrancers for value.

(c) To the extent permitted by law the power of sale conferred by this Deed of Trust is not an exclusive remedy. Beneficiary may cause this Deed of Trust to be judicially foreclosed or sue on the Credit Agreement or take any other action available in equity or at law. In connection with any portion of the Property which is personal property, Beneficiary shall further be entitled to exercise the rights of a secured party under the Uniform Commercial Code as then in effect in the state of Nevada.

(d) By accepting payment of any sum secured by this Deed of Trust after its due date, Beneficiary does not waive its right to require prompt payment when due of all other sums so secured or to declare default for failure to so pay, and

(e) If Grantor meets certain conditions, Grantor shall have the right to reinstate the Debt in accordance with applicable law within thirty-five (35) days after a notice of default and election to sell is recorded in the office of the county recorder in the county in which the Property is located and mailed by registered or certified mail, return receipt requested and with postage prepaid to Grantor, which thirty-five (35) day period commences on the first day following the day the recorded notice of default and election to sell is mailed.

8 Condemnation; Eminent Domain In the event any portion of the Property is taken or damaged in an eminent domain proceeding, the entire amount of the award or such portion as may be necessary to fully satisfy the obligation secured by this Deed of Trust, shall be paid to Beneficiary to be applied to the obligation in the same manner as payments under the Credit Agreement.

9 Fees and Costs Grantor shall pay Beneficiary's and Trustee's reasonable cost of searching records, other reasonable expenses as allowed by law and reasonable attorney's fees, in any lawsuit or other proceeding to foreclose this Deed of Trust, in any lawsuit or proceeding which Beneficiary or Trustee prosecutes or defends to protect the lien of this Deed of Trust, in defending of an action to enjoin foreclosure and, in any other action taken by Beneficiary to

collect the Debt, including without limitation any disposition of the Property under the State Uniform Commercial Code; and, any action taken in bankruptcy proceedings as well as any appellate proceedings

11 **Trustee; Successor Trustee** Beneficiary may, unless prohibited by law, appoint a successor Trustee from time to time in the manner provided by law. The successor trustee shall be vested with all powers of the original trustee. The Trustee is not obligated to notify any party hereto of a pending sale under any other deed of trust or of any action or proceeding in which Grantor, Trustee or Beneficiary shall be a party unless such action or proceeding is brought by the Trustee.

13 Miscellaneous This Deed of Trust shall benefit and obligate the heirs, devisees, legatees, administrators, executors, successors and assigns of the parties hereto. The term "Beneficiary" shall mean the holder and owner of the Credit Agreement secured by this Deed of Trust, whether or not that person is named as Beneficiary herein. The words used in this Deed of Trust referring to one (1) person shall be read to refer to more than one (1) person if two (2) or more have signed this Deed of Trust or become responsible for doing the things this Deed of Trust requires. This Deed of Trust shall be governed by and construed in accordance with Federal law and, to the extent Federal law does not apply, the laws of the state of Nevada. If any provision of this Deed of Trust is determined to be invalid under law, the remaining provisions of this Deed of Trust shall nonetheless remain in full force and effect.

15 **Riders.** If one or more riders are executed by Grantor and recorded together with this Security Instrument, the covenants and agreements of each such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Security Instrument as if the rider(s) were a part of this Security Instrument. [Check applicable box(es)]

☐ Other. _____
(specify)

4397 (07/02/07) w84



425436

05/01/2008
006 of 10

0792726861

By signing below, Grantor accepts and agrees to the provisions of this Deed of Trust, and of any rider(s) executed by Grantor concurrently therewith

San Francisco
DATED at April, 4th @ this 4th day of April, 4

Leo F. Kramer
LEO F KRAMER

Audrey E. Kramer
AUDREY E KRAMER

Mail tax statements to
LEO F KRAMER
1740 AUTUMN GLEN ST
FERNLEY, NV 89408-7204

Leo F. Kramer
Signature



425436

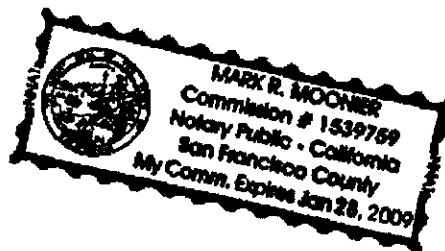
05/01/2008
007 of 10STATE OF CaliforniaCOUNTY OF San FranciscoOn 4/4/2008 before me, Mark R Mooner
(Name of Notary Public)personally appeared Audrey E Kramer & Leo E Kramer

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument

WITNESS my hand and official seal.


(Signature of Notary Public)

(This area for notarial seal)





425436

05/01/2008
008 of 10

STATE OF NEVADA California
COUNTY OF San Francisco)
) ss

0792726861

This instrument was acknowledged before me on 4/4/08 by
LEO F KRAMER
AUDREY E KRAMER

My commission expires 1/28/09

WITNESS my hand and official seal

[Signature]
Notary Public in and for the State of Nevada



REQUEST FOR FULL RECONVEYANCE
Do not record. To be used only when Grantor's
indebtedness has been repaid and Credit Agreement cancelled

TO TRUSTEE _____

The undersigned is Trustee of the within Deed of Trust, and the legal owner and holder of the
WaMu Mortgage Plus(TM) Agreement secured thereby Said Deed of Trust is hereby
surrendered to you for reconveyance and you are requested, upon payment of all sums owing to
you, to reconvey, without warranty, to the person(s) entitled thereto, the right, title and interest
now held by you thereunder

DATE _____

WASHINGTON MUTUAL BANK

By _____

Its _____



425436

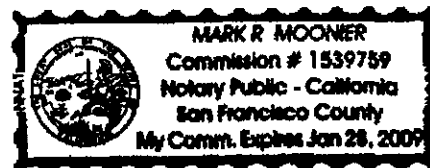
05/01/2008
009 of 10STATE OF CaliforniaCOUNTY OF San FranciscoOn 4/4/2008 before me, Mark R Moonier
(Name of Notary Public)personally appeared Audrey Ekramer & Leo F. Ekramer

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

(Signature of Notary Public)

(This area for notarial seal)



Lender's Information Guarantee II
GUARANTEE NO

ORDER NO 580005539-10

05/01/2008
010 of 10

EXHIBIT "A"

LT 62, SD UPLAND RANCH ESTATES UNIT NO 7, ACCORDING TO MAP THEREOF, FILED AS
DOCUMENT NO 315377, ON MARCH 9, 2004, COUNTY OF LYON, STATE OF NEVADA

APN 022-052-02

425436



Unofficial Copy

B

EMAIL FROM IN-HOUSE COUNSEL FOR
BRECKENRIDGE, CASEY NELSON

B

From: Casey Nelson <CaseyNelson@wedgewood-inc.com>

Date: June 12, 2018 at 12:32:48 PM PDT

To: "audreykramer55@yahoo.com" <audreykramer55@yahoo.com>

Cc: Nikki Trautman <ntrautman@wedgewood-inc.com> Subject: RE: BRECKENRIDGE PROPERTY FUND 2016 LLC

Ms. Kramer,

Thank you for taking the time to discuss this matter with me this morning. As we discussed, I am in receipt of your cease and desist letter and the complaint that was served on Breckenridge Property Fund 2016, LLC yesterday afternoon. I went ahead and accepted service of the complaint against Breckenridge only. I did not accept service on behalf of Ms. McDermott or Wedgewood as the process server did not attempt to serve these parties. Please be advised that I can, however, accept service on their behalf if you want to send a process server to our office again. It appears that there may be some confusion as to who the respective parties are in this matter and the role they played in the foreclosure of the subject property.

For example, Breckenridge Property Fund 2016, LLC ("Breckenridge") did not "foreclose" on your property as you have alleged within the complaint. Rather, all Breckenridge did was show up and place the highest winning bid at the public foreclosure sale which was held on May 18, 2018. Breckenridge has no affiliation whatsoever with the lender JPMorgan Chase Bank ("JPMorgan") or the trustee, National Default Servicing Corporation ("NDSC"), which noticed and conducted the foreclosure sale. At best, you can reasonably seek to quiet title against Breckenridge as the purchaser arguing that title didn't vest in our favor, but you can't maintain viable claims against the mere purchaser at a sale as having actually wrongfully foreclosed against you.

Similarly, your slander of title claim fails because you yourself admitted that no notice of lis pendens was ever recorded against the property, so we had no way of knowing that there was pending litigation against the property or that the foreclosure sale would possibly be disputed. As a purchaser, we are entitled to rely on publicly recorded documents and will take the position that we are bona fide purchasers for value and title should be vested in our favor. The mere act of a bona fide purchaser recording the deed it receives from a foreclosure sale does not rise to the requisite "false and malicious" standard for slander of title under Nevada law.

Moreover, your fraud claim is not tethered to reality. A plaintiff cannot simply throw out a litany of unsubstantiated allegations and hope something sticks or later shows up in discovery, but that is exactly what you have done within this complaint. You admitted that you don't fully understand the

relationship of the respective parties so you just generally alleged fraud against everybody and want to conduct discovery and hope something sticks. Not only must the circumstances of fraud be pled with particularity under NRCP 9(b) (which you have failed to adequately do), but there is no reasonable or objective evidence supporting this claim. In order to survive a motion to dismiss, you must "do more than simply show that there is some metaphysical doubt" as to the operative facts in order to avoid summary judgment being entered in our favor. *Wood v. Safeway, Inc.*, 121 P.3d 1026 (2005). You are not "entitled to build a case on the gossamer threads of whimsy, speculation, and conjecture." *Id.*

As such, we respectfully request that you dismiss, at a minimum, the unlawful foreclosure, slander of title, and constructive fraud claims against Breckenridge immediately.

Similarly, Wedgewood is not a proper party to this action. Although Breckenridge is managed by Wedgewood, Breckenridge is the sole party in interest as the purchaser at the sale and Wedgewood itself does not assert any interest in the subject property. Furthermore, Wedgewood has no affiliation whatsoever with JPMorgan or NDSC and had nothing to do with the actual act of foreclosing on the property. Again, as there are no facts, circumstances, or documents which objectively support your claims against Wedgewood, we respectfully request that you dismiss all claims against Wedgewood.

Finally, Ms. McDermott is merely an employee of Wedgewood and has no ownership interest in the respective entities you have named and does not assert an ownership interest in the property. Ms. McDermott has nothing to do with JPMorgan or NDSC and did not conduct the subject foreclosure of the property. Ms. McDermott was simply the representative that appeared at the public foreclosure sale and placed the winning bid on behalf of Breckenridge. Any and all contact that Ms. McDermott has had with your tenants is merely as a representative of the new owner of the property. We just paid, after all, \$211,000 for the property and are entitled to seek possession under NRS 107.080 et seq and NRS 40.255. Moreover, merely contacting the tenants does not give rise to any cognizable legal claim. As such, not only do all of the allegations against Ms. McDermott fail to state a claim upon which relief can be granted, but they are confusing. We therefore ask that you dismiss all claims against her immediately.

>NRCP 11 states in pertinent part that:

(b) Representations to Court. By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances,—

(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

[As amended; effective January 1, 2005.]

(c) Sanctions. If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation.

NRS 18.010 further states that:

NRS 18.010 Award of attorney's fees.

1. The compensation of an attorney and counselor for his or her services is governed by agreement, express or implied, which is not restrained by law.

2. In addition to the cases where an allowance is authorized by specific statute, the court may make an allowance of attorney's fees to a prevailing party:

(a) When the prevailing party has not recovered more than \$20,000; or

(b) Without regard to the recovery sought, when the court finds that the claim, counterclaim, cross-claim or third-party complaint or defense of the opposing party was brought or maintained without reasonable ground or to harass the prevailing party. The court shall liberally construe the provisions of this paragraph in favor of awarding attorney's fees in all appropriate situations. It is the intent of the Legislature that the court award attorney's fees pursuant to this paragraph and impose sanctions pursuant to Rule 11 of the Nevada Rules of Civil Procedure in all appropriate situations to punish for and deter frivolous or vexatious claims and defenses because such claims and defenses overburden limited judicial resources, hinder the timely resolution of meritorious claims and increase the costs of engaging in business and providing professional services to the public.

3. In awarding attorney's fees, the court may pronounce its decision on the fees at the conclusion of the trial or special proceeding without written motion and with or without presentation of additional evidence.

4. Subsections 2 and 3 do not apply to any action arising out of a written instrument or agreement which entitles the prevailing party to an award of reasonable attorney's fees.

It will be objectively clear to the court that the aforementioned factual allegations and claims against Breckenridge, Wedgewood, and Ms. McDermott under the circumstances are wholly improper, are not warranted under existing law, and lack a scintilla of evidentiary support. Your continuing to maintain these claims in light of the foregoing would be unreasonable and will be construed by us as purposeful harassment and a conscious effort on your part to needlessly delay and increase the cost of litigation. This falls squarely under the sanctionable conduct which these rules seek to protect parties from.

As such, we ask that you dismiss the same without our having to file a motion to dismiss. Please be advised that should we be forced to move forward and file a motion to dismiss, we will demand that the court impose sanctions against you and grant us attorneys fees and costs. Per our discussion, I will hold off on filing the motion to dismiss until after this Friday, June 15, 2018. Please review and get back to me before then.

Casey J. Nelson, Esq.

Associate General Counsel

image001

2320 Potosi Street, Suite 130

Las Vegas, Nevada 89146

702-305-9157 direct

310-469-0182 direct fax

C

DECLARATIONS OF:
AUDREY KRAMER-PLAINTIFF
LEE ANNE CHAFFIN-PLAINITFFS' PROP. MGT.
DANIEL STARLING-PLAINTIFFS' TENANT

C

1 LEO KRAMER
2 AUDREY KRAMER
3 2364 REDWOOD ROAD
4 HERCULES, CA 94547

5 PLAINTIFFS IN PRO PER

6
7 THIRD JUDICIAL DISTRICT COURT
8 LYON COUNTY, NEVADA
9

10 LEO KRAMER,
11 AUDREY KRAMER,

12 Plaintiffs,

13 vs.

14 NATIONAL DEFAULT SERVICING
15 CORPORATION, ALYSSA MC DERMOTT,
16 WEDGWOOD INC., BRECKENRIDGE
17 PROPERTY FUND 2016 LLC, and DOES 1
18 THROUGH 50 INCLUSIVE,
19

20 Defendants.

) Case No.: 18-CV-00663

)
) DECLARATION OF AUDREY KRAMER IN
) SUPPORT OF PLAINTIFFS' OPPOSITION
) TO DEFENDANTS, ALYSSA MC
) DERMOTT, WEDGWOOD INC., AND
) BRECKENRIDGE PROPERTY FUND 2016
) LLC'S MOTION TO DISMISS PLAINTIFFS'
) FIRST AMENDED COMPLAINT;
) MEMORANDUM OF POINTS AND
) AUTHORITIES IN SUPPORT THEREOF;
) DECLARATION OF DANIEL STARLING;
) DECLARATION OF LEE ANNE CHAFFIN;
) AND DECLARATION OF AUDREY
) KRAMER FILED CONCURRENTLY
) HEREWITH;

) Date: TBA
) Time: TBA
) Dept: 1

21
22
23
24
25 DECLARATION OF AUDREY KRAMER
26
27
28

1 I, AUDREY KRAMER declare as follows:-

- 2 1. I am over the age of 18 years.
- 3 2. I have personal knowledge of the above entitled matter and if called as a witness, I could
4 and would competently testify thereto.
- 5 3. I make this declaration in support of the attached or above motion to dismiss filed by
6 defendant, Breckenridge Property Fund 2016 LLC.
- 7 4. Plaintiffs' cause of action for unlawful foreclosure is a new cause of action that could not
8 have been included in the First complaint filed by Plaintiffs.
- 9 5. Plaintiffs were not and are still not in breach of the alleged \$176,000.00 revolving line of
10 credit that plaintiffs obtained from Washington Mutual Bank (WAMU).
- 11 6. Plaintiffs do not owe anything to Washington Mutual Bank, JPMorgan Chase Bank or any
12 of the Defendants in this lawsuit.
- 13 7. Plaintiffs could not and did not use the entire maximum credit limit amount of \$176,000.00
14 of the revolving line of credit.
- 15 8. Per the credit agreement, Plaintiffs were contracted to access up to \$176,000.00 of the
16 revolving line of credit, but could not and did not do so because WAMU Bank became
17 defunct, whereby Plaintiffs could not re-use the revolving line of credit as the credit
18 agreement contract provided. Thus, it was WAMU Bank who breached the credit
19 agreement, not Plaintiffs.
- 20 9. Neither JPMORGAN CHASE BANK nor WAMU BANK funded plaintiffs' initial
21 mortgage note and as such they have no standing to cause National Default Servicing
22 Corporation to sell Plaintiffs' real property.
- 23 10. On or about May 29, 2018, I was notified by our property management company, Chaffin
24 Real Estate Services, that our tenants residing in our property (1740 Autumn Glen, Fernley,
25 NV) were receiving harassing phone calls, notices and text messages from a person named
26 Alyssa McDermott claiming she was the purchaser and new owner of the subject property.
27 Ms. McDermott requested the tenants provide her with a copy of their lease. The tenants
28 stated they directed Ms. McDermott to contact the property management company and
provided contact information accordingly.
11. After being informed of this matter, as mentioned above, I contacted Western Title
Company in Fernley, NV and spoke with Ms. Kara Peterson. Upon doing a thorough
search, Ms. Peterson informed me that she did not see any recorded documentation of a sale
of our property.
12. On or about May 30, 2018, I called and left a voice message for Ms. Alyssa McDermott.
Ms. McDermott returned my call later that same day and informed me that she had
purchase our property at a foreclosure sale and was now the new owner. I told Ms.
McDermott no such sale had been recorded against our property and asked when she

1 purchased the property. Ms. McDermott replied, "Last Friday". I asked her the specific
2 date and she could not recall the actual date of the sale. I informed Ms. McDermott that she
3 should be aware there is pending litigation on the subject property currently in the '9th
Circuit Court of Appeals San Francisco'. Ms. McDermott replied, "That's fine", and then
hung up on me. I have had no further communications with Ms. McDermott.

4 13. On or about June 11, 2018, our property management company forwarded an email from
5 Mr. Casey Nelson, stating he was in-house counsel for Breckenridge Property Fund 2016,
6 LLC, who was allegedly the owner of the subject property. The following day I sent, via
email, a Cease & Desist letter to Mr. Nelson. **SEE EXHIBIT J (CEASE & DESIST**
LETTER)

7 14. On or about June 12, 2018, I received a phone call, followed up with an email, from Mr.
8 Casey Nelson, who identified himself as in-house counsel for Breckenridge Property Fund
9 2016, LLC. Mr. Nelson acknowledged in the phone call and in his email that he was in
10 receipt of our Cease & Desist letter and our complaint. Mr. Nelson asked that we drop
11 Alyssa McDermott and Wedgewood Inc. from our Complaint, stating that neither, Ms.
12 McDermott or Wedgewood Inc., has a monetary interest in the property. I informed Mr.
13 Nelson that Ms. McDermott had presented herself to me, our property manager and our
14 tenants that she was the purchaser and new owner of the property, and that at no time did
15 Ms. McDermott ever identify herself as an employee or representative of Breckenridge. I
16 did however tell Mr. Nelson that if he would give us a written affidavit affirming that Ms.
17 McDermott and Wedgewood Inc. did not have a monetary interest in the subject property
18 that we would drop them from our complaint. I also stated that if we found this assertion to
19 be false we reserved the right to amend our complaint accordingly. **SEE EXHIBIT D**
20 Mr. Nelson also told me that he had overseen in excess of 300 + purchase transactions and
21 was intimately familiar with JPMorgan Chase Bank & National Default Servicing
22 foreclosure sales. Mr. Nelson stated that Ms. McDermott and Wedgewood, of which he
23 represents as in-house counsel, should be dropped from Plaintiffs' complaint because they
24 were not party to Chase Bank or NDSC, further stating, "*Ms. McDermott was simply the*
25 *representative that appeared at the public foreclosure sale and placed the winning bid on*
26 *behalf of Breckenridge*". However, it is clear to Plaintiffs there is an intimate knowledge
27 and long standing relationship between Chase Bank, NDSC, Breckenridge, Wedgewood
28 Inc., Ms. McDermott and Mr. Nelson, not only by Mr. Nelson's own assertion on the phone
to me, but also evidenced by copies of checks Ms. McDermott presented to our tenants on
May 30, 2018. There were (4) checks, all drawn prior to the actual auction sale date of
May 18, 2018. It is evident that Ms. McDermott had inside information and did not appear
at the actual foreclosure auction on the court house steps. **SEE EXHIBIT G RE (4)**
CASHIER CHECKS: 5/10/2018 for \$100,000, 5/17/2018 for \$100,000, 5/17/18 for \$5,000
& 5/17/2018 for \$10,000.

1 I declare under penalty of perjury under the laws of the United States of America and under the
2 laws of the State of Nevada that the foregoing is true and correct.

3 Executed: on 12/19/18, at Concha Costa County, State of California
4 Audrey Kramer
5 AUDREY KRAMER
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 LEO KRAMER
2 AUDREY KRAMER
3 2364 REDWOOD ROAD
4 HERCULES, CA 94547
5
6 PLAINTIFFS IN PRO PER

7 THIRD JUDICIAL DISTRICT COURT
8 LYON COUNTY, NEVADA
9

10 LEO KRAMER,
11 AUDREY KRAMER,

12
13 Plaintiffs,

14 vs.

15
16 NATIONAL DEFAULT SERVICING
17 CORPORATION, ALYSSA MC DERMOTT,
18 WEDGWOOD INC., BRECKENRIDGE
19 PROPERTY FUND 2016 LLC, and DOES 1
20 THROUGH 50 INCLUSIVE,
21
22

23 Defendants.
24
25
26
27
28

) Case No.: 18-CV-00663

)
) DECLARATION OF LEE ANNE CHAFFIN
) IN SUPPORT OF OPPOSITION TO
) BRECKENRIDGE PROPERTY FUND 2016
) LLC'S MOTION TO DISMISS

)
) Date: TBA
) Time: TBA
) Dept: 1

DECLARATION OF LEE ANNE CHAFFIN

1 I, LEE ANNE CHAFFIN declare as follows:

- 2 1. I am over the age of 18 years.
- 3 2. If called as a witness, I could and would competently testify thereto.
- 4 3. I make this declaration in support of the Plaintiffs' Opposition to 'Motion to Dismiss' filed
- 5 by Breckenridge Property Fund 2016, LLC.
- 6 4. I am the Broker/Owner of Chaffin Real Estate Services located at 200 E. Main Street, Suite
- 7 102, Fernley, Nevada. I was the property management company for Plaintiffs' Leo and
- 8 Audrey Kramer's property located at 1740 Autumn Glen Street, Fernley, Nevada 89408.
- 9 5. Around the end of May early June 2018, I was contacted via phone by a woman who
- 10 identified herself as Allysa McDermott. Ms. McDermott informed me said that she had just
- 11 purchased the above mentioned property and told me that she was the new owner. Ms.
- 12 McDermott demanded I provide her with a copy of the tenant's rental agreement and told
- 13 me that all future rental payments were to be given to her.
- 14 6. In reply to Ms. McDermott's demands I requested she communicate with me in writing.
- 15 7. Shortly after Ms. McDermott's call, my office was contacted by another woman who
- 16 identified herself as Carmen Aguilera. Ms. Aguilera claimed to be the new owner and said
- 17 she had just purchased the above rental property. Ms. Aguilera later identified herself as
- 18 the asset manager for Wedgewood and asked for the tenant's info.
- 19 8. In reply to Ms. Aguilera's call I once again requested she submit her demands in writing.
- 20 9. On June 11, 2018, my office received an email correspondence from Mr. Case Nelson, who
- 21 identified himself as the In-House counsel for Breckenridge Property Fund 2016 LLC. Mr.
- 22 Nelson stated that his company was the new owner of the above mentioned property and
- 23 instructed us that that all future rents were to be forwarded to his company, and further
- 24 stated that he had proceeded with an eviction action against the tenants.
- 25 10. I notified the Kramers and informed them we could no longer handle their property
- 26 amongst the confusion of several people claiming ownership of their property.

27 I declare under penalty of perjury under the laws of the United States of America and under the

28 laws of the State of Nevada that the foregoing is true and correct.

Executed: on July 12, 2018 at LYON County, State of Nevada


Lee Anne Chaffin

1 LEO KRAMER
2 AUDREY KRAMER
3 2364 REDWOOD ROAD
4 HERCULES, CA 94547

5 PLAINTIFFS IN PRO PER

6
7 THIRD JUDICIAL DISTRICT COURT
8 LYON COUNTY, NEVADA

9
10 LEO KRAMER,
11 AUDREY KRAMER,

12
13 Plaintiffs,

14 vs.

15
16 NATIONAL DEFAULT SERVICING
17 CORPORATION, ALYSSA MC DERMOTT,
18 WEDGWOOD INC., BRECKENRIDGE
19 PROPERTY FUND 2016 LLC, and DOES 1
20 THROUGH 50 INCLUSIVE,

21
22 Defendants.

) Case No.: 18-CV-00663

) DECLARATION OF DANIEL STARLING IN
) SUPPORT OF OPPOSITION TO
) BRECKENRIDGE PROPERTY FUND 2016
) LLC'S MOTION TO DISMISS

) Date: TBA
) Time: TBA
) Dept: 1

23
24
25 DECLARATION OF DANIEL STARLING
26
27
28

1 I, DANIEL STARLING declare as follows:

- 2 1. I am over the age of 18 years.
- 3 2. If called as a witness, I could and would competently testify thereto.
- 4 3. I make this declaration in support of the Plaintiffs' Opposition to 'Motion to Dismiss' filed
- 5 by Breckenridge Property Fund 2016, LLC.
- 6 4. I am currently renting and residing at Plaintiffs' property located at 1740 Autumn Glen
- 7 Street, Fernley, Nevada 89408
- 8 5. On or about May 29, 2018, at approximately (1:29pm and again at 1:59pm) I was contacted
- 9 via cell phone by a woman who identified herself as Allysa McDermott. Ms. McDermott
- 10 informed me that she had purchased the above mentioned property, that I am currently
- 11 renting, and told me that she was the new owner. Ms. McDermott demanded that I provide
- 12 her with a copy of my rental agreement and told me that I was to start making rental
- 13 payments to her.
- 14 6. In reply to Ms. McDermott's demands I provided the name of the management company in
- 15 charge of the rental property and directed Ms. McDermott to contact the property manager
- 16 directly.
- 17 7. On or about May 30, 2018, at approximately 2:32pm, via cell phone, I was contacted by
- 18 another woman who identified herself Carmen Aguilera, stating she was a representative
- 19 for Wedgewood Inc., and said her company had just purchased the above mentioned rental
- 20 property and said she was in charge of the financial department for her company.
- 21 8. In reply to Ms. Aguilera's call I once again provided the name of the management company
- 22 in charge of the rental property and directed Ms. Aguilera to contact the property manager
- 23 directly.
- 24 9. On or about June 6, 2018, I received a text message from Ms McDermott, stating that the
- 25 sale had finally recorded on the property and Ms McDermott asked me to contact her
- 26 regarding exchanging cash for keys.

27 I declare under penalty of perjury under the laws of the United States of America and under the

28 laws of the State of Nevada that the foregoing is true and correct.

Executed: on 7-10-18, at LYON County, State of Nevada

Daniel Starling
DANIEL STARLING

D

PLAINTIFF, AUDREY KRAMER'S REPLY
EMAIL TO CASEY NELSON-IN-HOUSE
COUNSEL FOR BRECKENRIDGE

D

From: Audrey Kramer <audreykramer55@yahoo.com>
Date: June 15, 2018 at 2:50:04 PM PDT
To: Casey Nelson <CaseyNelson@wedgewood-inc.com>
Subject: Re: 1740 Autumn Glen Property

Mr. Nelson,

Thank you for your call on Tuesday, I am in receipt of your email outlining the supposed roles of Ms. McDermott and Wedgewood Inc., as they relate to the unlawful and fraudulent sale of our property.

You stated during our phone conversation and in your email that there may be some confusion as to who the respective parties are in this matter and the role they played in the foreclosure of the subject property. You also stated on the phone and in your email that Ms. McDermott is merely an employee of Wedgewood Inc. and does not assert an ownership interest in the 1740 Autumn Glen St. Fernley, NV property, which is the subject of our Complaint. You are correct there is indeed confusion, and that confusion is because Ms. McDermott conveyed directly to me, my property management company and my tenants that she had purportedly purchased the subject property and was the new owner. At no time did Ms. McDermott present herself as an employee, agent or representative of Breckenridge Property Fund 2016 LLC or Wedgewood Inc. Ms. McDermott identified herself as Alyssa McDermott and claimed, plain and simple, that she had recently purchased and was now the purported owner of the subject property. Additionally, in a Google search Ms. McDermott's name is listed in conjunction with Wedgewood Inc. and Breckenridge Property Fund 2016 LLC. There is no indication in the Google search defining Ms. McDermott's relationship or role with regard to the two aforementioned companies. As a matter of fact, there are numerous Google references of various property listings where Ms. McDermott's name is associated with Wedgewood Inc. and Breckenridge Property Fund 2016 LLC. Those listings direct the public to contact Ms. McDermott, giving further indication that Ms. McDermott is connected with the two aforementioned companies and that Ms. McDermott is deeply involved in purchasing and flipping properties. So in light of information obtained from Google, coupled with Ms. McDermott's purported assertions that she was the purchaser and owner of the subject property, it was absolutely appropriate to include her, Wedgewood Inc. and Breckenridge Property Fund 2016 LLC in our Complaint along with National Default Servicing Corporation. The subject property was unique to us and was to be our retirement home and it has wrongfully, fraudulently and unlawfully been stolen from us. Therefore, we do not consider the inclusion of Ms. McDermott, Wedgewood Inc. or Breckenridge in our Complaint to be frivolous, without merit or inappropriate. Perhaps had Ms. McDermott presented herself more accurately, as you say, an employee, agent or representative of Breckenridge, her role would not be in question.

Regarding your comments about our 'slander of title claim' failing because there was no notice of lis pendens recorded against the property, stating you had no way of knowing that there was pending litigation against the property or that the foreclosure would possibly be disputed, simply is not true. For two reasons, first you mentioned Chase Bank's involvement with regard to the unlawful foreclosure of our property. The only way you would have known of Chase bank's

involvement with regards to the purported unlawful foreclosure is by either speaking with JPMorgan Chase Bank (Chase) or National Default Servicing Corporation (NDSC) or by reviewing the property's recorded documents (several of which are fraudulent). You represented to me during our call on Tuesday that you were well acquainted with the interactions and foreclosure practices of Chase and NDSC. You indicated on the phone that you have first-hand professional knowledge of these practices from having participated in numerous foreclosure-trustee sales and purchases with Chase and NDSC. You stated with certainty that NDSC works directly for Chase and whatever Chase directs NDSC to do, i.e. foreclose on a property, then NDSC carries out Chase's directive accordingly. And though you claim in your email to me that Breckenridge has no affiliation whatsoever with Chase or NDSC, however, other assertions you have made regarding Chase and NDSC seem to be contrary to that claim. Especially considering the numerous foreclosure transactions you reported you have participated in as in-house counsel for your company, I believe you said in excess of 300 or more, it stands to reason that you have some connection and have at the very least engaged in direct communications with, either or both, Chase and NDSC regarding the selling of our property prior to your company placing its' bid. Further, as an expert in purchasing foreclosure properties and based on the above facts, you would have known, or should have known, that there is pending litigation on the subject property.

As far as your claim that you were unaware of any pending litigation on the subject property, once again, it is difficult to comprehend given your admission and assertion of the numerous foreclosure transactions that you have overseen as in-house counsel on behalf of Breckenridge. Respectfully, it would certainly stand to reason that a knowledgeable savvy lawyer such as yourself and an expert specializing as in-house counsel to oversee the purchasing of investment properties through foreclosure-trustee sales, would have done due diligence on behalf of your company. It would be remiss and unimaginable for you not to have reviewed the chain of title on any property prior to placing a bid at auction. Further, anyone reviewing the recorded documents with Lyon County on the subject property would have known, or should have known, that there was a potential problem. Especially since Leo Kramer and Audrey Kramer were the only owners and names listed on the Deed of Trust. We did not convey or give assignment of our property to anyone. At the very least, given the Chain of Title and other fraudulent documents recorded on the property, it certainly would have been smart to ask NDSC. The Notice of Default filed against the property was defective; therefore, making the Notice of Default (NOD), Notice of Trustee Sale (NOTS) and Trustee Sale void. Meaning, Breckenridge is not a bona fide purchaser or encumbrancer of our property. This foreclosure trustee sale was fraudulently and unlawfully conducted and therefore should be rescinded.

Lastly, you accused us in your email of purposeful harassment and a conscious effort to needlessly delay and increase the cost of litigation. We assure you nothing could be further from the truth. It is not our intention to delay or incur unnecessary cost. We would like this matter to be resolved as quickly as possible, we simply want to recover our property that was unlawfully and fraudulently stolen from us.

Respectfully, if you are willing to provide us with an affidavit declaring exactly what the actual relationship and role of Wedgewood Inc. and Ms. McDermott is to Breckenridge, and assure us that neither have an ownership interest in the foreclosed properties of Breckenridge, then we are

willing to withdraw both Wedgewood Inc. and Ms. McDermott from our complaint. However, should we learn otherwise we reserve the right to amend our complaint accordingly.

Audrey & Leo Kramer

Sent from my iPad

On Jun 12, 2018, at 12:32 PM, Casey Nelson <CaseyNelson@wedgewood-inc.com> wrote:

Ms. Kramer,

Thank you for taking the time to discuss this matter with me this morning. As we discussed, I am in receipt of your cease and desist letter and the complaint that was served on Breckenridge Property Fund 2016, LLC yesterday afternoon. I went ahead and accepted service of the complaint against Breckenridge only. I did not accept service on behalf of Ms. McDermott or Wedgewood as the process server did not attempt to serve these parties. Please be advised that I can, however, accept service on their behalf if you want to send a process server to our office again. It appears that there may be some confusion as to who the respective parties are in this matter and the role they played in the foreclosure of the subject property.

For example, Breckenridge Property Fund 2016, LLC ("Breckenridge") did not "foreclose" on your property as you have alleged within the complaint. Rather, all Breckenridge did was show up and place the highest winning bid at the public foreclosure sale which was held on May 18, 2018. Breckenridge has no affiliation whatsoever with the lender JPMorgan Chase Bank ("JPMorgan") or the trustee, National Default Servicing Corporation ("NDSC"), which noticed and conducted the foreclosure sale. At best, you can reasonably seek to quiet title against Breckenridge as the purchaser arguing that title didn't vest in our favor, but you can't maintain viable claims against the mere purchaser at a sale as having actually wrongfully foreclosed against you.

Similarly, your slander of title claim fails because you yourself admitted that no notice of lis pendens was ever recorded against the property, so we had no way of knowing that there was pending litigation against the property or that the foreclosure sale would possibly be disputed. As a purchaser, we are entitled to rely on publicly recorded documents and will take the position that we are bona fide purchasers for value and title should be vested in our favor. The mere act

of a bona fide purchaser recording the deed it receives from a foreclosure sale does not rise to the requisite "false and malicious" standard for slander of title under Nevada law.

Moreover, your fraud claim is not tethered to reality. A plaintiff cannot simply throw out a litany of unsubstantiated allegations and hope something sticks or later shows up in discovery, but that is exactly what you have done within this complaint. You admitted that you don't fully understand the relationship of the respective parties so you just generally alleged fraud against everybody and want to conduct discovery and hope something sticks. Not only must the circumstances of fraud be pled with particularity under NRCP 9(b) (which you have failed to adequately do), but there is no reasonable or objective evidence supporting this claim. In order to survive a motion to dismiss, you must "do more than simply show that there is some metaphysical doubt" as to the operative facts in order to avoid summary judgment being entered in our favor. *Wood v. Safeway, Inc.*, 121 P.3d 1026 (2005). You are not "entitled to build a case on the gossamer threads of whimsy, speculation, and conjecture." *Id.*

As such, we respectfully request that you dismiss, at a minimum, the unlawful foreclosure, slander of title, and constructive fraud claims against Breckenridge immediately.

Similarly, Wedgewood is not a proper party to this action. Although Breckenridge is managed by Wedgewood, Breckenridge is the sole party in interest as the purchaser at the sale and Wedgewood itself does not assert any interest in the subject property. Furthermore, Wedgewood has no affiliation whatsoever with JPMorgan or NDSC and had nothing to do with the actual act of foreclosing on the property. Again, as there are no facts, circumstances, or documents which objectively support your claims against Wedgewood, we respectfully request that you dismiss all claims against Wedgewood.

Finally, Ms. McDermott is merely an employee of Wedgewood and has no ownership interest in the respective entities you have named and does not assert an ownership interest in the property. Ms. McDermott has nothing to do with JPMorgan or NDSC and did not conduct the subject foreclosure of the property. Ms. McDermott was simply the representative that appeared at the public foreclosure sale and placed the winning bid on behalf of Breckenridge. Any and all contact that Ms. McDermott has had with your tenants is merely as a representative of the new owner of the property. We just paid, after all, \$211,000 for the property and are entitled to seek possession under NRS 107.080 et seq and NRS 40.255. Moreover, merely contacting the tenants does not give rise to any cognizable legal claim. As such, not only do all of the allegations against Ms. McDermott fail to state a claim upon which relief can be granted, but they are confusing. We therefore ask that you dismiss all claims against her immediately.

NRCP 11 states in pertinent part that:

(b) **Representations to Court.** By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances,—

(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

[As amended; effective January 1, 2005.]

(c) **Sanctions.** If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation.

NRS 18.010 further states that:

NRS 18.010 Award of attorney's fees.

1. The compensation of an attorney and counselor for his or her services is governed by agreement, express or implied, which is not restrained by law.

2. In addition to the cases where an allowance is authorized by specific statute, the court may make an allowance of attorney's fees to a prevailing party:

(a) When the prevailing party has not recovered more than \$20,000; or

(b) Without regard to the recovery sought, when the court finds that the claim, counterclaim, cross-claim or third-party complaint or defense of the opposing party was brought or maintained without reasonable ground or to harass the prevailing party. The court shall liberally construe the provisions of this paragraph in favor of awarding attorney's fees in all appropriate situations. It is the intent of the Legislature that the court award attorney's fees pursuant to this paragraph and impose sanctions pursuant to Rule 11 of the Nevada Rules of Civil Procedure in all appropriate situations to punish for and deter frivolous or vexatious claims and defenses because such claims and defenses overburden limited judicial resources, hinder the timely resolution of meritorious claims and increase the costs of engaging in business and providing professional services to the public.

3. In awarding attorney's fees, the court may pronounce its decision on the fees at the conclusion of the trial or special proceeding without written motion and with or without presentation of additional evidence.

4. Subsections 2 and 3 do not apply to any action arising out of a written instrument or agreement which entitles the prevailing party to an award of reasonable attorney's fees.

It will be objectively clear to the court that the aforementioned factual allegations and claims against Breckenridge, Wedgewood, and Ms. McDermott under the circumstances are wholly improper, are not warranted under existing law, and lack a scintilla of evidentiary support. Your continuing to maintain these claims in light of the foregoing would be unreasonable and will be construed by us as purposeful harassment and a conscious effort on your part to needlessly

delay and increase the cost of litigation. This falls squarely under the sanctionable conduct which these rules seek to protect parties from.

As such, we ask that you dismiss the same without our having to file a motion to dismiss. Please be advised that should we be forced to move forward and file a motion to dismiss, we will demand that the court impose sanctions against you and grant us attorneys fees and costs. Per our discussion, I will hold off on filing the motion to dismiss until after this Friday, June 15, 2018. Please review and get back to me before then.

Casey J. Nelson, Esq.

Associate General Counsel

2320 Potosi Street, Suite 130

E

CHASE 'FRAUDULENT'
SELF-FABRICATED ASSIGNMENT

E

Doc #: 578946

04/10/2018 08:53 AM Page: 1 of 1

OFFICIAL RECORD

Requested By: SERVICELINK TITLE AGENCY INC

Lyon County, NV
Dawna L. Warr, Recorder

Fee: \$38.00 RPTT: \$0.00

Recorded By: mkassebaum

RECORDING REQUESTED BY:

WHEN RECORDED MAIL TO:

National Default Servicing Corporation
7720 N. 16th Street, Suite 300
Phoenix, AZ 85020

NDSC NO.: 12-31926-JP-NV

APN: 022-052-02

PROP ADDRESS: 1740 Autumn Glen St, Fernley NV 89408-7204

ASSIGNMENT OF DEED OF TRUST

For Value Received, Washington Mutual Bank, a Federal Association the undersigned corporation hereby grants, assigns and transfers to JPMorgan Chase Bank, National Association all beneficial interest under that certain Deed of Trust dated 04/04/2008 executed by Leo F. Kramer and Audrey E Kramer Trustor, to California Reconveyance Company, A California Corporation Trustee, and recorded on 05/01/2008 as Instrument No. 425436 of the Official Records of Lyon County, NV describing the land therein:

AS PER DEED OF TRUST MENTIONED ABOVE.

Together with the Note or Notes therein described or referred to, the money due and to become due thereon with interest, and all rights accrued or to accrue under said Deed of Trust.

Dated: April 4, 2018

JPMorgan Chase Bank, National Association, as Attorney In fact for the Federal Deposit Insurance Corporation as Receiver of Washington Mutual Bank F/K/A Washington Mutual Bank, FA

Debbie A. Swartz
By: Debbie A. Swartz
Its: Vice President

STATE OF Louisiana
PARISH OF Ouachita

On April 4, 2018, 2018, before me, Amy Gott, a Notary Public for said State, personally appeared Debbie A. Swartz who personally known to me (or who proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

AMY GOTT
OUACHITA PARISH, LOUISIANA
LIFETIME COMMISSION
NOTARY ID # 66396

Signature: [Signature]

Amy Gott #66396

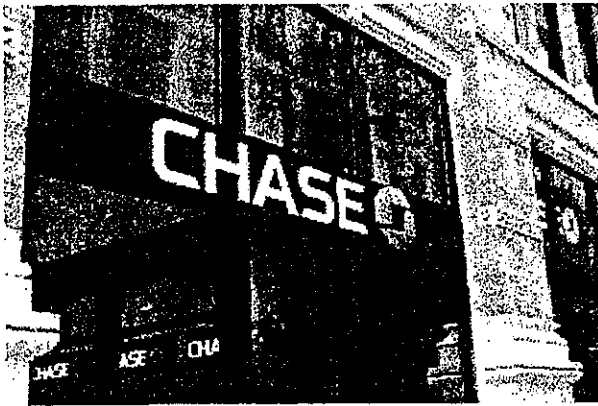
F

ARTICLES REGARDING FINES AGAINST CHASE
FOR FRAUD, ROBO-SIGNING &
UNLAWFUL FORECLOSURES

F

<http://www.culiklaw.com/jpmorgan-chase-fined-again-for-defective-foreclosures/>

JPMorgan Chase Fined, Again, for Defective Foreclosures



JPMorgan Chase is back in the news for failing to comply with a government foreclosure settlement. It is being fined \$48 million.

Back in 2013, banking giant Chase paid \$2 billion to settle claims related to illegal foreclosures that it had conducted on millions of homeowners, including homeowners in Massachusetts.

As part of that settlement, Chase was required to clean up its mortgage servicing processes, including providing eligible homeowners with loan modifications. These loan modifications are a key part of fixing the housing crisis that occurred as a result of the economic collapse in 2008.

But Chase still has not complied with the clean-up requirements. As a result, it has been fined \$48 million more. Notices that Chase sent, the government says, constitute “unsafe or unsound banking practices.”

Other banks that are still under government scrutiny related to their mortgage and foreclosure practices include HSBC, U.S. Bank, and Wells Fargo. These banks are being required to provide loan modifications and fix their foreclosure procedures before foreclosing on homeowners.

the company forged documents that allowed them to seize random houses and sell them out from under their owners on the strength of "robo-signed" paperwork produced by sleazy boiler-rooms where untrained people rubberstamped paperwork after less than 3 seconds' worth of scrutiny.

The \$4.2B that Morgan-Chase was supposed to pay in kind was to come in the form of debt forgiveness to borrowers who were about to lose their homes, but rather than do this, Morgan-Chase found a way to forgive the loans of people who didn't owe Chase any money (!), and to pull a list of other baroque cons that threw cities into chaos and revictimized people who'd lost their houses due to Morgan-Chase's brutal foreclosure policies.

(You may be sensing a pattern at this point)

In the runup to the financial crisis, Morgan-Chase made a practice of refusing all requests for loan modifications by borrowers struggling with their mortgages. Instead of allowing these borrowers to refinance and stay in their homes, Morgan-Chase held them to the terms of their original -- extremely misleading and often mis-sold -- mortgages, which allowed the bank to increase their mortgage payments by 200-400% after the initial "teaser rate" expired.

When these borrowers (predictably) started to default, Morgan-Chase sold their debt for pennies on the dollar, sensing that a crash was coming. Many of these loans were sold to vulture capitalists who hounded borrowers into bankruptcy, but there were a few good eggs, like Larry Schneider, whose 1st Fidelity bank bought 3,529 mortgages from Morgan Chase at \$0.001 on the dollar. Schneider then offered refinancing on fair terms to homeowners, reasoning that if they could stay in their homes and make affordable mortgage payments, then Schneider would get stable income, the homeowners could keep their homes, and cities and the economy would benefit.

It was a sleazy deal from the start. Even after Morgan-Chase sold the loans, they still sent bills to the borrowers, and then kept thousands in payments they had wrongly diverted, telling Schneider that the accounting process by which it had misappropriated \$47,695.53 was "not reversible." Morgan-Chase even sent sleazy, threatening debt-collectors after Schneider's customers, trying to get them to pay debts they didn't owe.

But then came the settlement and the imperative on Morgan-Chase to start forgiving \$4.2B in debt. The company began to send letters to Schneider's customers telling them they didn't owe anything anymore, despite the fact that Morgan-Chase no longer owned their mortgages.

This was just the tip of the iceberg. Morgan-Chase also started to mass-forgive loans on houses that had long been abandoned by defaulting owners, who had been hounded out of their homes by ballooning mortgage payments and Morgan-Chase's unwillingness to modify their loans. Because Morgan-Chase now owned these -- rotting, derelict, unlivable -- homes, they had to keep paying taxes on them, and make whatever minimum maintenance cities ordered to keep them from becoming firetraps or other hazards.

When Morgan-Chase forgave the loans on these houses, the defaulted, homeless owners once again became responsible for these houses, which Morgan-Chase had allowed to fall into

irredeemable disrepair. Now the victims of Morgan-Chase's foreclosure mill were de-foreclosed, they had to come up with thousands to pay the taxes and upkeep on houses that Morgan-Chase had ruined through neglect.

When (predictably), these owners found themselves unable to pay for this upkeep, the cities -- who were now significantly down on their property taxes, remember -- were stuck with the bill for maintaining them.

You may be asking yourself: how did Morgan-Chase get away with all these shenanigans, especially collecting on and then forgiving loans they didn't own? Good question, but it's got an obvious answer. According to Schneider, they used a firm of sleazy, Scientology-affiliated robosigners.

tl;dr: Morgan-Chase used robosigners to steal houses. They were told to forgive \$4.2B in mortgage debt to make good for this crime. They used robosigners to allow them to forgive debts that were not owed to them, and then they stiffed people whose houses they'd taken away with most of the rest of the bill for the \$4.2B, and cities had to pick up the tabs that these homeless ex-Morgan-Chase customers couldn't pay.

That is some vintage late-stage capitalism, my friends.

Federal officials knew about the problems and did nothing. In July 2014, the City of Milwaukee wrote to Joseph Smith, the federal oversight monitor, alerting him that "thousands of homeowners" were engulfed in legal nightmares because of the confusion that banks had sown about who really owned their mortgages. In a deposition for the lawsuit against JPMorgan Chase, Smith admitted that he did not recall responding to the City of Milwaukee's letter.

If you pay taxes in a municipality where JPMorgan spun its trickery, you helped pick up the tab. The bank's shell game prevented municipalities from knowing who actually owned distressed properties and could be held legally liable for maintaining them and paying property taxes. As a result, abandoned properties deteriorated further, spreading urban blight and impeding economic recovery. "Who's going to pay for the demolition [of abandoned buildings] or [the necessary extra] police presence?" asks Brent Tantillo, Schneider's lawyer. "As a taxpayer, it's you."

Such economic fallout may help explain why Jamie Dimon directed that JPMorgan's mass forgiveness of loans exempt Detroit, a city where JPMorgan has a long history. The bank's predecessor, the National Bank of Detroit, has been a fixture in the city for over 80 years; its relationships with General Motors and Ford go back to the 1930s. And JPMorgan employees knew perfectly well that mass loan forgiveness might create difficulties. The 2012 internal report warned that cities might react negatively to the sheer number of forgiven loans, which would lower tax revenues while adding costs. Noting that some of the cities in question were clients of JPMorgan Chase, the report warned that the project posed a risk to the bank's reputation.

Special Investigation: How America's Biggest Bank Paid Its Fine for the 2008 Mortgage Crisis—With Phony Mortgages!

URL: <https://boingboing.net/2017/10/06/eric-holders-legacy.html>

JP Morgan-Chase paid its billions in fines for mortgage fraud by committing billions in mortgage fraud

Follow Us

[Twitter](#) / [Facebook](#) / [RSS](#)



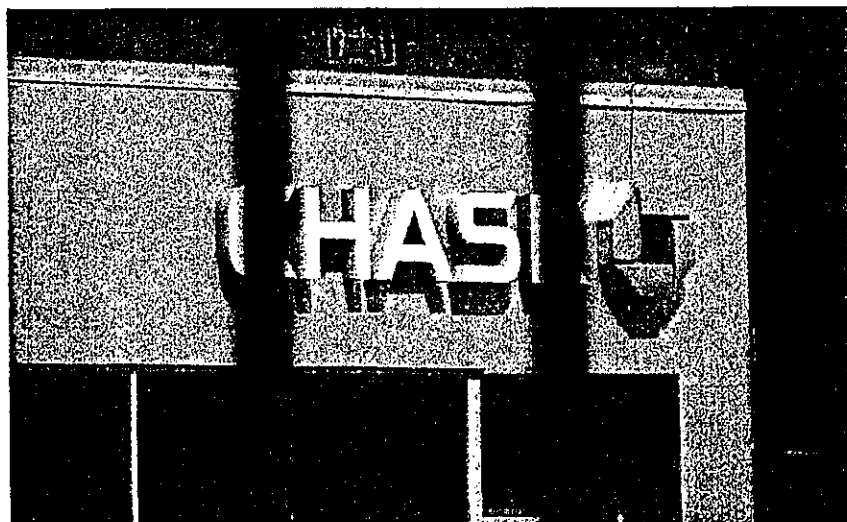
A lawsuit against JP Morgan-Chase -- the nation's largest bank -- asserts that the institution paid off the \$4,200,000,000 in mortgage forgiveness that it agreed to as a settlement for widescale mortgage and foreclosure fraud by committing a *lot* more mortgage fraud, in which homeowners, ethical lenders, and American cities were stuck with the bill.

The original settlement came from the Obama-era policy of not prosecuting finance executives for criminal acts, preferring to extract huge fines from the institutions.

In February 2012, JP Morgan-Chase agreed to pay \$5.1B in restitution for its mortgage fraud, which included widescale foreclosures on people who were not even Morgan-Chase customers --

<https://consumerist.com/2016/01/05/jpmorgan-chase-fined-48-million-for-failing-to-comply-with-robosigning-settlement/>

JPMorgan Chase Fined \$48 Million For Failing To Comply With Robo-signing Settlement



(Colin)

Years after being hit with billions in penalties, and after being told by federal regulators to stop screwing up the foreclosure and mortgage adjustment process by providing borrowers and courts with inaccurate and unchecked information, some banks continue to pay for the fact that they didn't quite learn their lesson.

Back in 2010, regulators learned that the nation's largest mortgage servicers — including JPMorgan Chase, Bank of America, and Wells Fargo — were using so-called “robosigners” to expedite foreclosures on the growing number of houses with delinquent mortgages. These untrained employees had no understanding of the documents they were supposed to be reviewing, and merely rubber-stamped them regardless of their accuracy.

As a result, both homeowners and courts received information that banks swore was true, but which didn't always stand up to scrutiny.

In 2011, the Office of the Comptroller of the Currency brought enforcement actions against several of these servicers, including Chase [\[PDF\]](#), directing them to put an end to these practices and to bolster protections for borrowers.

Two years later, the OCC reached a deal with these banks [PDF] that resulted in a settlement worth a total of \$9.3 billion (\$3.6 billion in cash payments, plus \$5.7 billion in other assistance — loan modifications and forgiveness of deficiency judgments — to borrowers).

Yet this wasn't enough for Chase to hit the brakes on its bad behavior.

In a consent order [PDF] released this morning, the OCC alleges that, between Dec. 2011 and Nov. 2013, Chase filed thousands of problematic documents with bankruptcy courts.

These include:

- 460 inaccurate Payment Change Notices (PCNs) that did not provide the borrower with the correct payment change amount or the correct date that the new payment change would go into effect;
- 4,380 PCNs bearing the signature of bank employees who no longer worked for Chase at the time the PCNs were filed;
- 2,285 PCNs signed by Chase employees who no longer worked in the bank's bankruptcy department at the time they were filed.

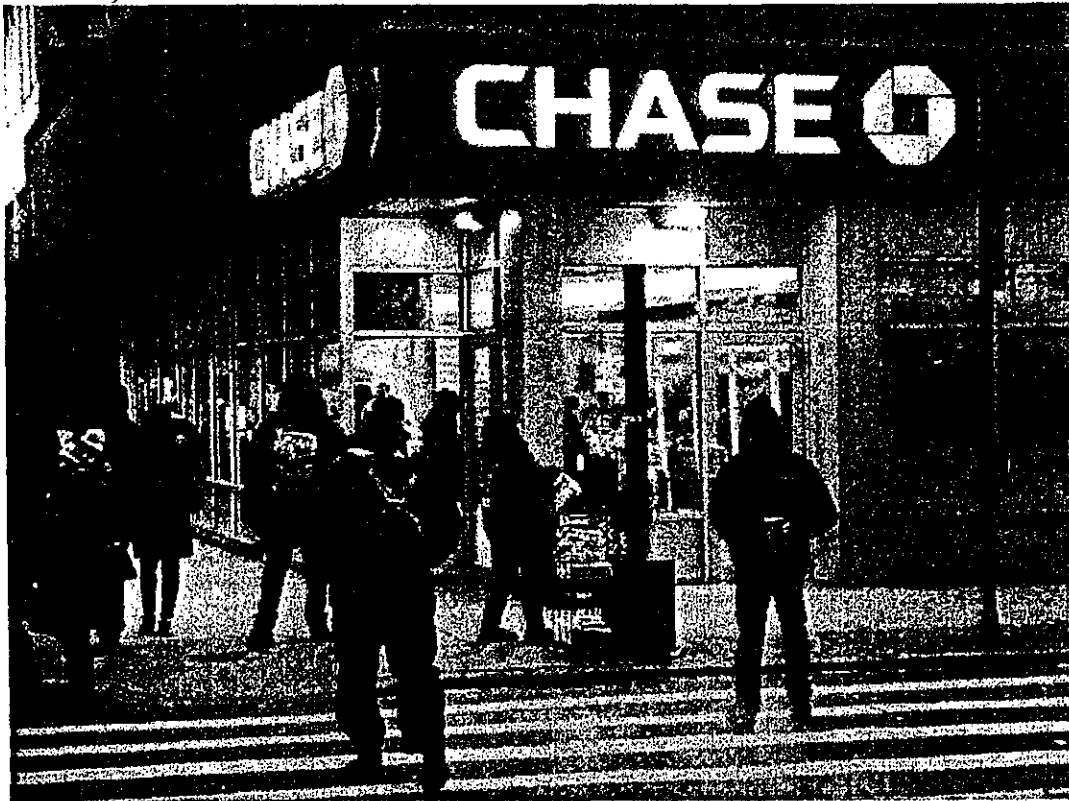
The OCC says that such practices are unsafe and unsound, and violate the earlier agreements made by Chase, which now must fork over \$48 million, even though it neither admits nor denies the allegations made by the government.

Want more consumer news? Visit our parent organization, Consumer Reports, for the latest on scams, recalls, and other consumer issues

<https://www.usatoday.com/story/money/2015/03/03/jpmorgan-robo-signing-department-justice/24332863/>

JPMorgan forks over \$50M in 'robo-signing' pact with DOJ

Kaja Whitehouse, USA TODAY Published 6:20 p.m. ET March 3, 2015 | Updated 2:01 p.m. ET March 4, 2015



(Photo: Mark Lennihan, AP)

[CONNECT](#) [TWEET](#) [LINKEDIN](#) [COMMENT](#) [EMAIL](#) [MORE](#)

This story has been updated to reflect JPMorgan's statements, which take issue with the Justice Department's description of the improper bankruptcy filings as "robo-signing."

JP Morgan Chase has agreed to fork over \$50 million for perjurious dealings in tens of thousands of mortgages in the aftermath of the mortgage crisis.

In a deal cut with the Department of Justice's Trustee Program, JPMorgan said it will pay more than \$50 million to over 25,000 homeowners in the form of cash payments, mortgage loan credits and loan forgiveness, to settle the DOJ's "robo-signing" allegations.

Robo-signing occurs when mortgage servicers rubber-stamp mortgage foreclosure documents without properly reviewing them — in some cases resorting to forgery to move them along. Such activity came under the spotlight following the 2008 mortgage meltdown as banks found themselves overwhelmed with foreclosures.

Chase acknowledged more than 50,000 PCNs were improperly signed under penalty of perjury in bankruptcy courts around the country, according to the DOJ. In 25,000 cases, Chase filed documents in the names of former employees or of employees who had nothing to do with reviewing the accuracy of certain filings, the DOJ said.

Despite the agreement, JPMorgan took issue with the DOJ's description of the improper bankruptcy filings as robo-signing, saying that the filings were properly reviewed and that the problem rested in its electronic filing process.

"We do not think it is accurate to characterize as 'robo-signing' a process in which a bank employee reviewed the accuracy of the information in each PCN," a JPMorgan spokesman said in an e-mailed statement. "Here, bank employees reviewed the accuracy of the information in the 50,000 PCNs and the notices were accurate over 99% of the time. The issue was that the employees who reviewed the PCNs did not electronically sign and file the PCNs with the bankruptcy court, as required by the bankruptcy court electronic filing rules."

As part of the agreement, Chase will provide \$22.4 million in credits and second lien forgiveness to about 400 homeowners who received inaccurate payment increase notices. Chase will also change internal operations and submit to oversight by an independent compliance reviewer, the DOJ said.

Tuesday's settlement is tied to homeowners who were already going through the bankruptcy process, a DOJ spokesperson said. JPMorgan's actions did not force the foreclosures, but resulted in other problems including inaccurate notices of payment increases, according to the settlement.

The proposed settlement must still be approved by the U.S. Bankruptcy Court for the Eastern District of Michigan, where it has been filed.

In January, JPMorgan disclosed higher-than-expected legal expenses of \$1 billion for the fourth quarter of 2014. At the time, JPMorgan's CEO Jamie Dimon said on a conference call that the bank intends to curb future legal costs by doing more to avoid stepping "in dog (poop), which we do every now and then."

<http://www.chicagotribune.com/business/ct-chase-settlement-0709-biz-20150708-story.html>

Chase fined \$136 million for illegal debt collection practices

JPMorgan Chase will pay \$136 million to settle charges that it used illegal tactics to go after delinquent credit card borrowers.

(Mark Lennihan)

Becky Yerak Contact Reporter Chicago Tribune

A customer uses an ATM at a branch of Chase Bank in New York. JPMorgan Chase will pay \$136 million to settle charges that it used illegal tactics to go after delinquent credit card borrowers.

(Mark Lennihan)

Becky Yerak Contact Reporter Chicago Tribune

A customer uses an ATM at a branch of Chase Bank in New York. JPMorgan Chase will pay \$136 million to settle charges that it used illegal tactics to go after delinquent credit card borrowers.

(Mark Lennihan)

Becky Yerak Contact Reporter Chicago Tribune

Illinois will receive \$7.2 million as part of a \$136 million nationwide settlement with JPMorgan Chase over what federal and state regulators said were illegal tactics to go after struggling credit card borrowers.

The federal Consumer Financial Protection Bureau alleges that the bank illegally relied on robo-signing — signing large numbers of documents — and sold "false debts to third-party collectors, including accounts with unlawfully obtained judgments, inaccurate balances and paid-off balances." The bureau also said Chase filed "misleading debt-collection lawsuits against consumers using robo-signed and illegally sworn statements to obtain false or inaccurate judgments for unverified debts."

ADVERTISING

Under the agreement announced Wednesday, JPMorgan Chase will pay more than \$95 million to 47 states and the District of Columbia, an additional \$11 million to states that conducted the

investigation and settlement negotiations, and \$30 million to the Consumer Financial Protection Bureau.

A Chase spokesman said, "We are pleased to resolve these legacy issues and are working to complete our remediation of affected credit card customers."

Illinois' share will go to the Illinois Equal Justice Foundation to fund legal aid services, including consumer debt counseling for poor and elderly residents, according to a statement from Illinois Attorney General Lisa Madigan.

Chase also paid \$50 million in consumer restitution through a separate 2013 consent order reached with the U.S. Office of the Comptroller of the Currency. About 6,000 Illinois consumers were due to get an estimated \$7.5 million in restitution, Madigan said.

As part of the new agreement, Chase was ordered to stop attempts to collect, enforce in court or sell 528,000 consumers' accounts. Madigan said that included 48,000 Illinois consumers.

Chase must pay a separate \$30 million penalty to the U.S. Office of the Comptroller of the Currency.

bverak@tribpub.com

Twitter @beckyyerak

G

BRECKENRIDGE PURCHASING DOCUMENTS
INCLUDING PARTIAL PHOTO COPIES OF
PURCHASING CHECKS

G

Fidelity National Title Insurance Company



Property Overview

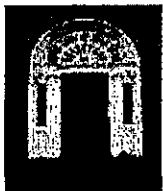
1740 AUTUMN GLEN ST, FERNLEY, NV, 89408-7204

Owner and Geographic Information



Primary Owner:	Secondary Owner:
KRAMER, LEO F & AUDREY E	
Mail Address:	121 CARDINAL WAY HERCULES CA 94547
Site Address:	1740 AUTUMN GLEN ST FERNLEY NV 89408
APN : 022-052-02	Lot Number : 62 Page Grid :
Housing Tract Number:	
Legal Description : Lot: 62 Map Ref: MAP: PM182130 Abbreviated Description: LOT:62 CITY:FERNLEY SUBD:UPLAND RANCH EST #7 MAP REF:MAP: PM182130 City/Muni/Twp: FERNLEY	

Property Details



Bedrooms : 3	Year Built : 2004	Square Feet : 1,850 SF
Bathrooms : 2	Garage : Attached: 2	Lot Size : 7,405 SF
Total Rooms :	Fireplace :	Number of Units : 0
Zoning : NR1	Pool :	Use Code : Single Family Residential

Sale & Loan



Transfer Date : 06/08/2005	Seller : FERNLEY PONDEROSA LLC,
Transfer Value : \$204,488	Document # : 353219 Cost/Sq Feet : \$110

Assessment & Taxes



Assessed Value : \$67,730	Percent Improvement : 80.61%	Homeowner Exemption :
Land Value : \$13,130	Tax Amount : \$1,886.82	Tax Rate Area : 6.01 FERNLEY
Improvement Value : \$54,600	Tax Status :	Tax Account ID :
Market Improvement Value :	Market Land Value :	Market Value :

Offered by Fidelity National Title Company
All information produced is deemed reliable but is not guaranteed.



Fidelity National Title
Insurance Company

TRUSTEE CERTIFICATE OF SALE / RECEIPT

Auction	Item No. n/9	Winning Bid 211,000.00	Bidder No. 3		
General Information:					
Date: 5/18/18		Auction.com ID: 12-31926JP NV			
Trustee Sale No: 12-31926JP NV		Trustee: National Default			
Property Address:					
Address: 1240 Autumn Glen St		City: Fernley			
State: NV	Zip: 89408	County: Lyon			
Form 8300: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No					
Owner Information:					
Buyer/Owner 1: BRECKENRIDGE PROPERTY FUND 2016, LLC					
E-mail: EBURG@WEDGEWOOD-INC.COM		Cell Phone: 702 673 8924			
Date of Birth: 7-16-90		Driver's License/ID:			
Address: 2320 POTOMI ST #130		City: LAS VEGAS State: NV Zip: 89146			
Buyer/Owner 2:					
E-mail:		Cell Phone:			
Date of Birth:		Driver's License/ID:			
Address:		City: State: Zip:			
Deed Mailing Address: <input checked="" type="checkbox"/> Same as Above <input type="checkbox"/> Same as Representative <input type="checkbox"/> Other:					
Buyer Type: <input type="checkbox"/> Owner Occupied <input checked="" type="checkbox"/> Investor <input type="checkbox"/> Second Home					
Representative Information:					
Name: ALYSSA McDERMOTT		Cell Phone: 775 530 4178			
Email: AMCDERMOTT@WEDGEWOOD-INC.COM		Driver's License/ID: 0205237164			
Date of Birth: 7-16-90					
Relationship to Buyer: <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Director/Officer <input type="checkbox"/> Manager/Member <input type="checkbox"/> Power of Atty. <input type="checkbox"/> Other:					
Vesting - Record Title As Shown: BRECKENRIDGE PROPERTY FUND 2016, LLC					
Receipt of Funds:					
Check No.	Financial Institution	Amount	Check No.	Financial Institution	Amount
1002719059	Bank of the West	\$ 100,000.00			\$
002723487	" "	\$ 100,000.00			\$
002723530	" "	\$ 9,000.00			\$
1002773521	" "	\$ 10,000.00			\$
		\$			\$
		\$			\$
Total Check Amount Received		\$ 215,000.00	Amount Required		\$ 211,000.00
Cash Received		\$	Refund Amount		\$ 4,000.00
Total Received		\$ 215,000.00			
Refund Payable To:					
Name: BRECKENRIDGE PROPERTY FUND 2016, LLC Phone: 702 673 8924					
Address: 2320 POTOMI ST #130 City: LAS VEGAS State: NV Zip: 89146					
<p>Buyer's or Buyer's Representative's signature below indicates that the above information is true and correct. IMPORTANT NOTE: Buyer or Buyer's Representative understands and agrees the sale of this property is on an "AS IS, WHERE IS" basis, with no warranties express or implied. Any refund will be dispersed upon clearing of funds; which shall not be less than ten (10) business days from the date of the auction.</p> <p>Disclaimer: Trustee may rescind the sale due to requirements set out in federal laws or regulations, including anti-money laundering, anti-terrorism, anti-drug trafficking and economic sanctions laws and regulations. Federal law requires all financial institutions to obtain, verify, and record information that identifies parties to transactions. This means that when your bid is provisionally accepted, we will ask for your name, address, date of birth, and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents to comply with such rules and regulations. Your bid is subject to verification of your identity and that we are in compliance with these federal laws and regulations.</p> <p>I/we acknowledge that I/we received a copy of this disclosure.</p>					
Signature of Buyer/Representative:			Date: 5/18/18		
Auditor Printed Name: James Benfield			Date: 5/18/18		

If you have any questions, please contact our Customer Support at (800) 793-6107

INK THAT CHANGES FROM ORANGE TO YELLOW WHEN HEAT IS APPLIED.

1002723530

90-78/1211
00247

DATE 05/17/2018

\$5,000.00

Security features included Details on back

AUTHORIZED SIGNATURE

INK THAT CHANGES FROM ORANGE TO YELLOW WHEN HEAT IS APPLIED.

1002718059

90-78/1211
00247

DATE 05/10/2018

\$100,000.00

Security features included Details on back

AUTHORIZED SIGNATURE

INK THAT CHANGES FROM ORANGE TO YELLOW WHEN HEAT IS APPLIED.

1002723521

90-78/1211
00247

DATE 05/17/2018

\$10,000.00

Security features included Details on back

AUTHORIZED SIGNATURE

04100045611

045611

Purchased: 5/18/2018 1:49:35 PM(Pacific)

**LYON
(FGL)**

Breckenridge Property Fund 2016, LLC

Paid: \$211,000

Spent: (\$215,000.00)

Sales Result Notes:

QB: Justin Bruni

Bidder: Alyssa McDermott

Delinquent Taxes: \$2,176

Liens & Assessments: \$0

APN: 022-052-02 (1)

Address: 1740 AUTUMN GLEN ST
FERNLEY, NV 89408

Pool: -

Baths: 2-0(2)

Beds: 3

Zoning: NR1

Use: SFR

Year Built: 2004

Lot: 7,350

SqFt: 1,850

Owner: KRAMER LEO F / KRAMER AUDREY

E

Last Sold Price: \$204,488

Recording Date: 6/8/2005

Servicer: AUCTION.COM

Trustee: NATIONAL DEFAULT SERVICING
COR

Trustee Phone: 800 280-2832

Site: 31 S MAIN ST YERINGTON

Map Code:

Tax Value:

Tax Year: 2017

Sale Date: 5/18/2018

TS #: 12-31926-JP-NV

Sale Time: 11:00 AM(Pacific)

Legal: 19-20-25 FRNE4SE4 CREATED
FROM SPLIT OF PARCEL # 021-321-07
UPLAND RANCH ESTATES UNIT 7

Published Bid: \$219,160.00

Opening Bid: \$135,000.00

TITLE

eburg@wedgewood-inc.com:5/18/2018 9:10:57 AM(Pacific) | Title: Clear

Position

First

Date

6/7/2005

Amount

\$163,500

Inst. #

NOD

NOS

Alyssa McDermott | 5/17/2018

FV: \$265,000

R: \$12,000

Occupied

Utilities: -

PROPERTY NOTES

Friday, May 18 2018 | Justin Bruni

feels like 270k list here - good clean sellable deal in a hot market!

Friday, May 18 2018 | Alyssa McDermott

TOTAL		HIGH LOW AVG MED		LIST PRICE		HIGH LOW		AVERAGE		MEDIAN		TOTAL PRICE	
LISTING COUNTY	21	DAYS ON MARKET	147 7 11 77	LIST PRICE	\$174,500	FOLD PRICE	\$174,500	\$174,500	\$174,500	\$174,500	\$174,500	\$174,500	\$174,500
1	2	3	4	5	6	7	8	9	10	11	12	13	14
1	2	3	4	5	6	7	8	9	10	11	12	13	14
1	1	1	1	1	1	1	1	1	1	1	1	1	1
2	2	2	2	2	2	2	2	2	2	2	2	2	2
3	3	3	3	3	3	3	3	3	3	3	3	3	3
4	4	4	4	4	4	4	4	4	4	4	4	4	4
5	5	5	5	5	5	5	5	5	5	5	5	5	5
6	6	6	6	6	6	6	6	6	6	6	6	6	6
7	7	7	7	7	7	7	7	7	7	7	7	7	7
8	8	8	8	8	8	8	8	8	8	8	8	8	8
9	9	9	9	9	9	9	9	9	9	9	9	9	9
10	10	10	10	10	10	10	10	10	10	10	10	10	10
11	11	11	11	11	11	11	11	11	11	11	11	11	11
12	12	12	12	12	12	12	12	12	12	12	12	12	12
13	13	13	13	13	13	13	13	13	13	13	13	13	13
14	14	14	14	14	14	14	14	14	14	14	14	14	14
15	15	15	15	15	15	15	15	15	15	15	15	15	15
16	16	16	16	16	16	16	16	16	16	16	16	16	16
17	17	17	17	17	17	17	17	17	17	17	17	17	17
18	18	18	18	18	18	18	18	18	18	18	18	18	18

Friday, May 18 2018 | Alyssa McDermott

Parcel Detail for Parcel # 022-052-02	
Location Property Location 1740 AUTUMN GLEN ST Town FERNLEY District 6.0 - City of Fernley Subdivision UPLAND RANCH EST #7 Lot 62 Block Property Name Remarks	Ownership Assessed Owner Name KRAMER, LEO F & AUDREY E Mailing Address 2364 REDWOOD RD ADOT CHAIRS HERCULES, CA 94547-1145 Legal Owner Name KRAMER, LEO F & AUDREY E Vesting Doc #, Date 353219 05/08/2005 Year / Book / Page Map Document #s PH182130 SM222065 SM315377
Description Total Acres .170 Square Feet 7,350 Ag Acres .000 WWR Acres .000 Improvements Single-family Detached 1 Non-dwelling Units 0 Bedrooms / Baths 3 / 2.00 Single-family Attached 0 Mobile Home Hookups 0 Stories 1.0 Multiple-family Units 0 Wells 0 Garage Square Ft., 420 Mobile Homes 0 Septic Tanks 0 Attached / Detached A Total Dwelling Units 1 Buildings Sq Ft 0 Residence Sq Ft 1,350 Basement Sq Ft 0 Basement Finished Basement SF 0 Bedrooms / Baths 0 / 00	Appraisal Classifications Current Land Use Code 200 Code Table Zoning Code(s) NR1 Class 2.75 Re-appraisal Group 4 Re-appraisal Year 2017 Original Construction Year 2004 Weighted Year

Thursday, May 17 2018 | Alyssa McDermott

Occupied single storyUtilities onComposition roof in good conditionFascia paint peeling 4k paint4k flooring2k appliances 1k Landscaping1k c4kR12

TITLE NOTES

Friday, May 18 2018 | Elysia Burg

deql tax due-\$2176.04~ 1st-\$176k refi 2008 GTS~ FCL
 Cert of Medi recd 3/2018

H

NATIONAL DEFAULT SERVICING CORP.
NOTICE OF DEFAULT

H

DOC#**571145**

10/06/2017

03:51PM

Official RecordRequested By
SERVICELINK TITLE AGENCY INC.**Lyon County - NV****Dawna L. Warr - Recorder**

Page: 1 of 7

Fee: \$288.00

Recorded By MFK

RPTT: \$0.00



0571145

RECORDING REQUESTED BY:**WHEN RECORDED MAIL TO:**

National Default Servicing Corporation
7720 N. 16th Street, Suite 300
Phoenix, AZ 85020

NDSC File No. : 12-31926-JP-NV

Title Order No. : 120135457-NV-GTO

APN: 022-052-02

**NOTICE OF DEFAULT AND ELECTION TO SELL UNDER DEED OF TRUST
IMPORTANT NOTICE**

IF YOUR PROPERTY IS IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR PAYMENTS, IT MAY BE SOLD WITHOUT ANY COURT ACTION, and you may have the legal right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account, which is normally five (5) business days prior to the date set for the sale of your property pursuant to NRS 107.080. No sale date may be set until three months from the date this notice of default may be recorded (which date of recordation appears on this notice).

NOTICE IS HEREBY GIVEN THAT : NATIONAL DEFAULT SERVICING CORPORATION is either the original Trustee or the duly appointed substituted Trustee under a Deed of Trust dated 04/04/2008, executed by Leo E. Kramer and Audrey E Kramer, as Trustor, to secure certain obligations in favor of Washington Mutual Bank, a Federal Association as beneficiary recorded 05/01/2008 as Instrument No. 425436 (or Book, Page) of the Official Records of Lyon County, NV. Said obligations including **ONE NOTE FOR THE ORIGINAL** sum of \$176,000.00.

That a breach of, and default in, the obligations for which such Deed of Trust is security has occurred in that payment has not been made of :

The installments of principal and interest which became due on 11/09/2010 and all subsequent installments of principal and interest through the date of this Notice, plus amounts that are due for late charges, delinquent property taxes, insurance premiums, advances made on senior liens, taxes and/or insurance, trustee fee's, and any attorney fees and court costs arising from or associated with the beneficiaries efforts to protect and preserve its security all of which must be paid as a condition of reinstatement, including all sums that shall accrue through reinstatement or pay-off (and will increase until your account becomes current) as summarized in the accompanying Affidavit of Authority to Exercise the Power of Sale pursuant to NRS 107.080.



571145

10/06/2017
2 of 7

Notice of Default and Election to Sell Under Deed of Trust
NDSC File No.: 12-31926-JP-NV
Page 2

While your property is in foreclosure, you still must pay other obligations (such as insurance and taxes) required by your Note and Deed of Trust or Mortgage. If you fail to make future payments on the loan, pay taxes on the property, provide insurance on the property, or pay other obligations as required by the Note and Deed of Trust or Mortgage, the beneficiary or mortgagee may insist that you do so in order to reinstate your account in good standing. In addition, the beneficiary or mortgagee may require as a condition to reinstatement that you provide reliable written evidence that you paid all senior liens, property taxes, and hazard insurance premiums.

Upon your written request, the beneficiary or mortgagee will give you a written itemization of the entire amount you must pay. You may not have to pay the entire unpaid portion of your account, even though full payment was demanded, but you must pay all amounts in default at the time payment is made. However, you and your beneficiary or mortgagee may mutually agree in writing prior to the time the notice of sale is posted (which may not be earlier than the end of the three month period stated above) to, among other things, (1) provide additional time in which to cure the default by the transfer of the property or otherwise; or (2) establish a schedule of payments in order to cure your default; or both (1) and (2).

Following the expiration of the time period referred to in the first paragraph of this notice, unless the obligation being foreclosed upon or a separate written agreement between you and your creditor permits a longer period, you have only the legal right to stop the sale of your property by paying the entire amount demanded by your creditor.

To find out the amount you must pay, or to arrange for payment to stop the foreclosure, or if your property is in foreclosure for any other reason, contact:

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, SUCCESSOR IN INTEREST BY
PURCHASE FROM THE FEDERAL DEPOSIT INSURANCE CORPORATION AS RECEIVER
OF WASHINGTON MUTUAL BANK
c/o National Default Servicing Corporation
7720 N. 16th Street, Suite 300
Phoenix, AZ 85020 Phone (602) 264-6101 Sales Website: www.ndscorp.com/sales/

Contact the following number to discuss Loan Modification Options: 866-550-5705

Attached hereto and incorporated herein by reference is the Affidavit of Authority to Exercise the Power of Sale pursuant to NRS 107.080.

You may wish to consult a credit-counseling agency to assist you. The Department of Housing and Urban Development (HUD) can provide you with the name and address of the local HUD approved counseling agency by calling their Approved Local Housing Counseling Agency toll free number: (800) 569-4287 or you can go to the HUD web site at: <http://portal.hud.gov/portal/page/portal/HUD/localoffices>.

The Property Address: 1740 Autumn Glen St, Fernley NV 89408-7204

If you have any questions, you should contact a lawyer or the governmental agency which may have insured your loan. Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale, provided the sale is concluded prior to the conclusion of the foreclosure. Remember, YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION.

(909)



571145

10/06/2017
3 of 7

Notice of Default and Election to Sell Under Deed of Trust
NDSC File No.: 12-31926-JP-NV
Page 3

That by reason thereof, the present beneficiary under such Deed of Trust has executed and delivered to duly appointed Trustee a written Declaration of Default and Demand for Sale, and has deposited with said duly appointed Trustee such Deed of Trust and all documents evidencing obligations secured thereby, and has declared and does hereby declare all sums secured thereby immediately due and payable and has elected and does hereby elect to cause the trust property to be sold to satisfy the obligations secured thereby.

Dated: 10-5, 2017

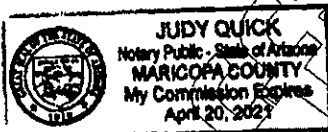
National Default Servicing Corporation, an Arizona Corporation, As Trustee for JPMorgan Chase Bank, National Association


By: Ivan Mora, Trustee Sales Supervisor

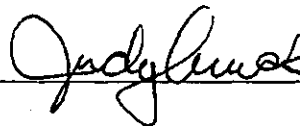
State of: Arizona
County of: Maricopa

On 10-5, 2017, before me, the undersigned, a Notary Public for said State, personally appeared Ivan Mora, personally known to me or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal,



Signature



This is an attempt to collect a debt and any information obtained will be used for that purpose.



571145

10/06/2017
4 of 7

TS No: 12-31926-JP-NV
APN: 022-052-02

**AFFIDAVIT OF AUTHORITY IN SUPPORT OF NOTICE OF DEFAULT AND
ELECTION TO SELL
[NRS § 107.080]**

Borrowers Identified in Deed of Trust:
Leo F. Kramer And Audrey E Kramer

Trustee Address:
7720 N. 16th Street, Suite 300
Phoenix AZ 85020

Property Address:
1740 Autumn Glen St
Fernley NV 89408-7204

Deed of Trust Document Instrument
Number:
425436

I, Von Mai, being first duly sworn, under penalty of perjury
state as follows:

1. I am a Vice President of JPMorgan Chase Bank, National Association ("Chase"), the current beneficiary of the deed of trust or the authorized representative of the current beneficiary. I am over the age of 18 and competent to testify as to the matters stated herein.
2. I have access to Chase's electronic mortgage servicing system, documents and other records (together the "business records"), maintained in the ordinary course of the regularly conducted business activity of servicing mortgage loans. I have received training on how those business records are kept and maintained, and I make this Affidavit based on the personal knowledge I acquired by a review of the business records of Chase for the debt obligation for this Deed of Trust (identified in the caption above).



TS No: 12-31926-JP-NV
APN: 022-052-02

3. The following subparagraphs list contact information that I understand is required to be provided in this Affidavit:
 - a. The full name and business address of the trustee for the Deed of Trust (identified in the caption above) is National Default Servicing Corporation, located at 7720 N. 16th Street, Suite 300, Phoenix, AZ 85020.
 - b. The full name and address of the servicer of the loan obligation for the Deed of Trust (identified in the caption above) is JPMorgan Chase Bank, National Association, located at 3415 Vision Drive Columbus, OH 43219.
 - c. The full name and address of the current beneficiary of record (and holder of the note) for the Deed of Trust (identified in the caption above) is JPMorgan Chase Bank, National Association, successor in interest by purchase from the Federal Deposit Insurance Corporation as Receiver of Washington Mutual Bank, located at 3415 Vision Drive, Columbus OH 43219.
4. The beneficiary under the deed of trust, the successor in interest of the beneficiary or the trustee is in actual or constructive possession of the note secured by the deed of trust.
5. I confirm that the servicer of the obligation or debt secured by the deed of trust has instructed the trustee to exercise the power of sale with respect to the property when permissible under Nevada law.
6. The beneficiary or its successor in interest, the servicer of the obligation or debt secured by the deed of trust or the trustee, or an attorney representing any of those persons, has sent to the obligor or borrower of the obligation or debt secured by the deed of trust a written statement of:



TS No: 12-31926-JP-NV
APN: 022-052-02

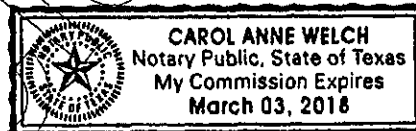
- a. The amount of payment required to make good the deficiency in performance or payment, avoid the exercise of the power of sale and reinstate the terms and conditions of the underlying obligation or debt existing before the deficiency in performance or payment, as of the date of the statement;
 - b. The amount in default;
 - c. The principal amount of the obligation or debt secured by the deed of trust;
 - d. The amount of accrued interest and late charges;
 - e. A good faith estimate of all fees imposed in connection with the exercise of the power of sale; and
 - f. Contact information for obtaining the most current amounts due, including the local or toll-free number.
7. The Contact information provided for obtaining the most current amounts due in the written statement above, 1-888-290-4323 may also be contacted by the obligor or borrower of the obligation or debt for a recitation of the information contained in this affidavit.
 8. I make the statements in this paragraph based on my personal knowledge acquired by a review of the business records of Chase, information contained in the records of the recorder of the county in which the property is located; or the title guaranty or title insurance issued by a title insurer or title agent authorized to do business in this State pursuant to chapter 692A of NRS.
 - a. The date, recordation number (or other unique designation of), the name of each assignee under each recorded assignment of the deed of trust is as follows:



571145

10/06/2017
7 of 7TS No: 12-31926-JP-NV
APN: 022-052-02Date Recording No. Assignee Name

(NONE)

Dated this 24th day of June, 20 14By: 
SignatureName: Von Mai Vice PresidentPrinted
JP Morgan Chase Bank, N.A.Subscribed and sworn to before me in said county this 24th day of June, 2014, by
Von MaiCarol Anne Welch Notary Public
Carol Anne Welch
State of Texas
County of Dallas
My Commission expires: 3/3/2018Personally Known / OR
Produced Identification /Type of Identification Produced:
/

AB300 Compliant

4

914

I

OUTLINE OF SUBJECT PROERTY
TITLE DOCUMENTS FOR:
1740 AUTUMN GLEN STREET, FERNLEY, NV

I

CHAIN OF TITLE OUTLINE:

Subject Property Address: 1740 Autumn Glen, Fernley, NV

Ponderosa & Leo & Audrey Kramer – Grant Bargain & Sales Deed

(Purchase Price \$204,488)

6/2/05 Signed

6/8/05 Recorded

Paul Financial --Mortgage Loan & Deed of Trust

(Loan Amt. \$163,500)

6/2/05 Signed

6/8/05 Recorded

MERS – Acting solely as nominee for lender is the -- Beneficiary

Foundation Conveyancing, LLC --Trustee

SUBSTITUTION OF TRUSTEE & FULL RECONVEYANCE

5/13/08 Signed

6/19/08 Recorded

MERS as owner and holder of the note --Beneficiary

Foundation Conveyancing, LLC –Trustee

Substitutes Executive Trustee Services, LLC as new Trustee

WAMU – CREDIT AGREEMENT & DEED OF TRUST

Revolving Line of Credit (\$176,000)

4/4/08 Signed

5/1/08 Recorded

Kramers –Trustors

WAMU –Beneficiary

California Reconveyance Company – Grantor, grants the undersigned
WaMu Plus TM as Trustee See Exhibit A

**There is NO assignment from Executive Trustee Services, LLC to
California Reconveyance Company**

SUBSTITUTION OF TRUSTEE

11/26/13 Signed by Carryn Barron, VP of Chase Bank

12/5/13 Recorded

(With no assignment of title)

Substitutes National Default Servicing Corporation as – Trustee

NOTICE OF DEFAULT

10/5/17 Signed by Ivan Mora, Trustee Sales Supervisor

10/6/17 Recorded

Attached to NOD is AFFIDAVIT OF AUTHORITY IN SUPPORT OF
NOTICE OF DEFAULT & ELECTION TO SELL

6/24/14 Signed by Von Mai, VP of Chase Bank

**This document was never recorded, it was piggy-backed 3 years
later and attached to NDSC's Notice of Default.**

ASSIGNMENT OF DEED OF TRUST

4/4/18 Signed by Debbie Swayzer, VP of Chase Bank

4/10/18 Recorded

This fraudulent document states: WAMU grants, assigns and transfers to Chase Bank all beneficial interest...., this is clearly a fraudulent self-fabricated document and untimely to say the least (10 YEARS) after WAMU went into receivership with the FDIC on September 25, 2008.

NOTICE OF TRUSTEE SALE

4/18/18 Signed by Rachael Hamilton, Trustee Sales Representative

4/19/18 Recorded

SALE TO BRECKRIDGE PROPERTY FUND 2016, LLC

6/1/18. Recorded

J

CEASE & DESIST LETTER
TO BRECKENRIDGE

J

Ms. Casey J. Nelson, Esq.
In-house Counsel for:
Breckenridge Property Fund 2016, LLC
2320 Potosi Street, Suite, 130
Las Vegas, Nevada 89146

CEASE AND DESIST

PROPERTY ADDRESS: 1740 AUTUMN GLEN, FERNLEY, NV

Dear Ms. Nelson,

It has been brought to our attention that you have informed via email to our property management company, Chaffin Real Estate Services, that you are the in-house counsel for Breckenridge Property Fund 2016, LLC and Wedgewood Inc. Both of the aforementioned companies we believe are owned by Ms. Alyssa McDermott. All of you have inappropriately contacted our property management company and our tenants and have provided them with false and misinformation about our property. Additionally, you have inappropriately requested and solicited our management company and our tenants demanding they provide you with a copy of our tenants' lease and other documentation. This repeated communication is considered harassment and is an invasion of our tenants' privacy and rights.

Please take note that we are the 'LEGAL' owners of the above mentioned property and the property in question is in litigation and currently before the United States Court of Appeals for the Ninth Circuit, San Francisco, CA.

We ask that you **CEASE AND DESIST** in having any further communications with our tenants immediately or we will proceed with legal action accordingly.

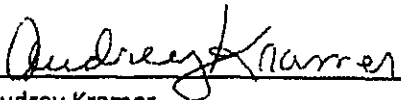
Sincerely,



Leo Kramer

6/11/2018

Date



Audrey Kramer

6/11/2018

Date

Cc: Alyssa McDermott--Wedgwood-Inc., 9 Sierra Circle, Carson City, NV 89703

Ms. Lee Anne Chaffin--Chaffin Real Estate Services, 200 E. Main Street #102, Fernley, NV 89408

FILED

2018 DEC 21 PM 4:14

TANYA SCHEER
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT
Tanya Thomas

John T. Steffen (4390)
Matthew K. Schriever (10745)
HUTCHISON & STEFFEN, PLLC
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145
Tel (702) 385-2500
Fax (702) 385-2086
mschriever@hutchlegal.com

Casey J. Nelson, Esq. (12259)
Wedgewood, LLC
Office of the General Counsel
2320 Potosi Street, Suite 130
Las Vegas, Nevada 89146
Tel (702) 305-9157
Fax (310) 730-5967
caseynelson@wedgewood-inc.com

Attorneys for Defendants

Alyssa McDermott, Wedgewood Inc., and Breckenridge Property Fund 2016 LLC

**THIRD JUDICIAL DISTRICT COURT
LYON COUNTY, NEVADA**

LEO KRAMER, AUDREY KRAMER,

Plaintiff,

v.

NATIONAL DEFAULT SERVICING
CORPORATION, ALYSSA MCDERMOTT,
WEDGEWOOD INC., BRECKENRIDGE
PROPERTY FUND 2016 LLC and DOES 1
THROUGH 50 INCLUSIVE,

Defendants.

Case No.: 18-CV-00663
Dept No.: I

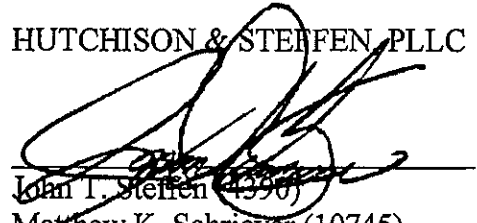
**REQUEST TO SUBMIT MOTION TO
DISMISS FIRST AMENDED COMPLAINT**

Comes now, ALYSSA MCDERMOTT ("McDermott"), WEDGEWOOD INC. ("Wedgwood"),
and BRECKENRIDGE PROPERTY FUND 2016 LLC ("Breckenridge") (collectively "Defendants") by
and through its counsel of record, Hutchison & Steffen, LLC, and hereby requests pursuant to T.J.D.C.R.
7(G)(3) that the MOTION TO DISMISS FIRST AMENDED COMPLAINT that was filed on

1 NOVEMBER 28, 2018, be submitted to the judge for consideration. No other parties have timely filed
2 an Opposition or Response to the Motion.

3 DATED this 21 day of December 2018.

4
5 HUTCHISON & STEFFEN, PLLC

6
7 
8 John T. Steffen (4396)
9 Matthew K. Schriever (10745)
10 10080 West Alta Drive, Suite 200
11 Las Vegas, NV 89145
12 mschriever@hutchlegal.com

13 Wedgewood, LLC
14 Office of the General Counsel

15 Casey J. Nelson, Esq. (12259)
16 2320 Potosi Street, Suite 130
17 Las Vegas, Nevada 89146
18 E-mail: caseynelson@wedgewood-inc.com

19 *Attorneys for Defendants*
20 *Alyssa McDermott, Wedgewood Inc., and*
21 *Breckenridge Property Fund 2016 LLC*
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Hutchison & Steffen, and that on the date indicated below, I served a true and correct copy of the **REQUEST TO SUBMIT MOTION TO DISMISS FIRST AMENDED COMPLAINT** via U.S. Mail to the parties designated below.

Leo Kramer
Audrey Kramer
2364 Redwood Road
Hercules, CA 94547
Plaintiffs

Kevin S. Soderstrom, Esq.
TIFFANY & BOSCO, PA
10100 W. Charleston Blvd., Ste. 220
Las Vegas, NV 89135
Attorney for National Default Servicing Corporation

DATED this 21 day of December 2018.



An Employee of HUTCHISON & STEFFEN

FILED

2018 DEC 21 PM 4:14

TANYA SCOTCHDO
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT

Kathy Thomas

John T. Steffen (4390)
Matthew K. Schriever (10745)
HUTCHISON & STEFFEN, PLLC
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145
Tel (702) 385-2500
Fax (702) 385-2086
mschriever@hutchlegal.com

Casey J. Nelson, Esq. (12259)
Wedgewood, LLC
Office of the General Counsel
2320 Potosi Street, Suite 130
Las Vegas, Nevada 89146
Tel (702) 305-9157
Fax (310) 730-5967
caseynelson@wedgewood-inc.com

Attorneys for Defendants

Alyssa McDermott, Wedgewood Inc., and Breckenridge Property Fund 2016 LLC

**THIRD JUDICIAL DISTRICT COURT
LYON COUNTY, NEVADA**

LEO KRAMER, AUDREY KRAMER,

Plaintiff,

v.

NATIONAL DEFAULT SERVICING
CORPORATION, ALYSSA MCDERMOTT,
WEDGEWOOD INC., BRECKENRIDGE
PROPERTY FUND 2016 LLC and DOES 1
THROUGH 50 INCLUSIVE,

Defendants.

Case No.: 18-CV-00663
Dept No.: I


**NOTICE OF NON-OPPOSITION TO
DEFENDANTS' MOTION TO DISMISS
FIRST AMENDED COMPLAINT**

Comes now, ALYSSA MCDERMOTT ("McDermott"), WEDGEWOOD INC. ("Wedgwood"),
and BRECKENRIDGE PROPERTY FUND 2016 LLC ("Breckenridge") (collectively "Defendants") by
and through its counsel of record, Hutchison & Steffen, LLC, and hereby files this Notice of Non-
Opposition to advise the Court that there has been no Opposition filed to Defendants' Motion To Dismiss
First Amended Complaint filed on NOVEMBER 19, 2018. Plaintiff has failed to timely file an

1 Opposition pursuant to T.J.D.C.R. 7(B). Plaintiff respectfully requests this Court construe the failure of
2 the Plaintiff to file a memorandum of points and authorities in opposition to the motion within the time
3 permitted as consent to the granting of the motion pursuant to T.J.D.C.R. 7(D).

4 DATED this 21 day of December 2018.

6 HUTCHISON & STEFFEN, PLLC

8 
9 John T. Steffen (4390)

10 Matthew K. Schriever (10745)

11 10080 West Alta Drive, Suite 200

12 Las Vegas, NV 89145

13 mschriever@hutchlegal.com

14 Wedgewood, LLC

15 Office of the General Counsel

16 Casey J. Nelson, Esq. (12259)

17 2320 Potosi Street, Suite 130

18 Las Vegas, Nevada 89146

19 E-mail: caseynelson@wedgewood-inc.com

20 *Attorneys for Defendants*

21 *Alyssa McDermott, Wedgewood Inc., and*

22 *Breckenridge Property Fund 2016 LLC*

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Hutchison & Steffen, and that on the date indicated below, I served a true and correct copy of the **NOTICE OF NON-OPPOSITION TO DEFENDANTS' MOTION TO DISMISS FIRST AMENDED COMPLAINT** via U.S. Mail to the parties designated below.

Leo Kramer
Audrey Kramer
2364 Redwood Road
Hercules, CA 94547
Plaintiffs

Kevin S. Soderstrom, Esq.
TIFFANY & BOSCO, PA
10100 W. Charleston Blvd., Ste. 220
Las Vegas, NV 89135
Attorney for National Default Servicing Corporation

DATED this 21 day of December 2018.

BAC
An Employee of HUTCHISON & STEFFEN

FILED

2018 DEC 21 PM 3:29

TANYA SCEDINE
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT

Victoria Tovar

LEO KRAMER
AUDREY KRAMER
2364 REDWOOD ROAD
HERCULES, CA 94547

PLAINTIFFS IN PRO PER

IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF LYON

LEO KRAMER,
AUDREY KRAMER,

Plaintiffs,

vs.

NATIONAL DEFAULT SERVICING
CORPORATION, ALYSSA MC DERMOTT,
WEDGWOOD INC., BRECKENRIDGE
PROPERTY FUND 2016 LLC, and DOES 1
THROUGH 50 INCLUSIVE,

Defendants.

Case No.: 18-CV-00663

PLAINTIFF'S REQUEST FOR
PRODUCTION OF DOCUMENTS SET ONE

PROPOUNDING /ASKING PARTY:

Plaintiffs, Audrey Kramer and Leo Kramer

RESPONDING/ANSWERING PARTY:

Defendant, National Default Servicing Corporation
Inc

SET:

One

1 **TO DEFENDANT, NATIONAL DEFAULT SERVICING CORPORATION INC,**
2 **AND THE ATTORNEY OF RECORD IN THE ABOVE-CAPTIONED MATTER:**

3 Pursuant to Nevada Rules of Civil Procedure 34, Plaintiffs, Audrey Kramer and Leo
4 Kramer, ("**Propounding Party**") hereby demand that, Defendant, NATIONAL DEFAULT
5 SERVICING CORPORATION INC, ("**Responding Party**") responds under oath and in writing
6 to the following Demand for Inspection and Production of Documents **SET ONE (1)** no later than
7 (30) days from the date of service.

9 **ALL DOCUMENTS SHOULD BE PRODUCED AT: 2364 REDWOOD ROAD**
10 **HERCULES, CA 94547 on January 28, 2019 AT 10:00 A.M.**

11 The documents to be produced are described herein and are believed to be in the
12 possession, custody and/or control of the Defendant, NATIONAL DEFAULT SERVICING
13 CORPORATION INC, his agents, representatives, employees, custodian of records, or attorneys
14 of record, and are not privileged and are reasonably calculated to lead to the discovery of
15 admissible evidence.

17 Demand is expressly made that Defendant, NATIONAL DEFAULT SERVICING
18 CORPORATION INC comply with the provisions of Nevada Rules of Civil Procedure 34, which
19 requires the Responding Party to respond and produce for inspection, within thirty (30) days of
20 service hereof, the documents, and that the response which accompanies said documents contain
21 certain statements of compliance, representations or objection to each category of the demands.

22 Further, demand is hereby made that if Defendant, NATIONAL DEFAULT SERVICING
23 CORPORATION INC objects to any of the items or categories of items set forth in this Demand
24 for Inspection and Production of Documents, pursuant to Nevada Rules of Civil Procedure 34, the
25 Defendant, NATIONAL DEFAULT SERVICING CORPORATION INC's response shall identify
26 with particularity any document or other thing within any category of item in the demand to which
27
28

1 an objection is being made and set forth clearly the extent of, and the specific ground for, the
2 objection. Failure to do so will be deemed a waiver of all such objections.

3 If you cannot provide the documents requested within thirty (30) days, please explain why
4 and provide the names and addressees of all persons and entities who have access to, or possession
5 of, the requested documents.

6
7 Plaintiffs hereby request that you certify, pursuant to NRCP 11, that each such document
8 provided by you is a true, correct, accurate and complete copy of the original document and that
9 such document contains all the pages of each original document without modification or deletion,
10 to allow Plaintiffs to make a determination as to the authenticity of genuineness of each such
11 document. You are requested to identify, describe or produce all tangible things which constitute
12 or contain matters within the scope of NRCP 26(b) which are in your possession, custody or
13 control, or in that of your counsel, or may reasonably be acquired by you or your counsel, which
14 may support any of the allegations in the pleadings.
15

16
17 **GENERAL INSTRUCTIONS FOR REQUEST FOR PRODUCTION**

18 **DOCUMENT REQUESTED:** The request set out below ("Requests") call for documents in
19 Defendant, NATIONAL DEFAULT SERVICING CORPORATION INC's, actual or constructive
20 possessions, custody, control or care, including, but not limited to, those documents in the actual
21 or constructive possessions, custody, control or care, of any lawyer, agent, or other representative
22 of Defendant, NATIONAL DEFAULT SERVICING CORPORATION INC. If after providing
23 the Responses and Production called for by these Requests, Defendant, NATIONAL DEFAULT
24 SERVICING CORPORATION INC become aware of any documents called for by the Request
25 which was not previously provided, Defendant, NATIONAL DEFAULT SERVICING
26
27
28

1 CORPORATION INC is requested to promptly provide a copy of that document to Plaintiffs,
2 Audrey Kramer and Leo Kramer on the above date.

3 **DOCUMENT WITHHELD:** If any document is withheld under a claim of privilege or other
4 protection, as to aid the Court and the parties hereto in determining the validity of the claim of
5 privilege or other protection, Defendant, NATIONAL DEFAULT SERVICING CORPORATION
6 INC is requested to provide the following information with respect to each withheld document:
7

- 8 1. The identity of the person(s) who prepared the document, who signed it, and over whose
9 name it was sent or issued;
- 10 2. The identity of the person(s) to whom the document was directed;
- 11 3. The nature and substance of the document with sufficient particularity to enable the Court
12 and Plaintiffs, Audrey Kramer and Leo Kramer or Counsel to identify the document;
- 13 4. The date of the document;
- 14 5. The identity of the person who has custody of, or control over, the document and each
15 copy thereof;
- 16 6. The identity of each person to whom a copy of the document was furnished;
- 17 7. The number of pages of the documents;
- 18 8. The basis on which any privilege or other protection is claimed; and
- 19 9. Whether any non-privilege matter is included in the document.

20
21
22 **PARTIAL PRODUCTION:** If Defendant, NATIONAL DEFAULT SERVICING
23 CORPORATION INC, object to a particular Request, or any portion of any Request, Defendant,
24 NATIONAL DEFAULT SERVICING CORPORATION INC must produce all documents called
25 for but not subject to the objection. Whenever a document is not produced in full, and describe, to
26 the best of Defendant, NATIONAL DEFAULT SERVICING CORPORATION INC's knowledge,
27
28

1 information, and belief and with as much particularity as possible, those portions of the document
2 which are not produced.

3 **ORDERLY RESPONSE:** Plaintiffs, Audrey Kramer and Leo Kramer, request DEFENDANT,
4 NATIONAL DEFAULT SERVICING CORPORATION INC, produce the documents called for
5 herein either as they are kept in the usual course of Defendant, NATIONAL DEFAULT
6 SERVICING CORPORATION INC's affairs, or organize them in such a manner as will facilitate
7 their identification with the particular Request(s) to which the documents are responsive.
8

9
10 **DEFINITIONS**

- 11 1. "YOU" and "YOUR" shall include YOU, Defendant, NATIONAL DEFAULT
12 SERVICING CORPORATION INC, shall mean YOU and all YOUR agents,
13 employees, subsidiaries, YOUR attorneys, YOUR accountants, YOUR investigators,
14 consultants, and anyone else working on YOUR behalf.
15
- 16 2. "PERSON" shall include a natural person, firm, organization, partnership, business,
17 trust, limited liability company, corporation, or public entity.
- 18 3. "DEFENDANT" shall mean YOU Defendant, NATIONAL DEFAULT SERVICING
19 CORPORATION INC.
- 20 4. "RESPONDING PARTY" shall mean YOU Defendant, NATIONAL DEFAULT
21 SERVICING CORPORATION INC.
- 22 5. "DOCUMENT(S)" shall include all written and/or graphic materials and/or sound
23 recordings, however produced or reproduced, of any kind and description, including
24 the original and all duplicates or copies. In that regard, the "DOCUMENT(S)" means
25 any "writing" including facsimiles, electronic records, film records or other
26 reproductions in the responding party's possession or known to the responding party on
27
28

1 usual inquiry. If a document has been prepared in more than one copy and any copy
2 was not or is no longer identical to the original by reason of simultaneous or
3 subsequent notation or modification of any kind, each non-identical copy must be
4 included.

5
6 6. "**DOCUMENT(S)**" herein also mean any written, recorded, or graphic material of any
7 kind, whether prepared by you or by any other person that is in your possession,
8 custody, or control. The term includes agreements; contracts; letters; telegrams; inter-
9 office communications; memoranda; reports; records; instructions; specifications;
10 notes; notebooks; scrapbooks; diaries; plans; drawings; sketches; blueprints; diagrams;
11 photographs; photocopies; charts; graphs; descriptions; drafts, whether or not they
12 resulted in a final document; minutes of meetings, conferences, and telephone or other
13 conversations or communications; invoices; purchase orders; bills of lading;
14 recordings; published or unpublished speeches or articles; publications; transcripts of
15 telephone conversations; phone mail; electronic-mail; ledgers; financial statements;
16 microfilm; microfiche; tape or disc recordings; and computer print-outs.

17
18 7. The term "**DOCUMENT**" also includes electronically stored data from
19 which information can be obtained either directly or by translation through detection
20 devices or readers; any such document is to be produced in a reasonably legible and
21 usable form. The term "document" includes all drafts of a document and all copies that
22 differ in any respect from the original, including any notation, underlining, marking, or
23 information not on the original. The term also includes information stored in, or
24 accessible through, computer or other information retrieval systems (including any
25 computer archives or back-up systems), together with instructions and all other
26 materials necessary to use or interpret such data compilations.
27
28

- 1 8. Without limitation on the term "control" as used in the preceding paragraph, a
2 document is deemed to be in your control if you have the right to secure the document
3 or a copy thereof from another person.
- 4 9. Additionally, "**DOCUMENT(S)**" shall include all written and/or graphic materials
5 and/or sound recordings, however produced or reproduced, of any kind and
6 description, including the original and all duplicates or copies. In that regard, the
7 "**DOCUMENT(S)**" means any "writing" including facsimiles, electronic records, film
8 records or other reproductions in the responding party's possession or known to the
9 responding party on usual inquiry. If a document has been prepared in more than one
10 copy and any copy was not or is no longer identical to the original by reason of
11 simultaneous or subsequent notation or modification of any kind, each non-identical
12 copy must be included.
- 13 10. "**DOCUMENT(S)**" herein also means and includes without limitation all
14 correspondence, memoranda, certificates, notes, books, manuals, pamphlets, brochures,
15 advertisements, books of account, balance sheets, financial statements, profit and loss
16 statements, working papers, schedules, diaries, calendars, logs, time records,
17 equipment records, microfilms, transcripts, recordings, tapes, telexes, telegrams, files,
18 proposals, bids, offers, contracts, agreements, change orders, worksheets, drawings,
19 blue prints, designs, specifications, time cards, compilations, graphs, charts, bills,
20 statements, invoices, receipts, bills of lading, shipping records, confirmations,
21 applications, purchase orders, checks, checkbooks and other checking records,
22 photographs, formulae, prescriptions, studies, projections, reports, computer programs,
23 information contained in computer banks, tapes cards, printouts and drafts to the
24
25
26
27
28

- 1 extent they differ from the originals, and all other records and papers of any nature
2 whatsoever.
- 3 11. **"IDENTIFY"** as used herein with regard to a person or an entity means identify
4 specifically by name, the last-known address, last-known telephone number, e-mail
5 address, and any other identifying characteristics known to **"YOU"**. The word
6 **"IDENTIFY"** as used herein with regard to a **DOCUMENT** means to identify
7 specifically by describing the **DOCUMENT**, including the medium in which it is
8 currently stored, its current location, and any other identifying characteristics known to
9 **YOU**.
- 10
11 12. **"RELATING TO"** and **"RELATE TO"** shall mean and include referring to, alluding
12 to, responding to, pertaining to, connected with, commenting on, reviewing any aspects
13 of, about, regarding, showing, describing, discussing, mentioning, concerning,
14 respecting, analyzing, constituting, or evidencing.
- 15
16 13. **"COMMUNICATION"** shall mean any and all COMMUNICATION of any kind,
17 whether oral or written, including, without limitation, letters, correspondence, notes,
18 transcriptions, face-to-face meetings, telephone conversations, e-mails, facsimile
19 transmissions, tape recordings, computer transmission of any type.
- 20
21 14. **"CONTRACT"** Shall mean any agreement YOU had with BRECKENRIDGE
22 PROPERTY FUND 2016 LLC regarding the purchase of the subject property.
- 23 15. Additionally, **"CONTRACT"** also Shall also mean any agreement YOU had with JP
24 Morgan Chase Bank, N.A. regarding the purchase of the subject property.
- 25 16. **"SUBJECT PROPERTY"** Shall mean: 1740 Autumn Glen Street, Fernley, NV 89408,
26 ("the subject property").and more fully legally described as:
27
28

1 Lot 62, SD UPLAND RANCH ESTATE UNIT NO. 7. ACCORDING TO MAP THEREOF,
2 FILED AS DOCUMENT NO 315377, ON MARCH 9, 2004, COUNTY OF LYON, STATE
3 OF NEVADA, Bearing APN: 022-052-02 in Lyon County, State of Nevada

4 **REQUESTS FOR PRODUCTION**

5 **REQUEST FOR PRODUCTION NO.1:**

6 All documents that contain information about, refer to, or relate to your claim of due diligence

7 Title Search before the contract before YOU recorded the Notice of Default.

8 **REQUEST FOR PRODUCTION NO.2:**

9 Any and all correspondence between you and the All the Defendants in this case in the past five
10 years, including letters, emails, text messages, and any other written or electronic communications
11 pertaining to purchase of real property in the State of Nevada.
12

13 **REQUEST FOR PRODUCTION NO.3:**

14 Any and all correspondence between you and the All the Defendants in this case in the past five
15 years, including letters, emails, text messages, and any other written or electronic communications
16 pertaining to purchase of real property in any State in the United States other than the State of
17 Nevada.
18

19 **REQUEST FOR PRODUCTION NO.4:**

20 Produce any and all original DOCUMENT(S) to be copied pertaining to any and all records of
21 financial bank accounts where YOU authorized a check to written for the purchase of the "Subject
22 Property.
23

24 **REQUEST FOR PRODUCTION NO.5:**

25 Any and all documents on which you relied or identified in your Answers to Interrogatories, or
26 which relate to your Answers to or the subject matter of the Interrogatories.
27
28

REQUEST FOR PRODUCTION NO.6:

Any and all correspondence between you and the All the Defendants in this case in the past five years, including letters, emails, text messages, and any other written or electronic communications pertaining to purchase of real property in any of the United States Territories.

REQUEST FOR PRODUCTION NO.7:

Any and all correspondence between you and All Defendants in this case in the past five years, including letters, emails, text messages, and any other written or electronic communications YOU had with NATIONAL DEFAULT SERVICING CORPORATION pertaining to purchase of the Subject Property.

REQUEST FOR PRODUCTION NO.8:

Any and all correspondence between you and any and all Defendants in this case in the past five years, including letters, emails, text messages, and any other written or electronic communications YOU had with JPMorgan Chase Bank, N.A., pertaining to purchase of the Subject Property

REQUEST FOR PRODUCTION NO.9:

Any and all correspondence between you and any and All Defendants in this case in the past five years, including letters, emails, text messages, and any other written or electronic communications for which YOU claimed YOU sold the Subject Property.

REQUEST FOR PRODUCTION NO.10:

All documents containing any statements made to you by anyone with personal knowledge of the facts at issue in this case.

REQUEST FOR PRODUCTION NO.11:

All documents related to any Investigation against YOU, in the States of Nevada or in any other jurisdiction, whether or not they resulted in a fine, for the past ten years

REQUEST FOR PRODUCTION NO.12:

Produce any and all original DOCUMENT(S) to be copied pertaining to YOUR purchase of the Subject property.

REQUEST FOR PRODUCTION NO.13:

Produce any and all original DOCUMENT(S) to be copied pertaining to YOUR title search of the subject property prior to YOUR alleged purchase of the Subject Property.

REQUEST FOR PRODUCTION NO.14:

Produce any and all original DOCUMENT(S) to be copied pertaining to any and all property purchased by "YOU" National Default Servicing Corporation Inc, within the past five years.

REQUEST FOR PRODUCTION NO.15:

All bank statements, cancelled checks and check registers for any checking accounts in your name alone or jointly with any person, firms, partnerships, companies, corporations, or limited partnerships since 2015.

REQUEST FOR PRODUCTION NO.16:

Produce any and all original DOCUMENT(S) to be copied pertaining to Financial records pertaining to the Purchase of the Subject property.

REQUEST FOR PRODUCTION NO.17:

Produce any and all original DOCUMENT(S) to be copied pertaining to any loans that YOU claimed or are claiming towards YOUR purchase of the Subject property.

Dated: December 19, 2018

Respectfully Submitted,


AUDREY KRAMER, Pro se Plaintiff

Dated: December 19, 2018

Respectfully Submitted,


LEO KRAMER, Pro se Plaintiff

PROOF OF SERVICE

[C.C.P. §1013]

The UPS Store

1511 Sycamore Ave. Ste M
Hercules, CA 94547

store2796@theupsstore.com



STATE OF CALIFORNIA)
) ss:
COUNTY OF CONTRA COSTA)

I am employed in the County of Contra Costa, State of California. I am over the age of 18 and not a party to the within action; my business address is _____

On December 20, 2018, I served the foregoing document entitled:

PLAINTIFFS, AUDREY KRAMER and LEO KRAMER'S REQUEST FOR PRODUCTION SET ONE

on all parties in this action as follows:

PLEASE SEE ATTACHED SERVICE LIST

☒ **By Mail.** By placing a true copy thereof enclosed in a sealed envelope. I am "readily familiar" with the firm's practice of collection and processing for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with first class postage thereon fully paid at San Diego, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or the postage meter is more than one day after day of deposit for mailing in this Proof of Service.

☐ **By Telefax.** I transmitted said document by telefax to the offices of the addressees at the telefax numbers on the attached Service List.

☐ **By Personal Service.** I delivered such envelope by hand to the addressee(s).

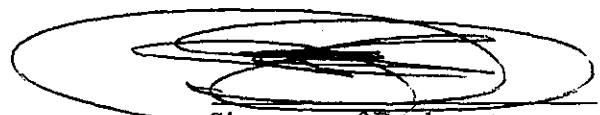
☐ **By Overnight Courier.** I caused the above-referenced document(s) to be delivered to an overnight courier service for next day delivery to the addressee(s) on the attached Service List.

I declare under penalty of perjury under the laws of the State of California and under the laws of the State of Nevada that the foregoing is true and correct.

Executed on December 20, 2018 at Hercules, California.

Corina DiGrazia

Name of Declarant


Signature of Declarant

CERTIFICATE OF SERVICE LIST:

John T. Steffen
Mathew K. Schriever
Hutchison & Steffen
1008 West Alta Drive, Suite 200
Las Vegas, NV 89145

Casey J. Nelson
Wedgewood, LLC
2320 Potosi Street, Suite 130
Las Vegas, Nevada 89146

Attorneys for Defendants,
ALYSSA MC DERMOTT, WEDGWOOD INC., BRECKENRIDGE PROPERTY
FUND 2016 LLC

Kevin S. Soderstrom
Tiffany & Bosco, P.A.
10100 W. Charleston Boulevard, Ste. 220
Las Vegas, NV 89107

Attorneys for Defendant,
NATIONAL DEFAULT SERVICING CORPORATION

FILED

2019 DEC 21 PM 3:28

TANYA SCERINE
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT

Victoria Toran

1 LEO KRAMER
2 AUDREY KRAMER
3 2364 REDWOOD ROAD
4 HERCULES, CA 94547
5
6 PLAINTIFFS IN PRO PER

7 IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
8
9 IN AND FOR THE COUNTY OF LYON

10 LEO KRAMER,
11 AUDREY KRAMER,

12 Plaintiffs,

13 vs.

14
15
16 NATIONAL DEFAULT SERVICING
17 CORPORATION, ALYSSA MC DERMOTT,
18 WEDGWOOD INC., BRECKENRIDGE
19 PROPERTY FUND 2016 LLC, and DOES 1
20 THROUGH 50 INCLUSIVE,

21 Defendants.
22
23
24

Case No.: 18-CV-00663

PLAINTIFFS, AUDREY KRAMER AND
LEO KRAMER'S REQUEST FOR
ADMISSIONS SET ONE

25 PROPOUNDING /ASKING PARTY: Plaintiffs, Audrey Kramer and Leo Kramer

26 RESPONDING/ANSWERING PARTY: Defendant, National Default Servicing Corporation

27 SET NO: ONE
28

**TO DEFENDANT, AND THE ATTORNEY OF RECORD IN THE ABOVE-
CAPTIONED MATTER:**

Pursuant to Nevada Rules of Civil Procedure 36, Plaintiffs, Audrey Kramer and Leo Kramer, ("**Propounding Party**") hereby demand that, Defendant, NATIONAL DEFAULT SERVICING CORPORATION, ("**Responding Party**") responds under oath and in writing to the following REQUEST FOR ADMISSIONS SET ONE (1) no later than thirty (30) days from the date of service hereof.

These Request for Admissions are being propounded on the grounds that each is relevant to the subject matter of this action or is reasonably calculated to lead to the discovery of admissible evidence.

GENERAL INSTRUCTIONS

If any of these Request for Admissions cannot be answered in full, then you should answer to the extent possible and specify the reasons for your inability to answer the remainder.

The person or persons answering these Request for Admissions must furnish such information as is known or is available to him/her upon reasonable investigation regardless of whether you obtained this information directly, or whether this information was obtained by and made known to you by any of your attorneys or other agents or representatives.

If you object to any part of an Interrogatory, state precisely your objection and answer, to the best of your ability, the remaining portion of that Interrogatory. If any discovery request is objected to as inquiring into privileged matter, set forth fully in the objection the facts upon which you base your objection. If you object to the scope or time period of an Interrogatory and refuse to answer for that scope or time period, state your objection and answer the Interrogatory within what you believe is the appropriate scope for the appropriate time period.

1 These Request for Admissions shall be deemed continuing and supplemental answers shall
2 be required if you directly or indirectly obtain further information after your initial response this
3 Request for Admissions.

4 Each Request for Admissions solicits all information obtainable by Defendant,
5 NATIONAL DEFAULT SERVICING CORPORATION, ("**RESPONDING PARTY**"), from his
6 attorneys, investigators, agents, employees and representatives. If you respond to any set of these
7 Request for Admissions on the basis that you lack sufficient information to respond, describe any
8 and all efforts you made to inform yourself of the facts and circumstances necessary to respond.
9

10 **DEFINITIONS**

11
12
1. 13 "**YOU**" and "**YOUR**" shall include **YOU**, Defendant, **NATIONAL DEFAULT**
14 **SERVICING CORPORATION**, shall mean **YOU** and all **YOUR** agents, employees,
15 subsidiaries, **YOUR** attorneys, **YOUR** accountants, **YOUR** investigators, consultants, and anyone
16 else working on **YOUR** behalf.

2. 17 "**PERSON**" shall include a natural person, firm, organization, partnership, business,
18 trust, limited liability company, corporation, or public entity.

3. 19 "**DEFENDANT**" shall mean **YOU** Defendant, **NATIONAL DEFAULT**
20 **SERVICING CORPORATION**.

21 "**RESPONDING PARTY**" shall mean **YOU** Defendant, **NATIONAL DEFAULT SERVICING**
22 **CORPORATION**.

4. 24 "**DOCUMENT(S)**" shall include all written and/or graphic materials and/or sound
25 recordings, however produced or reproduced, of any kind and description, including the original
26 and all duplicates or copies. In that regard, the "**DOCUMENT(S)**" means any "writing"
27 including facsimiles, electronic records, film records or other reproductions in the responding
28

1 party's possession or known to the responding party on usual inquiry. If a document has been
2 prepared in more than one copy and any copy was not or is no longer identical to the original by
3 reason of simultaneous or subsequent notation or modification of any kind, each non-identical
4 copy must be included.

5. 6 "DOCUMENT(S)" herein also mean any written, recorded, or graphic material of any
7 kind, whether prepared by you or by any other person that is in your possession, custody, or
8 control. The term includes agreements; contracts; letters; telegrams; inter-office communications;
9 memoranda; reports; records; instructions; specifications; notes; notebooks; scrapbooks; diaries;
10 plans; drawings; sketches; blueprints; diagrams; photographs; photocopies; charts; graphs;
11 descriptions; drafts, whether or not they resulted in a final document; minutes of meetings,
12 conferences, and telephone or other conversations or communications; invoices; purchase orders;
13 bills of lading; recordings; published or unpublished speeches or articles; publications; transcripts
14 of telephone conversations; phone mail; electronic-mail; ledgers; financial statements; microfilm;
15 microfiche; tape or disc recordings; and computer print-outs.

- 6.17 The term "DOCUMENT" also includes electronically stored data from
18 which information can be obtained either directly or by translation through detection devices or
19 readers; any such document is to be produced in a reasonably legible and usable form. The term
20 "document" includes all drafts of a document and all copies that differ in any respect from the
21 original, including any notation, underlining, marking, or information not on the original. The
22 term also includes information stored in, or accessible through, computer or other information
23 retrieval systems (including any computer archives or back-up systems), together with instructions
24 and all other materials necessary to use or interpret such data compilations.

7. 1 Without limitation on the term "control" as used in the preceding paragraph, a
2 document is deemed to be in your control if you have the right to secure the document or a copy
3 thereof from another person.

8. 4 Additionally, "**DOCUMENT(S)**" shall include all written and/or graphic
5 materials and/or sound recordings, however produced or reproduced, of any kind and description,
6 including the original and all duplicates or copies. In that regard, the "**DOCUMENT(S)**" means
7 any "writing" including facsimiles, electronic records, film records or other reproductions in the
8 responding party's possession or known to the responding party on usual inquiry. If a document
9 has been prepared in more than one copy and any copy was not or is no longer identical to the
10 original by reason of simultaneous or subsequent notation or modification of any kind, each non-
11 identical copy must be included.
12

9. 13 "**DOCUMENT(S)**" herein also means and includes without limitation all
14 correspondence, memoranda, certificates, notes, books, manuals, pamphlets, brochures,
15 advertisements, books of account, balance sheets, financial statements, profit and loss statements,
16 working papers, schedules, diaries, calendars, logs, time records, equipment records, microfilms,
17 transcripts, recordings, tapes, telexes, telegrams, files, proposals, bids, offers, contracts,
18 agreements, change orders, worksheets, drawings, blue prints, designs, specifications, time cards,
19 compilations, graphs, charts, bills, statements, invoices, receipts, bills of lading, shipping records,
20 confirmations, applications, purchase orders, checks, checkbooks and other checking records,
21 photographs, formulae, prescriptions, studies, projections, reports, computer programs,
22 information contained in computer banks, tapes cards, printouts and drafts to the extent they differ
23 from the originals, and all other records and papers of any nature whatsoever.
24

10. 25 "**IDENTIFY**" as used herein with regard to a person or an entity means identify
26 specifically by name, the last-known address, last-known telephone number, e-mail address, and
27
28

1 any other identifying characteristics known to "YOU". The word "IDENTIFY" as used herein
2 with regard to a **DOCUMENT** means to identify specifically by describing the **DOCUMENT**,
3 including the medium in which it is currently stored, its current location, and any other identifying
4 characteristics known to **YOU**.

11. 5 "RELATING TO" and "RELATE TO" shall mean and include referring to, alluding
6 to, responding to, pertaining to, connected with, commenting on, reviewing any aspects of, about,
7 regarding, showing, describing, discussing, mentioning, concerning, respecting, analyzing,
8 constituting, or evidencing.

12. 10 "COMMUNICATION" shall mean any and all COMMUNICATION of any kind,
11 whether oral or written, including, without limitation, letters, correspondence, notes,
12 transcriptions, face-to-face meetings, telephone conversations, e-mails, facsimile transmissions,
13 tape recordings, computer transmission of any type.

15 "CONTRACT" Shall mean any agreement YOU had with NATIONAL DEFAULT
16 SERVICING CORPORATION regarding the purchase of the subject property.

17 Additionally, "CONTRACT" also Shall also mean any agreement YOU had with JP
18 Morgan Chase Bank, N.A. regarding the purchase of the subject property.

19 "SUBJECT PROPERTY" Shall mean: 1740 Autumn Glen Street, Fernley, NV 89408,
20 ("the subject property").and more fully legally described as:

21
22 **Lot 62, SD UPLAND RANCH ESTATE UNIT NO. 7. ACCORDING TO MAP THEREOF,**
23 **FILED AS DOCUMENT NO 315377, ON MARCH 9, 2004, COUNTY OF LYON, STATE**
OF NEVADA, Bearing APN: 022-052-02 in Lyon County, State of Nevada

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

- 3
4
5
6
7
8

10

11

12

13

14
15
16

17

18

19

20

21

21

22

23

24

25

26

27

REQUEST FOR ADMISSIONS NO. 6:

Admit that BRECKENRIDGE PROPERTY FUND 2016 LLC was aware of Plaintiff's claims against Defendant, NATIONAL DEFAULT SERVICING CORPORATION and JPMorgan Chase N.A., before the contract regarding the subject property

REQUEST FOR ADMISSIONS NO. 7:

Admit that you conducted more than one real estate transactions with BRECKENRIDGE PROPERTY FUND 2016 LLC and JPMorgan Chase N.A. within the past five years.

REQUEST FOR ADMISSIONS NO. 8:

Admit that you and BRECKENRIDGE PROPERTY FUND 2016 LLC conducted you conducted Title Search of the subject property within the last two years.

REQUEST FOR ADMISSIONS NO. 9:

Admit that an individual associated with You and BRECKENRIDGE PROPERTY FUND 2016 LLC have been investigated for Mortgage Fraud.

REQUEST FOR ADMISSIONS NO. 10:

Admit that YOU have been investigated for Mortgage Fraud.

REQUEST FOR ADMISSIONS NO. 11:

Admit that BRECKENRIDGE PROPERTY FUND 2016 LLC did not tender any negotiable instrument to JPMorgan Chase N.A. for the purchase of the subject property.

REQUEST FOR ADMISSIONS NO. 12:

Admit that BRECKENRIDGE PROPERTY FUND 2016 LLC did not tender any negotiable instrument to YOU for the purchase of the subject property.

REQUEST FOR ADMISSIONS NO. 13:

Admit that YOU Plaintiffs are entitled to quiet title on the subject property.

1 **REQUEST FOR ADMISSIONS NO. 14:**

2 Admit that BRECKENRIDGE PROPERTY FUND 2016 LLC is entitled to refund of any money
3 paid to YOU for the subject property.

4 **REQUEST FOR ADMISSIONS NO. 15:**

5 Admit that BRECKENRIDGE PROPERTY FUND 2016 LLC is entitled to refund of any money
6 paid to JPMorgan Chase Bank, N.A for the subject property.

7
8
9 Dated: December 19, 2018

Respectfully Submitted,

11
12 
13 AUDREY KRAMER, In Pro per

14
15 Dated: December 19, 2018

Respectfully Submitted,

17
18 
19 LEO KRAMER, In Pro per

PROOF OF SERVICE

[C.C.P. §1013]

The UPS Store

1511 Sycamore Ave. Ste M

Hercules, CA 94547

store2796@theupsstore.com



STATE OF CALIFORNIA)
) ss:
COUNTY OF CONTRA COSTA)

I am employed in the County of Contra Costa, State of California. I am over the age of 18 and not a party to the within action; my business address is _____

On December 20, 2018, I served the foregoing document entitled:

PLAINTIFFS, AUDREY KRAMER AND LEO KRAMER'S REQUEST FOR ADMISSIONS SET ONE

on all parties in this action as follows:

PLEASE SEE ATTACHED SERVICE LIST

☒ **By Mail.** By placing a true copy thereof enclosed in a sealed envelope. I am "readily familiar" with the firm's practice of collection and processing for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with first class postage thereon fully paid at San Diego, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or the postage meter is more than one day after day of deposit for mailing in this Proof of Service.

☐ **By Telefax.** I transmitted said document by telefax to the offices of the addressees at the telefax numbers on the attached Service List.

☐ **By Personal Service.** I delivered such envelope by hand to the addressee(s).

☐ **By Overnight Courier.** I caused the above-referenced document(s) to be delivered to an overnight courier service for next day delivery to the addressee(s) on the attached Service List.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on December 20, 2018, at Hercules, California.

Corina DiGrazia

Name of Declarant


Signature of Declarant

CERTIFICATE OF SERVICE LIST:

John T. Steffen
Mathew K. Schriever
Hutchison & Steffen
1008 West Alta Drive, Suite 200
Las Vegas, NV 89145

Casey J. Nelson
Wedgewood, LLC
2320 Potosi Street, Suite 130
Las Vegas, Nevada 89146

Attorneys for Defendants,
ALYSSA MC DERMOTT, WEDGWOOD INC., BRECKENRIDGE PROPERTY
FUND 2016 LLC

Kevin S. Soderstrom
Tiffany & Bosco, P.A.
10100 W. Charleston Boulevard, Ste. 220
Las Vegas, NV 89107

Attorneys for Defendant,
NATIONAL DEFAULT SERVICING CORPORATION

1 LEO KRAMER
2 AUDREY KRAMER
3 2364 REDWOOD ROAD
4 HERCULES, CA 94547

5 PLAINTIFFS IN PRO PER

6 THIRD JUDICIAL DISTRICT COURT
7 LYON COUNTY, NEVADA

8
9 LEO KRAMER,
10 AUDREY KRAMER,

11 Plaintiffs,

12 vs.

13
14 NATIONAL DEFAULT SERVICING
15 CORPORATION, ALYSSA MC DERMOTT,
16 WEDGWOOD INC., BRECKENRIDGE
17 PROPERTY FUND 2016 LLC, and DOES 1
18 THROUGH 50 INCLUSIVE,

19 Defendants.

Case No.: 18-CV-00663

PLAINTIFFS' OBJECTION TO NOTICE OF
NON-OPPOSITION FILED BY
DEFENDANTS, ALYSSA MC DERMOTT,
WEDGWOOD INC., AND BRECKENRIDGE
PROPERTY FUND 2016 LLC;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF;

DECLARATION OF AUDREY KRAMER
FILED CONCURRENTLY HEREWITH

Date: TBA
Time: TBA
Dept: I

21
22
23
24 Plaintiffs Leo Kramer and Audrey Kramer, ("Plaintiffs"), hereby respectfully submit the
25 following memorandum of points and authority objecting to Defendants, ALYSSA MC DERMOTT,
26 WEDGWOOD INC., and BRECKENRIDGE PROPERTY FUND 2016 LLC frivolous notice for non-
27 opposition. Plaintiffs file this their objection on the grounds that Plaintiffs' opposition to Defendants'
28 motion to dismiss was timely filed after Plaintiffs were in receipt of Defendants' motion. Plaintiffs

FILED

2019 JAN -4 PM 2:45

TAYLOR SHEPHERD
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT
Taylor Thomas

1 further files this their objection on the grounds that Defendants' inexcusable delay in mailing or
2 serving plaintiffs with their motion to dismiss Plaintiffs' First Amended Complaint waives any claim
3 under Third Judicial District Court Rules" ("T.J.D.C.R.")).

4 This objection in response to Defendants' notice of non-opposition is based upon the
5 memorandum of points and authority contained herein, the pleadings and papers on file with the court,
6 and any oral argument that this Honorable Court may hear on the date set for the hearing in this matter.
7

8
9
10 Date: 1/02/2019

Date: 1/2/2019

11
12
13 Leo Kramer
14 Leo Kramer, Pro se

15
16
17 Audrey Kramer
18 Audrey Kramer, Pro se

19 MEMORANDUM OF POINTS AND AUTHORITIES

20 I
21 INTRODUCTION

22 Plaintiffs filed timely their 'Opposition' upon receipt by mail of Defendants' motion to dismiss
23 Plaintiffs' First Amended Complaint. **SEE EXHIBIT A**

24 After Defendants' inexcusable delay in serving or mailing their motion to dismiss to Plaintiffs,
25 Defendants made intentional misrepresentation of and concerning the Plaintiffs in Defendants'
26 frivolous notice of non-opposition. Particularly, Defendants made the following false claims:

27 **Plaintiffs respectfully request this court construe the failure of the Plaintiff to file a**
28 **memorandum of points and authorities in opposition to the motion within the times**
permitted as consent to granting of the motion to T.J.D.C.R. 7(D). (p.2., lines 1-3 of notice
of non-opposition).

1
2 Plaintiffs vehemently object to Mr. John T. Steffen, Mathew K. Schriever, the law office of
3 Hutchison & Steffen, and Casey J. Nelson's willful misrepresentation of Plaintiffs' position in this
4 matter. Further, Mr. John T. Steffen, Mathew K. Schriever, the law office of Hutchison & Steffen, and
5 Casey J. Nelson are not Plaintiffs' Attorneys; and they are not authorized to make any representation
6 or any argument on behalf of Plaintiffs as demonstrated on p.2., lines 1-3 of notice of non-opposition.
7

8 After consented to service of pleadings by electronic means, on October 05, 2018 and after the
9 Court ordered transmission and service of pleading by electronic e-mails, and without revocation of the
10 consent to serve pleading by electronic means, Defendants, Alyssa McDermott, Wedgwood Inc.,
11 Breckenridge Property Fund 2016 LLC, and their Attorneys turned to dishonesty and gamesmanship
12 tactics of filing a motion with the court, but conveniently waiting until over 3 weeks before depositing
13 the pleading in the U.S. Mail to the Plaintiffs. After receiving Plaintiffs' opposition to their Motion to
14 dismiss which details how Defendants are not bona-fide purchaser(s) of Plaintiffs' real property, which
15 Plaintiffs' promptly responded within (8) eight days of receipt of Defendants' motion to dismiss,
16 Defendants file this frivolous notice of non-opposition rather than file a reply to Plaintiffs' opposition
17 to their motion to dismiss. Plaintiffs' timely responded to Defendants' motion to dismiss within (8)
18 eight days of the receipt of the motion to dismiss.
19

20 Third Judicial District Court Rules" ("T.J.D.C.R.") did not contemplate filing of non-
21 opposition when the moving party, having consented to service by electronic means, did not file their
22 pleading by electronic means as they consented and as were instructed by the court. Defendants failed
23 to file and serve their pleading as ordered by this court. Plaintiffs complied with the court order
24 pertaining to service of pleading by e-mails. ("Defendants") engaged in gamesmanship by using
25 'NEOPOST' self-stamping service, holding of their motion for several weeks before depositing it in
26 the united states postal service to be delivered to plaintiffs. NEOPOST, is a self-stamping postal
27 service, which allows a user to self-stamp an envelope, and in addition, offers the feature to omit the
28

1 post-mark date altogether. Plaintiff, Audrey Kramer learned of this feature with NEOPOST (888-272-
2 4004) after speaking with NEOPOST representative, Tricia Shotwell. As such, Defendants' notice of
3 non-opposition should be rejected in its entirety. **SEE EXHIBIT B** Ironically, Defendants'
4 notice of non-opposition was recorded with the court on Dec. 21, 2018, and was received by Plaintiffs
5 on Dec. 24, 2018, within (3) three days of recording with the court. The question begs asking, "Why
6 then did it take 3+ weeks before Plaintiffs received Defendants' motion to dismiss?"
7
8

9 II 10 STATEMENT OF FACT

11 Oct 5, 2018, a hearing on defendants' motion to dismiss was held, with Hon. Judge
12 Schlegelmilch presiding.

13 Judge Schlegelmilch dismissed Plaintiffs' Initial Complaint without prejudice, granting
14 Plaintiffs' request to file an Amended Complaint provided their Amended Complaint had a new cause
15 of action. Judge Schlegelmilch made it clear that Plaintiffs would have 20 calendar days in which to
16 submit their 1st Amended Complaint.

17 During the October 05, 2018, hearing, Plaintiffs argued and the Hon. Judge Schlegelmilch
18 noted as well that there was a colorable claim regarding procedural error in conducting the non-judicial
19 foreclosure sale of Plaintiffs' real property because Plaintiffs were never served with the Notice of
20 Default ("NOD") by NATIONAL DEFAULT SERVICING CORPORATION ("NDSC"), in
21 accordance of Nevada foreclosure laws.
22

23 Furthermore, during the October 05, 2018 hearing, due to Plaintiffs bringing to the attention of
24 Judge Schlegelmilch that Plaintiffs had not been receiving pleadings timely from the Defendants and
25 that Defendants had tampered with mail sent to them by Plaintiffs, the Hon. Judge Schlegelmilch
26 inquired whether parties were willing to accept delivering of procedural pleading by electronic means
27 (e-mails). Attorneys for the Defendants, NATIONAL DEFAULT SERVICING CORPORATION,
28

1 ALYSSA MC DERMOTT, WEDGWOOD INC., BRECKENRIDGE PROPERTY FUND 2016 LLC
2 all consented to service of pleadings by e-mail. The following is the true and correct transcript of the
3 October 05, 2018 hearing regarding e-mails:

4 **Oct. 5, 2018, Recorded Hearing @ approximately 1:15 time of tape:**

5 **Judge Schlegelmilch:** *"I'm going to dismiss the...those, Ummm, well, I'm gonna dismiss the*
6 *entire complaint without prejudice with the ability to refile within 20 days. OK? So you don't*
7 *have to file a new filing fee."*

8 **Plaintiff, Audrey Kramer:** *"Thank you your honor."*

9 **Judge Schlegelmilch:** *"So...Let me ask you this...is your office...Mr. Dayton willing to accept*
10 *service of an Amended Complaint on behalf of your client?"*

11 **NDSC, Attorney, Matthew Dayton:** *"Ah, yes your honor that would be fine."*

12 **Judge Schlegelmilch:** *Alright...would you accept...would your office accept service on behalf*
13 *of your clients?" (Judge Schlegelmilch looks toward Mr. Warner, counsel for Breckenridge)*

14 **Breckenridge Attorney, Eric Warner:** *"Ummm, we would your honor...."*

15 **Judge Schlegelmilch:** *"So, let me ask you this, procedurally, would your office be willing to*
16 *accept emails?"*

17 **Attorney, Eric Warner:** *"Ummm, In lieu of paper service your honor?"*

18 **Judge Schlegelmilch:** *"Right"*

19 **Attorney, Eric Warner:** *"Ummm..."*

20 **Judge Schlegelmilch:** *"On a chain."*

21 **Attorney, Eric Warner:** *Ummm, Yes if it was a color scan, that would be fine.*

22 **Judge Schlegelmilch:** *"OK...are you willing to accept emails?" (Judge asked Plaintiff,*
23 *Audrey Kramer)*

24 **Plaintiff, Audrey Kramer:** *"Yes, your honor."*

25 After consenting to service of pleadings by e-mails, and without revocation and of their
26 consent and informing Plaintiffs of such revocation, Attorneys for ALYSSA MC DERMOTT,
27 WEDGWOOD INC., BRECKENRIDGE PROPERTY FUND 2016 LLC, turned to dishonesty and
28

1 gamesmanship by filing a motion with the court and waiting until over several weeks before depositing
2 the pleading in the U.S. Mail to the Plaintiffs.

3 At the October 05, 2018 hearing, Hon. Judge Schlegelmilch instructed NDSC to draft the
4 Judge's Orders and submit for his review.

5 As of 10/23/18, Plaintiffs still had not received Judge Schlegelmilch order so Plaintiff, Audrey
6 Kramer, called the court clerk to inquire. Plaintiff expressed to the clerk that Plaintiffs were concerned
7 in not having received the Judge's order and asked the clerk when the clock actually started because
8 they did not want to miss the 20 day deadline in which to submit their Amended Complaint. The clerk
9 told Ms. Kramer that the clock started the day after the Judge issued the order in his courtroom. Ms.
10 Kramer replied with a question of concern, "Even though we haven't actually received the Judge's
11 order in the mail"? The court clerk replied, "Yes". In an abundance of caution Ms. Kramer was also
12 transferred to the Judge Schlegelmilch's clerk to further inquire about the due date of the Judge's
13 order.
14

15 Plaintiffs got voice mail and left a message as to the reason for their inquiry. Additionally, Ms.
16 Kramer sent an email to follow up with Judge Schlegelmilch's law clerk. Judge Schlegelmilch's law
17 clerk, Aaron Ritcher, replied via email the following, "*Ms. Kramer, I received your message. The*
18 *Judge is still working on your order.*" **SEE EXHIBIT C**

19 Mr. Ritcher returned Ms. Kramer's call and confirmed via actual conversation the same
20 information that the previous court clerk had told Ms. Kramer, that the clock started the day after the
21 Judge gave his order in court even if Plaintiffs had not yet received it in writing via the mail.
22

23 Plaintiffs' in Pro se did not want to miss the court ordered deadline of 20 days so they filed
24 their 1st Amended Complaint on Oct. 25, 2018, via email to all parties as per Judge Schlegelmilch's
25 verbal orders. Shortly after sending the email, on the same day of Oct. 25, 2018, Plaintiffs received an
26 email from Mr. Ritcher alerting Ms. Kramer that she could not file Plaintiffs' complaint with the court
27 via email. **SEE EXHIBIT D** Alarmed by Mr. Ritcher's email notification Ms. Kramer immediately
28

1 called Mr. Ritcher and explained that Judge Schlegelmilch had obtained approval from Defendants'
2 attorneys to accept service on behalf of their clients and would accept emails from Plaintiffs, because
3 Plaintiffs previously had difficulty with Defendants sending and accepting correspondence. Mr.
4 Ritcher informed Ms. Kramer that it was fine to send the complaint to the Defendants' attorneys via
5 email, but not the court. So Ms. Kramer sent Plaintiffs' 1st Amended Complaint overnight on Oct. 25,
6 2018, to the court as Mr. Ritcher instructed.
7

8 **COURT ORDER:**

9 On 10/23/2018, Hon. Judge Schlegelmilch signed his order of Oct. 5, 2018, dismissing
10 Plaintiffs' Initial Complaint and Granting Plaintiffs leave to Amend.
11

12 Unbeknownst to Plaintiffs, on November 19, 2018, Defendants, Attorneys for ALYSSA MC
13 DERMOTT, WEDGWOOD INC., BRECKENRIDGE PROPERTY FUND 2016 LLC, filed their
14 motion to dismiss Plaintiffs' First Amended Complaint. However, Defendants did not serve Plaintiffs
15 with their motion to dismiss by e-mail as they consented to during the October 05, 2018 hearing.

16 Plaintiffs mailed their 1st Amended Complaint to the court 'overnight' on Thurs., Oct. 25, 2018,
17 however, the court did not record the complaint until Mon., Oct. 29, 2018 (4 days later). However, per
18 Judge Schlegelmilch, all Defendants were emailed Plaintiffs' 1st Amended Complaint (twice) on Oct.
19 25, 2018 (20 days post hearing of Oct. 5, 2018). **SEE EXHIBIT E** Attorney, Mr. Warner,
20 acknowledged receipt of Plaintiffs' 1st Amended Complaint by responding with his motion to dismiss,
21 which was recorded with the court on Nov. 19, 2018 (26 days after receiving Plaintiffs' complaint via
22 email, Oct. 25, 2018). While the court received/recorded Mr. Warner's motion to dismiss on Nov. 19,
23 2018, Plaintiffs did not receive Mr. Warner's motion to dismiss until Dec. 12, 2018.
24
25
26
27
28

**III
ARGUMENT**

A. THE COURT SHOULD REJECT OR OVERRULE DEFENDANTS' ALYSSA MCDERMOTT, WEDGWOOD INC., AND BRECKENRIDGE PROPERTY FUND 2016 LLC'S NOTICE OF NON-OPPOSITION BECAUSE OF DEFENDANTS' INEXCUSABLE DELAY IN MAILING OR SERVING PLAINTIFFS WITH THEIR MOTION TO DISMISS PLAINTIFFS' FIRST AMENDED COMPLAINT

1. Plaintiffs filed their opposition to Defendants' motion to dismiss within eight (8) days of receipt of Defendants' motion

Third Judicial District Court Rules" ("T.J.D.C.R.") Rule 7(A)(B) provides that:

(A) Upon filing any motion, the moving party shall file with the motion and serve on all parties a memorandum setting forth the points and authorities relied upon in support of the motion.

(B) An opposing party, unless otherwise ordered by the court, shall have ten (10) days after service of the moving party's memorandum within which to serve and file a memorandum of points and authorities in opposition to the motion.

Here, Plaintiffs complied with ("T.J.D.C.R.") Rule 7(B), in that Plaintiffs filed their opposition to Defendants, Alyssa McDermott, Wedgwood Inc., Breckenridge Property Fund 2016 LLC within eight days of receipt through the U.S. Postal service. However, Defendants, Alyssa McDermott, Wedgwood Inc., Breckenridge Property Fund 2016 LLC, and their Attorneys after consenting to service by e-mails, turned to dishonesty and gamesmanship tactics of filing a motion with the court and holding on to it until over several weeks before depositing the pleading in the U.S. Mail to the Plaintiffs. Defendants' inexcusable delay in mailing or serving plaintiffs with their motion to dismiss Plaintiffs' First Amended Complaint after they filed it with the Court on November 19, 2018, bares any relief under Third Judicial District Court Rules" ("T.J.D.C.R."). Furthermore, Plaintiffs did not consent to the dismissal of their First Amended Complaint as misrepresented and wrongfully stated by the Defendants and their attorneys.

1 Furthermore, Plaintiffs' Quiet Title claims against Defendants and each of them is property
2 under Nevada Law and Plaintiffs are entitled to the adjudication of their case on the merits consistent
3 without due process of law. In Nevada, a quiet title action may be brought "by any person against
4 another who claims an estate or interest in real property, adverse to the person bringing the action, for
5 the purpose of determining such adverse claim." NEV. REV. STAT. § 40.010. Here, ALYSSA MC
6 DERMOTT, WEDGWOOD INC., and BRECKENRIDGE PROPERTY FUND 2016 LLC and each of
7 them claims an estate or interest in Plaintiffs' real property, adverse to Plaintiffs, as such Plaintiffs are
8 entitle to bring a quiet title action against Alyssa McDermott, Wedgwood Inc., and Breckenridge
9 Property Fund 2016 LLC and each of them. The NOTICE OF DEFAULT was unlawfully recorded
10 and is void *ab initio* and cannot form lawful basis for the subsequent Notice of Trustee's Sale and the
11 Trustee's Deed upon Sale to Alyssa McDermott, Wedgwood Inc., or Breckenridge Property Fund 2016
12 LLC.
13

14
15 B. THE COURT SHOULD REJECT OR OVERRULE DEFENDANTS' ALYSSA MCDERMOTT,
16 WEDGWOOD INC., AND BRECKENRIDGE PROPERTY FUND 2016 LLC'S NOTICE OF
17 NON-OPPOSITION BECAUSE DEFENDANT CONSENTED TO SERVICE OF PLEADINGS
BY E-MAILS AND FAILED TO ADHERE TO THEIR PROMISE

18 NRS 2.120, in dealing with service and filing of pleadings and other papers provides in
19 pertinent part that:
20

21 Delivering a copy by electronic means if the attorney or the party served has consented to service
22 by electronic means. Service by electronic means is complete on transmission provided, however,
23 a motion, answer or other document constituting the initial appearance of a party must also, if
24 served by electronic means, be filed within the time allowed for service. The served attorney's
25 or party's consent to service by electronic means shall be expressly stated and filed in writing
with the clerk of the court and served on the other parties to the action. The written consent shall
identify:

26 (i) the persons upon whom service must be made;

27 (ii) the appropriate address or location for such service, such as the electronic-mail
28 address or facsimile number;

1 (iii) the format to be used for attachments; and

2 (iv) any other limits on the scope or duration of the consent.

3 An attorney's or party's consent shall remain effective until expressly revoked or until the
4 representation of a party changes through entry, withdrawal, or substitution of counsel. An
5 attorney or party who has consented to service by electronic means shall, within 10 days after
6 any change of electronic-mail address or facsimile number, serve and file notice of the new
7 electronic-mail address or facsimile number.

8 Here, during the October 05, 2018 hearing, due to Plaintiffs not receiving pleadings timely
9 from the Defendants as well as tampering and redacting mail sent by Plaintiffs to Defendants, Hon.
10 Judge Schlegelmilch inquired as to whether parties were willing to accept delivering of procedural
11 pleadings by electronic means (e-mails). Attorneys for the Defendants, NATIONAL DEFAULT
12 SERVICING CORPORATION, ALYSSA MC DERMOTT, WEDGWOOD INC., and
13 BRECKENRIDGE PROPERTY FUND 2016 LLC all consented to service of pleadings by e-mail.
14 The following 'segment' is the true and correct transcription of the transcript of the October 05, 2018
15 recorded hearing regarding e-mails:

16 **Oct. 5, 2018, Recorded Hearing approx. 1:15 time of tape:**

17 **Judge Schlegelmilch:** *"Let me ask you this procedurally, would your office be willing to*
18 *accept emails?"*

19 **Attorney, Eric Warner:** *"In lieu of paper service your honor?"*

20 **Judge Schlegelmilch:** *"Right."*

21 **Attorney, Mr. Warner:** *"Ummm..."*

22 **Judge Schlegelmilch:** *"On a chain"*

23 **Attorney, Eric Warner:** *"If it was a color scan, that would be fine."*

24 **Judge Schlegelmilch:** *"OK...are you willing to accept emails?" (Judge Schlegelmilch looks*
25 *at Plaintiff, Audrey Kramer)*

26 **Plaintiff, Audrey Kramer:** *"Yes, your honor"*
27
28

1 After consenting to service of pleadings by e-mails, and without revocation and of their
2 consent and informing Plaintiffs of such revocation, Attorneys for ALYSSA MC DERMOTT,
3 WEDGWOOD INC., BRECKENRIDGE PROPERTY FUND 2016 LLC, turned to dishonesty and
4 gamesmanship by filing a motion with the court and waiting until over several weeks before depositing
5 the pleading in the U.S. Mail to the Plaintiffs.
6

7
8 C. THE COURT SHOULD REJECT OR OVERRULE DEFENDANTS' ALYSSA MCDERMOTT,
9 WEDGWOOD INC., AND BRECKENRIDGE PROPERTY FUND 2016 LLC'S NOTICE OF
10 NON-OPPOSITION BECAUSE OF DEFENDANTS are not entitled to any relief due
11 'INEXCUSABLE DELAY IN MAILING OR SERVING PLAINTIFFS WITH THEIR MOTION
12 TO DISMISS PLAINTIFFS' FIRST AMENDED COMPLAINT after the motion was filed on
13 November 19, 2018

14 1. Laches should preclude consideration of Defendants notice of non-opposition due to
15 inexcusable delay
16

17 In the instant case, the record indicates that Defendants, filed their motion to dismiss Plaintiffs'
18 First Amended Complaint on November 19, 2018. Subsequently, Defendants, Alyssa McDermott,
19 Wedgwood Inc., Breckenridge Property Fund 2016 LLC, and their Attorneys, after having consented
20 to service by e-mails, used deceitfulness and gamesmanship tactics. Defendants filed their motion with
21 the court and hold on to the pleading until over several weeks before depositing the motion to dismiss
22 in the U.S. Mail to the Plaintiffs. Defendants' inexcusable delay in mailing or serving plaintiffs with
23 their motion to dismiss Plaintiffs' First Amended Complaint bares any relief under Third Judicial
24 District Court Rules" ("T.J.D.C.R.") due to inexcusable delay and the doctrine of laches. In Nevada,
25 the defense of laches is available where delay by one party results in a disadvantage to the other such
26 that the party seeking the defense of laches had a change in circumstances which would make granting
27 relief to the delaying party inequitable.
28

29 To determine whether or not laches should preclude consideration of Defendants' Notice of
30 non-opposition, a court must determine: (1) whether there was an inexcusable delay in seeking the
31 petition, (2) whether an implied waiver arose from the petitioner's knowing acquiescence in existing

1 conditions, and (3) whether there were circumstances causing prejudice to the respondent. Please see
2 for example, State v. Eighth Judicial Dist. Court ex rel. County of Clark, 2002, 42 P.3d 233, 118 Nev.
3 140,

4
5 **(1) Whether there was an inexcusable delay in seeking the petition:**

6 Here, Defendants filed their motion to dismiss Plaintiffs' First Amended Complaint on
7 November 19, 2018. Subsequently, Defendants, and their Attorneys, after having consented to service
8 by e-mails, revisited to their old deceitfulness and gamesmanship tactic and held on to the motion to
9 dismiss for several weeks before depositing the motion to dismiss in the U.S. Mail to the Plaintiffs.
10 Defendants' inexcusable delay in mailing or serving plaintiffs with their motion to dismiss Plaintiffs'
11 First Amended Complaint bares any relief under Third Judicial District Court Rules" ("T.J.D.C.R.")
12 due to inexcusable delay and the doctrine of laches.
13

14
15 **2) Whether an implied waiver arose from the petitioner's knowing acquiescence in existing conditions,**

16 It the common practice of the Defendants to utilized 'NEOPOST' self-stamping service,
17 holding of their motion for several weeks before depositing it in the united states postal service to be
18 delivered to plaintiffs. NEOPOST, is a self-stamping postal service, which allows a user to self-stamp
19 an envelope, and in addition, offers the feature to omit the post-mark date altogether. Plaintiff, Audrey
20 Kramer learned of this feature with NEOPOST (888-272-4004) after speaking with NEOPOST
21 representative, Tricia Shotwell. Therefore, the ten (10) days from November 19, 2018 when Plaintiff
22 were supposed to file and serve opposition to Defendants' motion to dismiss is waived due to
23 Defendants' inexcusable delay; deceitfulness and gamesmanship tactics. However, Plaintiffs did
24 timely filed and served their motion within eight (8) days of receipt of Defendants' motion to dismiss.
25
26

27 **(3) Whether there were circumstances causing prejudice to the respondent.**

28 Here, it is irrefutable that Plaintiffs were unduly prejudiced because they were unable to file

1 and serve their opposition ten (10) days after November 19, 2018 when Defendants filed their motion
2 to dismiss. In fact, the Motion to dismiss was still with Defendants after ten days when Plaintiffs
3 could have filed and served their opposition.

4 However, Plaintiffs did timely file and serve their motion within eight (8) days of receipt of
5 Defendants' motion to dismiss. Plaintiffs contend that *Laches* is an unreasonable delay in pursuing a
6 right or claim in a way that prejudices the opposing party and renders the granting of a claim
7 inequitable. Put another way, the *doctrine of laches* bars relief where the party seeking relief has been
8 guilty of excessive, unjustified delay in asserting rights. *Laches* is more than mere delay in seeking to
9 enforce one's rights, it is delay that works a disadvantage to another. *Cooney v. Pedroli*, 49 Nev. 55,
10 62, 235 P. 637, 640 (1925) (quoting *Chase v. Chase*, 37 A. 804, 805 (R.I.1897)); *Home Sav. Ass'n v.*
11 *Bigelow*, 105 Nev. 494, 496, 779 P.2d 85, 86 (1989).
12

13
14 IV
15 CONCLUSION

16 For the foregoing reasons, Plaintiff respectfully request this Court reject or overrule Defendants,
17 Alyssa McDermott, Wedgwood Inc., and Breckenridge's notice of non-opposition.
18

19 Date: 1/02/2019

Date: 1/2/2019

21 Leo Kramer
22 Leo Kramer, Pro se

21 Audrey Kramer
22 Audrey Kramer, Pro se

PLAINTIFFS IN PRO PER

LEO KRAMER,
AUDREY KRAMER,

Plaintiffs,

VS.

NATIONAL DEFAULT SERVICING CORPORATION, ALYSSA MC DERMOTT, WEDGWOOD INC., BRECKENRIDGE PROPERTY FUND 2016 LLC, and DOES 1 THROUGH 50 INCLUSIVE,

DECLARATION OF AUDREY KRAMER
FILED CONCURRENTLY HERewith IN
SUPPORT OF:

**PLAINTIFFS' OBJECTION TO NOTICE OF
NON-OPPOSITION FILED BY
DEFENDANTS, ALYSSA MC DERMOTT,
WEDGWOOD INC., AND BRECKENRIDGE
PROPERTY FUND 2016 LLC;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF;**

Defendants.

Date: TBA
Time: TBA
Dept: I

DECLARATION OF AUDREY KRAMER

1 I, AUDREY KRAMER declare the following:

- 2 1. I am over the age of 18 years.
- 3 2. I have personal knowledge of the above entitled matter and if called as a witness, I
- 4 could and would competently testify thereto.
- 5 3. I make this declaration in support of the attached or above objection to PLAINTIFFS'
- 6 OBJECTION TO NOTICE OF NON-OPPOSITION FILED BY DEFENDANTS,
- 7 ALYSSA MC DERMOTT, WEDGWOOD INC., AND BRECKENRIDGE
- 8 PROPERTY FUND 2016 LLC; MEMORANDUM OF POINTS AND AUTHORITIES
- 9 IN SUPPORT THEREOF;
- 10 4. There was a hearing on Oct. 5, 2018, with the Hon. Judge Schlegelmilch, whereby
- 11 Judge Schlegelmilch dismissed Plaintiffs' initial Complaint without prejudice, and
- 12 granted Plaintiffs the right to file an Amended Complaint within 20 days of his order.
- 13 5. During the October 05, 2018, hearing, Plaintiffs argued and the Hon. Judge
- 14 Schlegelmilch noted as well that there was a colorable claim regarding procedural
- 15 error in conducting the non-judicial foreclosure sale of Plaintiffs' real property
- 16 because Plaintiffs were never served with the Notice of Default ("NOD") by
- 17 NATIONAL DEFAULT SERVICING CORPORATION ("NDSC"), in accordance
- 18 of Nevada foreclosure laws.
- 19 6. As of 10/23/18, Plaintiffs still had not received Judge Schlegelmilch order, so Plaintiff,
- 20 Audrey Kramer, called the court clerk to inquire. Plaintiff expressed to the clerk that
- 21 Plaintiffs were concerned in not having received the Judge's order and asked the clerk
- 22 when the clock actually started because they did not want to miss the 20 day deadline in
- 23 which to submit their Amended Complaint. The clerk told Ms. Kramer that the clock
- 24 started the day after the Judge issued the order in his courtroom. Ms. Kramer replied
- 25 with a question of concern, "Even though we haven't actually received the Judge's
- 26 order in the mail?" The court clerk replied, "Yes".
- 27 7. In an abundance of caution Ms. Kramer was then transferred to the Judge
- 28 Schlegelmilch's clerk to further inquire about the due date of the Judge's order.
- Whereby Plaintiffs got voice mail and left a message as to the reason for their call. Ms.
- Kramer also sent an email to follow up with Judge Schlegelmilch's law clerk. Judge
- Schlegelmilch's law clerk, Aaron Ritcher, replied via email the following, "*Ms.*
- Kramer, I received your message. The Judge is still working on your order.*" SEE
- EXHIBIT C
8. Mr. Ritcher also followed up by returning Ms. Kramer's call and confirmed via actual
- conversation the same information that the previous court clerk had told Ms. Kramer,
- that the clock started the day after the Judge gave his order in court even if Plaintiffs
- had not yet received it in writing via the mail.
9. Plaintiffs' in Pro se did not want to miss the court ordered deadline of 20 days, so they
- filed their 1st Amended Complaint on Oct. 25, 2018, via email to all parties as per
- Judge Schlegelmilch's verbal orders of Oct. 5, 2018.
10. Shortly after sending the email on Oct. 25, 2018, Plaintiffs received an email from Mr.
- Ritcher alerting Ms. Kramer that she could not file Plaintiffs' complaint with the court
- via email. SEE EXHIBIT D Alarmed by Mr. Ritcher's email notification Ms.

1 Kramer immediately called Mr. Ritcher and explained that Judge Schlegelmilch had
2 obtained approval from Defendants' attorneys to accept service on behalf of their
3 clients and would accept procedural emails from Plaintiffs, because Plaintiffs alerted
4 the court they previously had difficulty with Defendants sending and accepting
correspondence. Mr. Ritcher informed Ms. Kramer it was fine to send the complaint to
the Defendants' attorneys via email, but not the court. So, on Oct. 25, 2018, Plaintiffs'
mailed their 1st Amended Complaint to the court overnight, per Mr. Ritcher.

- 5 11. Unbeknownst to Plaintiffs, on November 19, 2018, Defendants, Attorneys for
6 ALYSSA MC DERMOTT, WEDGWOOD INC., BRECKENRIDGE PROPERTY
7 FUND 2016 LLC, filed their motion to dismiss Plaintiffs' First Amended Complaint.
8 However, Defendants did not serve Plaintiffs with their motion to dismiss by e-mail as
9 they consented to during the October 05, 2018 hearing.
- 10 12. On Dec. 20, 2018, Plaintiffs timely filed their 'Opposition', within (8) eight days, upon
11 receipt by mail, of Defendants' motion to dismiss Plaintiffs' First Amended Complaint.
12 **SEE EXHIBIT A**
- 13 13. Plaintiffs did not receive Defendants' motion to dismiss until Dec. 12, 2018, (3+) three
14 plus weeks after it was recorded with the court on Nov. 19, 2018. **SEE EXHIBIT B**
- 15 14. Plaintiffs received Defendants' Notice of Non-Opposition on Dec. 24, 2018, only (3)
16 three days after it was filed with the court on Dec. 21, 2018.
- 17 15. Plaintiffs believe ("Defendants") engaged in gamesmanship by using 'NEOPOST', a
18 self-stamping service, then holding of their motion for several weeks before depositing
19 it in the united states postal service to be delivered to plaintiffs. Plaintiffs learned that
20 'NEOPOST', is a self-stamping postal service, which allows a user to self-stamp an
21 envelope, and in addition, offers the feature to omit the post-mark date altogether.
22 Plaintiff, Audrey Kramer, learned of this feature with 'NEOPOST' Phone # (888-272-
23 4004) after speaking with NEOPOST representative, Tricia Shotwell.
24 **SEE EXHIBIT B**

25 I declare under penalty of perjury under the laws of the United States of America and under the
26 laws of Nevada that the foregoing is true and correct.

27 Executed on: 1/2/2019, at Contra Costa County, State of California.

28 Audrey Kramer
AUDREY KRAMER

PROOF OF SERVICE

The UPS Store

1511 Sycamore Ave. Ste M
Hercules, CA 94547

store2796@theupsstore.com



STATE OF CALIFORNIA)

) SS:

COUNTY OF CONTRA COSTA)

I am employed in the County of Contra Costa, State of California. I am over the age of 18 and not a party to the within action; my business address is

On January 3, 2019, I served the foregoing document entitled:

PLAINTIFFS' OBJECTION TO NOTICE OF NON-OPPOSITION FILED BY DEFENDANTS, ALYSSA MC DERMOTT, WEDGWOOD INC., AND BRECKENRIDGE PROPERTY FUND 2016 LLC; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF; DECLARATION OF AUDREY KRAMER FILED CONCURRENTLY HERewith

on all parties in this action as follows:

PLEASE SEE ATTACHED SERVICE LIST

☒ **Mail.** By placing a true copy thereof enclosed in a sealed envelope. I am "readily familiar" with the firm's practice of collection and processing for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with first class postage thereon fully paid at Alameda, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or the postage meter is more than one day after day of deposit for mailing in this Proof of Service.

☐ **By Telefax.** I transmitted said document by telefax to the offices of the addressees at the telefax numbers on the attached Service List.

☐ **By Personal Service.** I delivered such envelope by hand to the addressee(s).

☐ **By Overnight Courier.** I caused the above-referenced document(s) to be delivered to an overnight courier service for next day delivery to the addressee(s) on the attached Service List.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on January 3, 2019, at Hercules, California.

Corina DiGrazia

Name of Declarant

Signature of Declarant

SERVICE LIST

John T. Steffen
Mathew K. Schriever
Hutchison & Steffen
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145

Casey J. Nelson
Wedgewood, LLC
2320 Potosi Street, Suite 130
Las Vegas, Nevada 89146

Attorneys for Defendants,
ALYSSA MC DERMOTT, WEDGWOOD INC., BRECKENRIDGE PROPERTY FUND 2016 LLC

Kevin S. Soderstrom
Tiffany & Bosco, P.A.
10100 W. Charleston Blvd., Ste 220
Las Vegas, NV 89107

Attorneys for Defendant,
NATIONAL DEFAULT SERVICING CORPORATION

alex

EXHIBIT LIST:

- A- UPS: PROOF OF SERVICE
- B- HUTCHISON & STEFFEN ENVELOP-
SHOWING SELF-STAMPING WITH NO
DATE
- C- 10/23/18- EMAIL THREAD WITH AARON
RITCHER
- D- 10/25/18-EMAIL THREAD WITH AARON
RITCHER
- E-- 10/25/18-EMIAL THREAD TO
DEFENDANTS

A

UPS: PROOF OF SERVICE

A

The UPS Store

Your parcel is ready to go

Just to let you know, we've processed a parcel shipping to **3RD DISTRICT COURT OF YERINTON NV.**

It's currently at **Mail Boxes Etc. #2796** and will be picked up by **UPS** on **Thursday, December 20, 2018.**

You can expect it to arrive on **Friday, December 21, 2018 End of Day**

Your shipment information

Who sent it...

KRAMER

--

(Sender's street address omitted intentionally from this email)
Hercules, CA 94547

Who will receive it...

3RD DISTRICT COURT OF YERINTON NV

--

(Recipient's street address omitted intentionally from this email)
YERINGTON, NV 89447-2355 US

Who is carrying it...

Mail Boxes Etc. #2796
(510) 245-7060

SHIPPING TOOLS

Your Tracking Information

[English \(US\)](#)

Status: DELIVERED
Delivered To: YERINGTON, NV US
Delivery Date: Fri 21 Dec 2018
Delivery Location: Front Desk
Signed By: UOVAR
Carrier: UPS
Service: Ground Commercial
UPS Tracking Number: 1ZA832V34255652103

Scan History:

Fri 21 Dec 2018	3:23 PM	Delivered YERINGTON NV US
	9:42 AM	Out For Delivery Today Sparks NV US
	8:48 AM	Loaded on Delivery Vehicle Sparks NV US
	8:36 AM	Destination Scan Sparks NV US
	8:04 AM	Arrival Scan Sparks NV US
	4:39 AM	Departure Scan West Sacramento CA US
	1:19 AM	Arrival Scan West Sacramento CA US
	12:07 AM	Departure Scan San Pablo CA US
Thu 20 Dec 2018	10:37 PM	Origin Scan San Pablo CA US
	5:17 PM	Order Processed: Ready for UPS US

NOTE: The times listed in the scan details are local time.

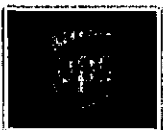
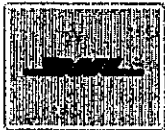
[Done](#)

Track Another Package

Carrier Tracking Number / iShip ID:

[Submit](#)

Tracking provided for



[Learn More](#) [Having trouble? Click here for help.](#) [iShip, Inc. Privacy Notice](#)

© 1998 - 2018 iShip, Inc. iShip, the iShip logo, Price It, Track It, Sell It, and Shipping Insight are trademarks of iShip, Inc. iShip, Inc. is a subsidiary of United Parcel Service of America, Inc. Logo and marks used by permission. All rights reserved

The UPS Store

Your parcel is ready to go

Just to let you know, we've processed a parcel shipping to **JOHN T STEFFER**.

It's currently at **Mail Boxes Etc. #2796** and will be picked up by **UPS** on **Thursday, December 20, 2018**.

You can expect it to arrive on **Monday, December 24, 2018 End of Day**

Your shipment information

Who sent it...

KRAMER

--

(Sender's street address omitted
intentionally from this email)

Hercules, CA 94547

Who will receive it...

JOHN T STEFFER

--

(Recipient's street address omitted
intentionally from this email)

Las Vegas, NV 89145 US

Who is carrying it...

Mail Boxes Etc. #2796

(510) 245-7060

Carrier details...

UPS Ground

Tracking details...

Tracking No.: **1ZA832V34288987637**

Shipment ID: **MMREPGCYMCF96**

Ship Ref 1:

Ship Ref 2:

Shipping date...

Thursday, December 20, 2018

Expected delivery date...

Monday, December 24, 2018 End of Day

SHIPPING TOOLS

Your Tracking Information

English (US)

Status: DELIVERED
Delivered To: LAS VEGAS, NV US
Delivery Date: Wed 26 Dec 2018
Delivery Location: Reception
Signed By: TUCKER
Carrier: UPS
Service: Ground Residential
UPS Tracking Number: 1ZA832V34288987637

Scan History:

Wed 26 Dec 2018	11:14 AM	Delivered LAS VEGAS NV US
	10:11 AM	Out For Delivery Today Las Vegas NV US
	5:30 AM	Destination Scan Las Vegas NV US
Mon 24 Dec 2018	10:30 AM	Delivery has been rescheduled due to holiday closures. / Your delivery has been rescheduled for the next business day. Las Vegas NV US
Sat 22 Dec 2018	4:59 AM	Destination Scan Las Vegas NV US
Fri 21 Dec 2018	11:54 AM	Arrival Scan Sparks NV US
	11:53 AM	Departure Scan Sparks NV US
	4:39 AM	Departure Scan West Sacramento CA US
	1:19 AM	Arrival Scan West Sacramento CA US
Thu 20 Dec 2018	12:07 AM	Departure Scan San Pablo CA US
	10:37 PM	Origin Scan San Pablo CA US
	5:17 PM	Order Processed: Ready for UPS US

NOTE: The times listed in the scan details are local time.

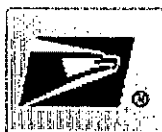
[Done](#)

Track Another Package

Carrier Tracking Number / iShip ID:

[Submit](#)

Tracking provided for



[Learn More](#) [Having trouble? Click here for help.](#) [iShip, Inc. Privacy Notice](#)

© 1998 - 2019 iShip, Inc. iShip, the iShip logo, Price It, Track It, Sell It, and Shipping Insight are trademarks of iShip, Inc. iShip, Inc. is a subsidiary of United Parcel Service of America, Inc. Logo and marks used by permission. All rights reserved

iShip_Services@iship.com <iShip_Services@iship.com>
To: AUDREYKRAMER55@YAHOO.COM
Dec 20, 2018 at 11:49 AM

Your parcel is ready to go

Join our email program to receive exclusive offers and resources

The UPS Store



Your parcel is ready to go

Just to let you know, we've processed a parcel shipping to **CASEY NELSON**.

It's currently at **Mail Boxes Etc. #2796** and will be picked up by **UPS** on **Thursday, December 20, 2018**.

You can expect it to arrive on **Monday, December 24, 2018 End of Day**

Your shipment information

Who sent it...

KRAMER

--

(Sender's street address omitted
intentionally from this email)

Hercules, CA 94547

Who will receive it...

CASEY NELSON

--

(Recipient's street address omitted
intentionally from this email)

LAS VEGAS, NV 89146-0312 US

Who is carrying it...

Mail Boxes Etc. #2796
(510) 245-7060

Carrier details...

UPS Ground

Tracking details...

Tracking No.: **1ZA832V34288989831**

Shipment ID: **MMREPGC4DF8VA**

Ship Ref 1:

Ship Ref 2:

Shipping date...

Thursday, December 20, 2018

Expected delivery date...

Monday, December 24, 2018 End of Day

SHIPPING TOOLS

Your Tracking Information

English (US)

Status: DELIVERED
Delivered To: LAS VEGAS, NV US
Delivery Date: Wed 26 Dec 2018
Delivery Location: Office
Signed By: CARMEN
Carrier: UPS
Service: Ground Commercial
UPS Tracking Number: 1ZA832V34288989831

Scan History:

Wed 26 Dec 2018	11:48 AM	Delivered LAS VEGAS NV US
	10:58 AM	Out For Delivery Today Las Vegas NV US
	6:44 AM	Destination Scan Las Vegas NV US
Mon 24 Dec 2018	10:10 AM	Delivery has been rescheduled due to holiday closures. Las Vegas NV US
	9:30 AM	Out For Delivery Today Las Vegas NV US
	7:21 AM	Loaded on Delivery Vehicle Las Vegas NV US
Sat 22 Dec 2018	7:30 AM	Destination Scan Las Vegas NV US
Fri 21 Dec 2018	11:54 AM	Arrival Scan Sparks NV US
	11:53 AM	Departure Scan Sparks NV US
	4:39 AM	Departure Scan West Sacramento CA US
	1:19 AM	Arrival Scan West Sacramento CA US
	12:07 AM	Departure Scan San Pablo CA US
Thu 20 Dec 2018	10:33 PM	Origin Scan San Pablo CA US
	5:17 PM	Order Processed: Ready for UPS US

NOTE: The times listed in the scan details are local time.

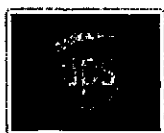
[Done](#)

Track Another Package

Carrier Tracking Number / iShip ID:

[Submit](#)

Tracking provided for



[Learn More](#)
[Having trouble? Click here for help.](#)
[iShip, Inc. Privacy Notice](#)

© 1998 - 2019 iShip, Inc. iShip, the iShip logo, Price It, Track It, Sell It, and Shipping Insight are trademarks of iShip, Inc. iShip, Inc. is a subsidiary of United Parcel Service of America, Inc. Logo and marks used by permission. All rights reserved

iShip_Services@iship.com <iShip_Services@iship.com>
To:AUDREYKRAMER55@YAHOO.COM
Dec 20, 2018 at 11:52 AM

Your parcel is ready to go

Join our email program to receive exclusive offers and resources

The UPS Store



Your parcel is ready to go

Just to let you know, we've processed a parcel shipping to **TIFFANY & BOSCO.**

It's currently at **Mail Boxes Etc. #2796** and will be picked up by **UPS** on **Thursday, December 20, 2018.**

You can expect it to arrive on **Monday, December 24, 2018 End of Day**

Your shipment information

Who sent it...

KRAMER

--

(Sender's street address omitted
intentionally from this email)

Hercules, CA 94547

Who will receive it...

TIFFANY & BOSCO

ATTN-KEVIN SODERMAN

(Recipient's street address omitted
intentionally from this email)

Las Vegas, NV 89107 US

Who is carrying it...

Mail Boxes Etc. #2796

(510) 245-7060

Carrier details...

UPS Ground

Tracking details...

Tracking No.: **1ZA832V34255658705**

Shipment ID: **MMREPGCMTBGZE**

Ship Ref 1:

Ship Ref 2:

Shipping date...

Thursday, December 20, 2018

Expected delivery date...

Monday, December 24, 2018 End of Day

977

SHIPPING TOOLS

Your Tracking Information

English (US)

Status: DELIVERED
Delivered To: LAS VEGAS, NV US
Delivery Date: Thu 27 Dec 2018
Delivery Location: Inside Delivery
Signed By: FRONT
Carrier: UPS
Service: Ground Commercial
UPS Tracking Number: 1ZA832V34255658705

Scan History:

Thu 27 Dec 2018	11:35 AM	Delivered LAS VEGAS NV US
	8:58 AM	Out For Delivery Today Las Vegas NV US
	3:13 AM	Destination Scan Las Vegas NV US
	12:49 AM	Arrival Scan Las Vegas NV US
Sat 22 Dec 2018	12:48 AM	Departure Scan Las Vegas NV US
	6:54 AM	We've incorrectly sorted this package which may cause a delay. Las Vegas NV US
	6:22 AM	We've corrected the postal code, and the package is on it's way to the updated address. NV US
Fri 21 Dec 2018	11:54 AM	Arrival Scan Sparks NV US
	11:53 AM	Departure Scan Sparks NV US
	4:39 AM	Departure Scan West Sacramento CA US
	1:19 AM	Arrival Scan West Sacramento CA US
Thu 20 Dec 2018	12:07 AM	Departure Scan San Pablo CA US
	10:36 PM	Origin Scan San Pablo CA US
	7:37 PM	We've corrected the postal code, and the package is on it's way to the updated address. LAS VEGAS NV US
	5:17 PM	Order Processed: Ready for UPS US

NOTE: The times listed in the scan details are local time.

[Done](#)

Track Another Package

Carrier Tracking Number / iShip ID:

Tracking provided for



[Learn More](#)
[Having trouble? Click here for help.](#)
[iShip, Inc. Privacy Notice](#)

© 1998 - 2019 iShip, Inc. iShip, the iShip logo, Price It, Track It, Sell It, and Shipping Insight are trademarks of iShip, Inc. iShip, Inc. is a subsidiary of United Parcel Service of America, Inc. Logo and marks used by permission. All rights reserved

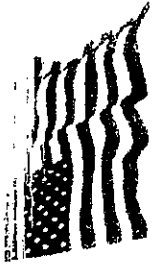
B

HUTCHISON & STEFFEN ENVELOP:
SHOWING SELF-STAMPING WITH NO DATE

B

HUTCHISON & STEFFEN
ATTORNEYS

500 DAMONTE RANCH PARKWAY, SUITE 980 • RENO, NEVADA 89521



US POSTAGE 0000.00



ZIP 89521
04110410529

Leo Kramer
Audrey Kramer
2364 Redwood Road
Hercules, CA 94547

9454731145 C014

C

10/23/18-EMAIL THREAD WITH AARON RITCHER

C

On Tuesday, October 23, 2018, 10:36:54 AM PDT, Law Clerk1 <lawclerk1@lyon-county.org> wrote:

Ms. Kramer, I received your message. The Judge is still working on your order.

Aaron P Richter
Law Clerk to the Honorable John P. Schlegelmilch
lawclerk1@lyon-county.org
(775) 463-6571, ext. 3

D

10/25/18-EMAIL THREAD WITH AARON RITCHER

D

Law Clerk1 <lawclerk1@lyon-county.org>

To:audreykramer55@yahoo.com

Cc:mschriever@hutchlegal.com,caseynelson@wedgewood-inc.com,md@tblaw.com,JCK@tblaw.com,NPetty@tblaw.com

Oct 25, 2018 at 12:44 PM

You need to file this directly with the court. The Court does not accept pleadings by email.

Aaron P Richter

Law Clerk to the Honorable John P. Schlegelmilch

lawclerk1@lyon-county.org

(775) 463-6571, ext. 3

E

10/25/18-EMIAL THREAD TO DEFENDANTS

E

Law Clerk1 <lawclerk1@lyon-county.org>

To:audreykramer55@yahoo.com

Cc:mschriever@hutchlegal.com,caseynelson@wedgewood-inc.com,md@tblaw.com,JCK@tblaw.com,NPetty@tblaw.com

Oct 25, 2018 at 12:44 PM

You need to file this directly with the court. The Court does not accept pleadings by email.

Aaron P Richter

Law Clerk to the Honorable John P. Schlegelmilch

lawclerk1@lyon-county.org

(775) 463-6571, ext. 3

On Thu, Oct 25, 2018 at 12:03 PM Audrey Kramer <audreykramer55@yahoo.com> wrote:

Kind Regards, Audrey

----- Forwarded Message -----

From: Audrey Kramer <audreykramer55@yahoo.com>

To: Law Clerk1 <lawclerk1@lyon-county.org>; mschriever@hutchlegal.com <mschriever@hutchlegal.com>; caseynelson@wedgewood-inc.com <caseynelson@wedgewood-inc.com>; md@tblaw.com <md@tblaw.com>; JCK@tblaw.com <JCK@tblaw.com>; NPetty@tblaw.com <NPetty@tblaw.com>

Cc: Audrey Kramer <audreykramer55@yahoo.com>

Sent: Thursday, October 25, 2018, 11:54:11 AM PDT

Subject: PLAINTIFFS' FIRST AMENDED COMPLAINT

All,

I am forwarding this email once again because I forgot to change the Subject Line on the email.

Please find attached Plaintiffs' First Amended Complaint.

Please acknowledge receipt of this email.

Thank you in advance for your prompt reply.

Sincerely,

Audrey Kramer & Leo Kramer

Audrey Kramer <audreykramer55@yahoo.com>
To:mschriever@hutchlegal.com,caseynelson@wedgewood-
inc.com,md@tblaw.com,JCK@tblaw.com,NPetty@tblaw.com,lawclerk1@lyon-county.org
Cc:Audrey Kramer
Oct 25, 2018 at 12:03 PM

Kind Regards, Audrey

----- Forwarded Message -----

From: Audrey Kramer <audreykramer55@yahoo.com>
To: Law Clerk1 <lawclerk1@lyon-county.org>; mschriever@hutchlegal.com
<mschriever@hutchlegal.com>; caseynelson@wedgewood-inc.com <caseynelson@wedgewood-
inc.com>; md@tblaw.com <md@tblaw.com>; JCK@tblaw.com <JCK@tblaw.com>; NPetty@tblaw.com
<NPetty@tblaw.com>
Cc: Audrey Kramer <audreykramer55@yahoo.com>
Sent: Thursday, October 25, 2018, 11:54:11 AM PDT
Subject: PLAINTIFFS' FIRST AMENDED COMPLAINT

All,

I am forwarding this email once again because I forgot to change the Subject Line on the email.

•

KRAMER-FIRST AMENDED COMPLAINT.pdf
14.7MB

FILED

2019 JAN -4 PM 1:22

TANYA A. JONES
COUNTY CLERK
THIRD JUDICIAL DISTRICT

Andrea Andersen

1 John T. Steffen (4390)
2 Matthew K. Schriever (10745)
3 HUTCHISON & STEFFEN, PLLC
4 10080 West Alta Drive, Suite 200
5 Las Vegas, NV 89145
6 Tel (702) 385-2500
7 Fax (702) 385-2086
8 mschriever@hutchlegal.com

9 Casey J. Nelson, Esq. (12259)
10 Wedgewood, LLC
11 Office of the General Counsel
12 2320 Potosi Street, Suite 130
13 Las Vegas, Nevada 89146
14 Tel (702) 305-9157
15 Fax (310) 730-5967
16 caseynelson@wedgewood-inc.com

17 *Attorneys for Defendants*

18 *Alyssa McDermott, Wedgewood Inc., and Breckenridge Property Fund 2016 LLC*

19 **THIRD JUDICIAL DISTRICT COURT**

20 **LYON COUNTY, NEVADA**

21 LEO KRAMER, AUDREY KRAMER,

22 Plaintiff,

23 v.

24 NATIONAL DEFAULT SERVICING
25 CORPORATION, ALYSSA MCDERMOTT,
26 WEDGEWOOD INC., BRECKENRIDGE
27 PROPERTY FUND 2016 LLC and DOES 1
28 THROUGH 50 INCLUSIVE,

Defendants.

Case No.: 18-CV-00663

Dept No.: I

**REPLY IN SUPPORT OF MOTION TO
DISMISS FIRST AMENDED COMPLAINT**

Comes now, ALYSSA MCDERMOTT ("McDermott"), WEDGEWOOD INC. ("Wedgwood"),
and BRECKENRIDGE PROPERTY FUND 2016 LLC ("Breckenridge") (collectively "Defendants") by
and through its counsel of record, Hutchison & Steffen, LLC, and hereby submits its Reply in Support of
Motion to Dismiss the Plaintiffs' First Amended Complaint.

///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

POINTS AND AUTHORITIES

Plaintiffs' Opposition to the Motion is untimely. The Motion was mailed to the Plaintiffs on November 19, 2018. Pursuant to TJDCR 7 and NRCP 6, any Opposition was due by December 10, 2018. Plaintiffs' Opposition was filed nearly two (2) weeks later. For this reason alone, the failure of the Plaintiffs to timely oppose the Motion within the time permitted should constitute a consent to the granting of the Motion. *See*, TJDCR 7(D). Nonetheless, Defendants now file this Reply to address the repetitive arguments made by the Plaintiffs in their untimely Opposition.

Plaintiffs First Amended Complaint only asserts causes of action against these Defendants of Quiet Title and Declaratory Relief, yet the majority of the Plaintiffs Opposition is focused on the remaining causes of action that do not concern these Defendants. None of the procedural allegations pertaining to the notice of foreclosure were done by these moving Defendants and dismissal as to the moving Defendants is appropriate. Similarly, the causes of action brought in the First Amended Complaint against the moving Defendants have already been dismissed as to these Defendants and leave was not granted to bring these causes of action again.

In their Opposition, the Plaintiffs do not dispute that the new allegations in the First Amended Complaint all allegedly occurred prior to the foreclosure sale. These Defendants had no role in this dispute prior to the foreclosure because their first involvement in the matter was when Breckenridge purchased the Subject Property at the foreclosure sale.

Rather than actually opposing the Defendants' Motion to Dismiss, the Plaintiffs have simply double-downed on their baseless, inflammatory, and unsupported vitriol. Plaintiffs provide no legal analysis as to how their claims are supported by Nevada law. Instead, they continue to put forth vague and ambiguous conspiracy theories against a non-party, JPMorgan Chase, that have already been rejected by the federal court. Plaintiffs further completely misconstrue the statements by Wedgewood's in-house counsel. First, any statements made to Plaintiffs were purely in the context of settlement discussions and

1 it is wholly inappropriate for Plaintiffs' to even include them in their briefing as supposed "evidence",
2 let alone deliberately misconstrue them. Moreover, Nevada's legal community is relatively small and
3 counsel's years of experience and familiarity with the foreclosure process and other attorneys
4 representing the various banks and trustees which operate throughout Nevada is not evidence of
5 collusion. This is just one more example of the Plaintiffs jumping to ridiculous, conspiracy-theory
6 conclusions.
7

8 Plaintiffs further implore the court to review all the documents to find the errors in the chain of
9 title; but Plaintiffs' themselves fail to demonstrate what the "errors" are. Plaintiffs' opposition is riddled
10 with non-binding decisions from other jurisdictions that are not even relevant to this case.

11 The Plaintiffs also improperly argue that the prior bankruptcy discharge of their *debt* also acted
12 as an avoidance of the *mortgage*. This is not the case and the mortgagee retained the ability to foreclose
13 even after the bankruptcy discharge of the *debt*. As explained by the Ninth Circuit recently:
14

15 The Bankruptcy Code authorizes debtors to receive a discharge of unsecured debt
16 (such as credit card debt) or secured debt (such as a mortgage on a home).
17 Ordinarily, in case of debtor default on a mortgage, a creditor is not limited to a
18 right of foreclosure on the property; a creditor may also sue the debtor personally
19 for any deficiency on the debt that remains after foreclosure. The discharge
20 eliminates the creditor's ability to proceed *in personam* against the debtor whether
21 the debt is secured or unsecured; in the case of a secured debt, ***the creditor retains
the ability to foreclose on the property but can no longer proceed against the
debtor personally.***

22 *In re Blendheim*, 803 F.3d 477 (2015) (internal citations omitted) (emphasis added). Here, as a result of
23 the bankruptcy discharge, the bank was still able to foreclose on the property, but it cannot sue the
24 Kramer's for a deficiency after the foreclosure.

25 As explained in the underlying Motion, the Plaintiffs are not entitled to quiet title or declaratory
26 relief against these Defendants because the Plaintiffs procedural allegations pertaining to the notice of
27 foreclosure are actions allegedly done by other entities and that also occurred prior to the foreclosure
28 sale, i.e. prior to these moving Defendants being involved with the dispute. These allegations against

1 other parties, even if true, do not provide either a factual or legal basis for relief against these moving
2 Defendants because these Defendants cannot be held responsible for the alleged actions of others.
3 Furthermore, Breckenridge was a Bona Fide Purchaser and the sale must be declared valid as to its
4 interest in the Subject Property because the Plaintiffs have failed to demonstrate how Breckenridge had
5 "actual knowledge, constructive notice of, or reasonable cause to know that there exists a defect in, or
6 adverse rights, title or interest to, the real property[.]" See, NRS 111.180(1) Accordingly, the order
7 dismissing these Defendants should include findings of fact and conclusions of law that Breckenridge
8 was a bona fide purchaser and that the sale is deemed valid as to its interest in the Subject Property.
9

10 Finally, Plaintiffs make allegations that the Defendants have failed to respond to discovery
11 requests. However, these Defendants have not received any discovery requests from the Plaintiffs.
12 Furthermore, even if discovery requests had been served, it would be premature pursuant to NRCP 26(a)
13 which states parties may not obtain discovery until "after the filing of a joint case conference report, or
14 not sooner than 10 days after a party has filed a separate case conference report, or upon order by the
15 court or discovery commissioner[.]" In this matter, none of those triggering events have occurred and
16 any discovery that Plaintiff attempts to serve prior to those events are inappropriate.
17

18 Based on the foregoing, Defendants respectfully requests that the Court grant its Motion to
19 dismiss with prejudice as to McDermott, Wedgewood, and Breckenridge as to all claims in the First
20 Amended Complaint and enter an Order that Breckenridge was a bona fide purchaser and that the sale
21 was valid as to its interest in the Subject Property.
22

23 ///

24 ///

25 ///

26 ///

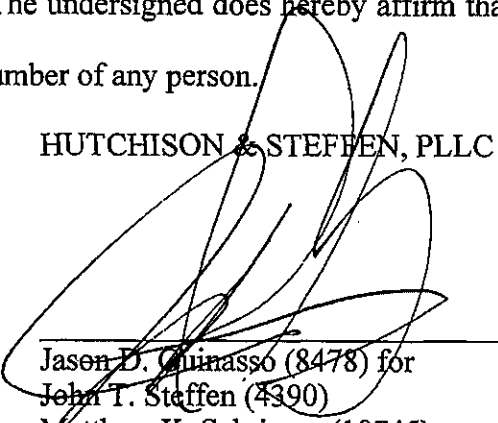
27 ///

28 ///

1 Affirmation pursuant to NRS 239B.030. The undersigned does hereby affirm that the preceding
2 documents does not contain the social security number of any person.

3 DATED this 31st day of January 2019.

HUTCHISON & STEFFEN, PLLC

4
5
6
7 
8 Jason D. Guinasso (8478) for
9 John T. Steffen (4390)
10 Matthew K. Schriever (10745)
11 10080 West Alta Drive, Suite 200
12 Las Vegas, NV 89145
13 mschriever@hutchlegal.com
14 Attorneys for Defendants
15 Alyssa McDermott, Wedgewood Inc., and
16 Breckenridge Property Fund 2016 LLC
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

Leo Kramer
Audrey Kramer
2364 Redwood Road
Hercules, CA 94547
Plaintiffs

DATED this 3 day of January 2019.

~~An Employee of HUTCHISON & STEFFEN~~

FILED

2019 JAN 17 PM 12:05

TANYA S. LON
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT*Andrea Andersen*

JASON C. KOLBE, ESQ.
Nevada Bar No. 11624
ACE C. VAN PATTEN, ESQ.
Nevada Bar No. 11731
TIFFANY & BOSCO, P.A.
10100 W. Charleston Blvd., Ste. 220
Las Vegas, NV 89135
Tel: (702) 258-8200
Fax: (702) 258-8787
TB #18-72716

Attorney for Defendant National Default Servicing Corporation

THIRD JUDICIAL DISTRICT COURT

LYON COUNTY, NEVADA

LEO KRAMER,
AUDREY KRAMER,

Plaintiffs,

vs.

NATIONAL DEFAULT SERVICING
CORPORATION, ALYSSA MC DERMOTT,
WEDGWOOD INC., BRECKENRIDGE
PROPERTY FUND 2016 LLC, and DOES 1
THROUGH 50 INCLUSIVE,

Defendants.

Case No.: 18-CV-00663

Dept. No.: I

**NATIONAL DEFAULT SERVICING CORPORATION'S MOTION TO DISMISS
FIRST AMENDED COMPLAINT**

COMES NOW Defendant National Default Servicing Corporation (hereinafter "NDSC" or the "Defendant"), by and through its counsel of record, Jason C. Kolbe, Esq. of Tiffany & Bosco, P.A., and moves the above-captioned Court to dismiss the First Amended Complaint

TIFFANY & BOSCO, P.A.
10100 W. Charleston Boulevard, Suite 220
Las Vegas, NV 89135
Tel 702-258-8200 Fax 702-258-8787

1 (the "Complaint") of Plaintiffs Leo Kramer and Audrey Kramer (hereinafter collectively the
2 "Plaintiffs") with prejudice based on the doctrine of res judicata.

3 This Motion is made and based upon the papers and pleadings on file herein, the
4 Memorandum of Points and Authorities, the attached documents, and any other additional
5 information or oral argument as may be requested by the Court.

6 DATED this 14th day of January, 2019.

7 TIFFANY & BOSCO, P.A.

8 

9 JASON C. KOLBE, ESQ.

10 Nevada Bar No. 11624

11 ACE C. VAN PATTEN, ESQ.

12 Nevada Bar No. 11731

13 10100 W. Charleston Blvd., Ste. 220

14 Las Vegas, NV 89135

15 Attorneys for Defendant

16 National Default Servicing Corporation

17 **MEMORANDUM OF POINTS AND AUTHORITIES**

18 **I.**

19 **INTRODUCTION**

20 The instant Amended Complaint is a rehashing of the same confused and jumbled
21 allegations the Plaintiffs have made before the U.S. District Court and this Court, both of which
22 resulted in dismissals. The Plaintiffs' Amended Complaint continues to raise issues previously
23 adjudicated and repeats the same confusion as to NDSC's role in the foreclosure sale,
24 incorrectly suggesting that NDSC lacked standing to conduct the foreclosure sale. NDSC was
25 acting as the Trustee under the Deed of Trust, and acquired its standing to do so not by virtue of
26 being the beneficiary or note holder but by virtue of the Substitution of Trustee. As such, it was
27 authorized to take the actions it took. Moreover, the actions it took were appropriate given that
28 the Plaintiffs had defaulted under the terms of the Note and Deed of Trust – a default which the
bankruptcy discharge would have neither cured nor precluded enforcement of the same. As a
consequence, despite the Plaintiffs' confusion and misunderstanding, the Complaint must be

1 dismissed in its entirety as to NDSC as there is no legal basis for the relief requested based upon
2 the allegations included in the Amended Complaint.

3 II.

4 **FACTUAL AND PROCEDURAL HISTORY**

5 The instant lawsuit is the second lawsuit filed by the Plaintiffs regarding the foreclosure
6 of the real property commonly known as 1740 Autumn Glen Street, Fernley, Nevada, 89408,
7 (hereinafter the "Property"). On May 18, 2018, the Property was sold at a non-judicial
8 foreclosure sale. The Property was sold to Breckenridge Property Fund 2016, LLC at that time
9 for \$211,000.00. A copy of the Trustee's Deed Upon Sale is attached as Exhibit "K." to the
10 Amended Complaint.¹

11 The Plaintiffs filed their Complaint in this action (hereinafter the "2nd Action") on June
12 8, 2018. The Complaint alleged causes of action relating to 1) unlawful foreclosure; 2) quiet
13 title; 3) injunctive relief; 4) slander of title; 5) constructive fraud; and 6) declaratory relief
14 relating to the ability to foreclose upon the Property.

15 However, previously, on January 2, 2018, the Plaintiffs filed a lawsuit (hereinafter the
16 "1st Action") against NDSC, JPMorgan Chase Bank, N.A., Mortgage Electronic Registration
17 Systems, Inc., and Washington Mutual Bank, N.A. in the United States District Court for the
18 District of Nevada (3:18-cv-00001-MMD-WGC), asserting among other causes of action, quiet
19 title, slander of title, declaratory relief, and cancellation of written instruments. A copy of the
20 U.S. District Court Complaint is attached hereto as **Exhibit "1."** On May 17, 2018, Judge
21 Miranda Du entered an order (hereinafter the "Federal Court Dismissal Order") dismissing the
22
23

24 ¹ Because the Trustee's Deed Upon Sale and order referenced below is a matter of public
25 record, the Court may take judicial notice of those documents and consider them in ruling on
26 NDSC's Motion to Dismiss without converting it to a motion for summary judgment, and
27 NDSC requests that the Court take judicial notice of said document. "[A] court may take
28 judicial notice of matters of public record." *Lee v. City of Los Angeles*, 250 F.3d 668, 689 (9th
Cir.2001) (internal quotations omitted); *see also Brelant v. Preferred Equities Corp.*, 109 Nev.
842, 847, 858 P.2d 1258, 1261 (1993) (court may consider matters of public record in ruling on
a motion to dismiss).

TIFFANY & BOSCO, P.A.
10100 W. Charleston Boulevard, Suite 220
Las Vegas, NV 89135
Tel 702-258-8200 Fax 702-258-8787

1 1st Action with prejudice. A copy of the Federal Court Dismissal Order is attached hereto as
2 Exhibit "2."

3 On or about October 24, 2018, this Court entered an Order Granting Motion to Dismiss
4 Plaintiff's Complaint, dismissing the entirety of the Complaint without prejudice and finding
5 that all claims, except for those relating to the procedural notice of the sale, were precluded
6 from being re-litigated as a result of res judicata. A copy of the Order Granting Motion to
7 Dismiss is attached hereto as Exhibit "3."

8 Plaintiffs subsequently amended their Complaint to provide for causes of action 1) for
9 unlawful foreclosure against NDSC; 2) quiet title; 3) slander of title; 4) declaratory relief; and
10 5) cancellation of written instruments. NDSC now moves to dismiss the same.

11 III.

12 LEGAL ARGUMENT

13 A. THE DOCTRINE OF RES JUDICATA BARS ALL CLAIMS EXCEPT THOSE 14 RELATING TO THE UNLAWFUL FORECLOSURE CAUSE OF ACTION.

15 The Plaintiffs again attempt to ignore the Federal Court Dismissal Order by reasserting
16 claims which have already been adjudicated. The Nevada Supreme Court provided the
17 following guidance regarding res judicata in *University of Nevada v. Tarkanian*, 110 Nev. 581,
879 P.2d 1180 (1994):

18 "Generally, the doctrine of res judicata precludes parties or those in privity with
19 them from relitigating a cause of action or an issue which has been finally
20 determined by a court of competent jurisdiction. *Horvath v. Gladstone*, 97 Nev.
21 594, 597, 637 P.2d 531, 533 (1981); *Gilbert v. Warren*, 95 Nev. 296, 594 P.2d
22 696 (1979). The doctrine is intended to prevent multiple litigation causing
23 vexation and expense to the parties and wasted judicial resources by
24 precluding parties from relitigating issues they could have raised in a prior
25 action concerning the same controversy. *Hulsey v. Koehler*, 218 Cal.App.3d
26 1150, 267 Cal.Rptr. 523, 526 (Ct.App.1990). For res judicata to apply, three
27 pertinent elements must be present: (1) the issue decided in the prior litigation
28 must be identical to the issue presented in the current action; (2) the initial ruling
must have been on the merits and have become final; and (3) the party against
whom the judgment is asserted must have been a party or in privity with a party to
the prior litigation. *Horvath*, 97 Nev. at 597, 637 P.2d at 531.

26 Additionally, there are two different species of res judicata that might arguably
27 apply here: issue preclusion and claim preclusion.

28 ...

1 Claim preclusion, or merger and bar, is triggered when a judgment is entered. A
2 valid and final judgment on a claim precludes a second action on that claim or any
3 part of it. *See Gilbert v. Warren*, 95 Nev. 296, 594 P.2d 696 (1979). The
4 preclusive effect is generally as to a subsequent action on the same claim or part
5 thereof, not as to subsequent proceedings in the same litigation. *See Office*
6 *Services Corp. of America v. CAS Systems, Inc.*, 63 Or.App. 842, 666 P.2d 297
7 (Ct.App.), *rev. denied*, 295 Or. 773, 670 P.2d 1036 (1983); Charles A. Wright,
8 Law of Federal Courts § 100A (4th ed. 1983). The claim of a prevailing plaintiff
9 is merged into the judgment. If the defendant prevails, the plaintiff is thereafter
10 barred from subsequent suits on the same claim. *See* Restatement (Second) of
11 Judgments § 24 (1982). **The modern view is that claim preclusion embraces**
12 **all grounds of recovery that were asserted in a suit, as well as those that**
13 **could have been asserted, and thus has a broader reach than collateral**
14 **estoppel.** *See Batterman v. Wells Fargo Ag. Credit Corp.*, 802 P.2d 1112
15 (Colo.Ct.App.1990); *Matter of Herbert M. Dowsett Trust*, 7 Haw.App. 640, 791
16 P.2d 398 (Ct.1990); *Madsen v. Borthick*, 769 P.2d 245, 247 (Utah 1988)."
17 (Emphasis added.) *Id.* at 598-600, 1191-92.

11 All of the requirements for the doctrine of res judicata continue to apply are satisfied in
12 this case with regard to the causes of action for quiet title, slander of title, declaratory relief, and
13 cancellation of written instruments. NDSC was named as a defendant in the 1st Action filed by
14 the Plaintiffs, which pertained to the Plaintiffs' mortgage and foreclosure of the Property. This
15 2nd Action filed by the Plaintiffs again names NDSC as a defendant and is again based on the
16 Plaintiffs' mortgage and foreclosure of the Property. Not only did the 1st Action involve NDSC,
17 the same issues were raised in the 1st Action as have been raised in the 2nd Action. The First
18 Amended Complaint attempts to dress the same arguments contained in the original Complaint
19 and the 1st Action do not give rise to new claims sufficient to avoid the application of res
20 judicata. The Federal Court entered a final ruling on the merits in the 1st Action, dismissing all
21 of the Plaintiffs' claims with prejudice, and this Court recognized the same in its own order
22 dismissing the first Complaint as to all claims except for the wrongful foreclosure cause of
23 action. As such, for the exact same reasons that it ruled earlier, the Amended Complaint must be
24 dismissed with prejudice for the causes of action relating to quiet title, slander of title,
25 declaratory relief, and cancellation of written instruments.

26 The claim relating to the wrongful foreclosure action should also be found to have been
27 adjudicated as it relies upon the same allegations concerning a lack of standing, lack of default,
28 and wrongful recordation of documents which were included in the federal court litigation.

Specifically, the Federal Court Dismissal Order reflects that the bankruptcy actions involving the Plaintiffs should have raised any claims relating to the loan and/or NDSC's involvement in the same as part of that case, expressly finding that "[e]quity demands that Plaintiffs be judicially estopped from now asserting claims against these Defendants in [the 1st Action] to avoid foreclosure on the [Property]. See, Exhibit 2, pp. 9-10. As a result, the Federal Court considered the same underlying facts and found that the Plaintiffs could not assert a viable cause of action based upon the same, given that they were judicially estopped from raising the same by virtue of their acknowledgement of the loan and lien in the bankrupt case. *Id.* The Court should recognize the same here, and find that the underlying issues have already been adjudicated as part of the 1st Action and are further judicially estopped as a result of the failure to address the same in the earlier bankruptcy cases, and the Complaint dismissed in its entirety.

B. THE PLAINTIFF'S COMPLAINT SHOULD BE ALSO BE DISMISSED UNDER NRCP 12(B)(5).

1. Legal Standard for Motion to Dismiss.

Pursuant to Nevada Rule of Civil Procedure ("NRCP") 12(b)(5) "failure to state a claim upon which relief can be granted," is a basis to dismiss a Complaint where the moving party can demonstrate beyond doubt that the Plaintiff cannot provide a set of facts in support of his claim which would entitle them to relief, such that this Motion to Dismiss should be granted. *Edgar v. Wagner*, 101 Nev. 226, 227, 699 P.2d 110, 111 (Nev. 1985). In making a determination, the allegations made in the Complaint are generally taken as true and viewed in the light most favorable to the non-moving party. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008). However, the Court should dismiss if the factual allegations of the Complaint, if accepted as true, are insufficient to establish essential elements of a claim for relief. *Edgar*, 101 Nev. at 228, 699 P.2d at 112. Here, even if res judicata were not applicable, the remaining claims must be dismissed.

///

///

///

1 **2. The unlawful foreclosure claims lack any factual allegations which would**
2 **warrant relief.**

3 Plaintiffs assert a hodge podge of allegations as to why the foreclosure notices were
4 improper, rendering the resulting sale invalid. Specifically, the Amended Complaint alleges that
5 there was 1) no default; 2) lack of standing by NDSC; and 3) defects with the notice provided.
6 None of these, however, provide a sufficient factual basis for the causes of action asserted.

7 **a. Plaintiffs' bankruptcy discharge did not prevent a default from**
8 **occurring or from being enforced against the Property.**

9 The Plaintiffs suggest that they were not in default because "whatever [balance owed]
10 was outstanding, if any, from the revolving line of credit was fully discharged in Bankruptcy
11 Court in 2011." Amended Complaint, ¶50. The Plaintiffs, however, misunderstand a
12 fundamental aspect of the effect of the bankruptcy discharge. The discharge only affects the
13 debtors' personal liability on the debt, it does not prevent or preclude the lien holder's actions to
14 enforce the lien whereby it only seeks to recover the amount owed from the collateral its lien
15 secures. *See e.g., Johnson v. Home State Bank*, 501 U.S. 78, 84 (1991); *In re Blendheim*, 803
16 F.3d 477 (9th Cir. 2015). The discharge, then, only prevents *in personam* enforcement, and not
17 remedies relating to *in rem* enforcement such as foreclosure. The Plaintiffs' discharge, then,
18 would not prevent or cure a default from leading to a foreclosure sale.

19 **b. NDSC, as the foreclosure trustee, was not required to be the**
20 **beneficiary under the Deed of Trust or the holder of the Note.**

21 Plaintiffs argue that NDSC did not have standing to record the Notice of Default on
22 October 5, 2017, a statement which reflects the Plaintiffs misunderstanding of the role of NDSC
23 as the foreclosure trustee. *See* Amended Complaint, ¶37. Specifically, they assert that there was
24 no assignment of the Deed of Trust to NDSC. *Id.* This, however, ignores that NDSC would not
25 have an ownership interest in the Property and was neither the beneficiary under the Deed of
26 Trust nor the holder of the Note. NDSC was merely acting as Trustee pursuant to the Deed of
27 Trust, as reflected in the Substitution of Trustee recorded in November 2013, was sufficient to
28 provide it the requisite standing to record the notices, despite Plaintiffs' suggestion to the

1 contrary. *See*, Exhibit F to Amended Complaint. The notices were conducted pursuant to the
2 Deed of Trust, but were not any claim by NDSC to have any interest in the Property, a fact
3 which the Plaintiffs fail to understand.

4 **c. The notices provided to the Plaintiffs were sufficient where the**
5 **Property was not owner-occupied.**

6 Similarly, the Plaintiffs allegations that they were deprived notice of the foreclosure
7 mediation program also fails to support its allegation that the sale was wrongfully conducted.
8 Specifically, the Amended Complaint notes that the Plaintiffs “allege the property was
9 purchased as a second home” and that the “tenants currently residing in the subject property”
10 were contacted in May 2018 by the new owner. *See*, Amended Complaint, ¶¶26, 43. As such,
11 the Property was not owner occupied, a requirement under NRS 107.086, for a homeowner to
12 be eligible for the foreclosure mediation program. As such, because the Plaintiffs did not utilize
13 the Property as an owner-occupied property, they were not eligible to participate in the
14 mediation program, and the foreclosure program rightly recognized the same and Home Means
15 Nevada rightfully provided a foreclosure certificate. *See*, Exhibit I to Amended Complaint. The
16 lack of owner-occupied status also negates the arguments made under made in the Amended
17 Complaint. NRS 107.500 in only applicable to a “residential mortgage loan” which, in turn, is
18 defined in NRS 107.450 as a loan “secured by a ...deed of trust on owner-occupied housing...”
19 Here, the Amended Complaint admits that the Property was not owner-occupied and that the
20 Property was being rented to tenants. *See*, Amended Complaint, ¶¶26, 43.

21 Similarly, the Plaintiffs argue that they were entitled to receive a copy of the Notice of
22 Default pursuant to NRS 107.090, but there is no allegation that the Plaintiffs recorded a request
23 for such a document, as is required by that statute. There are no allegations that the documents
24 were not posted as required by the statute or that the Plaintiffs were denied notice of the sale.
25 Indeed, the 1st Action had been commenced when the sale occurred. Consequently, even under
26 the Amended Complaint, there is no valid basis for the wrongful foreclosure claim given
27 NDSC’s limited involvement as the Trustee and the appropriateness of the documents recorded.

28 ///

3. **Quiet title is not appropriate as to NDSC as NDSC's only relationship with the Property is as the foreclosure trustee.**

To establish a right to quiet title, Plaintiffs have the burden of demonstrating good and clear title to the Property. *Brelant v. Preferred Equities Corp.*, 112 Nev. 663, 669, 918 P.2d 314,318 (1996). Plaintiffs' claim should also be dismissed because Plaintiffs have not provided, and cannot provide, this Court with "any cogent argument, legal analysis, or supporting factual allegations" to justify a quiet title determination in favor of Plaintiffs. *Browning v. State*, 120 Nev. 347, 361, 91 P.3d 39,50 (2004). A quiet title claim requires the plaintiff to allege that a defendant is unlawfully asserting an adverse claim to title to real property, which NDSC does not do so here. *See Kemberling v. Ocwen Loan Servicing*, 2009 WL 5039495 (D. Nev. Dec. 15, 2009). Moreover, Plaintiffs' quiet title claim should also be dismissed because in quiet title actions, the party seeking title must tender the undisputed amount due and owing to challenge the validity of the trustee's sale. *See, e.g., Abdallah v. United Savings Bank*, 43 Cal. App. 4th 1101, 1109 (1996).

Here, NDSC's involvement with the Plaintiffs is as the trustee pursuant to the Deed of Trust which the Plaintiffs admit encumbered the Property. *See*, Amended Complaint, ¶14, 15. Plaintiffs confuse and conflate the actions of NDSC as the trustee and the actions by the beneficiary under the Deed of Trust. NDSC does not claim an adverse interest in the Property, and as such, is not an appropriate party to the quiet title action. As such, the cause of action must be dismissed again as it relates to NDSC.

Finally, the cause of action must be dismissed as a result of the Plaintiffs' failure to make the full tender of the amount due on the loan. To successfully assert a claim that an improper foreclosure occurred, the plaintiff must allege that there is not a default on the loan. *See. Collins v. Union Fed. Sav. & Loan Ass'n*, 99 Nev. 284, 304, 662 P.2d 610, 623 (Nev. 1983). Here, the documents filed in the Plaintiff's bankruptcy cases acknowledge the loan and the default under the same. As a result, the Plaintiffs' previous acknowledgement of the default as part of the bankruptcy proceedings preclude it from now arguing that the loan was not in default at the time of sale, further warranting dismissal of the claim against NDSC.

1 **4. The slander of title cause of action must be dismissed as the lack of loan**
2 **payments made by the Plaintiffs warranted and justified the recording of**
3 **the foreclosure documents.**

4 Plaintiffs' slander of title claim is apparently based on the unsupported position that the
5 mere recording of the documents relating to the foreclosure sale is actionable. To establish a
6 prima facie claim for slander of title, a plaintiff must demonstrate that a defendant made a false
7 and malicious communication disparaging to plaintiff's title to land; and that the plaintiff
8 sustained special damages as a result of the communication. *See, e.g., Executive Management,*
9 *LTD. v. Ticor Title Ins. Co., 114 Nev. 823,963 P.2d 465 (Nev. 1998).* Plaintiffs' cannot sustain
10 these elements. If Plaintiffs stopped making their loan payments, such actions warrant and
11 legally justify the recording of all documents necessary and property to initiate non-judicial
12 foreclosure proceedings. *See NRS 107.080(2) and (4).* Due to the foregoing, there is no false
13 communication by any NDSC made to any third persons, let alone a communication that could
14 reasonably be construed as "malicious." *See, e.g., DeCarnelle v. Guimont, 705 P.2d 650,651*
15 *(Nev. 1985) and Ramo.s v. MERS, Inc., 2009 WL 5651132 at *4 (D. Nev. March 5, 2009).*

15 **5. The declaratory relief cause of action and cancellation of written**
16 **instruments are not a separate cause of action but are remedies.**

17 In order to be entitled to declaratory relief, "an existing controversy must be present."
18 *Doe v. Bryan, 102 Nev. 523, 525, 728 P.3d 443, 444 (1986).* There is no controversy present in
19 this matter aside from the confusion created by Plaintiffs' misunderstanding of the roles and
20 actions of the various parties. The role and authority of a lender (and its transferee/assignee) and
21 the trustee under the Deed of Trust is clearly set forth in the Deed of Trust, and pursuant to
22 Chapter 107 of the Nevada Revised Statutes. Moreover, "[t]he object of [declaratory relief] is to
23 afford a new form of relief where needed and not to furnish a litigant with a second cause of
24 action for the determination of identical issues." *Gen. of Am. Ins. Co. v. Lilly, 258 Cal. App. 2d*
25 *465, 470 (Cal. App. 1968).* Because Plaintiffs' declaratory relief action is duplicative of
26 Plaintiffs' other claims, it is unsustainable and must be dismissed.

27 Similarly, the request for cancellation of the foreclosure notices is a remedy and not a
28 separate cause of action. Because no basis exists for the cancellation of the same as a matter of

TIFFANY & BOSCO, P.A.
10100 W. Charleston Boulevard, Suite 220
Las Vegas, NV 89135
Tel 702-258-8200 Fax 702-258-8787

1 law, the Plaintiffs are not entitled to same. As a result, the claim must be dismissed with
2 prejudice.

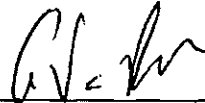
3 IV.

4 CONCLUSION

5 Based on the foregoing, NDSC requests that its Motion to Dismiss be granted in its
6 entirety and that the Plaintiffs' First Complaint against NDSC be dismissed in its entirety with
7 prejudice.

8 DATED this 14th day of January, 2019.

9 TIFFANY & BOSCO, P.A.

10 

11 JASON C. KOLBE, ESQ.

12 Nevada Bar No. 11624

13 ACE C. VAN PATTEN, ESQ.

14 Nevada Bar No. 11731

15 10100 W. Charleston Blvd., Ste. 220

16 Las Vegas, NV 89135

17 Attorneys for Defendant

18 National Default Servicing Corporation

TIFFANY & BOSCO, P.A.
10100 W. Charleston Boulevard, Suite 220
Las Vegas, NV 89135
Tel 702-258-8200 Fax 702-258-8787

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of January, 2019 I placed a copy of the above
**NATIONAL DEFAULT SERVICING CORPORATION'S MOTION TO DISMISS
FIRST AMENDED COMPLAINT** into a sealed envelope and mailed it via regular mail,
postage prepaid, addressed to:

Leo Kramer
Audrey Kramer
2364 Redwood Road
Hercules, CA 94547
Plaintiffs in Proper Person

Casey J. Nelson, Esq.
2320 Potosi Street, Suite 130
Las Vegas, NV 89146
Attorney for Breckenridge Property Fund
2016, LLC

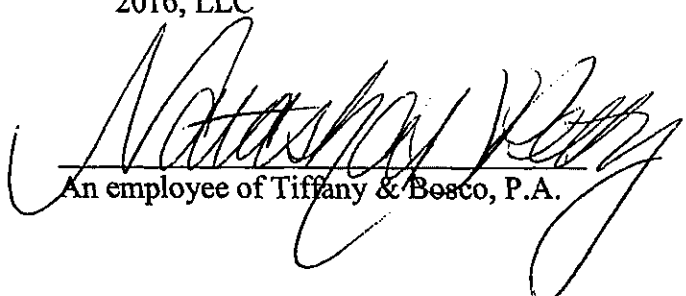

An employee of Tiffany & Bosco, P.A.



EXHIBIT 1

EXHIBIT 1

FILED	RECEIVED
ENTERED	SERVED ON
COUNSEL/UNITIES OF RECORD	
JAN 02 2018	
CLERK US DISTRICT COURT DISTRICT OF NEVADA	
BY:	DEPUTY

1 LEO KRAMER
2 AUDREY KRAMER
3 2364 REDWOOD ROAD
4 HERCULES, CA 94547

5 PLAINTIFFS IN PRO PER

6 UNITED STATES DISTRICT COURT
7 DISTRICT OF NEVADA
8 BRUCE R. THOMPSON U.S.COURTHOUSE

9
10 LEO KRAMER,
11 AUDREY KRAMER,

12 Plaintiffs,

13
14
15 vs.

16
17 JPMORGAN CHASE BANK, N.A.,
18 MORTGAGE ELECTRONIC
19 REGISTRATION SYSTEMS, INC.,
20 NATIONAL DEFAULT SERVICING
21 CORPORATION, WASHINGTON
22 MUTUAL BANK, N.A., and DOES 1
23 THROUGH 50 INCLUSIVE,

24 Defendants.

Case No. 3:18-cv-00001

COMPLAINT FOR:

1. VIOLATIONS OF 15 U.S.C. § 1692 ET SEQ.; 15 U.S.C. § 1601, FAIR DEBT COLLECTION PRACTICE ACT (FDCPA)
2. 11 VIOLATION OF U.S.C.A. § 524
3. BREACH OF FIDUCIARY DUTY
4. BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING
5. ACCOUNTING
6. PREDATORY LENDING PRACTICES
7. CONSTRUCTIVE FRAUD
8. FRAUD IN THE CONCEALMENT
9. FRAUD IN THE INDUCEMENT
10. SLANDER OF TITLE
11. QUIET TITLE
12. CANCELLATION OF NOTICE OF DEFAULT, SUBSTITUTION OF TRUSTEE AND FULL RECONVEYANCE
13. DECLARATORY RELIEF
14. NEGLIGENCE
15. INJUNCTIVE RELIEF

1 Plaintiffs, LEO KRAMER and AUDREY KRAMER, ("Plaintiffs"), allege as follows:

2
3 I
PRELIMINARY ALLEGATIONS

4 1. Plaintiffs contend that, the JPMORGAN CHASE BANK, N.A., MORTGAGE
5 ELECTRONIC REGISTRATION SYSTEMS, INC, NATIONAL DEFAULT SERVICING
6 CORPORATION, WASHINGTON MUTUAL BANK, N.A, ("Defendants") and each of them
7 cannot establish rightful possession and proper transfer or proper endorsement of the Promissory
8 Note and the assignment of the Deed of Trust herein. Therefore, the foreclosing defendants do
9 not have the ability to establish that the mortgages that secure the indebtedness, or Note, were
10 legally or properly acquired.
11

12 2. Plaintiffs contend that Defendants and each of them used obscenity, or repeated
13 annoying phone calls, in violation of 15 U.S.C. §1692d, falsely represent "the character, amount,
14 or legal status of the debt in violation of 15 U.S.C. §1692e (2)(A); and used various "unfair or
15 unconscionable means to collect or attempt to collect" on the revolving line of credit in violation
16 of 15 U.S.C. §1692f.
17

18 3. Plaintiffs allege that JPMORGAN CHASE BANK, N.A., NATIONAL
19 DEFAULT SERVICING CORPORATION, WASHINGTON MUTUAL BANK, N.A, and each
20 of them falsely represented "the character, amount, or legal status of the debt in violation of 15
21 U.S.C. §1692e (2)(A); and used various "unfair or unconscionable means to collect or attempt to
22 collect" on the revolving line of credit that was discharged in Plaintiffs, LEO KRAMER's
23 Chapter 13 Bankruptcy.
24

25 4. Plaintiffs allege that, JPMORGAN CHASE BANK, N.A., NATIONAL
26 DEFAULT SERVICING CORPORATION, WASHINGTON MUTUAL BANK, N.A attempt
27 to collect" on the revolving line of credit that was discharged in Plaintiffs, LEO KRAMER's
28

1 Chapter 13 Bankruptcy is a direct violation of 11 U.S.C.A. § 524.

2 5. Further, Plaintiffs allege that, any applicable statutes of limitations have been tolled
3 by the Defendants' continuing, fraud, knowing, and active concealment of the facts alleged
4 herein. Despite exercising reasonable diligence, Plaintiffs could not have discovered, did not
5 discover, and was prevented from discovering, the wrongdoing complained of herein.

6 6. Plaintiffs contend that there has been an unlawful, fraudulent and willful oppressive
7 commencement of a non-judicial foreclosure sale of their real property by above referenced
8 Defendants; as such, Plaintiffs are not required to tender prior to commencing this lawsuit.

9 7. Plaintiffs further allege that, notwithstanding, their Declaration, prior to recording
10 the Notice of Default neither WASHINGTON MUTUAL BANK, N.A. nor JPMORGAN
11 CHASE BANK, N.A., has obtain a judgment from the purported default of the line of credit and
12 none of the foreclosing defendants has establish the amount of indebtedness from the revolving
13 line of credit of One Hundred Seventy Six Thousand dollars (US\$176, 000.00) that was provided
14 by the creditor, WASHINGTON MUTUAL BANK, N.A., in 2008.

15 8. Plaintiffs contend that, because they are owners of the real property that is the
16 subject of this litigation, they have a private right of action to enjoin material violations and to
17 injunctive relief, which will remain in place as the trustee sale is postponed, until the court has an
18 opportunity to determine if there was any material violation. If the trustee's deed upon sale has
19 already been recorded and the court finds that there is a material violation that has not been
20 corrected, the mortgage servicer may be liable for actual damages. Additionally, if the violation is
21 found in court to have been intentional or reckless, the mortgage servicer may be liable to treble
22 actual damages. Plaintiffs bring this action for declaratory judgment, injunctive and equitable
23 relief, and for compensatory, special, general, punitive damages and treble damages against
24 above named Defendants and each of them.

1
2
3 **II.**
4 **JURISDICTION AND VENUE**

5 9. This court has Federal question jurisdiction under 28 U.S.C § 1331.

6 10. The amount in controversy without interest and costs, exceeds the sum or
7 value specified by 28 U.S.C § 1332.

8 11. Venue is proper under 28 U.S.C. § 1391 (a)(2) on the grounds that the
9 Substantial part of event or omission giving rise to the complaint was negotiated in the State of ,
10 Nevada and in the State of California.

11 12. The transactions and events which are the subject matter of this Complaint
12 occurred within the County of Lyon, State of Nevada and the amount in controversy exceeds
13 \$75,000.00.
14

15
16 **III.**
17 **THE PARTIES**

18 13. Plaintiffs, LEO KRAMER and AUDREY KRAMER, ("Plaintiffs"), are now, and
19 at all times relevant to this action, residents of the County of Contra Costa, State of California.

20 Plaintiffs are the rightful owners of the real property commonly describe as: 1740 Autumn Glen
21 Street, Fernley, NV 89408, ("the subject property") and more fully legally described as:

22 Lot 62, SD UPLAND RANCH ESTATE UNIT NO. 7. ACCORDING TO MAP THEREOF,
23 FILED AS DOCUMENT NO 315377, ON MARCH 9, 2004, COUNTY OF LYON, STATE
24 OF NEVADA Bearing APN: 022-052-02 in Lyon County, State of Nevada

25 14. Plaintiffs are informed and believe and thereon allege that at all relevant times
26 mentioned in this Complaint, Defendants, JPMORGAN CHASE BANK, N.A. a national
27 association with its Corporate Headquarters in the State of New York; was organized and
28

1 existing under the laws of the United States of America; and at all times pertinent, was
2 conducting business in the County of Lyon, State of Nevada. Plaintiffs further alleges that,
3 Defendant, is the purported agent of the creditor, Washington Mutual Bank N.A., provider of the
4 revolving line of credit, of One Hundred Seventy Six Thousand dollars (US\$176, 000.00).
5 Plaintiffs further alleges that, prior to and during the recording of the Notice of Default,
6 Defendant and its agent or anyone or entity acting on its behalf, made false or misleading
7 representations and engaged in various abusive and unfair practices and misrepresented the
8 amount of indebtedness from the revolving line of credit which was provided by Washington
9 Mutual Bank, *a defunct banking institution*. Defendant, JPMORGAN CHASE BANK, N.A.,
10 was not in privity of contract which secured the revolving line of credit of One Hundred Seventy
11 Six Thousand dollars (US\$176, 000.00).
12

13 15. Plaintiffs are informed and believe and thereon allege that at all relevant times
14 mentioned in this Complaint, Defendant, NATIONAL DEFAULT SERVICING
15 CORPORATION, is organized and existing under the laws of the State of Arizona, and under the
16 laws of the State of Nevada and at all times pertinent, was conducting business in the County of
17 Lyon, State of Nevada. Plaintiffs further alleges that, Defendant, is the purported agent of the
18 lender and the loan servicer. Plaintiffs further alleges that, prior to and during the recording of
19 the Notice of Default, Defendant made false or misleading representations and engaged in
20 various abusive and unfair practices and misrepresented the amount of indebtedness from the
21 revolving line of credit which was provided by Washington Mutual Bank, *a defunct banking*
22 *institution*.
23
24

25 16. Plaintiffs are informed and believe and thereon allege that at all relevant times
26 mentioned in this Complaint, Defendant, MORTGAGE ELECTRONIC REGISTRATION
27 SYSTEMS, INC, is organized and existing under the laws of the State of Delaware, and under
28

1 the laws of the State of Nevada and at all times pertinent, was conducting business in the County
2 of Lyon, State of Nevada. Plaintiffs further alleges that, Defendant, is the purported agent of the
3 lender and the loan servicer. Plaintiffs further alleges that, prior to and during the recording the
4 Notice of Default, Defendant made false or misleading representations and engaged in various
5 abusive and unfair practices and misrepresented the amount of indebtedness from the revolving
6 line of credit which was provided by Washington Mutual Bank, *a defunct banking institution*.
7

8 17. Plaintiffs are informed and believe and thereon allege that at all relevant times
9 mentioned in this Complaint, Defendant, Plaintiffs are informed and believe and thereon allege
10 that at all relevant times mentioned in this Complaint, Defendant, WASHINGTON MUTUAL
11 BANK, *a defunct banking institution*; was organized and existing under the laws of the United
12 States of America, and under the laws of the State of Nevada; and at all times pertinent, was
13 conducting business in the County of Lyon, State of Nevada. Plaintiffs further alleges that,
14 Defendant, is the "creditor" and provider of the revolving line of credit of One Hundred Seventy
15 Six Thousand dollars (US\$176, 000.00). Plaintiffs further allege that, prior to and during the
16 recording of the Notice of Default, Defendant and its agent or anyone or entity acting on its
17 behalf, made false or misleading representations and engaged in various abusive and unfair
18 practices and misrepresented the amount of indebtedness from the revolving line of credit which
19 provided by Washington Mutual Bank, *a defunct banking institution*.
20

21 18. Plaintiffs do not know the true names, capacities, or basis for liability of
22 Defendants sued herein as Does 1 through 50, inclusive, as each fictitiously named Defendant is
23 in some manner liable to Plaintiffs, or claims some right, title, or interest in the Property.
24 Plaintiffs will amend this Complaint to allege their true names and capacities when ascertained.
25 Plaintiffs are informed and believe, and therefore allege, that at all relevant times mentioned in
26 this Complaint, each of the fictitiously named Defendants are responsible in some manner for the
27
28

1 injuries and damages to Plaintiffs so alleged and that such injuries and damages were
2 proximately caused by such Defendants, and each of them.

3
4 IV.
5 FACTUAL AND GENERAL ALLEGATIONS
6

7 19. Plaintiffs allege that, prior to and during, NATIONAL DEFAULT SERVICING
8 CORPORATION, recording the Notice of Default, Defendant made false or misleading
9 representations and engaged in various abusive and unfair practices and misrepresented the
10 amount of indebtedness from the revolving line of credit which was provided by Washington
11 Mutual Bank, *a defunct banking institution*.

12 20. On or about June 02, 2005, (hereinafter referred to as "Closing Date"), Plaintiffs
13 LEO KRAMER and AUDREY KRAMER entered into a consumer credit transaction with,
14 PAUL FINANCIAL, LLC, by obtaining a One Hundred Sixty Three Thousand Five Hundred
15 dollars (US\$163, 500.00) mortgage loan secured by the DEED OF TRUST of Plaintiffs' real
16 property commonly described as: 1740 Autumn Glen Street, Fernley, NV 89408 ("the Subject
17 Property"). The true and correct copy of the Deed of Trust is attached hereto as Plaintiffs'
18 Exhibit "A" and incorporated herein by reference as if set forth in full herein. Plaintiffs are
19 informed and believe, and thereon allege that *PAUL FINANCIAL, LLC is a defunct financial*
20 *institution*. Plaintiffs further allege that, PAUL FINANCIAL, LLC, did not assign any
21 contractual rights to any of the above named Defendants. None of the above referenced
22 Defendants is a third party beneficiary under the contract which secured Plaintiffs' Note and
23 deed of trust.

24 21. Subsequently, on or about 05/01/2008, Plaintiffs used the subject property as
25 collateral to obtain the revolving line of credit in the amount of One Hundred Seventy Six
26
27
28

1 Thousand dollars (US\$176,000.00) from WASHINGTON MUTUAL BANK, *a now defunct*
2 *banking institution*; for the maintenance of the subject property and for the purchase of other
3 household goods. The true and correct copy of the revolving line of credit is attached hereto as
4 Plaintiffs' Exhibit "B" and incorporated herein by reference as if set forth in full herein.

5
6 22. Plaintiffs performed all terms, covenants, and conditions required of them under
7 the revolving line of credit, except for those terms, covenants, and conditions the performance of
8 which was either waived or rendered impossible by Defendants, and each of them.

9 23. Plaintiffs are informed and believes, and thereon alleges, that at all times herein
10 mentioned, each of the Defendants were the agents, employees, servants and/or the joint-
11 venturers of the remaining Defendants, and each of them, and in doing the things alleged herein
12 below, were acting within the course and scope of such agency, employment and/or joint venture
13 and enterprise in intrastate and interstate commerce.

14
15 24. On or about May 13, 2008, MORTGAGE ELECTRONIC REGISTRATION
16 SYSTEMS, INC., engaged the service of a *robo signer*, and unlawfully recorded a purported
17 "SUBSTITUTION OF TRUSTEE and FULL RECONVEYANCE" and thereafter, purported to
18 substitute EXECUTIVE TRUSTEE SERVICES, LLC as trustee under Plaintiffs' Note and Deed
19 of Trust and purported to transfer and convey all beneficial interest in Plaintiffs' Note and Deed
20 of Trust, to MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. The true and
21 correct copy of the purported "SUBSTITUTION OF TRUSTEE and FULL
22 RECONVEYANCE" is attached hereto as Plaintiffs' Exhibit "C" and incorporated herein by
23 reference as if set forth in full herein.

24
25 25. Plaintiffs allege that, any applicable statutes of limitations have been tolled by
26
27
28

1 the Defendants' continuing, fraud, knowing, and active concealment of the facts alleged herein.
2 Despite exercising reasonable diligence, Plaintiffs could not have discovered, did not discover,
3 and was prevented from discovering, the wrongdoing complained of herein.

4 26. Plaintiffs allege that, the "SUBSTITUTION OF TRUSTEE and FULL
5 RECONVEYANCE" is void and of no force and effect because MORTGAGE ELECTRONIC
6 REGISTRATION SYSTEMS, INC had no standing to issue "Substitution of Trustee and Full
7 Reconveyance" under Plaintiffs Note and thereafter, conveying and transferring all beneficial
8 interest to MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. Plaintiffs further
9 allege that, the "Substitution of Trustee and Full Reconveyance" is void and of no force and
10 effect because MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC had no
11 pecuniary interest in Plaintiffs' Note and Deed of Trust. Further, MORTGAGE ELECTRONIC
12 REGISTRATION SYSTEMS, INC was not the holder of Plaintiffs' Note in due course and had
13 no right or standing to record the purported "Substitution of Trustee and Full Reconveyance"
14

15 27. On or about 11/26/2013, JPMORGAN CHASE BANK, N.A.,
16 engaged the service of a *robo signer*, and thereafter unlawfully recorded a purported
17 "SUBSTITUTION OF TRUSTEE and unlawfully substituted NATIONAL DEFAULT
18 SERVICING CORPORATION, as trustee under the deed of trust under Plaintiffs' Note and
19 Deed of Trust. The true and correct copy of the purported "SUBSTITUTION OF TRUSTEE" is
20 attached hereto as Plaintiffs' Exhibit "D" and incorporated herein by reference as if set forth in
21 full herein.
22

23 28. Plaintiffs allege that, any applicable statutes of limitations have been tolled by the
24 Defendants' continuing, fraud, knowing, and active concealment of the facts alleged herein.
25 Despite exercising reasonable diligence, Plaintiffs could not have discovered, did not discover,
26 and was prevented from discovering, the wrongdoing complained of herein.
27
28

1 29. Plaintiffs allege that, the "SUBSTITUTION OF TRUSTEE" is void and of no force
2 and effect because JPMORGAN CHASE BANK, N.A., had no standing to issue "Substitution of
3 Trustee" under Plaintiffs Note and Deed of Trust. Plaintiffs further allege that, the "Substitution
4 of Trustee" is void and of no force and effect because JPMORGAN CHASE BANK, N.A had no
5 pecuniary interest in Plaintiffs' Note and Deed of Trust. Further, JPMORGAN CHASE BANK,
6 N.A, was not the holder of Plaintiffs' Note in due course and had no right or standing to record
7 the purported "Substitution of Trustee". Plaintiffs further allege that, the substitution of trustee is
8 void and of no force and effect because, NATIONAL DEFAULT SERVICING CORPORATION
9 is not a duly appointed trustee under Plaintiffs' Note and Deed of Trust.
10

11 30. On or about July 3, 2014 Plaintiff Leo Kramer filed chapter 13 bankruptcy
12 pursuant which all of Plaintiff's debt including the one Hundred Seventy Six Thousand dollars
13 (US\$176, 000.00) from WASHINGTON MUTUAL BANK revolving line of credit which was
14 declared in Plaintiff's bankruptcy. Plaintiffs allege that JPMORGAN CHASE BANK, N.A and
15 WASHINGTON MUTUAL BANK were notified of Plaintiffs' bankruptcy and the subsequent
16 bankruptcy discharge.
17

18 31. On or about 07/31/14, Plaintiffs listed and disclosed the One Hundred Seventy Six
19 Thousand dollars (US\$176, 000.00) from WASHINGTON MUTUAL BANK revolving line of
20 credit in Leo Kramer's bankruptcy filing. Notice of the SUMMARY OF SCHEDULES D was
21 provided to chase bank The true and correct copy of "BANKRUPTCY SCHEDULES
22 D" is attached hereto as Plaintiffs' Exhibit "E" and incorporated herein by reference as if set
23 forth in full herein.
24

25 32. Plaintiffs further allege that even though Chase Bank was given notice of Leo
26
27
28

1 Kramer's Chapter 13 Bankruptcy and his intend to discharge any all of the One Hundred Seventy
2 Six Thousand dollars (US\$176, 000.00) from WASHINGTON MUTUAL BANK revolving line
3 of credit, CHASE BANK and WASHINGTON MUTUAL BANK failed to file proof of claim.

4 33. On or about 01/13/2017, the United States Bankruptcy trustee filed the Trustee's
5 Final Report and Account on Leo Kramer's Chapter 13 Bankruptcy. The true and correct copy
6 of "TRUSTEE'S FINAL REPORT AND ACCOUNT" is attached hereto as Plaintiffs' Exhibit
7 "F" and incorporated herein by reference as if set forth in full herein. This information was also
8 provided to JPMORGAN CHASE BANK, N.A and WASHINGTON MUTUAL BANK and no
9 objection to the trustee's final report and account was ever raised or filed by JPMORGAN
10 CHASE BANK, N.A or WASHINGTON MUTUAL BANK.

11 34. On or about Jan 9, 2017 the United States Bankruptcy Court of the Northern
12 District of California entered an Order discharging Plaintiffs debt including the One Hundred
13 Seventy Six Thousand dollars (US\$176, 000.00) from WASHINGTON MUTUAL BANK
14 revolving line of credit. The true and correct copy of "BANKRUPTCY DISCHARGE" is
15 attached hereto as Plaintiffs' Exhibit "G" and incorporated herein by reference as if set forth in
16 full herein.

17 35. On or about 10/05/2017, Defendant, NATIONAL DEFAULT SERVICING
18 CORPORATION, unlawfully recorded the "NOTICE OF DEFAULT AND ELECTION TO
19 SELL UNDER THE DEED OF TRUST" in their zeal to deprive Plaintiffs of ALL beneficial
20 interests and enjoyment in their real property. (Plaintiffs' Exhibit "H"). Plaintiffs alleges that,
21 in spite of the declaration proffered by the Defendants, Defendants used obscenity, or repeated
22 annoying phone calls, in violation of 15 U.S.C. §1692d: falsely represent "the character, amount,
23 or legal status of the line of credit in violation of 15 U.S.C. §1692e (2)(A); and used various
24
25
26
27
28

1 "unfair or unconscionable means to collect or attempt to collect" on the revolving line of credit in
2 violation of 15 U.S.C. §1692f.

3 36. Plaintiffs alleges that Defendants, and each of them, cannot show proper receipt,
4 possession, transfer, negotiations, assignment and ownership of the Plaintiffs' original
5 Promissory Note and Deed of Trust, resulting in imperfect security interests and claims.

6 37. Plaintiffs seek redress from Defendants identified herein for damages, for other
7 injunctive relief, and for cancellation of written instruments based upon: violating Nevada laws,
8 Federal Laws and incomplete and ineffectual perfection of a security interest in Plaintiffs' Home.

9 38. Plaintiffs alleges that an actual controversy has arisen and now exists between the
10 Plaintiffs and Defendants, and each of them. Plaintiffs desires a judicial determination and
11 declaration of its rights with regard to the Property and the corresponding Promissory Note and
12 Deed of Trust.

13 39. Plaintiffs are informed and believe, and thereon allege, that the purchase mortgage
14 on the Property, the debt or obligation evidenced by the Note and the Deed of Trust executed by
15 Plaintiffs in favor of the original lender was not properly assigned and/or transferred to
16 Defendants operating the pooled mortgage funds.

17 40. Plaintiffs allege that, any applicable statutes of limitations have been tolled by the
18 Defendants' continuing, knowing, and active concealment of the facts alleged herein. Despite
19 exercising reasonable diligence, Plaintiffs could not have discovered, did not discover, and was
20 prevented from discovering, the Assignment of Deed of Trust and the wrongdoing complained of
21 herein. Plaintiffs allege that as of the date of the filing of this Complaint, the Deed of Trust had
22 not been legally assigned to any other party or entity.

1 41. Plaintiffs are also informed and believe, and thereon alleges that at all times
2 herein mentioned, and any assignment of a Deed of Trust without proper transfer of the
3 obligation that it secures, is a legal nullity.

4 42. Plaintiffs are informed and believes, and thereon alleges, that the Mortgage
5 Originator (i.e., the original lender herein) agreed to transfer and endorse to the Trustee for the
6 Securitized Trust, without recourse, including all intervening transfers and assignments, all of its
7 right, title and interest in and to the mortgage loan (Note) of Plaintiffs' herein and all other
8 mortgage loans.
9

10 43. Plaintiffs allege that the Defendant Trustees are estopped and precluded from
11 asserting any secured or unsecured claim in this case.

12 44. Plaintiffs are further informed and believes, and thereon alleges, that as a result of
13 the PSA and other documents signed under oath in relation thereto, the Mortgage Originator,
14 sponsor and Depositor are estopped from claiming any interest in the Note that is allegedly
15 secured by the Deed of Trust on Plaintiffs' Home herein.
16

17 45. Through this action, Plaintiffs seek damages against Defendants, JPMORGAN
18 CHASE BANK, N.A, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC,
19 NATIONAL DEFAULT SERVICING CORPORATION, WASHINGTON MUTUAL BANK,
20 N.A, resulting from the unlawful and wrongful encumbering of Plaintiffs' real property and for
21 Treble Damages for Defendants' willful violation of fair debt collection practice act, and for
22 violation of bankruptcy discharge order and breach of fiduciary duty.
23

24
25 FIRST CAUSE OF ACTION

26 (VIOLATIONS OF 15 U.S.C. § 1692 ET SEQ
27 FAIR DEBT COLLECTION PRACTICE ACT (FDCPA)
28

(Against All Defendants)

46. Plaintiffs re-allege and incorporates by reference all preceding paragraphs as though fully set forth herein.

47. Plaintiffs allege that Defendant, NATIONAL DEFAULT SERVICING CORPORATION and its agent and well known representative, Ivan Mora, were "debt collectors" under the FDCPA because they are in the business of regularly collecting debts including mortgage debts for third parties.

48. Plaintiffs LEO KRAMER and AUDREY KRAMER are "consumers" under the FDCPA because Plaintiffs LEO KRAMER and AUDREY KRAMER entered into a consumer credit transaction with, WASHINGTON MUTUAL BANK, N.A., by obtaining a One Hundred Seventy Six Thousand dollars (US\$176,000.00) revolving line of credit for the maintenance of the subject property and for the purchase of other household goods. The true and correct copy of the REVOLVING LINE OF CREDIT is attached hereto as Plaintiffs' Exhibit "B".

49. Plaintiffs performed all terms, covenants, and conditions required of them under the revolving line of credit, except for those terms, covenants, and conditions the performance of which was either waived or rendered impossible by Defendants, and each of them.

50. Plaintiffs contend that Defendants and each of them used obscenity, or repeated annoying phone calls, in violation of 15 U.S.C. §1692d; falsely represent "the character, amount, or legal status of the debt in violation of 15 U.S.C. §1692e (2)(A); and used various "unfair or unconscionable means to collect or attempt to collect" on the revolving line of credit in violation of 15 U.S.C. §1692f.

51. On or about March of 2017, Chase Bank contacted Plaintiffs to make unreasonable demands and asked that Plaintiffs enter into a loan modification agreement with Chase Bank if

1 Plaintiffs want to continue to assert ownership interest in their real property. Plaintiffs contend
2 that Chase Bank is not the holder of Plaintiffs' Note in due course and had no standing to
3 demand that Plaintiffs enter into a loan modification agreement with Chase Bank. Furthermore,
4 Plaintiffs contend that Chase Bank was neither in privity of contract which secured Plaintiffs'
5 Note and Deed of Trust nor the agreement for the revolving line of credit. Additionally, neither
6 Chase Bank nor Washington Mutual Bank had obtained a judgment from any court of competent
7 jurisdiction for any purported default or indebtedness arising from the Revolving line of credit
8 which was provided by the creditor, Washington Mutual Bank.
9

10 52. On or about Feb 2017 continued on to on about 10/05/2017, JPMORGAN CHASE
11 BANK, N.A, and NATIONAL DEFAULT SERVICING CORPORATION, falsely represent "the
12 character, amount, or legal status of the debt in violation of 15 U.S.C. §1692e (2)(A); and used
13 various "unfair or unconscionable means to collect or attempt to collect" on the revolving line of
14 credit in violation of 15 U.S.C. §1692f.
15

16 53. On or about Jan 9. 2017 the United States Bankruptcy Court of the Northern
17 District of California entered an Order discharging Plaintiffs debt including the One Hundred
18 Seventy Six Thousand dollars (US\$176, 000.00) from WASHINGTON MUTUAL BANK
19 revolving line of credit. The true and correct copy of "BANKRUPTCY DISCHARGE" is
20 attached hereto as Plaintiffs' Exhibit "G" and incorporated herein by reference as if set forth in
21 full herein.
22

23 54. On or about 10/05/2017, Defendant, NATIONAL DEFAULT SERVICING
24 CORPORATION, unlawfully recorded the "NOTICE OF DEFAULT AND ELECTION TO
25 SELL UNDER THE DEED OF TRUST" in their zeal to deprive Plaintiffs of ALL beneficial
26 interests and enjoyment in their real property. (Plaintiffs' Exhibit "H"). Plaintiffs alleges that,
27 in spite of the declaration proffered by the Defendants, NATIONAL DEFAULT SERVICING
28

1 CORPORATION attempting to collect debt for Chase Bank, used obscenity, or repeated
2 annoying phone calls, in violation of 15 U.S.C. §1692d; falsely represent "the character, amount,
3 or legal status of the debt in violation of 15 U.S.C. §1692e (2)(A); and used various "unfair or
4 unconscionable means to collect or attempt to collect" on the revolving line of credit in violation
5 of 15 U.S.C. §1692f.

6
7 55. Plaintiffs allege that the notice of default concerned the collection of an alleged
8 \$176,000.00 revolving line of credit owed by Plaintiffs to WASHINGTON MUTUAL BANK,
9 N.A. Plaintiffs alleges that such notice of default was sent to them and to the public in violation
10 of the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692-1692o ("FDCPA") even though the
11 one Hundred Seventy Six Thousand dollars (US\$176, 000.00) from WASHINGTON MUTUAL
12 BANK revolving line of credit was discharged in Leo Kramer's Chapter 13 Bankruptcy.
13 Defendants used obscenity, or repeated annoying phone calls, in violation of 15 U.S.C. §1692d;
14 falsely represent "the character, amount, or legal status of the debt in violation of 15 U.S.C.
15 §1692e (2)(A); and used various "unfair or unconscionable means to collect or attempt to collect"
16 on the revolving line of credit in violation of 15 U.S.C. §1692f. Defendants falsely represent
17 "the character, amount, or legal status of the debt in violation of 15 U.S.C. §1692e (2)(A) in the
18 Notice of default.
19

20
21 56. Plaintiffs allege that, JPMORGAN CHASE BANK, N.A., NATIONAL
22 DEFAULT SERVICING CORPORATION, alleged agents of the Master Servicers and Lender
23 and the remaining Defendants, (hereinafter "the foreclosing Defendants"), and each of them
24 falsely represent "the character, amount, or legal status of the debt in violation of 15 U.S.C.
25 §1692e (2)(A).

26
27 57. Plaintiffs allege that prior to filing the Notice of Default and prior to instituting the
28 non-judicial foreclosure of Plaintiffs' real property, the foreclosing defendants did not contact

1 Plaintiffs to discuss the amount of indebtedness if any instead, Defendants mischaracterized and
2 misrepresented Plaintiffs 'indebtedness on the line of credit. .

3 58. Plaintiffs contend that they are not indebted to JPMORGAN CHASE BANK, N.A.
4 ., NATIONAL DEFAULT SERVICING CORPORATION, WASHINGTON MUTUAL BANK,
5 N.A in the amount that formed Defendants' basis for institution the purported Notice of Default.
6

7 59. As a direct and proximate result of the JPMORGAN CHASE BANK, N.A ., and
8 NATIONAL DEFAULT SERVICING CORPORATION misrepresentation of Plaintiffs'
9 indebtedness, Plaintiffs have suffered general and special damages in an amount to be
10 determined at jury trial.

11 60. Additionally, as a direct and proximate result of the JPMORGAN CHASE BANK,
12 N.A ., and NATIONAL DEFAULT SERVICING CORPORATION' failure to comply with the
13 express requirement of the Fair debt collection practice act, Plaintiffs are entitled to treble
14 damages and \$25, 000.00 for each communication which violates 15 U.S.C. § 1692 FAIR DEBT
15 COLLECTION PRACTICE ACT (FDCPA).
16

17
18 SECOND CAUSE OF ACTION

19 (VIOLATION OF 11 U.S.C.A. § 524)

20 (Against all Defendants)
21

22 61. Plaintiffs re-allege and incorporate by reference all preceding paragraphs
23 as though fully set forth herein.

24 62. Plaintiffs contend that District court would exercise its discretion. in furtherance of
25 judicial economy. to construe discharged debtors' claim alleging violation of discharge injunction
26 as claim alleging contempt of court. 11 U.S.C.A. § 524.
27

28 63. On or about July 3, 2014 Plaintiffs Leo Kramer filed chapter 13 bankruptcy

1 pursuant which all of Plaintiffs' debt including the one Hundred Seventy Six Thousand dollars
2 (US\$176, 000.00) from WASHINGTON MUTUAL BANK revolving line of credit was declared
3 in Plaintiffs' bankruptcy. Plaintiffs allege that JPMORGAN CHASE BANK, N.A and
4 WASHINGTON MUTUAL BANK were notified of Plaintiffs' bankruptcy and the subsequent
5 bankruptcy discharge.
6

7 64. On or about 07/31/14, Plaintiffs listed and disclosed the One Hundred Seventy Six
8 Thousand dollars (US\$176, 000.00) from WASHINGTON MUTUAL BANK revolving line of
9 credit in Leo Kramer's bankruptcy filing. Notice of the **SUMMARY OF SCHEDULES D** was
10 provided to chase bank The true and correct copy of "BANKRUPTCY SCHEDULES D" is
11 attached hereto as Plaintiffs' Exhibit "E" and incorporated herein by reference as if set forth in
12 full herein.
13

14 65. Plaintiffs further allege that even though Chase Bank was given notice of Leo
15 Kramer's Chapter 13 Bankruptcy and his intend to discharge any and all of the One Hundred
16 Seventy Six Thousand dollars (US\$176, 000.00) from WASHINGTON MUTUAL BANK
17 revolving line of credit, CHASE BANK and WASHINGTON MUTUAL BANK failed to file
18 proof of claim.
19

20 66. On or about 01/13/2017, the United States Bankruptcy trustee filed the Trustee's
21 Final Report and Account on Leo Kramer's Chapter 13 Bankruptcy. The true and correct copy
22 of "TRUSTEE'S FINAL REPORT AND ACCOUNT" is attached hereto as Plaintiffs' Exhibit
23 "F" and incorporated herein by reference as if set forth in full herein. This information was also
24 provided to JPMORGAN CHASE BANK, N.A and WASHINGTON MUTUAL BANK and no
25 objection to the trustee's final report and account was ever raised or filed by JPMORGAN
26 CHASE BANK, N.A or WASHINGTON MUTUAL BANK.
27
28

1 67. On or about Jan 9, 2017 the United States Bankruptcy Court of the Northern
2 District of California entered an Order discharging Plaintiffs debt including the One Hundred
3 Seventy Six Thousand dollars (US\$176, 000.00) from WASHINGTON MUTUAL BANK
4 revolving line of credit. The true and correct copy of "BANKRUPTCY DISCHARGE" is
5 attached hereto as Plaintiffs' Exhibit "G" and incorporated herein by reference as if set forth in
6 full herein.
7

8 68. On or about 10/05/2017, Defendant, NATIONAL DEFAULT SERVICING
9 CORPORATION, unlawfully recorded the 'NOTICE OF DEFAULT AND ELECTION TO
10 SELL UNDER THE DEED OF TRUST' in their zeal to deprive Plaintiffs of ALL beneficial
11 interests and enjoyment in their real property. (Plaintiffs' Exhibit "H"). Plaintiffs alleges that,
12 in spite of the declaration proffered by the Defendants, Defendants used obscenity, or repeated
13 annoying phone calls, in violation of 15 U.S.C. §1692d; falsely represent "the character, amount,
14 or legal status of the line of credit in violation of 15 U.S.C. §1692e (2)(A); and used various
15 "unfair or unconscionable means to collect or attempt to collect" on the revolving line of credit in
16 violation of 15 U.S.C. §1692f.
17

18 69. Plaintiffs allege that 11 U.S.C.A. § 524, operates as an injunction against the
19 commencement or continuation of an action, the employment of process, or an act, to collect or
20 recover from, or offset against, property of the debtor.
21

22 70. Plaintiffs allege that as a direct and proximate result of Defendants' violation of 11
23 U.S.C.A. § 524, Plaintiffs have sustained substantial damage to their reputation and have been
24 ridiculed in the community.

25 71. Plaintiffs allege that as a direct and proximate result of Defendants' violation of
26 11 U.S.C.A. § 524, Plaintiffs are entitled to damages including punitive damages according to
27 proof at jury trial.
28

1
2 THIRD CAUSE OF ACTION

3 (BREACH OF FIDUCIARY DUTY)

4 (Against Defendants, WASHINGTON MUTUAL BANK, it agents and representatives)

5
6 72. Plaintiffs re-allege and incorporate by reference all preceding paragraphs
7 as though fully set forth herein.

8 73. On or about 05/01/2008, Plaintiffs, LEO KRAMER and AUDREY
9 KRAMER used the subject property as collateral to obtain the revolving line of credit in the
10 amount of One Hundred Seventy Six Thousand dollars (US\$176, 000.00) from WASHINGTON
11 MUTUAL BANK; for the maintenance of the subject property and for the purchase of other
12 household goods. The true and correct copy of the revolving line of credit is attached hereto as
13 Plaintiffs' Exhibit "B" and incorporated herein by reference as if set forth in full herein.

14
15 74. Plaintiffs re-allege that there existed an express contractual relationship
16 between Plaintiffs and WASHINGTON MUTUAL BANK where which confidence was reposed
17 by WASHINGTON MUTUAL BANK. The confidential communication were related to how
18 WASHINGTON MUTUAL BANK intended to conduct its business endeavor due to the
19 revolving line of credit in the amount of One Hundred Seventy Six Thousand dollars (US\$176,
20 000.00), of which Defendant failed to perform it obligations under the contract.

21
22 75. Defendant was under a duty not to defraud the Plaintiffs and under a duty not to
23 disclose information which Plaintiffs provided to Defendant in confidence regarding revolving
24 line of credit in the amount of One Hundred Seventy Six Thousand dollars (US\$176, 000.00).

25
26 76. Defendant breached this duty when Defendant divulged or disclosed information
27 which Plaintiffs provided to Defendant in confidence regarding the revolving line of credit in the
28 amount of one Hundred Seventy Six Thousand dollars (US\$176, 000.00), and acted consciously,

1 deliberately, and unfairly conspired and negotiated with others to defraud the Plaintiffs and
2 attempt to acquire all the rights Plaintiffs possessed under the "note and deed of trust" when
3 Defendant had existing duty to Plaintiffs under the revolving line of credit in the amount of One
4 Hundred Seventy Six Thousand dollars (US\$176, 000.00) agreement.

5
6 77. Plaintiffs allege that, any applicable statutes of limitations have been tolled
7 by the Defendants' continuing, fraud, knowing, and active concealment of the facts alleged
8 herein. Despite exercising reasonable diligence, Plaintiffs could not have discovered, did not
9 discover, and was prevented from discovering, the wrongdoing complained of herein

10 78. As direct and proximate result of Defendants conducts, WASHINGTON
11 MUTUAL BANK, Plaintiffs have suffered damage to their reputation in the community; have
12 lost business income in the amount to be determined at trial.
13

14
15 **FOURTH CAUSE OF ACTION**
16 **(BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING)**
17 **(AGAINST ALL DEFENDANTS)**

18 79. Plaintiffs re-allege and incorporate by reference all preceding paragraphs
19 as though fully set forth herein.

20 80. On or about 05/01/2008, Plaintiffs used the subject property as collateral to
21 obtain the revolving line of credit in the amount of One Hundred Seventy Six Thousand dollars
22 (US\$176, 000.00) from WASHINGTON MUTUAL BANK, for the maintenance of the subject
23 property and for the purchase of other household goods. The true and correct copy of the
24 revolving line of credit is attached hereto as Plaintiffs' Exhibit "B" and incorporated herein by
25 reference as if set forth in full herein.

26 81. There existed an express contractual relationship between Plaintiffs and
27
28

1 WASHINGTON MUTUAL BANK. for one Hundred Seventy Six Thousand dollars (US\$176,
2 000.00) upon which Defendant failed to perform its obligations under the agreement.

3 82. The covenant created by the revolving line of credit in the amount of One Hundred
4 Seventy Six Thousand dollars (US\$176, 000.00) Agreement is to the effect that neither party to
5 the contract will do anything deliberately to deprive the other of the benefits of the agreement.
6

7 83. Defendants WASHINGTON MUTUAL BANK and JPMORGAN CHASE BANK,
8 N.A, the purported successor in interest to WASHINGTON MUTUAL BANK, breached this
9 covenant in that Defendants acted consciously, deliberately, and unfairly frustrates the agreed
10 common purpose of the revolving line of credit in the amount of One Hundred Seventy Six
11 Thousand dollars (US\$176, 000.00) and disappoints the reasonable expectations of Plaintiffs.
12

13 84. Defendants WASHINGTON MUTUAL BANK and JPMORGAN CHASE BANK,
14 N.A, the purported successor in interest to WASHINGTON MUTUAL BANK, breach this
15 covenant in that Defendants acted consciously, deliberately, and unfairly conspired and
16 negotiated with others to acquire all rights Plaintiffs possessed under Plaintiffs' Note and Deed of
17 trust to their real property when Defendant had existing duty under the contract to Plaintiffs.
18

19 85. Defendants WASHINGTON MUTUAL BANK and JPMORGAN CHASE BANK,
20 N.A, the purported successor in interest to WASHINGTON MUTUAL BANK, breached this
21 covenant in that Defendants acted consciously and deliberately and unfairly conspired with
22 others and to deprive Plaintiffs of all beneficial and pecuniary interest in their real property.
23

24 86. Defendants WASHINGTON MUTUAL BANK and JPMORGAN CHASE BANK,
25 N.A, the purported successor in interest to WASHINGTON MUTUAL BANK, breach this
26 covenant in that Defendants acted consciously, deliberately, and unfairly conspired with others
27 and frustrated Plaintiffs. enjoyment of contract rights with their tenant. Defendants' conducts
28 have caused damage to Plaintiffs, in that Plaintiffs' reputation in the community have tarnished.

1 87. As direct and proximate result of Defendants conducts, WASHINGTON
2 MUTUAL BANK, Plaintiffs have suffered damage to their reputation in the community; have
3 lost business income in the amount to be determined at trial.
4

5 FIFTH CAUSE OF ACTION

6 (ACCOUNTING)

7 (Against all Defendants)
8

9 88. Plaintiffs re-allege and incorporate by reference all preceding paragraphs as
10 though fully set forth herein.

11 89. Plaintiffs allege that, Plaintiffs and the defendant, WASHINGTON
12 MUTUAL BANK, N.A., had a fiduciary or trust-based relationship concerning the
13 revolving line of credit in the amount of One Hundred Seventy Six Thousand dollars (US\$176,
14 000.00) which is the subject matter of the controversy and false and misrepresentation by
15 JPMORGAN CHASE BANK, N.A .
16

17 90. Plaintiffs allege that, the right to an accounting is premised upon the
18 existence of a confidential or fiduciary relationship and a breach of the duty imposed by
19 that relationship respecting the revolving line of credit in the amount of One Hundred Seventy
20 Six Thousand dollars (US\$176, 000.00) in which Plaintiffs are seeking the accounting.
21

22 91. Plaintiffs are informed and belief and thereon allege that, at all times
23 herein mentioned, each of the defendants, JPMORGAN CHASE BANK, N.A ., MORTGAGE
24 ELECTRONIC REGISTRATION SYSTEMS, INC, NATIONAL DEFAULT SERVICING
25 CORPORATION, WASHINGTON MUTUAL BANK, N.A. sued herein was the agent and
26 employee of each of the remaining defendants and was at all times acting within the purpose and
27 scope of such agency and employment.
28

1 92. On or about 05/01/2008, Plaintiffs had a fiduciary relationship with
2 WASHINGTON MUTUAL BANK, N.A. pursuant to which Plaintiffs secured a revolving line of
3 credit in the amount of One Hundred Seventy Six Thousand dollars (US\$176, 000.00) from
4 WASHINGTON MUTUAL BANK, *a now defunct banking institution*. The true and correct
5 copy of the revolving line of credit is attached hereto as Plaintiffs' Exhibit "B" and incorporated
6 herein by reference as if set forth in full herein.
7

8 93. Plaintiffs allege that, the relationship between Plaintiffs and defendant,
9 WASHINGTON MUTUAL BANK, N.A. or other circumstances appropriate to an accounting of
10 the revolving line of credit in the amount of One Hundred Seventy Six Thousand dollars
11 (US\$176, 000.00) existed between Plaintiffs and Washington Mutual Bank.
12

13 94. As a result of the aforementioned revolving line of credit in the amount of One
14 Hundred Seventy Six Thousand dollars (US\$176, 000.00), defendant, WASHINGTON
15 MUTUAL BANK, N.A has received money, a portion of which is due to Plaintiffs from
16 defendant, WASHINGTON MUTUAL BANK, N.A, as previously alleged.

17 95. The amount of money due from defendant, WASHINGTON MUTUAL BANK,
18 N.A to Plaintiffs is unknown to Plaintiffs and cannot be ascertained without receipts of payment,
19 bank statements and disbursements of the aforementioned a revolving line of credit in the amount
20 of One Hundred Seventy Six Thousand dollars (US\$176, 000.00) from WASHINGTON
21 MUTUAL BANK transaction. Plaintiffs are informed and belief and thereon allege that the
22 amount due to Plaintiffs exceeds \$65, 000.00.
23

24 96. Plaintiffs have demanded an accounting of the aforementioned a revolving line of
25 credit in the amount of One Hundred Seventy Six Thousand dollars (US\$176, 000.00) transaction
26 from WASHINGTON MUTUAL BANK and from JPMORGAN CHASE BANK, N.A .. and
27
28

1 from the remaining defendant and payment of the amount found due but defendant has failed and
2 refused, and continues to fail and refuse, to render such an accounting and to pay such sum.

3
4 WHEREFORE, Plaintiffs pray judgment against defendant, WASHINGTON MUTUAL BANK
5 and from JPMORGAN CHASE BANK, N.A., and each of them, as follows:

6 (a) For an accounting between Plaintiffs and defendant, WASHINGTON MUTUAL
7 BANK and from JPMORGAN CHASE BANK, N.A. .

8 (b) For the amount found to be due from defendant to Plaintiffs as a result of the
9 accounting and interest on that amount 10 per cent from and after December 26,
10 2011 to present

11 (c) For costs of suit herein incurred.

12 (d) For such other and further relief as the court may deem proper.

13
14 SIXTH CAUSE OF ACTION

15 (PREDATORY LENDING PRACTICES)

16 (Against all Defendants)

17
18 97. Plaintiffs re-allege and incorporate by reference all preceding paragraphs as
19 though fully set forth herein.

20
21 98. Plaintiffs allege that, Plaintiffs and the defendant, WASHINGTON
22 MUTUAL BANK, N.A., had a fiduciary or trust-based relationship concerning the revolving line
23 of credit in the amount of One Hundred Seventy Six Thousand dollars (US\$176, 000.00) which is
24 the subject matter of the controversy and false and misrepresentation by JPMORGAN CHASE
25 BANK, N.A. .

26 99. Plaintiffs are informed and believes, and based thereon alleges that Defendants,
27 JPMORGAN CHASE BANK, N.A. , MORTGAGE ELECTRONIC REGISTRATION
28

1 SYSTEMS, INC, NATIONAL DEFAULT SERVICING CORPORATION, WASHINGTON
2 MUTUAL BANK, N.A, and each of the Defendants, have collaborated to engage and engaged in
3 predatory lending practices with respect to Plaintiffs.

4 100. On or about Feb of 2017, JPMORGAN CHASE BANK, N.A, contacted Plaintiffs
5 to make unreasonable demands and asked that Plaintiffs enter into a loan modification agreement
6 with Chase Bank if Plaintiffs wants to continue to assert ownership interest in their real property.
7 Plaintiffs contend that Chase Bank is not the holder of Plaintiffs' Note in due course and had no
8 standing to demand that Plaintiffs enter into a loan modification agreement with Chase Bank.
9 Furthermore, Plaintiffs contend that Chase Bank was neither in privity of contract which secured
10 Plaintiffs' Note and Deed of Trust nor the agreement for the revolving line of credit.
11 Additionally, neither Chase Bank nor Washington Mutual Bank had obtained a judgment from
12 any court of competent jurisdiction for any purported default or indebtedness arising from the
13 Revolving line of credit which was provided by the creditor, Washington Mutual Bank.

14 101. On or about Feb 2017 continued on to on about 10/05/2017, JPMORGAN CHASE
15 BANK, N.A ., MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC, NATIONAL
16 DEFAULT SERVICING CORPORATION, WASHINGTON MUTUAL BANK, N.A, falsely
17 represent the character, amount, or legal status of the debt in violation of 15 U.S.C. §1692e
18 (2)(A); and used various "unfair or unconscionable means to collect or attempt to collect" on the
19 revolving line of credit in violation of 15 U.S.C. §1692f. Plaintiffs contend that Defendants
20 also engage in their deceptive conduct by their attempt to force Plaintiffs into a fraudulent loan
21 modification agreement with JPMORGAN CHASE BANK, N.A .

22 102. Plaintiffs are informed and believes, and based thereon alleges that the statutory
23 violations and unlawful actions or practices of Defendants as alleged in this Complaint constitute
24 unlawful business acts and practices within the meaning of deceptive and predatory lending
25
26
27
28

1 practice.

2 103. Said unlawful business acts and practices include Defendants' failure to comply
3 with statutory disclosure requirements under the Fair Debt Collection Practices Act.

4 104. Plaintiffs alleges that Defendants' misconduct, as alleged herein, has given them
5 an unfair competitive advantage over their competitors in that, had they complied with their
6 obligations, Plaintiffs and other similarly situated homeowners might have obtained financing
7 from another lender on better and fair terms.
8

9 105. Plaintiffs alleges that as a direct and proximate result of Defendants' actions,
10 they have prospered at Plaintiffs' expense and benefited from collecting mortgage payments and
11 potentially foreclosing on Plaintiffs' property.

12 106. Plaintiffs are further informed and believes, and based thereon alleges that
13 Defendants, and each of them, have engaged in additional violations of the aforementioned
14 statutes, the specifics of which are unknown, but which are subject to discovery and with respect
15 to which specifics will be alleged by amendment to this Complaint when ascertained.
16

17 WHEREFORE, Plaintiffs are entitled to equitable relief, including, restitution, and
18 disgorgement of all profits obtained by Defendants, JPMORGAN CHASE BANK, N.A.,
19 MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC, NATIONAL DEFAULT
20 SERVICING CORPORATION, WASHINGTON MUTUAL BANK, N.A by virtue of their
21 misconduct.
22

23 SEVENTH CAUSE OF ACTION

24 (CONSTRUCTIVE FRAUD)

25 (Against all Defendants)

26
27 107. Plaintiffs re-alleges and incorporates by reference all preceding paragraphs as
28 though fully set forth herein.

1 108. Plaintiffs allege that, Plaintiffs and the defendant, WASHINGTON
2 MUTUAL BANK, N.A., had a fiduciary or trust-based relationship concerning the revolving line
3 of credit in the amount of One Hundred Seventy Six Thousand dollars (US\$176, 000.00) which is
4 the subject matter of the controversy and false and misrepresentation by JPMORGAN CHASE
5 BANK, N.A. .

6
7 109. On or about 05/01/2008, Plaintiffs used the subject property as collateral to obtain
8 the revolving line of credit in the amount of One Hundred Seventy Six Thousand dollars
9 (US\$176, 000.00) from WASHINGTON MUTUAL BANK, *a now defunct banking institution*;
10 for the maintenance of the subject property and for the purchase of other household goods. The
11 true and correct copy of the revolving line of credit is attached hereto as Plaintiffs' Exhibit "B"
12 and incorporated herein by reference as if set forth in full herein.

13
14 110. Plaintiffs performed all terms, covenants, and conditions required of them under the
15 revolving line of credit, except for those terms, covenants, and conditions the performance of
16 which was either waived or rendered impossible by Defendants, and each of them.

17 111. Plaintiffs are informed and believes, and thereon alleges, that at all times herein
18 mentioned, each of the Defendants were the agents, employees, servants and/or the joint-
19 venturers of the remaining Defendants, and each of them, and in doing the things alleged herein
20 below, were acting within the course and scope of such agency, employment and/or joint venture
21 and enterprise in intrastate and interstate commerce.

22
23 112. On or about May 13, 2008, MORTGAGE ELECTRONIC REGISTRATION
24 SYSTEMS, INC., engaged the service of a *robo signer*, and unlawfully recorded a purported
25 "SUBSTITUTION OF TRUSTEE and FULL RECONVEYANCE" and thereafter, purported to
26 substitute EXECUTIVE TRUSTEE SERVICES, LLC as trustee under Plaintiffs' Note and Deed
27 of Trust and purported to transfer and convey all beneficial interest in Plaintiffs' Note and Deed
28

1 of Trust, to MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. The true and
2 correct copy of the purported "SUBSTITUTION OF TRUSTEE and FULL
3 RECONVEYANCE" is attached hereto as Plaintiffs' Exhibit "C" and incorporated herein by
4 reference as if set forth in full herein.

5
6 113. Plaintiffs allege that, any applicable statutes of limitations have been tolled by
7 the Defendants' continuing, fraud, knowing, and active concealment of the facts alleged herein.
8 Despite exercising reasonable diligence, Plaintiffs could not have discovered, did not discover,
9 and was prevented from discovering, the wrongdoing complained of herein.

10 114. Plaintiffs allege that, the "SUBSTITUTION OF TRUSTEE and FULL
11 RECONVEYANCE" is void and of no force and effect because MORTGAGE ELECTRONIC
12 REGISTRATION SYSTEMS, INC had no standing to issue "Substitution of Trustee and Full
13 Reconveyance" under Plaintiffs Note and thereafter, conveying and transferring all beneficial
14 interest to MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. Plaintiffs further
15 allege that, the "Substitution of Trustee and Full Reconveyance" is void and of no force and
16 effect because MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC had no
17 pecuniary interest in Plaintiffs' Note and Deed of Trust. Further, MORTGAGE ELECTRONIC
18 REGISTRATION SYSTEMS, INC was not the holder of Plaintiffs' Note in due course and had
19 no right or standing to record the purported "Substitution of Trustee and Full Reconveyance"
20
21

22 115. On or about 11/26/2013, JPMORGAN CHASE BANK, N.A.,
23 engaged the service of a *robo signer*, and thereafter unlawfully recorded a purported
24 "SUBSTITUTION OF TRUSTEE and unlawfully substituted NATIONAL DEFAULT
25 SERVICING CORPORATION, as trustee under the deed of trust under Plaintiffs' Note and
26 Deed of Trust. The true and correct copy of the purported "SUBSTITUTION OF TRUSTEE" is
27
28

1 attached hereto as Plaintiffs' Exhibit "D" and incorporated herein by reference as if set forth in
2 full herein.

3 116. Plaintiffs allege that, any applicable statutes of limitations have been tolled by
4 the Defendants' continuing, fraud, knowing, and active concealment of the facts alleged herein.
5 Despite exercising reasonable diligence, Plaintiffs could not have discovered, did not discover,
6 and was prevented from discovering, the wrongdoing complained of herein.
7

8 117. Plaintiffs allege that, the "SUBSTITUTION OF TRUSTEE" is void and of no
9 force and effect because JPMORGAN CHASE BANK, N.A., had no standing to issue
10 "Substitution of Trustee" under Plaintiffs Note and Deed of Trust. Plaintiffs further allege that,
11 the "Substitution of Trustee" is void and of no force and effect because JPMORGAN CHASE
12 BANK, N.A had no pecuniary interest in Plaintiffs' Note and Deed of Trust. Further,
13 JPMORGAN CHASE BANK, N.A, was not the holder of Plaintiffs' Note in due course and had
14 no right or standing to record the purported "Substitution of Trustee". Plaintiffs further allege
15 that, the substitution of trustee is void and of no force and effect because, NATIONAL
16 DEFAULT SERVICING CORPORATION is not a duly appointed trustee under Plaintiffs' Note
17 and Deed of Trust.
18

19 118. On or about July 3, 2014 Plaintiffs Leo Kramer filed chapter 13 bankruptcy
20 pursuant which all of Plaintiffs' debt including the one Hundred Seventy Six Thousand dollars
21 (US\$176, 000.00) from WASHINGTON MUTUAL BANK revolving line of credit was declared
22 in Plaintiffs' bankruptcy. Plaintiffs allege that JPMORGAN CHASE BANK, N.A and
23 WASHINGTON MUTUAL BANK were notified of Plaintiffs' bankruptcy and the subsequent
24 bankruptcy discharge.
25

26 119. On or about 07/31/14, Plaintiffs listed and disclosed the One Hundred Seventy Six
27
28

1 Thousand dollars (US\$176, 000.00) from WASHINGTON MUTUAL BANK revolving line of
2 credit in Leo Kramer's bankruptcy filing. Notice of the SUMMARY OF SCHEDULES D was
3 provided to chase bank The true and correct copy of "BANKRUPTCY SCHEDULES D" is
4 attached hereto as Plaintiffs' Exhibit "E" and incorporated herein by reference as if set forth in
5 full herein.

6
7 120. Plaintiffs further allege that even though Chase Bank was given notice of Leo
8 Kramer's Chapter 13 Bankruptcy and his intend to discharge any and all of the One Hundred
9 Seventy Six Thousand dollars (US\$176, 000.00) from WASHINGTON MUTUAL BANK
10 revolving line of credit, CHASE BANK and WASHINGTON MUTUAL BANK failed to file
11 proof of claim.

12 121. On or about 01/13/2017, the United States Bankruptcy trustee filed the Trustee's
13 Final Report and Account on Leo Kramer's Chapter 13 Bankruptcy. The true and correct copy
14 of "TRUSTEE'S FINAL REPORT AND ACCOUNT" is attached hereto as Plaintiffs' Exhibit
15 "F" and incorporated herein by reference as if set forth in full herein. This information was also
16 provided to JPMORGAN CHASE BANK, N.A and WASHINGTON MUTUAL BANK and no
17 objection to the trustee's final report and account was ever raised or filed by JPMORGAN
18 CHASE BANK, N.A or WASHINGTON MUTUAL BANK.

19
20 122. On or about Jan 9. 2017 the United States Bankruptcy Court of the Northern
21 District of California entered an Order discharging Plaintiffs debt including the One Hundred
22 Seventy Six Thousand dollars (US\$176, 000.00) from WASHINGTON MUTUAL BANK
23 revolving line of credit. The true and correct copy of "BANKRUPTCY DISCHARGE" is
24 attached hereto as Plaintiffs' Exhibit "G" and incorporated herein by reference as if set forth in
25 full herein.

26
27 123. On or about 10/05/2017, Defendant, NATIONAL DEFAULT SERVICING
28

1 CORPORATION, unlawfully recorded the "NOTICE OF DEFAULT AND ELECTION TO
2 SELL UNDER THE DEED OF TRUST" in their zeal to deprive Plaintiffs of ALL beneficial
3 interests and enjoyment in their real property. (Plaintiffs' Exhibit "H"). Plaintiffs alleges that,
4 in spite of the declaration proffered by the Defendants, Defendants used obscenity, or repeated
5 annoying phone calls, in violation of 15 U.S.C. §1692d; falsely represent "the character, amount,
6 or legal status of the line of credit in violation of 15 U.S.C. §1692e (2)(A); and used various
7 "unfair or unconscionable means to collect or attempt to collect" on the revolving line of credit in
8 violation of 15 U.S.C. §1692f.

10 124. Plaintiffs alleges that Defendants, and each of them, cannot show proper receipt,
11 possession, transfer, negotiations, assignment and ownership of the Plaintiffs' original
12 Promissory Note and Deed of Trust, resulting in imperfect security interests and claims.

14 125. Plaintiffs, are and at all times herein mention as the rightful owner of the subject
15 property located at 1740 Autumn Glen Street, Fernley, NV 89408.

16 126. Plaintiffs and each of them is, the original Trustor under the Deed of Trust which
17 secured the property and recorded in the official records of Lyon County, Nevada.

18 127. Plaintiffs are informed and believe and thereon alleges that Defendants,
19 JPMORGAN CHASE BANK, N.A., MORTGAGE ELECTRONIC REGISTRATION
20 SYSTEMS, INC, NATIONAL DEFAULT SERVICING CORPORATION, and each of them
21 claim an interest in the property adverse to Plaintiffs herein by false misrepresentation.

22 128. Plaintiffs are informed and believe and thereon alleges that Defendants
23 JPMORGAN CHASE BANK, N.A., MORTGAGE ELECTRONIC REGISTRATION
24 SYSTEMS, INC, NATIONAL DEFAULT SERVICING CORPORATION, WASHINGTON
25 MUTUAL BANK, N.A, in conspiracy with, each and all of the DOES Defendants entered into
26 an agreement of peonage, and through malicious acts, duress, coercion and fraud, and through
27
28

1 promulgating counterfeit securities, with respect to Plaintiffs' home in violation of *Nevada law*,
2 Fair Debt Collection Practices Act, and other foreclosure laws.

3 129. Plaintiffs are informed and believe and thereon alleges that Defendants,
4 JPMORGAN CHASE BANK, N.A., MORTGAGE ELECTRONIC REGISTRATION
5 SYSTEMS, INC, NATIONAL DEFAULT SERVICING CORPORATION, WASHINGTON
6 MUTUAL BANK, N.A, are insured pursuant to insurance laws and at least one of the
7 Defendants is a State insured institution and has a duty of candor and a duty to cause no harm to
8 individual member of the public.
9

10 130. Plaintiffs are informed and believe and thereon alleges that Defendant breached
11 this duty when it conspired with others implementing fraudulent assignments and securitization
12 schemes to foreclose on Plaintiffs' home.
13

14 131. Plaintiffs are informed and believe and thereon alleges that Defendants,
15 JPMORGAN CHASE BANK, N.A., MORTGAGE ELECTRONIC REGISTRATION
16 SYSTEMS, INC, NATIONAL DEFAULT SERVICING CORPORATION, WASHINGTON
17 MUTUAL BANK, N.A, had a fiduciary relationship with Plaintiffs for which they conspired to
18 breach. Plaintiffs are informed and believe and thereon alleges that Defendants conspired with
19 each of them and through false misrepresentation, concealment and nondisclosure of assignment
20 instrument in their zeal to induce reliance, justifiable reliance with the co-conspirators to assert
21 fraudulent claim and of Plaintiffs' real property. All Defendants individually, including DOE
22 Defendants had knowledge of this falsity.
23

24 132. As direct and proximate result of Defendants' illegal foreclosure schemes,
25 Plaintiffs have been harmed and the extent of Plaintiffs' injury will be determined by the jury at
26 trial.
27
28

EIGHTH CAUSE OF ACTION
(FRAUD IN THE CONCEALMENT)
(Against all Defendants)

133. Plaintiffs re-allege and incorporate by reference all preceding paragraphs as though fully set forth herein.

134. Defendants concealed the fact that the Revolving Line of Credit was securitized as well as the terms of the Securitization Agreements, including, inter alia: (1) Financial Incentives paid; (2) existence of Credit Enhancement Agreements, and (3) existence of Acquisition Provisions. By concealing the securitization, Defendant concealed the fact that Borrower's loan changed in character inasmuch as no single party would hold the Note but rather the Notes would be included in a pool with other notes, split into tranches, and multiple investors would effectively buy shares of the income stream from the Revolving Line of Credit. Changing the character of the Revolving Line of Credit in this way had a materially negative effect on Plaintiffs that were known by Defendants but not disclosed.

135. Defendants knew or should have known that had the truth been disclosed, Plaintiffs would not have entered into the Revolving Line of Credit.

136. Defendants intended to induce Plaintiffs based on these misrepresentations and improper disclosures.

137. Plaintiffs' reasonable reliance upon the misrepresentations was detrimental. But for failure to disclose the true and material terms of the transaction, Plaintiffs could have been alerted to issues of concern. Plaintiffs would have known of Defendants true intentions and profits from the proposed risky Revolving Line of Credit. Plaintiffs would have known that the actions of Defendants would have an adverse effect on the value of Plaintiffs' home.

1 138. Defendants' failure to disclose the material terms of the transaction induced
2 Plaintiffs to enter into the loans and accept the Services as alleged herein.

3 139. Defendants were aware of the misrepresentations and profited from them.

4 140. As a direct and proximate result of the misrepresentations and concealment
5 Plaintiffs were damaged in an amount to be proven at trial, including but not limited to costs of
6 the Revolving Line of Credit, damage to Plaintiffs' financial security, emotional distress, and
7 Plaintiffs have incurred costs and attorney's fees.

9 141. Defendants are guilty of malice, fraud and/or oppression. Defendants' actions
10 were malicious and done willfully in conscious disregard of the rights and safety of Plaintiffs in
11 that the actions were calculated to injure Plaintiffs. As such Plaintiffs are entitled to recover, in
12 addition to actual damages, punitive damages to punish Defendants and to deter them from
13 engaging in future misconduct.

15
16 NINTH CAUSE OF ACTION

17 (FRAUD IN THE INDUCEMENT)

18 (Against all Defendants)

19 142. Plaintiffs re-allege and incorporate by reference all preceding paragraphs as
20 though fully set forth herein.

22 143. On or about 05/01/2008, Plaintiffs used the subject property as collateral to obtain
23 the revolving line of credit in the amount of One Hundred Seventy Six Thousand dollars
24 (US\$176, 000.00) from WASHINGTON MUTUAL BANK, *a now defunct banking institution;*
25 for the maintenance of the subject property and for the purchase of other household goods. The
26 true and correct copy of the revolving line of credit is attached hereto as Plaintiffs' Exhibit "B"
27 and incorporated herein by reference as if set forth in full herein. Plaintiffs performed all terms,
28

1 covenants, and conditions required of them under the revolving line of credit, except for those
2 terms, covenants, and conditions the performance of which was either waived or rendered
3 impossible by Defendants, and each of them.

4 144. Defendants, intentionally misrepresented to Plaintiffs those Defendants were
5 entitled to exercise the power of sale provision contained in the Deed of Trust. In fact,
6 Defendants were not entitled to do so and have no legal, equitable, or actual beneficial interest
7 whatsoever in the Property.
8

9 145. Defendants misrepresented that they are the "holder and owner" of the Note and
10 the beneficiary of the Deed of Trust. However, this was not true and was a misrepresentation of
11 material fact. Documents state that the original lender allegedly sold the mortgage loan or the
12 Revolving Line of Credit to JPMORGAN CHASE BANK, N.A., MORTGAGE ELECTRONIC
13 REGISTRATION SYSTEMS, INC, and NATIONAL DEFAULT SERVICING
14 CORPORATION. Plaintiffs allege that, Defendants were attempting to collect on a debt to
15 which they have no legal, equitable, or pecuniary interest in. This type of conduct is outrageous.
16 Defendants are fraudulently foreclosing on the Property which they have no monetary or
17 pecuniary interest. This type of conduct is outrageous.
18

19 146. Defendants' failure to disclose the material terms of the transaction induced
20 Plaintiffs to enter into the loans and accept the Services as alleged herein.
21

22 147. The material misrepresentations were made by Defendants with the intent to cause
23 Plaintiffs to reasonably rely on the misrepresentation in order to induce the Plaintiffs to rely on
24 the misrepresentations and foreclosure on the Property. This material misrepresentation was
25 made with the purpose of initiating the securitization process as illustrated above, in order to
26 profit from the sale of the Property by selling the note to sponsors who then pool the note and
27 sell it to investors.
28

1 148. Defendants were aware of the misrepresentations and profited from them.

2 149. As a direct and proximate result of the misrepresentations and concealment,
3 Plaintiffs were damaged in an amount to be proven at trial, including but not limited to costs of
4 Loan, damage to Plaintiffs' financial security, emotional distress, and Plaintiffs have incurred
5 costs and attorney's fees.

6 150. Defendants are guilty of malice, fraud and/or oppression. Defendants' actions
7 were malicious and done willfully in conscious disregard of the rights and safety of Plaintiffs in
8 that the actions were calculated to injure Plaintiffs. As such Plaintiffs are entitled to recover, in
9 addition to actual damages, punitive damages to punish Defendants and to deter them from
10 engaging in future misconduct.

11
12 TENTH CAUSE OF ACTION

13 (SLANDER OF TITLE)

14 (Against all Defendants)

15
16 151. Plaintiffs re-allege and incorporate by reference all preceding paragraphs as though
17 fully set forth herein.

18 152. Defendants, JPMORGAN CHASE BANK, N.A., MORTGAGE ELECTRONIC
19 REGISTRATION SYSTEMS, INC, NATIONAL DEFAULT SERVICING CORPORATION,
20 WASHINGTON MUTUAL BANK, N.A and each of them, disparaged Plaintiffs' exclusive valid
21 title by and through the preparing, posting, publishing, and recording of the documents
22 previously described herein, including, but not limited to, the Notice of Default. Said Defendants
23 knew or should have known that such documents were improper in that at the time of the
24 execution and delivery of said documents, Defendants had no right, title, or interest in the
25 Property. These documents were naturally and commonly to be interpreted as denying,
26 disparaging, and casting doubt upon Plaintiffs' legal title to the Property. By posting, publishing,
27
28

1 and recording said documents, Defendants' disparagement of Plaintiffs' legal title was made to
2 the public at large.

3 153. As a direct and proximate result of Defendants' conduct in publishing these
4 documents, Plaintiffs' title to the Property has been disparaged and slandered, and there is a
5 cloud on Plaintiffs' title, and Plaintiffs has suffered, and continues to suffer, damages in an
6 amount to be proved at trial.

7
8 154. As a further proximate result of Defendants' conduct, Plaintiffs have incurred
9 expenses in order to clear title to the Property. Moreover, these expenses are continuing, and
10 Plaintiffs will incur additional charges for such purpose until the cloud on Plaintiffs' title to the
11 property has been removed. The amounts of future expenses and damages are not ascertainable at
12 this time.

13
14 155. As a further direct and proximate result of Defendants' conduct, Plaintiffs have
15 suffered humiliation, mental anguish, anxiety, depression, and emotional and physical distress,
16 resulting in the loss of sleep and other injuries to his and her health and well-being, and continues
17 to suffer such injuries on an ongoing basis. The amount of such damages shall be proven at trial.

18 156. At the time that the false and disparaging documents were created and published
19 by the Defendants, Defendants knew the documents were false and created and published them
20 with the malicious intent to injure Plaintiffs and deprive them of their exclusive right, title, and
21 interest in the Property, and to obtain the Property for their own use by unlawful means.

22
23 157. The conduct of the Defendants in publishing the documents described above was
24 fraudulent, oppressive, and malicious. Therefore, Plaintiffs are entitled to an award of punitive
25 damages in an amount sufficient to punish Defendants for their malicious conduct and deter such
26 misconduct in the future.

27 ELEVENTH CAUSE OF ACTION
28

1 (QUIET TITLE)

2 (Against all Defendants)

3 158. Plaintiffs re-allege and incorporate by reference all preceding paragraphs as though
4 fully set forth herein.

5 159. All Defendants, JPMORGAN CHASE BANK, N.A., MORTGAGE
6 ELECTRONIC REGISTRATION SYSTEMS, INC, NATIONAL DEFAULT SERVICING
7 CORPORATION, WASHINGTON MUTUAL BANK, N.A, named herein claim an interest and
8 estate in the property adverse to Plaintiffs in that defendants asserts that they are the owner of the
9 note secured by the deed of trust to the property the subject of this suit.
10

11 160. ALL the above named Defendants claims an interest and estate in the property
12 adverse to Plaintiffs in that defendants asserts that they are the owner of deed of trust securing the
13 note to the property the subject of this suit.
14

15 161. The claims of all defendants are without any right whatsoever, and defendants have
16 no right, estate, title, lien or interest in or to the property, or any part of the property.

17 162. The claim of all defendants herein named, and each of them, claim some estate,
18 right, title, lien or interest in or to the property adverse to Plaintiffs' title, and these claims
19 constitute a cloud on Plaintiffs' title to the property.
20

21 163. Plaintiffs, therefore, allege, upon information and belief, that none of the parties to
22 neither the securitization transaction, nor any of the Defendants in this case, hold a perfected and
23 secured claim in the Property; and that all Defendants are estopped and precluded from asserting
24 an unsecured claim against Plaintiffs real property.

25 164. Plaintiffs request the decree permanently enjoin defendants, and each of them, and
26 all persons claiming under them, from asserting any adverse claim to Plaintiffs' title to the
27 property.
28

1 165. Plaintiffs request the court award the Plaintiffs costs of this action, and such other
2 relief as the court may deem proper.

3
4 TWELFTH CAUSE OF ACTION

5 (CANCELLATION OF WRITTEN INSTRUMENTS- SUBSTITUTION OF TRUSTEE (SOT),
6 NOTICE OF DEFAULT (NOD), AND FULL RECONVEYANCE (FR)

7 (Against all Defendants)

8
9 166. Plaintiffs re-allege and incorporate by reference all preceding paragraphs as though
10 fully set forth herein.

11 167. On or about May 13, 2008, MORTGAGE ELECTRONIC REGISTRATION
12 SYSTEMS, INC., engaged the service of a *robo signer*, and unlawfully recorded a purported
13 "SUBSTITUTION OF TRUSTEE and FULL RECONVEYANCE" and thereafter, purported to
14 substitute EXECUTIVE TRUSTEE SERVICES, LLC as trustee under Plaintiffs' Note and Deed
15 of Trust and purported to transfer and convey all beneficial interest in Plaintiffs' Note and Deed
16 of Trust, to MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. The true and
17 correct copy of the purported "SUBSTITUTION OF TRUSTEE and FULL
18 RECONVEYANCE" is attached hereto as Plaintiffs' Exhibit "C" and incorporated herein by
19 reference as if set forth in full herein.
20

21 168. Plaintiffs allege that, any applicable statutes of limitations have been tolled by
22 the Defendants' continuing, fraud, knowing, and active concealment of the facts alleged herein.
23 Despite exercising reasonable diligence, Plaintiffs could not have discovered, did not discover,
24 and was prevented from discovering, the wrongdoing complained of herein.
25

26 169. Plaintiffs allege that, the "SUBSTITUTION OF TRUSTEE and FULL
27 RECONVEYANCE" is void and of no force and effect because MORTGAGE ELECTRONIC
28 REGISTRATION SYSTEMS, INC had no standing to issue "Substitution of Trustee and Full

1 Reconveyance" under Plaintiffs Note and thereafter, conveying and transferring all beneficial
2 interest to MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. Plaintiffs further
3 allege that, the "Substitution of Trustee and Full Reconveyance" is void and of no force and
4 effect because MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC had no
5 pecuniary interest in Plaintiffs' Note and Deed of Trust. Further, MORTGAGE ELECTRONIC
6 REGISTRATION SYSTEMS, INC was not the holder of Plaintiffs' Note in due course and had
7 no right or standing to record the purported "Substitution of Trustee and Full Reconveyance"
8

9 170. On or about 11/26/2013, JPMORGAN CHASE BANK, N.A
10 engaged the service of a *robo signer*, and thereafter unlawfully recorded a purported
11 "SUBSTITUTION OF TRUSTEE and unlawfully substituted NATIONAL DEFAULT
12 SERVICING CORPORATION, as trustee under the deed of trust under Plaintiffs' Note and
13 Deed of Trust. The true and correct copy of the purported "SUBSTITUTION OF TRUSTEE" is
14 attached hereto as Plaintiffs' Exhibit "D" and incorporated herein by reference as if set forth in
15 full herein.
16

17 171. Plaintiffs allege that, any applicable statutes of limitations have been tolled by
18 the Defendants' continuing, fraud, knowing, and active concealment of the facts alleged herein.
19 Despite exercising reasonable diligence, Plaintiffs could not have discovered, did not discover,
20 and was prevented from discovering, the wrongdoing complained of herein.
21

22 172. Plaintiffs allege that, the "SUBSTITUTION OF TRUSTEE" is void and of no
23 force and effect because JPMORGAN CHASE BANK, N.A., had no standing to issue
24 "Substitution of Trustee" under Plaintiffs Note and Deed of Trust. Plaintiffs further allege that,
25 the "Substitution of Trustee" is void and of no force and effect because JPMORGAN CHASE
26 BANK, N.A had no pecuniary interest in Plaintiffs' Note and Deed of Trust. Further,
27 JPMORGAN CHASE BANK, N.A., was not the holder of Plaintiffs' Note in due course and had
28

1 no right or standing to record the purported "Substitution of Trustee". Plaintiffs further allege
2 that, the substitution of trustee is void and of no force and effect because, NATIONAL
3 DEFAULT SERVICING CORPORATION is not a duly appointed trustee under Plaintiffs' Note
4 and Deed of Trust.

5
6 173. On or about 10/05/2017, Defendant, NATIONAL DEFAULT SERVICING
7 CORPORATION, unlawfully recorded the "NOTICE OF DEFAULT AND ELECTION TO
8 SELL UNDER THE DEED OF TRUST" in their zeal to deprive Plaintiffs of ALL beneficial
9 interests and enjoyment in their real property. (Plaintiffs' Exhibit "F"). Plaintiffs alleges that, in
10 spite of the declaration proffered by the Defendants, Defendants used obscenity, or repeated
11 annoying phone calls, in violation of 15 U.S.C. §1692d; falsely represent "the character, amount,
12 or legal status of the line of credit in violation of 15 U.S.C. §1692e (2)(A); and used various
13 "unfair or unconscionable means to collect or attempt to collect" on the revolving line of credit in
14 violation of 15 U.S.C. §1692f.

15
16 174. Plaintiffs allege that, if the wrongfully recorded SOT1, SOT2, FR, and NOD,
17 instruments are left outstanding, Plaintiffs will continue to suffer loss and damages. Plaintiffs
18 therefore seeks cancellation of the above mentioned recorded instruments.

19
20 175. Plaintiffs are informed and believe, and therefore allege, that JPMORGAN
21 CHASE BANK, N.A, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC,
22 NATIONAL DEFAULT SERVICING CORPORATION, WASHINGTON MUTUAL BANK,
23 and DOES 1 through 50 acted willfully and with a conscious disregard for Plaintiffs' rights and
24 with a specific intent to defraud and injure Plaintiffs, by causing the above documents to be
25 prepared and recorded without a factual or legal basis for doing so.

26 176. Although the SOT1, SOT2, FR, and NOD may appear valid on its face, it is
27
28

1 invalid, void, and of no force or effect regarding Plaintiffs' interests and rights in the Property for
2 the reasons set out in this Complaint.

3 177. The estate or interests in the Property claimed by Defendants JPMORGAN
4 CHASE BANK, N.A., MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC,
5 NATIONAL DEFAULT SERVICING CORPORATION, WASHINGTON MUTUAL BANK,
6 N.A and purporting to convey the Property to JPMORGAN CHASE BANK, N.A., are each
7 based on the above-described SOT1, SOT2, FR, and NOD; constitutes a cloud on Plaintiffs' title,
8 tends to depreciate the market value of the property, restricts Plaintiffs full use and enjoyment of
9 the real property, and hinders Plaintiffs' rights to unrestricted alienation of the Property. If the
10 trustee's deed is not canceled, there is a reasonable fear that Plaintiffs will suffer serious injury.
11

12 178. On information and belief, these acts by Defendants constitute fraud, oppression
13 and malice and with a conscious disregard for the requirements to conduct a non-judicial
14 foreclosure sale of Plaintiffs' real property knowing they had taken a calculated risk that
15 Plaintiffs would not contest.
16

17 179. By virtue of Defendants' willful and wrongful conduct as herein alleged above,
18 Plaintiffs are entitled to general and special damages according to proof at trial, but not less than
19 \$1,090,000, as well as punitive and exemplary damages as determined by this Court.
20

21 THIRTEENTH CAUSE OF ACTION

22 (DECLARATORY RELIEF)

23 (Against all Defendants)

24
25 180. Plaintiffs re-allege and incorporate by reference all preceding paragraphs as though
26 fully set forth herein.
27
28

1 181. An actual controversy has arisen and now exists between Plaintiffs and Defendants
2 concerning their respective rights and duties regarding the Note and Trust Deed.

3 182. Plaintiffs contend that pursuant to the Loans, Defendants do not have authority to
4 foreclose upon and sell the Property.

5 183. Plaintiffs are informed and believes and upon that basis alleges that Defendants
6 dispute Plaintiffs' contention and instead contend they may properly foreclose upon the Property.

7 184. Plaintiffs therefore request a judicial determination of the rights, obligations and
8 interest of the parties with regard to the Property, and such determination is necessary and
9 appropriate at this time under the circumstances so that all parties may ascertain and know their
10 rights, obligations and interests with regard to the Property.

11 185. Plaintiffs request a determination of the validity of the Trust Deeds as of the date
12 the Notes were assigned without a concurrent assignment of the underlying Trust Deeds.

13 186. Plaintiffs request a determination of the validity of the NOD (Notice of Default).

14 187. Plaintiffs request a determination of whether any Defendants have authority to
15 foreclose on the Property.

16 188. Plaintiffs request all adverse claims to the real property must be determined by a
17 decree of this court.

18 189. Plaintiffs request the decree declare and adjudge that Plaintiffs is entitled to the
19 exclusive possession of the property.

20 190. Plaintiffs request the decree declare and adjudge that Plaintiffs owns in fee simple,
21 and is entitled to the quiet and peaceful possession of, the above-described real property.

22 191. Plaintiffs request the decree declare and adjudge that defendants, and each of
23 them, and all persons claiming under them, have no estate, right, title, lien, or interest in or to the
24 real property or any part of the property.
25
26
27
28

1
2 FOURTEENTH CAUSE OF ACTION

3 (NEGLIGENCE)

4 (AGAINST ALL DEFENDANTS)

5
6 192. Plaintiffs re-allege and incorporates by reference all preceding paragraphs as
7 though fully set forth herein.

8 193. At all times relevant herein, JPMORGAN CHASE BANK, N.A., MORTGAGE
9 ELECTRONIC REGISTRATION SYSTEMS, INC, NATIONAL DEFAULT SERVICING
10 CORPORATION, WASHINGTON MUTUAL BANK, N.A, acting as Plaintiffs' lender and/or
11 loan servicers, had a duty not to Defraud the Plaintiffs and a duty to exercise reasonable care and
12 skill to maintain proper and accurate loan records and to discharge and fulfill the other incidents
13 attendant to the maintenance, accounting and servicing of loan records, including, but not limited,
14 accurate crediting of payments made by Plaintiffs.
15

16 194. Plaintiffs allege that, JPMORGAN CHASE BANK, N.A., MORTGAGE
17 ELECTRONIC REGISTRATION SYSTEMS, INC, NATIONAL DEFAULT SERVICING
18 CORPORATION, WASHINGTON MUTUAL BANK, N.A, and each of them owe duty of care
19 to ensure they do not defraud the Plaintiffs.
20

21 195. Plaintiffs are informed and believes, and on that basis alleges that, in engaging in
22 the conduct alleged above, and in failing to take the actions as alleged above, JPMORGAN
23 CHASE BANK, N.A., MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC,
24 NATIONAL DEFAULT SERVICING CORPORATION, WASHINGTON MUTUAL BANK,
25 N.A, breached their duty of care and skill to Plaintiffs in the servicing of Plaintiffs' loan by,
26 among other things, failing to properly and accurately credit payments made by Plaintiffs toward
27
28

1 the loan, preparing and filing false documents, and foreclosing on the Subject Property without
2 having the legal authority and/or proper documentation to do so.

3 196. As a direct and proximate result of the negligence of Defendants, CHASE BANK,
4 N.A., MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC, NATIONAL
5 DEFAULT SERVICING CORPORATION, WASHINGTON MUTUAL BANK, N.A, as set
6 forth above, Plaintiffs have suffered general and special damages in an amount to be determined
7 at trial.
8

9
10 FIFTEENTH CAUSE OF ACTION

11 (INJUNCTIVE RELIEF)

12 (Against all Defendants)

13
14 197. Plaintiffs re-allege and incorporate by reference all preceding paragraphs as
15 though fully set forth herein.

16 198. An actual controversy has arisen and now exists between Plaintiffs and
17 Defendants concerning their respective rights and duties regarding the Note and Trust Deed.

18 199. Plaintiffs contends that pursuant to the mortgage loans and the Deed of Trust,
19 Defendants, do not have authority to foreclose upon and/or sell Plaintiffs' real properties
20 described above.

21 200. Plaintiffs allege that, in addition to violating the Fair Debt Collection Practices
22 Act, Defendants knowingly concealed their lack of an enforceable security interests in Plaintiffs'
23 real properties by fabricating and recording false documents in the Lyon County Recorder's
24 Office.
25

26 201. Plaintiffs brings this action for preliminary injunction against Defendants,
27 JPMORGAN CHASE BANK, N.A., MORTGAGE ELECTRONIC REGISTRATION
28

1 SYSTEMS, INC, NATIONAL DEFAULT SERVICING CORPORATION, WASHINGTON
2 MUTUAL BANK, N.A, and their agents, officers, employees, and affiliates or associated parties
3 for their and their predecessors' actions in engaging in a pattern of unlawful, fraudulent, and
4 unfair predatory real estate practices causing Plaintiffs to become victims of such behavior and to
5 be in jeopardy of losing their real property through unlawful non-judicial foreclosure.
6

7 202. Plaintiffs have clear legal rights to seek temporary and permanent injunctive
8 relief as Plaintiffs have legal rights to their real property and as Defendants are without any
9 satisfying and necessary legal standing to institute a foreclosure, are seeking, to take possession,
10 custody, and control of Plaintiffs' real property and ultimately remove the Plaintiffs from their
11 home/real property.

12 203. Plaintiffs have no adequate remedy at law to redress the harm complained of, and
13 the sale of the Plaintiffs' property, under the circumstances of record, is contrary to equity and
14 good conscience in that such sale is being instituted by Defendants who have no legal standing to
15 institute or maintain the non-judicial foreclosure.
16

17 204. The specific facts set forth in this Complaint demonstrates that unless an
18 injunctive relief temporary is granted against Defendants from removing Plaintiffs from their real
19 properties during the pendency of this lawsuit, Plaintiffs will suffer irreparable injury, loss, and
20 damage of their real property and eviction therefrom. The threatened injury to Plaintiffs'
21 properties and personal rights cannot be compensated for by an ordinary damage award in that
22 Plaintiffs real properties are unique.
23

24 205. Under the circumstances where the unlawful non-judicial foreclosure sale has
25 occurred and Defendants are threatening to remove Plaintiffs from their property, irreparable loss
26 to Plaintiffs will result if the Injunctive Relief requested herein is not granted immediately.

27 206. As Defendants has no legal standing to institute or maintain a foreclosure of the
28

1 Property, there is no harm to said Defendant with the granting of the requested relief, and any
2 claimed harm is substantially outweighed by the irreparable harm to the Plaintiffs if the relief
3 requested herein is not granted.

4 207. The granting of the relief requested herein is in the public interest, as the
5 consuming public, including Plaintiffs, will continue to be harmed by the illegal and unlawful
6 conduct of the Defendants if the relief requested herein is not granted.
7

8 208. Under the circumstances where there is no harm to Defendant with the granting
9 of the requested relief, no bond should be required as a prerequisite to the granting of the relief
10 requested herein as there are no costs or other damages which could be contemplated on the part
11 of Defendants with the granting of the requested relief for which a bond would otherwise be
12 necessary.

13 **WHEREFORE**, Plaintiffs respectfully request that this Court immediately take jurisdiction of
14 this matter and enter an Order granting temporary and permanent injunctive relief expressly
15 precluding Defendants, JPMORGAN CHASE BANK, N.A., MORTGAGE ELECTRONIC
16 REGISTRATION SYSTEMS, INC, NATIONAL DEFAULT SERVICING CORPORATION,
17 WASHINGTON MUTUAL BANK, N.A, and their agents and assigns, from enforcing the non-
18 judicial foreclosure and from removing Plaintiffs from their real property during the pendency of
19 this action.
20
21

22
23 **DEMAND FOR JURY TRIAL**

24 **WHEREFORE**, Plaintiffs request for Jury Trial on all causes of action.

25
26 **PRAYER FOR RELIEF**

27 **WHEREFORE**, Plaintiffs asks for the following for each Cause of Action to be awarded:
28

1 (a) For Compensatory Damages in an amount to be determined by proof at trial;
2 (b) For Special Damages in an amount to be determined by proof at trial;
3 (c) For General Damages in an amount to be determined by proof at trial;
4 (d) For Punitive Damages as allowed by law;
5 (e) For Restitution as allowed by law;
6 (f) For Attorney's Fees and Costs of this action;
7 (g) For Declaratory Relief, including but not limited to the following Decrees of this
8 Court that:

- 9 (i) Plaintiffs are the prevailing party;
10 (ii) The Trustees of the Trusts have no enforceable secured or unsecured claim
11 against the Property;
12 (iii) The Mortgage Originator has no enforceable secured or unsecured claim
13 against the Property;
14 (iv) Determines all adverse claims to the real property in this proceeding;
15 (v) Plaintiffs are entitled to the exclusive possession of the property;
16 (vi) Plaintiffs own in fee simple, and are entitled to the quiet and peaceful
17 possession of, the above-described real property.
18 (vii) Defendants, and each of them, and all persons claiming under them, have
19 no estate, right, title, lien, or interest in or to the real property or any part of
20 the property.

21 Dated: 12/26/2017

22 Dated: 12/26/2017

23 Leo Kramer
24 LEO KRAMER
25 Plaintiffs In Pro Per

26 Audrey Kramer
27 AUDREY KRAMER
28 Plaintiffs In Pro Per

EXHIBIT 2

EXHIBIT 2

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

LEO KRAMER, AUDREY KRAMER,
Plaintiffs,

v.

JP MORGAN CHASE BANK, N.A.,
MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.,
NATIONAL DEFAULT SERVICING
CORPORATION, WASHINGTON
MUTUAL BANK, N.A., and DOES 1
THROUGH 50 INCLUSIVE,

Defendants.

Case No. 3:18-cv-00001-MMD-WGC

ORDER

(ECF Nos. 17, 22, 43)

I. SUMMARY

This action is in part an attempt by Leo Kramer ("Kramer") and Audrey Kramer (collectively "Plaintiffs") to prevent a non-judicial foreclosure of their property. (See *generally* ECF No. 1.) Before the Court, and among other motions, are two motions to dismiss Plaintiffs' complaint ("the Complaint"), pursuant to Fed. Civ. P. ("Rule") 12(b)(6), by Defendants JPMorgan Chase Bank, N.A. ("Chase") and Mortgage Electronic Registration Systems, Inc. (MERS). (ECF Nos. 17, 22.) Plaintiffs filed responses to Chase's motion to dismiss ("Chase's Motion") (ECF Nos. 28, 31), and Chase replied (ECF No. 38).

Additionally before the Court is Plaintiffs' motion to strike MERS's motion to dismiss ("MERS's Motion"). (ECF No. 43.) The Court has reviewed MERS's response (ECF No. 45) and Plaintiffs' reply (ECF No. 50).

1 For the reasons discussed below, Plaintiffs' motion to strike (ECF No. 43) is denied,
2 and both motions to dismiss (ECF Nos. 17, 22) are granted.

3 **II. BACKGROUND**

4 The following facts are derived from the Complaint and exhibits attached thereto,
5 or are established by documents found in the public records (ECF Nos. 1, 17-6, 17-7, 17-
6 8, 17-9, 17-11, 17-12, 17-13, 17-14)¹:

7 In June 2005, Plaintiffs obtained a loan from Paul Financial, LLC ("Paul Financial")
8 to purchase property located at 1740 Autumn Glen Street in Fernley Nevada (the
9 "Property" or "Collateral Property"). (ECF No. 1 at 7, 52.) The loan was secured by a deed
10 of trust ("First DOT") naming Paul Financial as the lender and MERS as beneficiary. (See
11 ECF No. 1 at 51-53.) In May 2008, MERS substituted Executive Trustee Services, LLC
12 ("ETS") as the trustee under the First DOT. (ECF No. 1 at 88-90.) Acting as the substituted
13 trustee, ETS reconveyed the Property.² (*Id.* at 89.) Accordingly, the First DOT ceased to
14 encumber the Property.

15 On May 1, 2008, Plaintiffs used the Property as collateral to obtain a \$176,000
16 revolving line of credit (the "Loan") from Defendant Washington Mutual Bank, F.A.
17 ("WaMu"). (ECF No. 1 at 6-8.) The deed of trust on the Property securing the WaMu Loan
18 ("Second DOT") was publicly recorded. (*Id.* at 77.) In September 2008, the Federal Deposit
19 Insurance Corporation ("FDIC") assumed receivership of WaMu and sold WaMu's assets
20 and liabilities to Chase pursuant to a Purchase and Assumption Agreement ("the PAA").³

21 ///

22 ¹The Court may take judicial notice of "matters of public record." *Lee v. City of L.A.*,
23 250 F.3d 668, 689 (9th Cir. 2001) (quoting *Mack v. S. Bay Beer Distrib.*, 798 F.2d 1279,
1282 (9th Cir. 1986)); see also Fed. R. Evid. 201.

24 ² The Substitution of Trustee and Full Reconveyance effectively allowed for ETS to
25 be substituted as successor trustee, and allowed ETS to reconvey the Property to "the
26 person or persons legally entitled thereto all estate now held by [ETS] under [the First
27 DOT,]" who would be Plaintiffs. (See ECF No. 1 at 52-53, 88; see also *id.* at 78 (Plaintiffs
representing to Washington Mutual Bank that Plaintiffs owned the Property, and that the
Property was unencumbered.))

28 ³The Court takes judicial notice of the PAA, which is available on the FDIC's
website, at https://www.fdic.gov/about/freedom/washington_mutual_p_and_a.pdf. See,

1 The PAA details that as part of Chase's acquisition, Chase obtained the rights and
2 liabilities of WaMu, as lender and beneficiary, arising under all of the loan assets of WaMu,
3 which would include the Second DOT. In November 2013, Chase substituted Defendant
4 National Default Servicing Corporation ("NDSC") as trustee under the Second DOT. (ECF
5 No. 1 at 9, 92.)

6 Kramer filed three bankruptcy petitions: Case No 10-43951, filed as a Chapter 11
7 petition in April 2010, but *converted to a Chapter 7 filing*; Case No 11-49493 filed as a
8 Chapter 13 petition in September 2011; and Case No 14-42866, filed as a Chapter 13
9 petition in July 2014.^{4,5} (ECF Nos. 17-6, 17-7, 17-8, 17-11, 17-12; see also ECF No. 1 at
10 10, 96-100, 102.) In schedules filed in Case Nos. 10-43951 and 14-42866, Kramer
11 acknowledged the Loan was secured and that Chase held a security interest in the
12 Collateral Property.⁶ (ECF No. 17-7 at 4; ECF No. 17-12 at 4, 9; ECF No. 1 at 97.)

13 ///

14 e.g., *Allen v. United Fin. Mortg. Corp.*, 660 F. Supp. 2d 1089, 1093-94 (2009) (citing *New*
15 *Mexico ex rel. Richardson v. BLM*, 565 F.3d 683, 702 n.22 (10th Cir. 2009) (taking judicial
16 notice of data on web sites of federal agencies)). Because the PAA establishes only that
17 Chase assumed WaMu's assets and liabilities, contrary to Plaintiffs' position, it is
18 impertinent whether the link to the PAA, provided here, displays 39 pages, instead of 118
pages which Plaintiffs allege is the actual length of the PAA and has not been made public.
Plaintiffs do not contest that the 39-page PAA is a public record, nor do they aver that the
allegedly longer 118-page PAA contradicts the 39-page PAA in pertinent part. (See ECF
No. 28 at 2-3.)

19 ⁴The Court takes judicial notice of the bankruptcy proceedings, as identified in
20 exhibits attached to Chase's Motion, because the proceedings are matters of public
21 record. Plaintiffs do not challenge the authenticity of the bankruptcy case documents. (See
22 *generally* ECF Nos. 28, 31.)

23 ⁵The bankruptcy court dismissed Case No. 11-49493. (See ECF No. 17-8.)

24 ⁶Plaintiffs' response to Chase's Motion asserts that Plaintiffs "naïve[ly]" and
25 "inadvertently" listed Chase as having a security interest in Kramer's bankruptcy
26 schedules. (See ECF No. 31 at 24.) Citing to "Exhibit I," Plaintiffs claim they "discovered
27 through this process that their Note associated with the Loan was not assigned to Chase.
28 (*Id.*) However, Exhibit I, which only displays Chase's billing statements, does not
undermine Chase's security interest in the Collateral Property. Plaintiffs also identify an
Exhibit H to support their claim that the "alleged debt" was listed as "non-secure" in the
Chapter 7 bankruptcy. (ECF No. 31 at 4.) However, as noted *infra*, debt discharge does
not also discharge a creditor's secured interest in collateral property. Further, Exhibit H
lists the Collateral Property under "Schedule D – Creditors Holding Secured Claims," and
notes Chase as a creditor. (ECF No. 31 at 166). Exhibit H also separately lists
WaMu/Chase under "Schedule F-Creditors Holding Unsecured Nonpriority Claims," but

1 Chase filed a proof of claim regarding the Loan in both Case No. 14-42866 and
2 Case No. 11-49493, before the latter's dismissal. (ECF No. 17-9; ECF No. 17-13; see
3 *also* ECF No. 17-8.) To the proof of claims Chase attached a copy of the WaMu Mortgage
4 Plus Agreement and Disclosure relating to the Loan (the "Note"), and the Second DOT.
5 (See ECF No. 17-9 at 4-23; ECF No. 17-13 at 9-31.) In Case No. 14-42866, Kramer
6 proposed a Chapter 13 plan wherein Chase was recognized as a Class 3 creditor, and
7 Kramer was to surrender his interest in the Collateral Property upon plan confirmation.
8 (ECF No. 17-14 at 3.) Kramer received discharges in both Case No. 10-43951 and Case
9 No. 14-42866, on June 16, 2011, and January 9, 2017, respectively. (ECF No. 17-6 at 2,
10 13; ECF No. 1 at 11, 102.) At no point in the bankruptcy proceedings did Kramer assert
11 claims against any of the Defendants herein. Nor did Kramer seek to have the lien
12 evidenced in the Second DOT stripped from the Property to render the Loan "unsecured."

13 In October 2017, NDSC recorded a Notice of Default and Election to Sell Under the
14 Deed of Trust. (ECF No. 1 at 11, 105.) In January 2018, Plaintiff initiated this action. The
15 Complaint alleges fifteen (15) causes of action against "all Defendants," challenging the
16 impending foreclosure (*see generally* ECF No. 1) and requesting damages (*id.* at 12). The
17 Complaint does not allege that the Loan has been paid or that Plaintiffs are not in payment
18 default under the terms of the Loan.

19 Chase moves for dismissal, contending, *inter alia*, Plaintiffs are judicially estopped
20 from asserting claims in this Court against Chase and the various Defendants. (See ECF
21 No. 17.) MERS argues it is entitled to dismissal because MERS had "no interest in
22 transactions that allegedly give rise to Plaintiffs' claims." (ECF No. 22 at 3.) The Court
23 finds that dismissal with prejudice is warranted as to all Defendants, on all of Plaintiffs'
24 claims, as amendment would be futile.⁷

25 ///

26 nonetheless notes the claim as "Secured Credit Line," and does not list the Collateral
27 Property (*id.* at 170).

28 ⁷The Court takes note of Plaintiffs' argument that certain issues raised by Chase's
Motion can be cured by the Court permitting amendment to the Complaint (ECF No. 31 at

1 **III. PLAINTIFFS' MOTION TO STRIKE MERS'S MOTION TO DISMISS**

2 Plaintiffs' motion to strike is premised on their contention that MERS failed to serve
3 its Motion in time for Plaintiffs to respond (see ECF No. 43 at 2), and that therefore
4 Plaintiffs' right to due process was undermined (*id.* at 5; ECF No. 50 at 2). The Court
5 disagrees.

6 On January 23, 2018, this Court ordered MERS to respond to the Complaint within
7 twenty days after Plaintiffs posted their required security. (ECF No. 13.) Plaintiffs made
8 their cash deposit on February 21, 2018. (ECF No. 15.) MERS filed its Motion on March
9 12, 2018, within the twenty-day deadline. (*Compare* ECF No. 22 *with* ECF No. 13 *and*
10 ECF No. 15.) MERS's Motion includes a certification that MERS's Motion was served on
11 Plaintiffs by mail at the address Plaintiffs provided in the Complaint. (ECF No. 22 at 7; *see*
12 *also* ECF No. 45 at 2.) Plaintiffs filed the motion to strike MERS's Motion on April 6, 2018.
13 (See ECF No. 43.)

14 The day before Plaintiffs filed the motion to strike, MERS's counsel and Plaintiffs
15 had exchanged emails wherein MERS, in addition to noting it had complied with its
16 servicing obligations by mail, was "agreeable to setting a schedule for [Plaintiffs] to file a
17 response to [MERS's Motion]." (ECF No. 45-1.) MERS expressed it was "agreeable" given
18 Plaintiffs' claim of lack of receipt by mail. (*Id.*) MERS had also sent Plaintiffs a copy of its
19 Motion by email on April 3, 2018. (ECF No. 43 at 4.) It appears Plaintiffs chose to file the
20 instant motion to strike instead of accepting MERS's proposal.

21 The Court finds no merit to Plaintiffs' claim that MERS needed to engage in good
22 faith effort to "meet and confer" before filing its Motion. (ECF No. 43 at 2, 6, ECF No. 50
23 at 5.) In support of this claim, Plaintiffs cite to LR IA 1-3(f). (ECF No. 43 at 2.) However,
24 neither LR IA 1-3(f) nor any rule of which the Court is aware requires parties to meet and
25 confer prior to filing a motion to dismiss.

26 ///

27 ///

28 6), but ultimately finds these other issues irrelevant in light of the application of the judicial
 estoppel bar.

1 Under the circumstances here, the Court disagrees with Plaintiffs that their right to
2 due process was undermined by not having sufficient time to respond. This is really a
3 problem of Plaintiffs' own choosing. Plaintiffs opted to file a motion to strike instead of
4 working with MERS to give Plaintiffs more time to respond. Moreover, Plaintiffs provide no
5 evidence contradicting MERS's attestation that it timely mailed its Motion.⁸ Accordingly,
6 Plaintiffs' motion to strike (ECF No. 43) is denied

7 IV. THE MOTIONS TO DISMISS

8 A. Legal Standard

9 A court may dismiss a plaintiff's complaint for "failure to state a claim upon which
10 relief can be granted." Rule 12(b)(6). A properly pleaded complaint must provide "a short
11 and plain statement of the claim showing that the pleader is entitled to relief." Rule 8(a)(2);
12 *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). While Rule 8 does not require
13 detailed factual allegations, it demands more than "labels and conclusions" or a "formulaic
14 recitation of the elements of a cause of action." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)
15 (citing *Twombly*, 550 U.S. at 555.) "Factual allegations must be enough to rise above the
16 speculative level." *Twombly*, 550 U.S. at 555. Thus, to survive a motion to dismiss, a
17 complaint must contain sufficient factual matter to "state a claim to relief that is plausible
18 on its face." *Iqbal*, 556 U.S. at 678 (internal citation omitted).

19 In *Iqbal*, the Supreme Court clarified the two-step approach district courts are to
20 apply when considering motions to dismiss. First, a district court must accept as true all
21 well-pleaded factual allegations in the complaint; however, legal conclusions are not
22 entitled to the assumption of truth. *Id.* at 678-79. Mere recitals of the elements of a cause
23 of action, supported only by conclusory statements, do not suffice. *Id.* at 678. Second, a
24 district court must consider whether the factual allegations in the complaint allege a
25 plausible claim for relief. *Id.* at 679. A claim is facially plausible when the plaintiff's

26 ///

27 ⁸ MERS' Motion was filed on the Court's docket. (ECF No. 22.) The next day, the
28 Court issued a notice of the filing of a motion to dismiss and the need for the opposing
party (i.e., Plaintiffs) to respond. (ECF No. 25.) Even if Plaintiffs did not receive a copy of
MERS' Motion, the Court's notice should have alerted Plaintiff of the filing of such a motion.

1 complaint alleges facts that allow a court to draw a reasonable inference that the
2 defendant is liable for the alleged misconduct. *Id.* at 678. Where the complaint does not
3 permit the court to infer more than the mere possibility of misconduct, the complaint has
4 “alleged—but it has not show[n]—that the pleader is entitled to relief.” *Id.* at 679 (internal
5 quotation marks omitted). When the claims in a complaint have not crossed the line from
6 conceivable to plausible, the complaint must be dismissed. *Twombly*, 550 U.S. at 570.

7 Ordinarily, a complaint must contain either direct or inferential allegations
8 concerning “all the material elements necessary to sustain recovery under some viable
9 legal theory.” *Twombly*, 550 U.S. at 562 (quoting *Car Carriers, Inc. v. Ford Motor Co.*, 745
10 F.2d 1101, 1106 (7th Cir. 1989)). But, allegations in *pro se* complaints are held to less
11 stringent standards than formal pleadings drafted by lawyers and must be liberally
12 construed. See *Hamilton v. Brown*, 630 F.3d 889, 893 (9th Cir. 2011).

13 “Generally, a district court may not consider any material beyond the pleadings in
14 ruling on a Rule 12(b)(6) motion.” *Hal Roach Studios, Inc. v. Richard Feiner & Co.*, 896
15 F.2d 1542, 1555 n.19 (9th Cir.1990). Where “matters outside the pleading are presented
16 to and not excluded by the court,” a Rule 12(b)(6) motion is to “be treated as one for
17 summary judgment and disposed of as provided in Rule 56, and all parties shall be given
18 reasonable opportunity to present all material made pertinent to such a motion by Rule
19 56.” Rule 12(b).

20 There are three exceptions to this rule: (1) a court may consider documents
21 “‘properly submitted as part of the complaint’ on a motion to dismiss;” (2) if “documents
22 are not physically attached to the complaint,” incorporation by reference is proper “‘if the
23 documents’ authenticity . . . is not contested’ and ‘the plaintiff’s complaint necessarily
24 relies’ on them,” *Lee v. City of L.A.*, 250 F.3d 668, 688-89 (9th Cir. 2001) (quoting *Parrino*
25 *v. FHP, Inc.*, 146 F.3d 699, 705-06 (9th Cir. 1998)); and (3) “a court may take judicial
26 notice of ‘matters of public record.’” *Id.* (quoting *Mack v. S. Bay Beer Distribs.*, 798 F.2d
27 1279, 1282 (9th Cir. 1986)).

28 ///

1 **B. Chase's Motion**

2 Chase argues that Plaintiffs are judicially estopped from asserting claims against
3 it, as well as the other Defendants, because Plaintiffs failed to provide notice of their claims
4 during the bankruptcy proceedings. (ECF No. 17 at 12-13.) The Court agrees.

5 "Judicial estoppel will be imposed when the debtor has knowledge of enough facts
6 to know that a potential cause of action exists during the pendency of the bankruptcy, but
7 fails to amend his schedules or disclosure statements to identify the cause of action as a
8 contingent asset." *Hamilton v. State Farm Fire & Cas. Co.*, 270 F.3d 778, 784 (9th Cir.
9 2001) (citing *Hay v. First Interstate Bank of Kalispell, N.A.*, 978 F.2d 555, 557 (9th Cir.
10 1992)) (additional citations omitted). In bankruptcy proceedings, potential claims a debtor
11 may have against a creditor or lender are deemed assets. See *Hamilton v.*, 270 F.3d at
12 785 (noting the debtor plaintiff's failure to list potential claims against creditor as an asset);
13 *Hay*, 978 F.2d at 556 (the debtor plaintiff conceding its action is an asset of its bankruptcy
14 estate). While *Hay* and *Hamilton* are summary judgment cases, there is no reason their
15 analysis and conclusion would not apply in this case. Both cases support the proposition
16 that judicial estoppel should be applied here.

17 In *Hay*, the Ninth Circuit recognized that *while the plaintiff did not know all the facts*,
18 the plaintiff *knew enough* to require notification of the asset (the action/suit against a
19 creditor) to the bankruptcy court. 978 F.2d at 557. The Ninth Circuit ruled that the plaintiff's
20 failure to give the required notice estopped the plaintiff and justified the district court's
21 grant of summary judgment to the defendants. *Id.*

22 *Hamilton* additionally recognized that it is immaterial that a debtor commences an
23 action against a creditor or lender after filing for bankruptcy. 270 F.3d at 784. "The debtor's
24 duty to disclose potential claims as assets does not end when the debtor files schedules,
25 but instead continues for the duration of the bankruptcy proceeding." *Id.* at 785 (citations
26 omitted). *Hamilton* also explains that courts "must invoke judicial estoppel to protect the
27 integrity of the bankruptcy process," which includes preventing a debtor from deceiving
28 the bankruptcy court, and acquiring an "unfair advantage" due to having enjoyed "the

1 benefit of both an automatic stay and a discharge of debt in the debtor's Chapter 7
2 bankruptcy proceeding." *Id.*

3 The rulings and reasoning in *Hay* and *Hamilton* compel this Court to dismiss the
4 Complaint. Here, as noted, Kramer was involved in Chapter 7 and Chapter 13 proceedings
5 and received discharges. (ECF No. 17-6; ECF No. 1 at 11, 102.) Moreover, the Complaint
6 is grounded in the assertions that the Collateral Property that secured the Loan was part
7 of the bankruptcy proceedings and cannot be foreclosed upon, due to alleged fraud and
8 irregularities, and that the Second DOT should be stripped from it. (See ECF No. 1.) The
9 judicially noticed records show that during both the Chapter 7 and 13 bankruptcy
10 proceedings Kramer acknowledged Chase's acquired security interest in the Collateral
11 Property. (ECF No. 17-7 at 4; ECF No. 17-12 at 4,9; ECF No. 17-14 at 3; ECF No. 1 at
12 97.) The July 2014 Chapter 13 plan in Case No. 14-42866 called for Kramer to surrender
13 his interest in the Collateral Property to Chase. (ECF No. 17-14 at 3.)

14 Kramer (and by extension the Plaintiffs) knew sufficient facts by which he could
15 anticipate a cause of action against Chase, especially given Kramer's now evident
16 reservations about actually surrendering the Collateral Property. While bankruptcy
17 discharge covering the Loan extinguished Kramer's personal liability for the Loan,
18 bankruptcy discharge does not prevent foreclosure on the Collateral Property. See *Long*
19 *v. Bullard*, 117 U.S. 617, 621 (1886); accord *Dewsnup v. Timm*, 502 U.S. 410, 417 (1992)
20 ("the creditor's lien stays with the real property until the foreclosure"); *Farrey v. Sanderfoot*,
21 500 U.S. 291, 297 (1991) ("Ordinarily, liens and other secured interests survive
22 bankruptcy."); *Johnson v. Home State Bank*, 501 U.S. 78, 84 (1991) ("[A] bankruptcy
23 discharge extinguishes only one mode of enforcing a claim—namely, an action against
24 the debtor *in personam*—while leaving intact another—namely, an action against the
25 debtor *in rem*.").

26 Additionally, during the 2014 Chapter 13 bankruptcy proceeding, Kramer knew, or
27 should have known, that Chase substituted NDSC as the trustee under the Second DOT,
28 as the substitution occurred in November 2013. (See ECF No. 1 at 9.) Therefore, Kramer

(and by extension the Plaintiffs) knew enough to trigger his obligation to provide the bankruptcy court notice of his potential claims against Chase, WaMu, and NDSC.⁹ Equity demands that Plaintiffs be judicially estopped from now asserting claims against these Defendants in this Court to avoid foreclosure on the Collateral Property. To rule otherwise would be to allow Kramer to circumvent the bankruptcy process.

In sum, the Court finds that Plaintiffs are judicially estopped from asserting the claims here against Chase, WaMu and NDSC. Claims against these Defendants will be dismissed.

C. MERS's Motion

The Court finds the Complaint is improperly instituted against MERS because MERS was not involved in the loan transaction giving rise to the claims asserted in the Complaint. Although Plaintiffs have not filed a response to MERS's Motion, a response is unnecessary given the fact that MERS was not involved in the Loan or the Second DOT. The loan transaction involving MERS was resolved when ETS executed the reconveyance of the Property. Moreover, the "robo-signing" and substitution of trustee claims asserted against MERS (ECF No. 1 at 8-9) have no merits. *See, e.g., Heidig v. PNC Bank N.A.*, 2017 WL 4102465, *3 n.6 (D. Nev. Sept. 15, 2017) (stating with respect to the plaintiffs' theory challenging assignments based on a "robo-signing" argument, "the Ninth Circuit has affirmed that a borrower lacks standing to allege such an argument because the borrower does not suffer an injury from the robo-signing"); *Closson v. Reconstruct Co.*, No. 2:11-cv-00146-KDJ-RJJ, 2012 WL 893746, at *3-5 (D. Nev. Mar. 15, 2012) (holding that trustee was properly substituted by MERS because MERS has the right to substitute a new trustee in its capacity as nominee).

///

///

///

⁹ Chase essentially stands in the place of WaMu as the acquirer of WaMu's assets and liabilities (specifically the Note and Second DOT), and Chase substituted NDSC as the trustee under the Second DOT.

V. CONCLUSION

The Court notes that the parties made several arguments and cited to several cases not discussed above. The Court has reviewed these arguments and cases and determines that they do not warrant discussion as they do not affect the outcome of the motions before the Court.

It is therefore ordered that Plaintiffs' motion to strike MERS's Motion (ECF No. 43) is denied.

It is further ordered that Chase and MERS's motions to dismiss (ECF Nos. 17, 22) are granted.

It is further ordered that Plaintiffs' pending motions (ECF Nos. 30, 46, 55, 56) and objection (ECF No. 51) are denied as moot.

The Clerk is directed to enter judgment accordingly and close this case.

DATED THIS 17th day of May 2018.



MIRANDA M. DU
UNITED STATES DISTRICT JUDGE

EXHIBIT 3

EXHIBIT 3

FILED

Case No.: 18-CV-00663

Dept. No.: I

2018 OCT 24 AM 8:28

TANYA SCOTT
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT

KATHY THOMAS

IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF LYON

LEO KRAMER,
AUDREY KRAMER,

Plaintiffs,

vs.

**ORDER GRANTING MOTION TO
DISMISS PLAINTIFF'S COMPLAINT**

NATIONAL DEFAULT SERVICING
CORPORATION, ALYSSA MC DERMOTT,
WEDGWOOD INC., BRECKENRIDGE
PROPERTY FUND 2016 LLC, and DOES 1
THROUGH 50 INCLUSIVE,

Defendants.

THIS MATTER having come on for hearing on October 5, 2018 on the Motion to Dismiss filed by Defendant National Default Servicing Corporation and joined by Defendants Alyssa McDermott, Wedgewood Inc., and Breckenridge Property Fund 2016 LLC, the Plaintiffs having opposed the motion to dismiss, the Court having reviewed the papers and pleadings on file herein and having heard the arguments of the parties, the Court being fully advised in the premises and good cause appearing therefore the Court makes the following findings of fact and conclusions of law, and the Court orders as follows:

FINDINGS OF FACT

1. This action concerns real property commonly known as 1740 Autumn Glen Street, Fernley, Nevada, 89408, Assessor's Parcel Number 022-052-02 (hereinafter the "Property").
2. The instant state court lawsuit, commenced on June 8, 2018, is the second lawsuit filed by the Plaintiffs regarding the foreclosure on the Property.
3. The first lawsuit was filed on January 2, 2018 against NDSC, JPMorgan Chase Bank, N.A., Mortgage Electronic Registration Systems, Inc., and Washington Mutual Bank, N.A. in the United States District Court for the District of Nevada (3:18-cv-00001-MMD-WGC).
4. On May 17, 2018, Judge Miranda Du entered an order dismissing the first lawsuit and its attendant 15 causes of action with prejudice. On May 24, 2018, Plaintiffs' appealed Judge Du's Order to the Ninth Circuit. Preliminary Injunction was denied by Judge Du's Order and no stay of the non-judicial foreclosure was issued by any Court pending appeal.
5. Plaintiffs' state court Complaint filed in the instant lawsuit contains the same core causes of action that were alleged in the first, federal complaint which was dismissed by Judge Du.
6. However, Plaintiffs' state court Complaint does contain an allegation of unlawful foreclosure on procedural grounds that was not addressed in the first lawsuit or Judge Du's order dismissing the Complaint.

CONCLUSIONS OF LAW

1. Judge Du's Order dismissing the Complaint with prejudice in Case No: 3:18-cv-00001-MMD-WGC involved the same issues alleged in this instant action (except for the allegation of unlawful foreclosure based on procedural grounds), involved the same parties, and the decision was on the merits and final. All the required elements of res judicata have been met and therefore res judicata does apply in this matter.

- 1 2. Plaintiffs' Complaint appears to contain an allegation regarding the procedural notice of the
2 foreclosure which was not addressed in Judge Du's order of dismissal. The Court finds this
3 potential claim as a basis to allow the Plaintiffs' action to survive for the purpose of amending the
4 complaint.
5
6 3. Plaintiffs' Complaint is dismissed against all Defendants without prejudice.
7
8 4. Plaintiffs shall have 20 days to file and serve an Amended Complaint.

9 **ORDER AND JUDGMENT**

10 THE COURT HEREBY ORDERS, ADJUDGES, AND DECREES that Defendant National
11 Default Servicing Corporation's Motion to Dismiss is GRANTED.

12 THE COURT FURTHER ORDERS, ADJUDGES, AND DECREES that Plaintiffs' entire
13 Complaint against all Defendants is dismissed without prejudice with the ability to file an Amended
14 Complaint within 20 days of the date of this Order.
15

16 DATED this 23rd day of October, 2018.

17
18
19 
20 DISTRICT COURT JUDGE
21
22
23
24
25
26
27
28

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

1972

FILED

2019 JAN 18 AM 11:06

TANYA SCHEIN
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT

Kathy Thomas DEPUTY

Case No. 18-CV-00663

Dept. No. I

THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF LYON

LEO KRAMER, AUDREY KRAMER

SETTING MEMO

Plaintiffs,

vs.

NATIONAL DEFAULT SERVICING
CORPORATION, ALYSSA MC
DERMOTT, WEDGWOOD INC.,
BREKENRIDGE PROPERTY FUND 2016
LLC, and DOES I THRU 50 INCLUSIVE,

Defendants.

The above entitled matter is set for Hearing on Motion to Dismiss, on the **22nd day of February, 2019, at 10:00 a.m.**

Should you want the matter reported contact Kathy Terhune at (775) 887-0737 or Shelly Loomis at (775) 882-5322 to schedule court reporting services.

DATED: This 18th day of January, 2019.

[Signature]
HON. JOHN P. SCHLEGELMILCH
DISTRICT COURT JUDGE

1 Certificate of Mailing

2 I hereby certify that I, Anne Rossi, am an employee of the Third Judicial District Court,
3 and that on this date pursuant to NRCP 5(b), a true copy of the foregoing document was mailed
4 at Yerington, Nevada addressed to:

5 Leo Kramer
6 Audrey Kramer
7 2364 Redwood Road
8 Hercules, CA 94547

9 Matthew K. Schriever, Esq.
10 HUTCHISON & STEFFEN, PLLC
11 10080 West Alta Drive, Suite 200
12 Las Vegas, NV 89145

13 Casey J. Nelson, Esq.
14 WEDGEWOOD, LLC
15 2320 Potosi Street, Suite 130
16 Las Vegas, NV 89146

17 Kevin S. Soderstrom, Esq.
18 TIFFANY & BOSCO, P.A.
19 10100 W. Charleston Blvd., Ste. 220
20 Las Vegas, NV 89135

21 Dated this 18th day of January, 2019.

22 Anne Rossi
23 Employee of Hon. John P. Schlegelmilch
24
25
26
27
28

FILED

2019 FEB -1 AM 11:52

TANYA SCEIRINE
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT

Andrea Andersen DEPUTY

EXMT

Leo Kramer & Audrey Kramer

(Your name)

2364 Redwood Road

(Address)

Hercules, CA 94547

(City, state, zip code)

510-708-9100

(Telephone number)

audreykramer55@yahoo.com

(Fax/E-mail address)

☒ Plaintiff/ ☐ Defendant, In Proper Person

☐ Other (insert party designation) _____, In Proper Person

THIRD JUDICIAL DISTRICT COURT
LYON COUNTY, NEVADA

LEO KRAMER, AUDREY KRAMER

Plaintiff,

-vs-

NATIONAL DEFAULT SERVICING CORP, BRECKENRIDGE

WEDGEWOOD, ALYSSA MC DERMOTT

Defendant.

CASE NO. 18-CV-00663

DEPT. NO. 1

EX PARTE MOTION FOR CONTINUANCE

COMES NOW, the ☒ Plaintiff ☐ Defendant in the above-entitled matter and moves this Honorable Court for an Order granting a continuance. This motion is brought in good faith and is based on the following:

1. There is a hearing currently scheduled in the above-referenced case on

(insert date of hearing) 2-22-19 at (insert time of hearing) 10:00 ☒ am / ☐ pm.

2. The other party will not agree to continue the hearing date because (explain why the other party will not agree to change the court date):

We reached out to counsel for National Default Servicing Corp. and to counsel for

Breckenridge Property Fund, Wedgewood Inc. and Alyssa McDermott via email--both

attorneys were non-responsive to our request for continuance.

3. I am requesting a change to the court date because *(explain why you want to change the court date)*:

We had a recent death in our family and we will be out of state
for the planning and attendance of the funeral, which conflicts with
the upcoming hearing of 2-22-10.

4. If granted, I ask the court to reschedule the court date to *(give a month/week/date that you suggest for the
new court date, e.g. "after April 1, 20XX" or "any other Monday or Wednesday after October 15, 20XX")*:

We will be available any time after March 11, 2019.

I respectfully request the Court continue the court date as requested above, and any other
relief as the Court finds appropriate.

DATED THIS 1 day of 30, 2019.

Audrey Kramer
(Signature)
AUDREY KRAMER
(Your name)

DECLARATION IN SUPPORT OF MOTION

I declare under penalty of perjury under the law of the State of Nevada that the foregoing
and following are true and correct:

I am the Movant in the above-entitled action. I have read the foregoing Ex Parte Motion
for Continuance, and know the contents thereof. The Motion is true of my own knowledge
except as to those matters based on information and belief, and as to those matters, I believe
them to be true.

DATED THIS 31 day of January, 2019.

Audrey Kramer
(Signature)
AUDREY KRAMER
(Your name)

SERVICE LIST

Mathew Dayton
John T. Steffen
Mathew K. Schriever
Hutchison & Steffen
1008 West Alta Drive, Suite 200
Las Vegas, NV 89145

Casey J. Nelson
Wedgewood, LLC
2320 Potosi Street, Suite 130
Las Vegas, Nevada 89146

Attorneys for Defendants,
ALYSSA MC DERMOTT, WEDGWOOD INC., BRECKENRIDGE PROPERTY FUND 2016
LLC

Kevin S. Soderstrom
Tiffany & Bosco, P.A.
10100 W. Charleston Boulevard, Ste.220
Las Vegas, NV 89135

Attorneys for Defendant,
NATIONAL DEFAULT SERVICING CORPORATION

FILED

2019 FEB -4 PM 1:55

TANYA SCHEWINE
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT

Victoria Toranzo DEPUTY

1 LEO KRAMER
2 AUDREY KRAMER
3 2364 REDWOOD ROAD
4 HERCULES, CA 94547
5
6 PLAINTIFFS IN PRO PER

THIRD JUDICIAL DISTRICT COURT
LYON COUNTY, NEVADA

9
10 LEO KRAMER,
11 AUDREY KRAMER,

12 Plaintiffs,

13 vs.

14
15
16 NATIONAL DEFAULT SERVICING
17 CORPORATION, ALYSSA MC DERMOTT,
18 WEDGWOOD INC., BRECKENRIDGE
19 PROPERTY FUND 2016 LLC, and DOES 1
20 THROUGH 50 INCLUSIVE,

21 Defendants.
22
23
24
25
26
27
28

Case No.: 18-CV-00663

PLAINTIFFS' OPPOSITION TO
DEFENDANT, NATIONAL DEFAULT
SERVICING CORPORATION'S MOTION
TO DISMISS PLAINTIFFS' FIRST
AMENDED COMPLAINT; DECLARATION
OF AUDREY KRAMER FILED
CONCURRENT HEREWITH;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF

Date: TBA
Time: TBA
Dept: I

MEMORANDUM OF POINTS AND AUTHORITIES

Plaintiffs, Leo Kramer and Audrey Kramer, ("Plaintiffs"), submit the following memorandum of points and authority opposing the motion to dismiss Plaintiffs' First Amended Complaint by Defendant, NATIONAL DEFAULT SERVICING CORPORATION, and state as follows:

I INTRODUCTION

Defendant, National Default Servicing Corporation's motion to dismiss Plaintiffs' First Amended Complaint on the notion of *res judicata* is unconscionable and is brought in bad faith. The issue regarding *res-judicata* was addressed by this Honorable Court when the Court granted Plaintiffs leave to amend their Complaint. In addressing the issue of *res judicata*, this Honorable Court states:

Plaintiffs' Complaint appears to contain an allegation regarding the procedural notice of the foreclosure which was not addressed in Judge Du's order of dismissal. The Court finds this potential claim as a basis to allow the Plaintiffs' action to survive for the purposes of amending the complaint.

p. 3 ¶ 2 of the conclusion of law in the Court's order. *See also* (Plaintiffs' Exhibit "A", the Court order), attached herein in this opposition to dismiss Plaintiffs' First Amended Complaint. Plaintiffs' First Amended Complaint is premised on the lack of procedural notice of the Notice of Default. National Default Servicing Corporation failed to comply with Nevada law requiring Notice to homeowner after the recording Notice of Default. This issue was not addressed in Judge Du's order of dismissal as observed by

1 this Honorable Court. As such, Defendant, National Default Servicing Corporation's *res*
2 *judicata* argument should be rejected in its entirety.

3 Furthermore, Plaintiffs' causes of action in their First Amended Complaint are
4 directly attributed to the fact that Plaintiffs' property was unlawfully foreclosed because
5 Plaintiffs were not properly served with Notice of Default ("NOD"), making the NOD
6 defective and VOID on its face, which in turn rendered the Notice of Trustee Sale
7 (herein after the "NOTS") also VOID on its face, which further rendered the Trustee's
8 Deed upon Sale (herein after the "TDUS") of Plaintiffs' property also VOID on its face;
9 thus, supporting the fact that Defendant's Breckenridge Property Fund 2016 LLC and
10 Wedgewood Inc. can not and are not bona fide encumbrancers of Plaintiffs' subject
11 property. If the wrongfully recorded substitution of trustee (SOT), Notice of Default
12 (NOD), and Notice of trustee's sale (NTS), Trustee's Deed Upon Sale, (TDUS),
13 instruments are left outstanding, Plaintiff will continue to suffer loss and damages.
14 Plaintiff therefore seeks cancellation of the above mentioned recorded instruments.

15 Additionally, Nevada law requires the servicer or owner of the loan to send the
16 borrower a notice that contains information about the account, including the total
17 amount needed to cure the default, and includes information about foreclosure
18 prevention alternatives, among other things. (Nev. Rev. Stat. § 107.500). Plaintiffs
19 contend the neither servicer or owner of the loan nor Washington Mutual or JPMorgan
20 Chase claimed to be owner of certain revolving line of credit sent Plaintiffs a notice that
21
22
23
24
25
26
27
28

1 contains information about the account, including the total amount needed to cure the
2 default, or information about foreclosure prevention alternatives, among other things.

3 Plaintiffs contend that, National Default Servicing Corporation ("NDSC") failed
4 to give Plaintiffs notice of the Notice of Default as required by Nevada Law.

5
6 Additionally, when Defendant recorded the Notice of default and subsequently
7 conducted the non-judicial foreclosure of Plaintiffs' real property, no breach of
8 condition of Mortgage Note or failure of performance under the Mortgage Note existed
9 that would have authorized such action. See, *Collins v. Union Federal Sav. & Loan*
10 *Ass'n, 662 P.2d 610, 623 (Nev. 1983)*. Furthermore, no breach of condition of the
11 Revolving Line of Credit with Washington Mutual Bank or with JPMorgan Chase Bank
12 existed that would have authorized National Default Servicing Corporation to file the
13 Notice of Default under Plaintiffs' Note and Deed of Trust.

14
15 Furthermore, there was no recorded Assignment of Deed of Trust that substituted
16 National Default Servicing Corporation as a Trustee when National Default Servicing
17 Corporation recorded the Notice of Trustee's Sale.

18
19 Plaintiffs were NOT given Notice of Default prior to conducting the non-judicial
20 foreclosure of Plaintiffs' real property. Further, in conducting the Sale of Plaintiffs' real
21 property, National defendant failed to give Plaintiffs Notice of the Default and failed to
22 adhere to Nev. Rev. Stat. § 107.090. which requires that a copy of the Notice of Default
23 (NOD) must be sent to each person with an interest or claimed interest in the property
24 by registered or certified mail within ten days after the NOD is recorded. (Nev. Rev.
25
26
27
28

1 Stat. § 107.090). Furthermore, Plaintiffs contend that the service of this Notice of
2 Default failed to comply with the requirements of Nevada law, which requires the
3 servicer or owner of the loan to send the borrower a notice that contains information
4 about the account, including the total amount needed to cure the default, and includes
5 information about foreclosure prevention alternatives, among other things. (Nev. Rev.
6 Stat. § 107.500). As such, the alleged sale of Plaintiffs' real property was unlawful and
7 void *ab initio* and the purported sale of Plaintiffs' real property has no enforceable legal
8 status and any legal document that is taken to have conveyed or assigned any interest in
9 Plaintiffs' real property to Defendants, Alyssa Mc Dermott, Wedgwood Inc., or
10 Breckenridge Property Fund 2016 LLC is void.
11

12
13
14 At all times relevant to this Complaint, Plaintiff maintained a residence and/or
15 mailing address known or discoverable by National Default Servicing Corporation and
16 the remaining Defendants, yet National Default Servicing Corporation (NDSC) failed to
17 give Plaintiffs Notice of the Notice of default and election to sell Plaintiff's real
18 property by certified mail, return receipt requested, to the Plaintiffs, at their last known
19 address, on the date the notice is recorded in the county where the property is located as
20 required by Nevada Law. Plaintiffs offer in support of this fact monthly bank
21 statements they received from JPMorgan Chase Bank. Given that Chase Bank hires and
22 pays NDSC to carry out their fraudulent foreclosures, NDSC clearly knew Plaintiffs'
23 mailing address. *See also* (Plaintiffs' **Exhibit "B"**, the Bank Statements)
24
25
26
27
28

II STATEMENT OF FACTS

The instant lawsuit in this Hon. Court was filed by Plaintiffs on June 18, 2018, after their real property was unlawfully and wrongfully foreclosed and later sold at an unlawful non-judicial foreclosure sale on May 18, 2018.

Plaintiffs previously filed a complaint with the US District Court for the District of Nevada on January 2, 2018. On May 17, 2018, without giving Plaintiffs leave to amend their complaint or the right to discovery under the law, the US District Court dismissed Plaintiffs' complaint with prejudice.

Plaintiffs then timely filed an appeal with the 9th Circuit Court of Appeals, San Francisco, Case # 18-1595. *See also* (Plaintiffs' **Exhibit "C"** Notice of Appeal) Given Plaintiffs were denied their right of due process, Plaintiffs firmly believe they will ultimately prevail on appeal.

In the instant case, at a hearing on Oct. 5, 2018, with the Hon. Judge Schlegelmilch presiding, Plaintiffs alerted Judge Schlegelmilch to the fact that Plaintiffs were not properly served by Defendants with the NOD according to Nevada Law (NRS 107.090). After the Hon. Judge Schlegelmilch confirmed that Plaintiffs had introduced this fact in their initial complaint filed with the 3rd Judicial District Court in Yerington, NV on June 18, 2018, and after further confirming that Judge Miranda Du of the United States District Court for the District of Nevada had not addressed this same issue in her ruling on May 17, 2018, Judge Schlegelmilch stated Plaintiffs could bring this issue before his court as a different cause of action.

1 On Oct. 24, 2018, Judge Schlegelmilch entered his ruling to dismiss without
2 prejudice Plaintiffs' initial complaint filed on June 18, 2018, and granted Plaintiffs 20
3 days in which to file an amended complaint. Plaintiffs then timely mailed their 1st
4 Amended Complaint on Oct. 25, 2018, for the court to file. *See also (Plaintiffs' Exhibit*
5 *"D" Court Docket)*

7 Subsequently, NDSC filed a Motion to Dismiss Plaintiffs' 1st Amended
8 Complaint, which was mailed to Plaintiffs utilizing NDSC's Pitney Bows self-stamping
9 system showing a postmark of 1/14, 2019, which Plaintiffs received (9) days later on
10 January 22, 2019. Plaintiffs brought this problematic mailing issue with Defendants to
11 the court's attention (Oct. 5, 2018) and again via Plaintiff, Audrey Kramer's affidavit on
12 (Jan. 3, 2019) explaining to the court what appears to be intentional ongoing
13 gamesmanship causing mailing delays in an effort to thwart and cheat Plaintiffs of
14 valuable time to respond. This devious behavior is unfair, unconscionable and
15 unprofessional. When this was brought to the court's attention during the Oct. 5, 2019
16 hearing, NDSC did not deny or defend Plaintiffs' assertion. Plaintiffs offer two
17 envelopes mailed by NDSC showing self-stamped post marks, one of which was caught
18 and correctly date stamped by the post office. *See also (Plaintiffs' Exhibit "E" Tiffany*
19 *& Bosco Self-stamped Envelopes)*

25 On or about June 2, 2005, Leo Kramer and Audrey Kramer, the Plaintiffs', as
26 husband and wife, as joint tenants, purchased property located at 1740 Autumn Glenn
27 Street in Fernley Nevada, County of Lyon (APN 022-052-02). The aforementioned
28

1 property is the subject of Plaintiffs' Complaint. The purchase price of the subject
2 property was \$204,448, whereby, Plaintiffs' made a down payment of approximately
3 33% (\$67,948) and obtained a mortgage loan from Paul Financial, LLC in the amount
4 of \$163,500, to complete the purchase transaction. Paul Financial, LLC issued
5 Plaintiffs a Deed of Trust accordingly.
6

7 On or about April 4, 2008, Plaintiffs later obtained a Revolving Line of Credit
8 through Washington Mutual Bank (WaMu) with a maximum credit limit of \$176,000.
9 Plaintiffs at no time ever accessed the maximum credit limit of \$176,000, which was
10 contracted in accordance with Plaintiffs' Credit Agreement Contract with WaMu.
11 Within 6 months after Plaintiffs entered into the Credit Agreement with WaMu, the
12 Credit Agreement Contract was BREACHED by WaMu because Plaintiffs were unable
13 to use the maximum credit limit of \$176,000. As such, Plaintiffs were never at any time
14 indebted to WaMu for \$176,000. In fact, WaMu breached the revolving line
15 Agreement because Plaintiffs were unable to access the \$176,000 allowable by the
16 Revolving line of Credit Agreement. WaMu Bank became a defunct lending institution
17 upon the FDIC taking receivership of WaMu on Sept 25, 2008. Succinctly, the Credit
18 Agreement Contract Plaintiffs had with WaMu became a '**Breached of Contract**'
19 because WaMu failed to perform its obligation under the revolving line of credit
20 agreement.
21
22
23
24
25

26 On or about October 5, 2017, unknowingly to Plaintiffs at the time, a Notice of
27 Default and Election to Sell Under revolving line of credit was recorded on the Property
28

1 by Defendant, NATIONAL DEFAULT SERVICING CORPORATION. During the
2 time NATIONAL DEFAULT SERVICING CORPORATION filed the NOD there was
3 no assignment of deed of trust which provided NATIONAL DEFAULT SERVICING
4 CORPORATION with standing to record the Notice of Default.
5

6 7 III 8 ARGUMENT

9 A. THE COURT SHOULD DENY DEFENDANT, NATIONAL DEFAULT
10 SERVICING CORPORATION'S MOTION TO DISMISS BECAUSE
11 PLAINTIFFS' FIRST AMENDED COMPLAINT HAS SET FORTH
12 ALLEGATIONS SUFFICIENT TO MAKE OUT THE ELEMENTS OF A
13 RIGHT TO RELIEF

14 1. National Default Servicing Corporation failed to served Plaintiffs the Notice of
15 Default as required by Nevada Law

16 The test for determining whether the allegations of a complaint are sufficient to
17 assert a claim for relief is whether the allegations give fair notice of the nature and basis
18 of a legally sufficient claim and the relief requested. *Brelant v. Preferred Equities*
19 *Corp.*, 109 Nev. 842, 858 P.2d 1258 (1993). In the instant case, Plaintiffs' First
20 Amended Complaint contains an allegation regarding defect and the lack of the
21 procedural notice that is mandated by Nevada law after the recording of the Notice of
22 Default. Furthermore, Plaintiffs' First Amended Complaint has given NATIONAL
23 DEFAULT SERVICING CORPORATION fair notice that the non-judicial foreclosure
24 of Plaintiffs' real property was unlawful because NATIONAL DEFAULT SERVICING
25 CORPORATION did not serve Plaintiff with the Notice of Default ("NOD"), making
26 the NOD defective and VOID on its face, which in turn rendered the Notice of Trustee
27
28

1 Sale (herein after the "NOTS") also VOID on its face, which further rendered the
2 Trustee's Deed upon Sale (herein after the "TDUS") of Plaintiffs' property also VOID
3 on its face; thus, supporting the fact that Defendant's Breckenridge Property Fund 2016
4 LLC and Wedgewood Inc. can not and are not bona fide encumbrancers of Plaintiffs'
5 subject property. If the wrongfully recorded substitution of trustee (SOT), Notice of
6 Default (NOD), and Notice of trustee's sale (NTS), Trustee's Deed Upon Sale, (TDUS),
7 instruments are left outstanding, Plaintiff will continue to suffer loss and damages.
8

9
10 Plaintiffs contend that NATIONAL DEFAULT SERVICING CORPORATION's
11 Notice of Default failed to comply with the requirements of Nevada law, which requires
12 the servicer or owner of the loan to send the borrower a notice that contains information
13 about the account, including the total amount needed to cure the default, and includes
14 information about foreclosure prevention alternatives, among other things. (Nev. Rev.
15 Stat. § 107.500). Further, the Notice of Default failed to comply with the requirements
16 of Nevada law, which requires that a copy of the NOD must be sent to each person who
17 has a recorded request for a copy and each person with an interest or claimed interest in
18 the property by registered or certified mail within ten days after the NOD is recorded.
19 (Nev. Rev. Stat. § 107.090).
20
21

22
23 In reviewing a motion to dismiss for failure to state a claim, a court must
24 determine whether or not the challenged pleading sets forth allegations sufficient to
25 make out the elements of a right to relief. *Edgar v. Wagner*, 101 Nev. 226, 227, 699
26 P.2d 110,111 (1985). A claimant must set forth factual allegations, either direct or
27
28

1 inferential, regarding each material element necessary to sustain recovery under an
2 actionable legal theory to successfully oppose a motion to dismiss for failure to state a
3 claim upon which relief may be granted. See, *Remco Distributors, Inc., v. Oreck Corp.*,
4 814 F.Supp. 171, 174, (D. Mass. 1992).
5

6 A pleading must contain a "short and plain statement of claim showing that the
7 pleader is entitled to relief." The complaint must give a defendant "fair notice" of what
8 the claim is and the grounds upon which it rests. *Bell Atlantic v. Twombly*, 550 U.S.
9 544, 555 (2007). In the case at bar, it is irrefutable that Plaintiffs' complaint has given
10 National Default Servicing Corporation as well as the remaining Defendant(s) "fair
11 notice" of what Plaintiffs' claim is and the grounds upon which it rests. Plaintiffs were
12 not and are not in breach of any mortgage note and Defendants have no standing to
13 cause the non-judicial foreclosure of Plaintiffs' real property and retirement home.
14
15

16 Further, Breckenridge Property Fund 2016 LLC is not a bona fide purchaser of
17 Plaintiffs' real property because Breckenridge Property Fund 2016 LLC was aware of
18 the dispute and lawsuit pertaining to the Plaintiffs' real property commonly described
19 as: 1740 Autumn Glenn Street in Fernley Nevada, County of Lyon (APN 022-052-02).
20 Furthermore, the Cashier Checks obtained on May 10, 2018, which Alyssa McDermott,
21 Wedgwood Inc., and Breckenridge sent to Plaintiffs and Plaintiffs' tenant, purported to
22 be part of the fund allegedly used to purchase Plaintiffs' real property, was issued prior
23 to the actual Unlawful Trustee Sale of Plaintiffs' property on May 18, 2018, further
24 demonstrating that, Alyssa McDermott, Wedgwood Inc., and Breckenridge, are insiders
25
26
27
28

1 and not innocent third parties as Attorneys for the Defendants willfully and wantonly
2 misrepresented to this Honorable Court.

3 In reviewing a motion to dismiss for failure to state a claim, a court must
4 determine whether or not the challenged pleading sets forth allegations sufficient to
5 make out the elements of a right to relief. *Edgar v. Wagner*, 101 Nev. 226, 227, 699
6 P.2d 110, 111 (1985). A claim must set forth factual allegations, either direct or
7 inferential, regarding each material element necessary to sustain recovery under an
8 actionable legal theory to successfully oppose a motion to dismiss for failure to state a
9 claim upon which relief may be granted. See, *Remco Distributors, Inc., v. Oreck Corp.*,
10 814 F.Supp. 171, 174, (D. Mass. 1992). "The test for determining whether the
11 allegations of a complaint are sufficient to assert a claim for relief is whether the
12 allegations give fair notice of the nature and basis of a legally sufficient claim and the
13 relief requested. " *Brelant v. Preferred Equities Corp.*, 109 Nev. 842, 858 P.2d 1258
14 (1993). Here, it is irrefutable that, in the present case, Plaintiffs, Audrey Kramer and
15 Leo Kramer have met their burden under Nevada law and *stare decisis* in the state of
16 Nevada including decisions of the United States Supreme Court.
17
18
19
20
21

22
23 B. PLAINTIFFS' CAUSE OF ACTION FOR UNLAWFUL OR WRONGFUL
24 NON-JUDICIAL FORECLOSURE IS NOT BARRED BY THE DOCTRINE OF
25 RES JUDICATA BECAUSE HON. JUDGE SCHLEGELMILCH HAS FOUND
26 THAT THERE IS POTENTIAL CLAIM AS A BASIS TO ALLOW
27 PLAINTIFFS' ACTION TO SURVIVE FOR THE PURPOSES OF AMENDING
28 THE COMPLAINT

1 1. Plaintiffs' First Amended Complaint contain an allegation regarding the
2 procedural notice of the foreclosure which was not addressed in Judge Du's order
3 of dismissal.

4 Plaintiffs' first cause of action for unlawful foreclosure against the defendants is
5 adequately pled. Plaintiffs were not and are not in breach of any mortgage note and
6 Defendant, NATIONAL DEFAULT SERVICING CORPORATION has no standing to
7 cause the non-judicial foreclosure of Plaintiffs' real property and retirement home.
8

9 In reviewing a motion to dismiss for failure to state a claim, a court must determine
10 whether or not the challenged pleading sets forth allegations sufficient to make out the
11 elements of a right to relief. *Edgar v. Wagner*, 101 Nev. 226, 227, 699 P.2d 110,111
12 (1985). The test for determining whether the allegations of a complaint are sufficient
13 to assert a claim for relief is whether the allegations give fair notice of the nature and
14 basis of a legally sufficient claim and the relief requested." *Breliant v. Preferred*
15 *Equities Corp.*, 109 Nev. 842, 858 P.2d 1258 (1993).
16
17
18

19 A pleading must contain a "short and plain statement of claim showing that the
20 pleader is entitled to relief." The complaint must give a defendant "fair notice" of what
21 the claim is and the grounds upon which it rests. *Bell Atlantic v. Twombly*, 550 U.S.
22 544, 555 (2007). In the case at bar, it is irrefutable that Plaintiffs' complaint has
23 given National Default Servicing Corporation as well as the remaining Defendant(s)
24 "fair notice" of what Plaintiffs' claim is and the grounds upon which it rests. Plaintiffs
25 were not and are not in breach of any mortgage note and Defendants have no standing
26 to cause the non-judicial foreclosure of Plaintiffs' real property and retirement home.
27
28

1 Further, National Default Servicing Corporation failed to serve Plaintiffs with the
2 Notice of Default.

3 **C. PLAINTIFFS' SECOND CAUSE OF ACTION FOR QUIET TITLE AS A**
4 **DIRECT RESULT OF THE UNLAWFUL FORECLOSURE IS**
5 **ADEQUATELY PLED**

6
7 On or about October 5, 2017, unbeknownst to Plaintiffs, a Notice of Default and
8 Election to Sell Under revolving line of credit was recorded on the Property by
9 Defendant, National Default Servicing Corporation. Prior to and after recording the
10 Notice of Default under Plaintiffs' Note and Deed of Trust, National Default Servicing
11 Corporation failed to give Plaintiffs Notice as required by Nevada Law. Furthermore,
12 during the time National Default Servicing Corporation filed the Notice of Default,
13 there was no assignment of deed of trust which provided National Default Servicing
14 Corporation with standing to record the Notice of Default. Furthermore, National
15 Default Servicing Corporation failed to give Plaintiffs Notice of the Notice of Default as
16 required by Nevada law.

17
18 In Nevada, a quiet title action may be brought "by any person against another
19 who claims an estate or interest in real property, adverse to the person bringing the
20 action, for the purpose of determining such adverse claim." NEV. REV. STAT. §
21 40.010. "In a quiet title action, the burden of proof rests with the plaintiff to prove good
22 title in himself." *Brelant v. Preferred Equities Corp.*, 918 P.2d 314, 318 (Nev. 1996).
23 "Additionally, an action to quiet title requires a plaintiff to allege that she has paid any
24 debt owed on the property." *Lalwani v. Wells Fargo Bank, N.A.*, No. 2-11-cv-00084,
25
26
27
28

1 2011 WL 4574338, at *3 (D. Nev. Sep. 30, 2011) (citing Ferguson v. Avelo Mortg.,
2 LLC, No. B223447, 2011 WL 2139143, at *2 (Cal.App.2d June 1, 2011)).

3 Here, Plaintiffs are the legal and beneficial owners of the real property which is the
4 subject of the illegal, fraudulent, and willful oppressive non-judicial foreclosure sale by
5 the defendants and each of them who are now claiming *interest in real property*,
6 *adverse to Plaintiffs*.
7

8 Accordingly, in the case at bar, it is irrefutable that Plaintiffs' first amended
9 complaint has given National Default Servicing Corporation as well as the remaining
10 Defendant(s) "fair notice" of what Plaintiffs' claim is and the grounds upon which it
11 rests. As such, National Default Servicing Corporation's Motion to dismiss Plaintiffs'
12 First Amended complaint should be denied in its entirety because Plaintiffs' complaint
13 and cause of action for quiet title has met the standard set forth in Rule 8. Additionally,
14 Plaintiffs' Second cause of action for Quiet Title has given National Default Servicing
15 Corporation "fair notice" of what Plaintiffs' claim is and the grounds upon which
16 Plaintiffs' claim against National Default Servicing Corporation rests.
17
18
19
20

21 **D. PLAINTIFFS' THIRD CAUSE OF ACTION FOR SLANDER OF**
22 **TITLE AS A DIRECT RESULT OF THE UNLAWFUL**
23 **FORECLOSURE IS ADEQUATELY PLED**

24 In Sumner Hill Homeowners' Association v. Rio Mesa Holdings, LLC, 205 Cal.
25 App. 4th 999 (2012), the court observed: "The elements of the tort are (1) a publication,
26 (2) without privilege or justification, (3) falsity, and (4) direct pecuniary loss." Id. at
27 1030. Any claim by Defendants that some privilege attaches to the recording of the
28

1 Notices of Default and Notice of Sale is conditional at best and cannot be resolved on
2 demurrer. *Gudger v. Menton*, 21 Cal. 2d 537, 545 (1943). Here, the Notice of default,
3 notice of Trustee's sale and the Trustee's Deed upon sale were defective and unlawfully
4 executed and unduly put cloud on the Title of Plaintiffs' real property. As such, any
5 subsequent trustee's sale and the trustee's deed upon sale are void and unenforceable.
6

7 Defendant, National Default Servicing Corporation recorded Notice of Default,
8 Notice of Trustee's sale and Trustee's deed upon sale claiming an interest in or a lien or
9 encumbrance against Plaintiffs' real property, knowing or having reason to know that
10 the document is forged or groundless, or contains a material misstatement or false claim
11 in contravention of NRS 205.395. Further, at the time of foreclosure or exercise of the
12 power of sale of Plaintiffs' real property, no breach of condition or failure of
13 performance existed that would have authorized such action. See, *Collins v. Union*
14 *Federal Sav. & Loan Ass'n*, 662 P.2d 610, 623 (Nev. 1983). Accordingly, Plaintiffs'
15 Third cause of action for Slander of Title has given National Default Servicing
16 Corporation "fair notice" of what Plaintiffs' claim is and the grounds upon which
17 Plaintiffs' claim against National Default Servicing Corporation rests.
18
19
20
21

22
23 **E. PLAINTIFFS' FOURTH CAUSE OF ACTION FOR DECLARATORY**
24 **RELIEF IS ADEQUATELY PLED**

25 An actual controversy has arisen and now exists between Plaintiffs and
26 Defendants concerning their respective rights and duties regarding the Note and Trust
27
28

1 Deed. Plaintiffs contend that pursuant to the Loans, Defendants do not have authority to
2 foreclose upon and sell the Property.

3 Defendant, National Default Servicing Corporation recorded Notice of Default,
4 Notice of Trustee's sale and Trustee's deed upon sale claiming an interest in or a lien or
5 encumbrance against Plaintiffs' real property, knowing or having reason to know that
6 the document is forged or groundless, or contains a material misstatement or false claim
7 in contravention of NRS 205.395. Further, at the time of foreclosure or exercise of the
8 power of sale of Plaintiffs' real property, no breach of condition or failure of
9 performance existed that would have authorized such action. See, *Collins v. Union*
10 *Federal Sav. & Loan Ass'n*, 662 P.2d 610, 623 (Nev. 1983). Additionally, National
11 Default Servicing Corporation failed to provide Plaintiffs with Notice of the Notice of
12 Default under Plaintiffs' Note and Deed of Trust.

13 Plaintiffs therefore request a judicial determination of the rights, obligations and
14 interest of the parties with regard to the Property, and such determination is necessary
15 and appropriate at this time under the circumstances so that all parties may ascertain and
16 know their rights, obligations and interests with regard to the Property. Plaintiffs
17 request a determination of the validity of the Trust Deeds as of the date the Notes were
18 assigned without a concurrent assignment of the underlying Trust Deeds. Plaintiffs
19 request a determination of the validity of the NOD (Notice of Default). Plaintiffs
20 request a determination of whether any Defendants have authority to foreclose on the
21 Property. Plaintiffs' fourth cause of action for Declaratory Relief has given National
22
23
24
25
26
27
28

1 Default Servicing Corporation "fair notice" of what Plaintiffs' claim is and the grounds
2 upon which Plaintiffs' claim against National Default Servicing Corporation rests.
3

4 **F. PLAINTIFFS' FIFTH CAUSE OF ACTION FOR CANCELLATION OF**
5 **WRITTEN INSTRUMENTS- SOT, NOD, NTS, AND TDUS IS**
6 **ADEQUATELY PLED**

7 Plaintiffs contend that if the wrongfully recorded substitution of trustee (SOT),
8 Notice of Default (NOD), and Notice of trustee's sale (NTS), Trustee's Deed Upon
9 Sale, (TDUS), instruments are left outstanding, Plaintiff will continue to suffer loss and
10 damages. Plaintiff therefore seeks cancellation of the above mentioned recorded
11 instruments. Plaintiffs contend that NATIONAL DEFAULT SERVICING
12 CORPORATION, acted willfully and with a conscious disregard for Plaintiffs' rights
13 and with a specific intent to injure Plaintiff, by causing the above documents to be
14 prepared and recorded without a factual or legal basis for doing so. On information and
15 belief, these acts by Defendants constitute willful oppression and malice and in
16 violation ,Nev. Rev. Stat. § 107.500; Nev. Rev. Stat. § 107.090; NRS 205.395 and other
17 Nevada Foreclosure Laws by virtue of Defendants' willful and wrongful conduct as
18 herein alleged above, Plaintiffs are entitled to general and special damages according to
19 proof at trial, but not less than \$1,065,050. 00, as well as punitive and exemplary
20 damages as determined by this Court.
21
22
23
24
25

26 Accordingly, Plaintiffs' fifth cause of action for Cancellation of Written
27 Instruments- SOT, NOD, NTS, and TDUS has given National Default Servicing
28

1 Corporation "fair notice" of what Plaintiffs' claim is and the grounds upon which
2 Plaintiffs' claim against National Default Servicing Corporation rests.

3 Generally, a complaint need only give "fair notice of what the plaintiff's claim is
4 and the grounds upon which it rests." In re Delorean Motor Co. v. Weitzman, 991 F.2d
5 1236, 1240 (6th Cir.1993) (quoting Conley, 355 U.S. at 47). The fundamental purpose
6 of pleadings under Nevada Law and Federal Rules of Civil Procedure is to give
7 adequate notice to the parties of each side's claims and to allow cases to be decided on
8 the merits after an adequate development of the facts.
9
10
11
12

13 IV
14 CONCLUSION

15 For each of the foregoing reasons, Plaintiffs pray this Court deny Defendant,
16 NATIONAL DEFAULT SERVICING CORPORATION's motion to dismiss Plaintiffs'
17 First Amended Complaint in its entirety.
18

19
20 Date: 1/31/2019

Date: 1/31/2019

21
22 Leo Kramer
23 Leo Kramer, Pro se
24

25 Audrey Kramer
26 Audrey Kramer, Pro se
27
28

1 LEO KRAMER
2 AUDREY KRAMER
2364 REDWOOD ROAD
3 HERCULES, CA 94547

4 PLAINTIFFS IN PRO PER

6
7 THIRD JUDICIAL DISTRICT COURT
8 LYON COUNTY, NEVADA

10 LEO KRAMER,
11 AUDREY KRAMER,

12
13 Plaintiffs,

14 vs.

15
16 NATIONAL DEFAULT SERVICING
17 CORPORATION, ALYSSA MC DERMOTT,
18 WEDGWOOD INC., BRECKENRIDGE
19 PROPERTY FUND 2016 LLC, and DOES 1
20 THROUGH 50 INCLUSIVE,

21
22 Defendants.

) Case No.: 18-CV-00663

)
) DECLARATION OF AUDREY KRAMER IN
) SUPPORT OF PLAINTIFFS' OPPOSITION
) TO DEFENDANT, NATIONAL DEFAULT
) SERVICING CORPORATION'S MOTION
) TO DISMISS PLAINTIFFS' FIRST
) AMENDED COMPLAINT;

)
)
) Date: TBA
) Time: TBA
) Dept: 1

23
24
25 DECLARATION OF AUDREY KRAMER
26
27
28

1 I, AUDREY KRAMER declare as follows:

- 2 1. I am over the age of 18 years.
- 3 2. I have personal knowledge of the above entitled matter and if called as a witness, I could
4 and would competently testify thereto.
- 5 3. I make this declaration in support of the attached or above motion to dismiss filed by
6 defendant, National Default Servicing Corporation.
- 7 4. Plaintiffs maintain they were never properly served or noticed by National Default
8 Servicing Corp. of the Notice of Default to foreclose on Plaintiff's real property located at
9 1740 Autumn Glenn Street in Fernley Nevada, County of Lyon (APN 022-052-02)
- 10 5. Plaintiffs were not noticed of the Notice of Default until Oct. 10/16/2017, when they
11 received an email notification from their property management company, Chaffin Real
12 Estate Services. See Plaintiffs (Exhibit " F" Email thread from Chaffin Real Estate
13 Services).
- 14 6. Plaintiffs were never served a written Notice of Default by National Default Servicing
15 Corp., even though Defendant "NDSC" was fully aware of Plaintiff's mailing address in
16 CA, as is demonstrated by monthly statements mailed by Chase Bank.
- 17 7. Plaintiffs' First Amended Complaint is premised on the lack of procedural notice of the
18 Notice of Default. Plaintiffs' cause of action for unlawful foreclosure is a new cause of
19 action, barring the Doctrine of Res Judicata.
- 20 8. The issue of National Default Servicing Corporation failing to comply with Nevada law
21 requiring written Notice to homeowner via certified mail with receipt of delivery requested
22 after recording a Notice of Default was not addressed in Judge Du's order of dismissal, as
23 observed by this Honorable Court.
- 24 9. Plaintiffs were not and are still not in breach of the alleged \$176,000.00 revolving line of
25 credit that plaintiffs obtained from Washington Mutual Bank (WAMU).
- 26 10. Plaintiffs do not owe anything to Washington Mutual Bank, JPMorgan Chase Bank or any
27 of the Defendants in this lawsuit.
- 28 11. Plaintiffs could not and did not use the entire maximum credit limit amount of \$176,000.00
of the revolving line of credit because per the WaMu credit agreement, Plaintiffs were
contracted to access up to \$176,000.00 of the revolving line of credit, but could not and did
not do so because WAMU Bank became defunct approximately 6 months into the credit
agreement, whereby Plaintiffs could not re-use the revolving line of credit as the credit
agreement contract provided. Due to the seizure of WAMU Bank, the credit agreement
contract was breached.
12. Neither JPMORGAN CHASE BANK nor WAMU BANK funded plaintiffs' initial
mortgage note and as such have no standing to cause National Default Servicing
Corporation to sell Plaintiffs' real property.

1 13. Plaintiffs timely mailed their 1st Amended Complaint on Oct. 25, 2018, for the
2 court to file. The Court recorded Plaintiffs' 1st Amended Complaint on
3 Monday, Oct. 29, 2018. *See also* (Plaintiffs' Exhibit "D" Court Docket)
4 Subsequently, NDSC responded by filing a Motion to Dismiss Plaintiffs' 1st
5 Amended Complaint, which was mailed to Plaintiffs (utilizing NDSC's Pitney
6 Bows self-stamping system, showing a postmark of 1/14, 2019, which
7 Plaintiffs did not receive until (9) days later on January 22, 2019. Plaintiffs
8 brought this problematic mailing issue with Defendants to the court's attention
9 (Oct. 5, 2018) and again via Plaintiff, Audrey Kramer's affidavit on (Jan. 3,
10 2019) explaining to the court what appears to be intentional ongoing
11 gamesmanship causing mailing delays in an effort to thwart and cheat
12 Plaintiffs of valuable time to respond. When this was brought to the court's
13 attention during the Oct. 5, 2019 hearing, NDSC did not deny or defend
14 Plaintiffs' assertion. Plaintiffs offer two envelopes mailed by NDSC showing
15 self-stamped post marks, one of which was caught and correctly date stamped
16 by the post office. *See also* (Plaintiffs' Exhibit "E" Tiffany & Bosco Self-
17 stamped Envelopes)

18 I declare under penalty of perjury under the laws of the United States of America and under the
19 laws of the State of Nevada that the foregoing is true and correct.

20 Executed: on 1/31/2019, at Concha Costa County, State of California
21 Audrey Kramer
22 AUDREY KRAMER
23
24
25
26
27
28

PROOF OF SERVICE

STATE OF CALIFORNIA)
) SS:
COUNTY OF CONTRA COSTA)

I am employed in the County of Contra Costa, State of California. I am over the age of 18 and not a party to the within action; my business address is _____

On February 1, 2019, I served the foregoing document entitled:

PLAINTIFFS' OPPOSITION TO DEFENDANT, NATIONAL DEFAULT SERVICING CORPORATION'S MOTION TO DISMISS PLAINTIFFS' FIRST AMENDED COMPLAINT; DECLARATION OF AUDREY KRAMER FILED CONCURRENT HERewith; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

on all parties in this action as follows:

PLEASE SEE ATTACHED SERVICE LIST

The UPS Store

1511 Sycamore Ave. Ste M
Hercules, CA 94547

store2796@theupsstore.com



X Mail. By placing a true copy thereof enclosed in a sealed envelope. I am "readily familiar" with the firm's practice of collection and processing for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with first class postage thereon fully paid at Alameda, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or the postage meter is more than one day after day of deposit for mailing in this Proof of Service.

By Telefax. I transmitted said document by telefax to the offices of the addressees at the telefax numbers on the attached Service List.

By Personal Service. I delivered such envelope by hand to the addressee(s).

By Overnight Courier. I caused the above-referenced document(s) to be delivered to an overnight courier service for next day delivery to the addressee(s) on the attached Service List.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on February 1, 2019 at Hercules, California.

Corina DiGrazia

Name of Declarant


Signature of Declarant

SERVICE LIST

Mathew Dayton

John T. Steffen

Mathew K. Schriever

Hutchison & Steffen

1008 West Alta Drive, Suite 200

Las Vegas, NV 89145

Casey J. Nelson

Wedgewood, LLC

2320 Potosi Street, Suite 130

Las Vegas, Nevada 89146

Attorneys for Defendants,

ALYSSA MC DERMOTT, WEDGWOOD INC., BRECKENRIDGE PROPERTY FUND 2016 LLC

Kevin S. Soderstrom

Tiffany & Bosco, P.A.

10100 W. Charleston Boulevard, Ste.220

Las Vegas, NV 89135

Attorneys for Defendant,

NATIONAL DEFAULT SERVICING CORPORATION

EXHIBIT LIST:

- A- THE COURT ORDER
- B- BANK STATEMENTS
- C- PLAINTIFFS' NOTICE OF APPEAL
- D- COURT DOCKET
- E- TIFFANY & BOSCO SELF-STAMPED
ENVELOPES
- F- EMAIL THREAD WITH CHAFFIN REAL
ESTATE SERVICES



A

THE COURT ORDER

A

FILED

Case No.: 18-CV-00663

Dept. No.: I

OCT 24 AM 9:23

KATHY THOMAS

IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF LYON

LEO KRAMER,
AUDREY KRAMER,

Plaintiffs,

vs.

**ORDER GRANTING MOTION TO
DISMISS PLAINTIFF'S COMPLAINT**

NATIONAL DEFAULT SERVICING
CORPORATION, ALYSSA MC DERMOTT,
WEDGWOOD INC., BRECKENRIDGE
PROPERTY FUND 2016 LLC, and DOES 1
THROUGH 50 INCLUSIVE,

Defendants.

THIS MATTER having come on for hearing on October 5, 2018 on the Motion to Dismiss filed by Defendant National Default Servicing Corporation and joined by Defendants Alyssa McDermott, Wedgwood Inc., and Breckenridge Property Fund 2016 LLC, the Plaintiffs having opposed the motion to dismiss, the Court having reviewed the papers and pleadings on file herein and having heard the arguments of the parties, the Court being fully advised in the premises and good cause appearing therefore the Court makes the following findings of fact and conclusions of law, and the Court orders as follows:

FINDINGS OF FACT

1. This action concerns real property commonly known as 1740 Autumn Glen Street, Fernley, Nevada, 89408, Assessor's Parcel Number 022-052-02 (hereinafter the "Property").
2. The instant state court lawsuit, commenced on June 8, 2018, is the second lawsuit filed by the Plaintiffs regarding the foreclosure on the Property.
3. The first lawsuit was filed on January 2, 2018 against NDSC, JPMorgan Chase Bank, N.A., Mortgage Electronic Registration Systems, Inc., and Washington Mutual Bank, N.A. in the United States District Court for the District of Nevada (3:18-cv-00001-MMD-WGC).
4. On May 17, 2018, Judge Miranda Du entered an order dismissing the first lawsuit and its attendant 15 causes of action with prejudice. On May 24, 2018, Plaintiffs' appealed Judge Du's Order to the Ninth Circuit. Preliminary Injunction was denied by Judge Du's Order and no stay of the non-judicial foreclosure was issued by any Court pending appeal.
5. Plaintiffs' state court Complaint filed in the instant lawsuit contains the same core causes of action that were alleged in the first, federal complaint which was dismissed by Judge Du.
6. However, Plaintiffs' state court Complaint does contain an allegation of unlawful foreclosure on procedural grounds that was not addressed in the first lawsuit or Judge Du's order dismissing the Complaint.

CONCLUSIONS OF LAW

1. Judge Du's Order dismissing the Complaint with prejudice in Case No: 3:18-cv-00001-MMD-WGC involved the same issues alleged in this instant action (except for the allegation of unlawful foreclosure based on procedural grounds), involved the same parties, and the decision was on the merits and final. All the required elements of res judicata have been met and therefore res judicata does apply in this matter.

- 1 2. Plaintiffs' Complaint appears to contain an allegation regarding the procedural notice of the
2 foreclosure which was not addressed in Judge Du's order of dismissal. The Court finds this
3 potential claim as a basis to allow the Plaintiffs' action to survive for the purpose of amending the
4 complaint.
5
6 3. Plaintiffs' Complaint is dismissed against all Defendants without prejudice.
7
8 4. Plaintiffs shall have 20 days to file and serve an Amended Complaint.

8 **ORDER AND JUDGMENT**

9
10 THE COURT HEREBY ORDERS, ADJUDGES, AND DECREES that Defendant National
11 Default Servicing Corporation's Motion to Dismiss is GRANTED.

12 THE COURT FURTHER ORDERS, ADJUDGES, AND DECREES that Plaintiffs' entire
13 Complaint against all Defendants is dismissed without prejudice with the ability to file an Amended
14 Complaint within 20 days of the date of this Order.
15

16 DATED this 23rd day of October, 2018.

17
18
19 
20 DISTRICT COURT JUDGE
21
22
23
24
25
26
27
28

B

BANK STATEMENTS

B



Bankruptcy Information

Loan Number	3500026861
Statement Period	05/14/2017 - 06/12/2017
Property Address	1740 AUTUMN GLEN ST FERNLEY NV 89408

LEO F KRAMER
121 CARDINAL WAY
HERCULES, CA 94547-1602

ACCOUNT STATEMENT IS FOR INFORMATIONAL PURPOSES ONLY

Account Information

Bankruptcy Chapter:	7
Bankruptcy Status	Discharged
Contractual Due Date (For Informational Purposes Only)	11/09/2010
Interest Rate	4.90000%
Late Charge Fee (per month)	\$33.78
Current Maturity Date	05/2038
Current Principal Balance ¹	\$167,755.82

¹ This is your Principal Balance only, not the amount required to pay your loan in full.

Year-To-Date Payments

Total	\$0.00
-------	--------

Important Messages

To the extent your original obligation was discharged, or is subject to an automatic stay of bankruptcy under Title 11 of the United States Code, this statement is for compliance and/or informational purposes only and does not constitute an attempt to collect a debt or to impose personal liability for such obligation. However, a secured party retains rights under its security instrument, including the right to foreclose its lien.

If you do not wish to receive this monthly Information Statement in the future, or if you have any questions regarding this mortgage/deed of trust account, please call 1-866-243-5851.



Bankruptcy Information

Loan Number	3600026861
Statement Period	07/13/2017 - 08/12/2017
Property Address	1740 AUTUMN GLEN ST FERNLEY NV 89408

LEO F KRAMER
121 CARDINAL WAY
HERCULES, CA 94547-1602

ACCOUNT STATEMENT IS FOR INFORMATIONAL PURPOSES ONLY

Account Information

Bankruptcy Chapter:	7
Bankruptcy Status	Discharged
Contractual Due Date (For Informational Purposes Only)	11/09/2010
Interest Rate	5.15000%
Late Charge Fee (per month)	\$36.40
Current Maturity Date	05/2038
Current Principal Balance ¹	\$167,755.82

¹ This is your Principal Balance only, not the amount required to pay your loan in full.

Year-To-Date Payments

Total	\$0.00
-------	--------

Important Messages

To the extent your original obligation was discharged, or is subject to an automatic stay of bankruptcy under Title 11 of the United States Code, this statement is for compliance and/or informational purposes only and does not constitute an attempt to collect a debt or to impose personal liability for such obligation. However, a secured party retains rights under its security instrument, including the right to foreclose its lien.

If you do not wish to receive this monthly Information Statement in the future, or if you have any questions regarding this mortgage/deed of trust account, please call 1-866-620-6447.



Bankruptcy Information

Loan Number 3500026861
Statement Period 08/13/2017 - 09/12/2017
Property Address 1740 AUTUMN GLEN ST
FERNLEY NV 89408

LEO F KRAMER
121 CARDINAL WAY
HERCULES, CA 94547-1602

ACCOUNT STATEMENT IS FOR INFORMATIONAL PURPOSES ONLY

Account Information

Bankruptcy Chapter: 7
Bankruptcy Status Discharged
Contractual Due Date (For Informational Purposes Only) 11/09/2010
Interest Rate 5.15000%
Late Charge Fee (per month) \$36.69
Current Maturity Date 05/2038
Current Principal Balance ¹ \$167,755.82

¹ This is your Principal Balance only, not the amount required to pay your loan in full.

Year-To-Date Payments

Total \$0.00

Important Messages

To the extent your original obligation was discharged, or is subject to an automatic stay of bankruptcy under Title 11 of the United States Code, this statement is for compliance and/or informational purposes only and does not constitute an attempt to collect a debt or to impose personal liability for such obligation. However, a secured party retains rights under its security instrument, including the right to foreclose its lien.

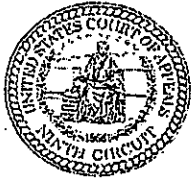
If you do not wish to receive this monthly Information Statement in the future, or if you have any questions regarding this mortgage/deed of trust account, please call 1-866-520-6447.

Please detach and return the bottom portion of this statement with your payment using the enclosed envelope.

C

PLAINTIFFS' NOTICE OF APPEAL

C



Office of the Clerk
United States Court of Appeals for the Ninth Circuit
Post Office Box 193939
San Francisco, California 94119-3939
415-355-8000

Molly C. Dwyer
Clerk of Court

May 24, 2018

No.: 18-15959
D.C. No.: 3:18-cv-00001-MMD-WGC
Short Title: Leo Kramer, et al v. JP Morgan Chase Bank NA, et al

Dear Appellant/Counsel

A copy of your notice of appeal/petition has been received in the Clerk's office of the United States Court of Appeals for the Ninth Circuit. The U.S. Court of Appeals docket number shown above has been assigned to this case. You must indicate this Court of Appeals docket number whenever you communicate with this court regarding this case.

Please furnish this docket number immediately to the court reporter if you place an order, or have placed an order, for portions of the trial transcripts. The court reporter will need this docket number when communicating with this court.

The due dates for filing the parties' briefs and otherwise perfecting the appeal have been set by the enclosed "Time Schedule Order," pursuant to applicable FRAP rules. These dates can be extended only by court order. Failure of the appellant to comply with the time schedule order will result in automatic dismissal of the appeal. 9th Cir. R. 42-1.

Appellants who are filing pro se should refer to the accompanying information sheet regarding the filing of informal briefs.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

MAY 24 2018

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

LEO KRAMER; AUDREY
KRAMER,

Plaintiffs - Appellants,

v.

JP MORGAN CHASE BANK NA;
MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.;
NATIONAL DEFAULT
SERVICING CORPORATION;
WASHINGTON MUTUAL BANK,
N.A.,

Defendants - Appellees.

No. 18-15959

D.C. No. 3:18-cv-00001-MMD-WGC
U.S. District Court for Nevada, Reno

TIME SCHEDULE ORDER

The parties shall meet the following time schedule.

Mon., July 23, 2018

Appellant's opening brief and excerpts of record shall be served and filed pursuant to FRAP 31 and 9th Cir. R. 31-2.1.

Thu., August 23, 2018

Appellees' answering brief and excerpts of record shall be served and filed pursuant to FRAP 31 and 9th Cir. R. 31-2.1.

The optional appellant's reply brief shall be filed and served within 21 days of service of the appellees' brief, pursuant to FRAP 31 and 9th Cir. R. 31-2.1.

Failure of the appellant to comply with the Time Schedule Order will result in automatic dismissal of the appeal. See 9th Cir. R. 42-1.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

By: Ruben Talavera
Deputy Clerk
Ninth Circuit Rule 27-7

D

COURT DOCKET

D

**NATIONAL DEFAULT SERVICING CORPORATION, LEO KRAMER, AUDREY KRAMER, ALYSSA MC
DERMOTT, WEDGWOOD INC., BRECKENRIDGE PROPERTY FUND 2016 LLC - COMPLAINT**

Case Number: 18-CV-00663

Agency: Third Judicial District Court

Type: Other Title to Property Case

Received Date: 6/8/2018

Status: Reopened

Status Date: 10/29/2018

Involvements

Primary Involvements

KRAMER, LEO Plaintiff

KRAMER, AUDREY Plaintiff

NATIONAL DEFAULT SERVICING CORPORATION Defendant

MC DERMOTT, ALYSSA Defendant

WEDGWOOD INC. Defendant

BRECKENRIDGE PROPERTY FUND 2016 LLC Defendant

Other Involvements

Steffen, John T. Esq. Defendant's Attorney

Soderstrom, Kevin S. Esq. Defendant's Attorney

KRAMER, LEO Pro Per

KRAMER, AUDREY Pro Per

Third Judicial District Court (18-CV-00663)

Schlegelmilch, John P. - JPS Dept I - TJDC

7. REOPEN - Reopened Charge

Notes: AMENDED COMPLAINT FILED

Lead/Active: False

Other Title to Property Case

1. NRCP 3 - COMPLAINT

Lead/Active: True

2. NRCP 3 - COMPLAINT

Lead/Active: False

3. NRCP 5 - ANSWER

Lead/Active: False

4. NRCP 5 - ANSWER

Lead/Active: False

5. NRCP 5 - ANSWER

Lead/Active: False

6. NRCP 5 - ANSWER

Lead/Active: False

Case Status History

6/8/2018 12:31:00 PM | Open
10/24/2018 | Closed
10/29/2018 | Reopened

Documents

6/8/2018 Complaint .pdf - Filed
Notes: For: 1. Unlawful Foreclosure 2. Quiet Title 3. Preliminary Injunction 4. Slander of Title 5. Constructive Fraud
6. Declaratory Relief
6/8/2018 Summons- Issued.pdf - Issued
6/8/2018 Civil Cover Sheet.pdf - Filed
6/20/2018 Affidavit of Service - Breckenridge Property.pdf - Filed
6/20/2018 Proof of Service National Default Service Corp.pdf - Filed
6/25/2018 National Default Servicing Corporation's Motion to Dismiss.pdf - Filed
7/2/2018 Motion to Dismiss.pdf - Filed
7/2/2018 Joinder to National Default Servicing Corporation's Motion to Dismiss.pdf - Filed
7/5/2018 Ptf's Oppo to Deft National Default Servicing Corp's.pdf - Filed
Notes: Mtn to Dismiss Ptf's Complaint; Declaration of Audrey Kramer filed Concurrent Herewith; Memorandum of
Points & Authorities in Support Thereof
7/17/2018 Plaintiffs' Opposition to Defendants Motion to Dismiss Plaintiffs Complaint.pdf - Filed
Notes: Memorandum of Points and Authorities in Support Thereof, Declaration of Daniel Starrling; Declaration of Lee
Anne Chaffin; and Declaration of Audrey Kramer Filed Concurrently Herewith
8/2/2018 Request for Submission.pdf - Filed
8/2/2018 Reply in Support of Motion to Dismiss.pdf - Filed
8/3/2018 Notice of Errata Regarding Certificate of Service Attached to Request for Submission of Motion to Dismiss.pdf
- Filed
Notes: Filed and Served on August 2, 2018
8/20/2018 Request for Submission of National Default Servicing Corporation's Motion to Dismiss (2).pdf - Filed
8/30/2018 Setting Memo (10-5-18).pdf - Filed
10/5/2018 Request for Telephonic Appearance and Approval for 10-5-18 Hearing.pdf - For Court Use Only
SEALED
10/24/2018 Order Granting Motion to Dismiss Pltf's Complaint.pdf - Filed
10/29/2018 First Amended Complaint.pdf - Filed
11/19/2018 Motion to Dismiss First Amended Complaint.pdf - Filed
12/21/2018 Plaintiff's Request for Production of Documents Set One (Breckenridge Property Fund 2016).pdf - Filed
12/21/2018 Plaintiffs, Audrey Kramer & Leo Kramer's Special Interrogatories Set Once (National Default Servicing).pdf -
Filed
12/21/2018 Plaintiffs, Audrey Kramer & Leo Kramer's Special Interrogatories Set One (Breckenridge).pdf - Filed
12/21/2018 Plaintiffs, Audrey Kramer & Leo Kramer's Request for Admissions Set One (Breckenridge).pdf - Filed
12/21/2018 Plaintiffs' Oppo to Def, Alyssa Mc Dermott, Wedgwood Inc. & Breckenridge Property Fund 2016 LLC's Motion
to Dismiss.pdf - Filed
12/21/2018 Request to Submit Motion to Dismiss First Amended Complaint.pdf - Filed
12/21/2018 Notice of Non-Oppo to Deft's Motion to Dismiss 1st Amended Complaint.pdf - Filed
12/21/2018 Plaintiff's Request for Production of Documents Set One (National Default Servicing).pdf - Filed
12/21/2018 Plaintiffs, Audrey Kramer & Leo Kramer's Request for Admissions Set One (National Default Servicing).pdf -
Filed
1/4/2019 Reply in Support of Motion to Dismiss First Amended Complaint.pdf - Filed
1/4/2019 Ptf's Objection to Notice of Non-oppo Filed by Defts.pdf - Filed
1/17/2019 National Default Servicing Corporation's Motion to Dismiss First Amended Complaint.pdf - Filed
1/18/2019 Setting Memo (2-22-19).pdf - Filed

Events

10/5/2018 10:00:00 AM | Motion Hearing | DEPT I 18-CV-00663 | Court Room B

Andersen, Andrea Deputy Clerk -
AANDERSEN

Staff - STAFF

Court Room B - CourtRmB

lawclerk1 - LAW1

Aaron Richter

Dayton, Matthew D. Esq.

Telephonic, obo National Default Servicing Corporation

Warner, Eric Esq.

obo Defendants, Alyssa McDermott, Wedgewood, Inc., and Breckenridge Property Fund 2016 LLC

Schlegelmilch, John P. - JPS (Dept I -
TJDC)

KRAMER, LEO (Pro Per)

Plaintiff, in Pro Per

KRAMER, AUDREY (Pro Per)

Plaintiff, in Pro Per

Notes: Mr. Dayton, Mr. Warner and Ms. Kramer argued the Motion to Dismiss and the res judicata matter. Plaintiff requested leave to file an amended complaint and discovery. Court finds Judge Du's previously found there was an ability to foreclose upon the property and therefore precludes that matter from being brought up in this court. In the event that ruling is reversed, it would then be addressed in the United States District Court. Court granted the Motion to Dismiss without prejudice against all defendant. Court granted Plaintiff's the ability to file an Amended Complaint that is not based upon Judge Du's rulings. Amended Complaint is to be filed within twenty (20) calendar days. Mr. Dayton and Mr. Warner are willing to accept service of the Amended Complaint on behalf of their client(s). Court permitted service of the Amended Complaint on counsel. Court directed plaintiff to provide an Acceptance of Service for counsel to sign. Mr. Dayton to prepare Order and email the order to the court, Plaintiff's and Mr. Warner. Parties will have five (5) days to object to the proposed order. Plaintiff's email address is audreykramer55@yahoo.com. Proposed Order is to be submitted to the court in Word or Word Perfect.

2/22/2019 10:00:00 AM | Motion Hearing | DEPT I 18-CV-00663 | Court Room B

Staff - STAFF

Court Room B - CourtRmB

lawclerk1 - LAW1

GEURTS, PATRICK J.

Schlegelmilch, John P. - JPS (Dept I -
TJDC)

E

TIFFANY & BOSCO SELF-STAMPED
ENVELOPES

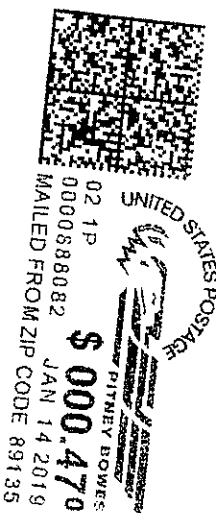
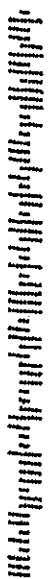
E

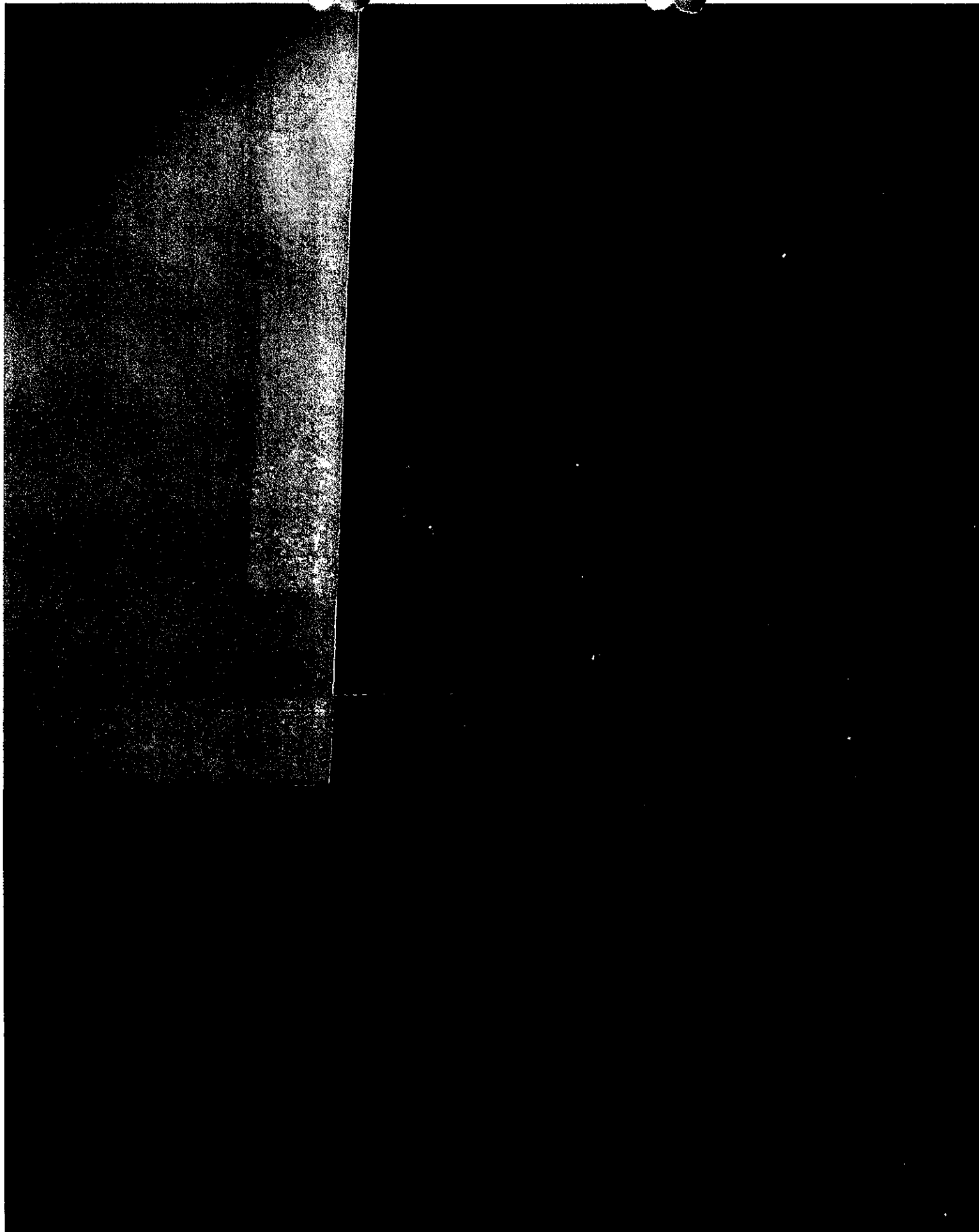
Tiffany & Bosco, P.A.
10100 W. Charleston Blvd., Ste. 220
Las Vegas, Nevada 89135

LAS VEGAS
NV 890
16 JAN '19
PM 3 L

Leo Kramer
Audrey Kramer
2364 Redwood Road
Hercules, CA 94547

94547-114564





F

EMAIL THREAD WITH CHAFFIN
REAL ESTATE SERVICES

F

From: Audrey Kramer <audreykramer55@yahoo.com>
Date: October 16, 2017 at 2:01:49 PM PDT
To: Debi Taylor <debi@chaffinrealestate.com>
Cc: ricokramer111@outlook.com, Lee Anne Chaffin <chaffinleeanne@yahoo.com>
Subject: Re: 1740 Autumn Glen

Debi,

We have not received anything re: foreclosure and have placed a call to our attorney. We will get back with you as soon as we've had a chance to speak with him.

Regards,
Audrey & Rico

Sent from my iPad

On Oct 16, 2017, at 12:50 PM, Debi Taylor <debi@chaffinrealestate.com> wrote:

Hello,

The tenants received a notice of default on the home. I have attached the paperwork they received. If the home is going to be foreclosed, we must let the tenants out of their lease.

--

Thank you, We appreciate your business!

*Debi Taylor
Assistant to Lee Anne Chaffin
Chaffin Real Estate Services
775 575 5000*

<http://www.chaffinrealestate.com>
visit my facebook page

<1740 Autumn Glen NOD.pdf>

<1740 Autumn Glen NOD2.pdf>

ORIGINAL

FILED

2019 MAR -6 AM 8:02

TANYA SCHEPINE
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT

Andrea Anderson

JASON C. KOLBE, ESQ.

Nevada Bar No. 11624

ACE C. VAN PATTEN, ESQ.

Nevada Bar No. 11731

TIFFANY & BOSCO, P.A.

10100 W. Charleston Blvd., Ste. 220

Las Vegas, NV 89135

Tel: (702) 258-8200

Fax: (702) 258-8787

TB #18-72716

Attorney for Defendant National Default Serving Corporation

THIRD JUDICIAL DISTRICT COURT

LYON COUNTY, NEVADA

LEO KRAMER, and AUDREY KRAMER,

Plaintiffs,

vs.

NATIONAL DEFAULT SERVICING
CORPORATION, ALYSSA MC DERMOTT,
WEDGEWOOD INC., BRECKENRIDGE
PROPERTY FUND 2016 LLC, and DOES 1
THROUGH 50 INCLUSIVE,

Defendants.

Case No.: 18-CV-00663

Dept. No.: I

**STIPULATION AND ORDER TO
CONTINUE HEARING**

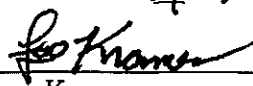
Defendant, National Default Servicing Corporation ("NDSC"), by and through its attorney of record, Ace C. Van Patten, Esq., of Tiffany & Bosco, P.A.; Plaintiffs, Leo Kramer and Audrey Kramer (collectively "the Kramers"), in proper person; and Defendants, Alyssa Mc Dermott ("Ms. McDermott"), Wedgewood, Inc. ("Wedgewood") and Breckenridge Property Fund 2016, LLC ("Breckenridge") (collectively "Defendants"), by and through their attorneys of record, Matthew K. Schriever, Esq., of Hutchison & Steffen, PLLC and Casey J. Nelson, Esq., of Wedgewood, LLC hereby stipulate as follows:

TIFFANY & BOSCO, P.A.
10100 W. Charleston Boulevard, Suite 220
Las Vegas, NV 89135
Tel 702-258-8200 Fax 702-258-8787


1 Whereas a hearing is currently set for February 22, 2019 at 10:00 a.m. before the above-
2 entitled Court on Ms. McDermott, Wedgewood, and Breckenridge's Motion to Dismiss First
3 Amended Complaint and NDSC's Motion to Dismiss First Amended Complaint.

4 **IT IS HEREBY STIPULATED BY AND BETWEEN THE PARTIES** that the
5 hearing on the Motions' to Dismiss First Amended Complaint be continued and heard on the 1st
6 day of May, 2019, at 10:30 a.m.

7 DATED this 14 day of February, 2019.

8 
9 Leo Kramer
2364 Redwood Rd.
10 Hercules, CA 94547

DATED this 14 day of February, 2019.


Audrey Kramer
2364 Redwood Rd.
Hercules, CA 94547

11
12 DATED this ___ day of February, 2019.

13 TIFFANY & BOSCO, P.A.

14
15
16 Ace C. Van Patten, Esq.
Nevada Bar No. 11731
10100 W. Charleston Blvd., Ste. 220
17 Las Vegas, Nevada 89135
18 *Attorney for NDSC*

DATED this ___ day of February, 2019.

WEDGEWOOD, LLC,
OFFICE OF THE GENERAL COUNSEL

Casey J. Nelson, Esq.
Nevada Bar No. 12259
2320 Potosi Street, Ste. 130
Las Vegas, Nevada 89146

John T. Steffen, Esq.
Nevada Bar No. 4390
Matthew K. Schriever, Esq.
Nevada Bar No. 10745
10080 W. Alta Dr., Ste. 200
Las Vegas, Nevada 89145
*Attorneys for Ms. McDermott, Wedgewood
and Breckenridge*

24 **ORDER**

25 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that the hearing on the
26 Ms. McDermott, Wedgewood and Breckenridge's Motion to Dismiss First Amended Complaint
27 shall be heard on the 1st day of May, 2019, at 10:30 a.m.
28

TIFFANY & BOSCO, P.A.
10100 W. Charleston Boulevard, Suite 220
Las Vegas, NV 89135
Tel 702-258-8200 Fax 702-258-8787

Whereas a hearing is currently set for February 22, 2019 at 10:00 a.m. before the above-entitled Court on Ms. McDermott, Wedgewood, and Breckenridge's Motion to Dismiss First Amended Complaint and NDSC's Motion to Dismiss First Amended Complaint.

IT IS HEREBY STIPULATED BY AND BETWEEN THE PARTIES that the hearing on the Motions' to Dismiss First Amended Complaint be continued and heard on the 1st day of May, 2019, at 10:30 a.m.

DATED this ___ day of February, 2019.

DATED this ___ day of February, 2019.

Leo Kramer
2364 Redwood Rd.
Hercules, CA 94547


Audrey Kramer
2364 Redwood Rd.
Hercules, CA 94547

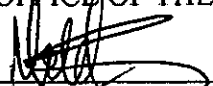
DATED this 19 day of February, 2019.

DATED this 12 day of February, 2019.

TIFFANY & BOSCO, P.A.

WEDGEWOOD, LLC,
OFFICE OF THE GENERAL COUNSEL


Ace C. Van Patten, Esq.
Nevada Bar No. 11731
10100 W. Charleston Blvd., Ste. 220
Las Vegas, Nevada 89135
Attorney for NDSC


Casey J. Nelson, Esq.
Nevada Bar No. 12259
2320 Potosi Street, Ste. 130
Las Vegas, Nevada 89146

John T. Steffen, Esq.
Nevada Bar No. 4390
Matthew K. Schriever, Esq.
Nevada Bar No. 10745
10080 W. Alta Dr., Ste. 200
Las Vegas, Nevada 89145
*Attorneys for Ms. McDermott, Wedgewood
and Breckenridge*

ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the hearing on the Ms. McDermott, Wedgewood and Breckenridge's Motion to Dismiss First Amended Complaint shall be heard on the 1st day of May, 2019, at 10:30 a.m.

TIFFANY & BOSCO, P.A.
10100 W. Charleston Boulevard, Suite 220
Las Vegas, NV 89135
Tel 702-258-8200 Fax 702-258-8787

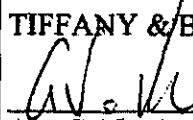
1 **IT IS FURTHER ORDERED** that the hearing on the NDSC's Motion to Dismiss First
2 Amended Complaint shall be heard on the 1st day of May, 2019, at 10:30 a.m.

3 DATED this 28th day of February, 2019.

4
5
6 
DISTRICT COURT JUDGE

6 Respectfully Submitted By:

7 TIFFANY & BOSCO, P.A.

8 
9 Ace C. Van Patten, Esq.
10 Nevada Bar No. 11731
11 10100 W. Charleston Blvd., Ste. 220
12 Las Vegas, Nevada 89135
13 *Attorney for NDSC*
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ORIGINAL

FILED

2019 MAR 18 PM 4:53

TANYA SCHEIDT
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT

Aphy Thomas

JASON C. KOLBE, ESQ.
Nevada Bar No. 11624
ACE C. VAN PATTEN, ESQ.
Nevada Bar No. 11731
TIFFANY & BOSCO, P.A.
10100 W. Charleston Blvd., Ste. 220
Las Vegas, NV 89135
Tel: (702) 258-8200
Fax: (702) 258-8787
TB #18-72716
Attorney for Defendant National Default Serving Corporation

THIRD JUDICIAL DISTRICT COURT

LYON COUNTY, NEVADA

LEO KRAMER, and AUDREY KRAMER,

Plaintiffs,

vs.

NATIONAL DEFAULT SERVICING
CORPORATION, ALYSSA MC DERMOTT,
WEDGEWOOD INC., BRECKENRIDGE
PROPERTY FUND 2016 LLC, and DOES 1
THROUGH 50 INCLUSIVE,

Defendants.

Case No.: 18-CV-00663

Dept. No.: I

**NOTICE OF ENTRY OF STIPULATION
AND ORDER TO CONTINUE HEARING**

PLEASE TAKE NOTICE that a Stipulation and Order to Continue Hearing was entered
on the 6th day of March, 2019, a copy of which is attached hereto.

DATED March 13, 2019.

TIFFANY & BOSCO, P.A.

A C Van Patten

Ace C. Van Patten, Esq.
Nevada Bar No. 11731
10100 W. Charleston Blvd., Ste. 220
Las Vegas, Nevada 89135
Attorney for NDSC

TIFFANY & BOSCO, P.A.
10100 W. Charleston Boulevard, Suite 220
Las Vegas, NV 89135
Tel 702-258-8200 Fax 702-258-8787

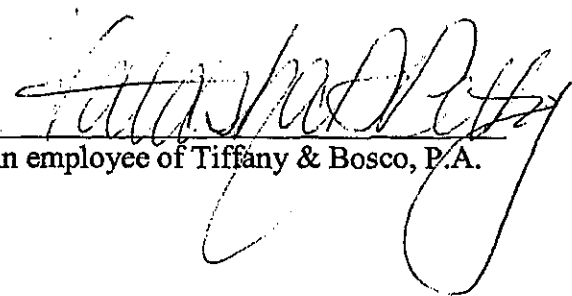
TIFFANY & BOSCO, P.A.
10100 W. Charleston Boulevard, Suite 220
Las Vegas, NV 89135
Tel 702-258-8200 Fax 702-258-8787

CERTIFICATE OF SERVICE

I hereby certify that on March 13, 2019 I placed a copy of the above NOTICE OF ENTRY OF STIPULATION AND ORDER TO CONTINUE HERING into a sealed envelope and mailed it via regular mail, postage prepaid, addressed to:

Leo Kramer
Audrey Kramer
2364 Redwood Road
Hercules, CA 94547
Plaintiffs in Proper Person

Casey J. Nelson, Esq.
2320 Potosi Street, Suite 130
Las Vegas, NV 89146
Attorney for Breckenridge Property Fund
2016, LLC


An employee of Tiffany & Bosco, P.A.

TIFFANY & BOSCO, P.A.

10100 W. Charleston Boulevard, Suite 220

Las Vegas, NV 89135

Tel 702-258-8200 Fax 702-258-8787

FILED

2019 MAR -6 AM 8:02

TANYA SCEIRINE
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT

ANDREA ANDERSEN DEPUTY

1 JASON C. KOLBE, ESQ.

Nevada Bar No. 11624

2 ACE C. VAN PATTEN, ESQ.

3 Nevada Bar No. 11731

TIFFANY & BOSCO, P.A.

4 10100 W. Charleston Blvd., Ste. 220

5 Las Vegas, NV 89135

Tel: (702) 258-8200

6 Fax: (702) 258-8787

TB #18-72716

7 Attorney for Defendant National Default Servicing Corporation

8
9 **THIRD JUDICIAL DISTRICT COURT**

10 **LYON COUNTY, NEVADA**

11
12 LEO KRAMER, and AUDREY KRAMER,

13 Plaintiffs,

14 vs.

15 NATIONAL DEFAULT SERVICING
16 CORPORATION, ALYSSA MC DERMOTT,
17 WEDGEWOOD INC., BRECKENRIDGE
18 PROPERTY FUND 2016 LLC, and DOES 1
THROUGH 50 INCLUSIVE,

19 Defendants.

Case No.: 18-CV-00663

Dept. No.: I

**STIPULATION AND ORDER TO
CONTINUE HEARING**


20
21 Defendant, National Default Servicing Corporation ("NDSC"), by and through its
22 attorney of record, Ace C. Van Patten, Esq., of Tiffany & Bosco, P.A.; Plaintiffs, Leo Kramer
23 and Audrey Kramer (collectively "the Kramers"), in proper person; and Defendants, Alyssa Mc
24 Dermott ("Ms. McDermott"), Wedgewood, Inc. ("Wedgewood") and Breckenridge Property
25 Fund 2016, LLC ("Breckenridge") (collectively "Defendants"), by and through their attorneys
26 of record, Matthew K. Schriever, Esq., of Hutchison & Steffen, PLLC and Casey J. Nelson,
27 Esq., of Wedgewood, LLC hereby stipulate as follows:
28

TIFFANY & BOSCO, P.A.
10100 W. Charleston Boulevard, Suite 220
Las Vegas, NV 89135
Tel 702-258-8200 Fax 702-258-8787

Whereas a hearing is currently set for February 22, 2019 at 10:00 a.m. before the above-entitled Court on Ms. McDermott, Wedgewood, and Breckenridge's Motion to Dismiss First Amended Complaint and NDSC's Motion to Dismiss First Amended Complaint.

IT IS HEREBY STIPULATED BY AND BETWEEN THE PARTIES that the hearing on the Motions' to Dismiss First Amended Complaint be continued and heard on the 1st day of May, 2019, at 10:30 a.m.

DATED this 14 day of February, 2019.



Leo Kramer
2364 Redwood Rd.
Hercules, CA 94547

DATED this ___ day of February, 2019.

TIFFANY & BOSCO, P.A.

Ace C. Van Patten, Esq.
Nevada Bar No. 11731
10100 W. Charleston Blvd., Ste. 220
Las Vegas, Nevada 89135
Attorney for NDSC

DATED this 14 day of February, 2019.


Audrey Kramer
2364 Redwood Rd.
Hercules, CA 94547

DATED this ___ day of February, 2019.

WEDGEWOOD, LLC,
OFFICE OF THE GENERAL COUNSEL

Casey J. Nelson, Esq.
Nevada Bar No. 12259
2320 Potosi Street, Ste. 130
Las Vegas, Nevada 89146

John T. Steffen, Esq.
Nevada Bar No. 4390
Matthew K. Schriever, Esq.
Nevada Bar No. 10745
10080 W. Alta Dr., Ste. 200
Las Vegas, Nevada 89145
Attorneys for Ms. McDermott, Wedgewood
and Breckenridge

ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the hearing on the Ms. McDermott, Wedgewood and Breckenridge's Motion to Dismiss First Amended Complaint shall be heard on the 1st day of May, 2019, at 10:30 a.m.

TIFFANY & BOSCO, P.A.
10100 W. Charleston Boulevard, Suite 220
Las Vegas, NV 89135
Tel 702-258-8200 Fax 702-258-8787

Whereas a hearing is currently set for February 22, 2019 at 10:00 a.m. before the above-entitled Court on Ms. McDermott, Wedgewood, and Breckenridge's Motion to Dismiss First Amended Complaint and NDSC's Motion to Dismiss First Amended Complaint.

IT IS HEREBY STIPULATED BY AND BETWEEN THE PARTIES that the hearing on the Motions' to Dismiss First Amended Complaint be continued and heard on the 1st day of May, 2019, at 10:30 a.m.

DATED this ___ day of February, 2019.

DATED this ___ day of February, 2019.

Leo Kramer
2364 Redwood Rd.
Hercules, CA 94547

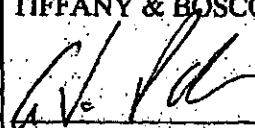
Audrey Kramer
2364 Redwood Rd.
Hercules, CA 94547

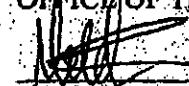
DATED this 19 day of February, 2019.

DATED this 12 day of February, 2019.

TIFFANY & BOSCO, P.A.

WEDGEWOOD, LLC,
OFFICE OF THE GENERAL COUNSEL


Ace C. Van Patten, Esq.
Nevada Bar No. 11731
10100 W. Charleston Blvd., Ste. 220
Las Vegas, Nevada 89135
Attorney for NDSC


Casey J. Nelson, Esq.
Nevada Bar No. 12259
2320 Potosi Street, Ste. 130
Las Vegas, Nevada 89146

John T. Steffen, Esq.
Nevada Bar No. 4390
Matthew K. Schriever, Esq.
Nevada Bar No. 10745
10080 W. Alta Dr., Ste. 200
Las Vegas, Nevada 89145
Attorneys for Ms. McDermott, Wedgewood
and Breckenridge

ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the hearing on the Ms. McDermott, Wedgewood and Breckenridge's Motion to Dismiss First Amended Complaint shall be heard on the 1st day of May, 2019, at 10:30 a.m.

TIFFANY & BOSCO, P.A.
10100 W. Charleston Boulevard, Suite 220
Las Vegas, NV 89135
Tel 702-258-8200 Fax 702-258-8787

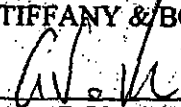
1 IT IS FURTHER ORDERED that the hearing on the NDSC's Motion to Dismiss First
2 Amended Complaint shall be heard on the 1st day of May, 2019, at 10:30 a.m.

3 DATED this 25th day of February, 2019.

4
5 
6 DISTRICT COURT JUDGE

6 Respectfully Submitted By:

7 TIFFANY & BOSCO, P.A.

8 
9 Ace C. Van Patten, Esq.
10 Nevada Bar No: 11731
11 10100 W. Charleston Blvd., Ste. 220
12 Las Vegas, Nevada 89135
13 Attorney for NDSC
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FILED

2019 MAR 29 PM 1:29

TANYA SCEISINE
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT

Victoria Tomas

1 LEO KRAMER & AUDREY KRAMER, Pro Se

(Name)

2 2364 Redwood Road

(Mailing address)

3 Hercules, CA 94547

(City, state, zip code)

4 510-708-9100

(Telephone number)

5 audreykramer55@yahoo.com

(E-mail address)

6 ☒ Plaintiff / ☐ Defendant / ☐ Other (specify) _____

7 In Proper Person

8 ~~JUSTICE COURT, TOWNSHIP OF~~ 3rd Judicial District Court

9 Lyon → CLARK COUNTY, NEVADA

10 LEO KRAMER & AUDREY KRAMER, Pro Se

Case No.: 18-CV-00663

11 Plaintiff(s),

Dept. No.: 1

12 vs.

13 National Default Servicing Corp, Breckenridge et al.

14 Defendant(s).

Date of Hearing: N/A

Time of Hearing: N/A

15 **EARLY CASE CONFERENCE REPORT PURSUANT TO ~~FCRCP~~ 16.1(b)**

16 Pursuant to ^NFCRCP 16.1(b), the parties referenced in the case caption above submit this report of
17 the documents and witnesses exchanged by them as required by ^NFCRCP 16.1(a).

18 1. Plaintiff, (insert plaintiff's name) Leo Kramer & Audrey Kramer, filed the
19 Complaint in this case on (insert date complaint was filed) 6/8/2018. Defendant,
20 (insert defendant's name) National Default Servicing Corp, Breckenridge, et al, filed the Answer in this case on
21 (insert date answer was filed) MOTIONS TO DISMISS 11/19/19 & 1/17/19.

22 2. Plaintiff provided a listing of documents and witnesses to all parties on (insert date of
23 plaintiff's exchange) N/A. Defendant provided a listing of documents and
24 witnesses to all parties on (insert date of defendant's exchange) BOTH DEFENDANTS REFUSED.

25 3. Plaintiff and Defendant exchanged the following documents:

26 Plaintiff's Documents (insert a numbered list of plaintiff's documents exchanged)

27 1. N/A, PLAINTIFFS ARE FILING AN ^(Individual) SEPARATE EARLY CASE CONFERENCE REPORT.

- 1 2. PLEASE SEE ATTACHED INFORMATION REGARDING THE CONFERENCE
2 3. CALL WHICH TOOK PLACE TELEPHNICALLY AT (2:00PM)
3 4. ON MARCH 25, 2019, BETWEEN PLAINTIFFS AND DEFENDANTS.

- 4 5.
5 6.
6 7.
7 8.
8 9.
9 10.
10 11.
11 12.

12 (☒ Check if attaching additional pages.)

13 Defendant's Documents (insert a numbered list of defendant's documents exchanged)

- 14 1. DEFENDANTS REFUSED TO DISCUSS OR PROVIDE DISCOVERY,
15 2. AT THIS TIME.

- 16 3.
17 4.
18 5.
19 6.
20 7.
21 8.
22 9.
23 10.
24 11.
25 12.

26 (☒ Check if attaching additional pages.)

(2) pages attached.

27 4. Plaintiff and Defendant exchanged lists of persons known to have knowledge of facts relevant
28 to this case, and copies of those lists are attached.

28 5. Plaintiff and Defendant understand that they are under a continuing duty to promptly

1 supplement these disclosures as new information becomes available. They further understand that the
2 Court could exclude those documents or witnesses that are not promptly disclosed to the other side.

3 ^N
(NCRCP 16.1(c).)

4 **PLAINTIFF:**

5 DATED this 25 day of March, 2019.

6 I declare under penalty of perjury under the law of the State of
7 Nevada that the foregoing is true and correct.

8 Leo Kramer Audrey Kramer
(Signature)

9 **LEO KRAMER & AUDREY KRAMER, IN PRO PER**

(Name)

10 ☒ Plaintiff / ☐ Defendant/ ☐ Other, In Proper Person

11 **DEFENDANT:**

12 DATED this ____ day of _____, 20__.

13 I declare under penalty of perjury under the law of the State of
14 Nevada that the foregoing is true and correct.

15 _____
(Signature)

16 _____
(Name)

17 ☐ Plaintiff / ☒ Defendant/ ☐ Other, In Proper Person

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on (insert date document was served) MARCH 28, 2019

I served the above EARLY CASE CONFERENCE REPORT PURSUANT TO ^N ~~JERCP~~ 16.1(b), pursuant
to ^N ~~JERCP~~ 5(b), by depositing a copy of the same in the ^{UPS} ~~United States Mail~~ in ^{Hercules, CA} ~~Las Vegas, Nevada~~, postage
prepaid, to the address listed below (insert names and mailing addresses of opposing parties' attorneys,
or opposing parties directly if no attorneys):

ACE VAN PATTEN

TIFFANY & BOSCO

10100 W CHARLESTON BLVD STE 220

LAS VEGAS, NV 89135

MATTHEW SCHRIEVER

HUTCHISON & STEFFEN

10080 WEST ALTA DRIVE STE 200

LAS VEGAS, NV 89145

Casey Nelson

Wedgewood, LLC

2320 Potosi Street, Ste 130

Las Vegas, CA 89146

(Insert date, signature, and name of person mailing document:)

DATED this 28 day of MARCH, 2019.

I declare under penalty of perjury under the law of the State of
Nevada that the foregoing is true and correct.

(Signature)

Corina DiGrazia

(Print name)

The UPS Store

1511 Sycamore Ave. Ste M

Hercules, CA 94547

store2796@theupsstore.com



ADDENDUM TO INDIVIDUAL EARLY CASE CONFERENCE REPORT

On June 8, 2018, Plaintiffs, Leo and Audrey Kramer filed a Complaint in the 3rd. Judicial District Court in Yerrington, Nevada for the wrongful non-judicial foreclosure of their real property, located in Fernley, NV.

On October 24, 2018, the Honorable Judge Schlegelmilch ruled to Dismiss Plaintiffs' Initial Complaint without prejudice and granted Plaintiffs Leave to Amend after he was made aware of and acknowledged a procedural error may have occurred in the non-judicial foreclosure of Plaintiffs' real property.

On October 29, 2018, Plaintiffs filed their First Amended Complaint.

On November 19, 2018, Defendant, Breckenridge filed a Motion To Dismiss Plaintiffs' First Amended Complaint with the court, but Plaintiffs were not in receipt of Defendant's motion until Dec. 12, 2018.

On December 21, 2018, Plaintiffs filed with the court their Requests For Discovery; Admissions Set One, Special Interrogatories Set One & Production of Documents Set One. Plaintiffs sent same Discovery requests, via (Certified UPS Delivery with return receipt requested), to both Defendants, National Default Servicing Corp. & Breckenridge et al.

On January 19, 2019, Defendant, National Default Servicing Corp. filed a Motion To Dismiss Plaintiffs' First Amended Complaint.

On January 23, 2019, Plaintiffs received a letter dated January 14, 2019, from Defendant, National Default Servicing Corp. The letter acknowledged receipt of Plaintiffs' Request For Discovery and informed Plaintiffs they were not in compliance with NRCP 16.1(b)(1) and NRCP 26(a), further stating in same letter, ***"Once you have followed the relevant rules we will be happy to respond to any written requests."***

On or about March 7, 2019, Plaintiffs reached out to counsel for National Default Servicing to request an early case conference to meet and confer to discuss discovery, as per Rule 16.1(b)(1).

On or about March 14, 2019, Plaintiffs reached out to counsel for Breckenridge et al, to request an early case conference to meet and confer to discuss discovery, as per Rule 16.1(b)(1).

On March 14, 2019, Defendant, National Default Servicing Corp, agreed to a telephonic early case conference to be conducted on Monday, March 25, 2019.

On March 18, 2019, Defendants, Breckenridge et al, agreed to join same telephonic early case conference to be conducted on Monday, March 25, 2019.

On March 25, 2019, prior to the scheduled conference call, Plaintiffs sent an email to Defendants with the subject line titled **'Today's Early Case Conference Call' to reconfirm the appointment and ensure both Defendants had the correct number in which to call Plaintiffs.**

On March 25, 2019, at approximately 2pm, both Defendants, National Default Servicing Corp. and Breckenridge et al, called Plaintiffs, Leo and Audrey Kramer. According to Plaintiffs' cell phone records the call began at 2:01pm lasted 15 minutes. During the call Plaintiffs reiterated to Defendants the sole reason for the early case conference was to discuss discovery issues, as per Rule 16.1(b)(1) mandates. However, both Defendants objected and refused to discuss discovery issues, stating they were not obligated to address discovery because *"neither had filed an answer or a pleading in this matter"*.

In lieu of Defendants' positions a joint case conference report was unobtainable, therefore, Plaintiffs are filing an individual case conference report with the court in order to move forward with discovery.

NRCP 16.1 (b)(1) provides that if a defendant files a motion to dismiss instead of answering, then an early case conference must occur no later than 180 days "after an appearance is served by the Defendant in question". Which means the Plaintiffs may have up to 180 days to complete an early case conference.

NRCP 26 (a) allows for written discovery after the filing of a joint case conference report, or no sooner than 10 days after a party has filed an individual case conference report.

If the joint case conference report has not been filed, a party who wants to start discovery may file an individual case conference report and commence discovery 10 days later.



FILED

2019 APR 22 AM 11:29

TANYA DEEDINE
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT

Victoria Toran

John T. Steffen (4390)
Matthew K. Schriever (10745)
HUTCHISON & STEFFEN, PLLC
Peccole Professional Park
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145
Tel (702) 385-2500
Fax (702) 385-2086
mschriever@hutchlegal.com

Casey J. Nelson, Esq. (12259)
Wedgewood, LLC
Office of the General Counsel
2320 Potosi Street, Suite 130
Las Vegas, Nevada 89146
Tel (702) 305-9157
Fax (310) 730-5967
caseynelson@wedgewood-inc.com

Attorneys for Defendants

Alyssa McDermott, Wedgewood Inc., and Breckenridge Property Fund 2016 LLC

**THIRD JUDICIAL DISTRICT COURT
LYON COUNTY, NEVADA**

LEO KRAMER, AUDREY KRAMER,

Plaintiff,

v.

NATIONAL DEFAULT SERVICING
CORPORATION, ALYSSA MCDERMOTT,
WEDGEWOOD INC., BRECKENRIDGE
PROPERTY FUND 2016 LLC and DOES 1
THROUGH 50 INCLUSIVE,

Defendants.

Case No.: 18-CV-00663
Dept No.: I

**OBJECTION TO PLAINTIFF'S EARLY
CASE CONFERENCE REPORT**

Comes now, ALYSSA MCDERMOTT ("McDermott"), WEDGEWOOD INC. ("Wedgwood"),
and BRECKENRIDGE PROPERTY FUND 2016 LLC ("Breckenridge") (collectively "Defendants") by
and through its counsel of record, Hutchison & Steffen, LLC, and hereby objects to Plaintiff's Early Case
Conference Report.

POINTS AND AUTHORITIES

Defendants filed a Motion to Dismiss Plaintiff's Complaint on November 28, 2019. That motion is still pending before this Court for decision. Plaintiffs purportedly sent written discovery to the Defendants shortly after the motion was filed. Those discovery requests and Plaintiffs' recently filed Early Case Conference Report are premature under the Nevada Rules of Civil Procedure. Defendants informed Plaintiffs via email correspondence that their actions in attempting to hold an early case conference pursuant to NRCP 16.1(b) was premature. *See Exhibit #1.*

NRCP 16.1(b) provides, in pertinent part, "[A]ll parties who have filed a pleading in the action must participate in an early case conference." The Plaintiffs demands for the parties to participate in an early case conference was premature because none of the Defendants have filed an answer or "pleading" in this matter. A pleading is defined in NRCP 7 as a complaint, an answer to a complaint, an answer to a counterclaim, an answer to a crossclaim, a third-party complaint, an answer to a third-party complaint, or a reply to an answer. Defendants have only filed motions in this matter and motions are not pleadings under NRCP 7.

NRCP 16.1(b)(2)(A) provides, "The early case conference must be held within 30 days after service of an answer by the first answering defendant. All parties who have served initial pleadings must participate in the first case conference." Again, the Defendants have not filed an answer or pleading. Thus, there is no requirement that the Defendants participate in an early case conference at this time.

Similarly, Plaintiffs' filing of the Early Case Conference Report was also premature. NRCP 16.1(c)(1)(A) provides, "Within 30 days after each case conference, the parties must file a joint case conference report, or if the parties are unable to agree upon the contents of a joint report, each party must serve and file an individual case conference report." Here, a case conference has not taken place because

1 none of the Defendants have filed an answer or pleading. Accordingly, the Plaintiff's Early Case
2 Conference Report is also premature because no case conference has taken place.

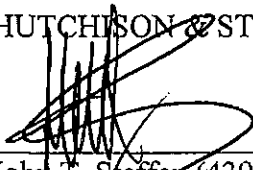
3 Defendant is not required to participate in an early case conference or prepare a case conference
4 report at this time. Similarly, Plaintiff is not entitled to demand discovery. Defendants were clear in
5 their statement that any participation in a telephonic conference was not to be construed as participation
6 in an early case conference. *Id.* Plaintiffs' contention that NRCP 16.1(b)(1) requires the parties to
7 participate in an early case conference within 180 after an appearance is simply not found in the current
8 version of NRCP 16.1 and misconstrues prior versions of NRCP 16.1.

9
10 An early case conference can be scheduled after Defendants file an Answer, *if* Plaintiffs'
11 complaint survives Defendants' renewed motion to dismiss. Then, and only then, may Plaintiff's
12 schedule an early case conference or send discovery requests to Defendants under NRCP.

13
14 Based on the foregoing, Defendants respectfully request that the Court take no action on Plaintiffs
15 Early Case Conference Report and only allow discovery if the parties are later required to participate in
16 an early case conference pursuant to NRCP 16.1.

17 DATED this 15 day of April 2019.

18
19 HUTCHISON & STEFFEN, PLLC

20
21 
22 John T. Steffen (4390)
23 Matthew K. Schriever (10745)
24 Peccole Professional Park
25 10080 West Alta Drive, Suite 200
26 Las Vegas, NV 89145
27 mschriever@hutchlegal.com

28
Attorneys for Defendants
Alyssa McDermott, Wedgewood Inc., and
Breckenridge Property Fund 2016 LLC

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Hutchison & Steffen, PLLC and that on the date indicated below, I served a true and correct copy of the **OBJECTION TO PLAINTIFF'S EARLY CASE CONFERENCE REPORT** via U.S. Mail to the parties designated below.

Leo Kramer
Audrey Kramer
2364 Redwood Road
Hercules, CA 94547
Plaintiffs

Ace Van Patten, Esq.
TIFFANY & BOSCO, PA
10100 W. Charleston Blvd., Ste. 220
Las Vegas, NV 89135
Attorney for National Default Servicing Corporation

DATED this 15 day of April 2019.

Heather Bennett

An Employee of HUTCHISON & STEFFEN, PLLC

INTENTIONALLY LEFT BLANK
EXHIBIT PAGE ONLY

EXHIBIT 1

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

From: Matthew K. Schriever
Sent: Friday, March 15, 2019 11:44 AM
To: Audrey Kramer
Cc: AVP@tblaw.com; NPetty@tblaw.com; Casey Nelson (CaseyNelson@wedgewood-inc.com)
Subject: RE: REQUEST TO SCHEDULE EARLY CASE CONFERENCE PURSUANT TO NRCP 16.1(b)(1)

I do not have a record of receiving any discovery requests from you. Any discovery requests are premature under the Nevada Rules of Civil Procedure. I will not participate in an early case conference pursuant to NRCP 16.1(b) because that conference would be premature at this time because we have not filed an answer or "pleading" in this matter. A pleading is defined in NRCP 7 as a complaint, an answer to a complaint, an answer to a counterclaim, an answer to a crossclaim, a third-party complaint, an answer to a third-party complaint, or a reply to an answer. We have only filed motions in this matter and motions are not pleadings. You're not entitled to request discovery at this point and I won't let you try to construe my participation in an early case conference as some sort of waiver. We can schedule an early case conference if your complaint survives my client's renewed motion to dismiss and after we file an Answer. However, I am more than happy to have a conference call with you and Ace Van Patten to discuss this matter, so long as it is understood that it is not a NRCP 16.1 early case conference. I am available on March 25 for that conference call. Please let me know what time you would like to schedule it for. Also, please provide me with a call-in number.

From: Audrey Kramer <audreykramer55@yahoo.com>
Sent: Thursday, March 14, 2019 12:45 PM
To: Matthew K. Schriever <mschriever@hutchlegal.com>
Cc: AVP@tblaw.com; NPetty@tblaw.com
Subject: Re: REQUEST TO SCHEDULE EARLY CASE CONFERENCE PURSUANT TO NRCP 16.1(b)(1)

Mr. Schriever,

In accordance with Nevada laws we are reaching out to schedule an early case conference with you regarding our request to obtain Discovery that was mailed to all parties on Dec. 20, 2018, and recorded with the Court on Dec. 21, 2018.

Please see below:

**Plaintiffs, Audrey Kramer and Leo Kramer's Request for Admission Set One,
Plaintiffs, Audrey Kramer and Leo Kramer's Special Interrogatories Set One,
Plaintiff's Request for Production of Documents Set One ("written requests")**

Below are possible dates we are available (telephonically) to schedule an early case conference to discovery items:

Mon. 3/18/19, 8a-5p

Tues. 3/19/19, 2:30p-4p

Wed. 3/20/19, 8a-5p

Fri. 3/22/19, 2:30p-4p

Mon. 3/25/19, 8a-5p

Lastly, we have reached out to Mr. Van Patten with NDSC, and he is only available on Monday, March 25th, between 8a-5p. Hopefully, that day will work for you as well. We would prefer to schedule sometime in the afternoon depending on how long you and Mr. Van Patten anticipate the call going, that is of course if you are able to join in. If not, please advise as to what other date that you may be available.

Thank you in advance for your prompt reply to this email.

Sincerely,
Audrey & Leo Kramer
510-708-9100 Cell

Sent from my iPad

FILED

2019 MAY -2 AM 11:02

TANYA SCOTT
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT

John Peoples

John T. Steffen (4390)
Matthew K. Schriever (10745)
HUTCHISON & STEFFEN, PLLC
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145
Tel (702) 385-2500
Fax (702) 385-2086
mschriever@hutchlegal.com

Casey J. Nelson, Esq. (12259)
Wedgewood, LLC
Office of the General Counsel
2320 Potosi Street, Suite 130
Las Vegas, Nevada 89146
Tel (702) 305-9157
Fax (310) 730-5967
caseynelson@wedgewood-inc.com

Attorneys for Defendants

Alyssa McDermott, Wedgewood Inc., and Breckenridge Property Fund 2016 LLC

THIRD JUDICIAL DISTRICT COURT

LYON COUNTY, NEVADA

LEO KRAMER, AUDREY KRAMER,

Plaintiff,

v.

NATIONAL DEFAULT SERVICING
CORPORATION, ALYSSA MCDERMOTT,
WEDGEWOOD INC., BRECKENRIDGE
PROPERTY FUND 2016 LLC and DOES 1
THROUGH 50 INCLUSIVE,

Defendants.

Case No.: 18-CV-00663

Dept No.: I

**OPPOSITION TO PLAINTIFF'S MOTION
FOR SUMMARY JUDGMENT**

Comes now, ALYSSA MCDERMOTT ("McDermott"), WEDGEWOOD INC. ("Wedgwood"), and BRECKENRIDGE PROPERTY FUND 2016 LLC ("Breckenridge") (collectively "Wedgewood Defendants") by and through its counsel of record, Hutchison & Steffen, LLC, and hereby submits its opposition to the motion for summary judgment filed by Plaintiffs. This opposition is based upon the papers and pleadings on file herein, the currently pending motion to dismiss, the following points and

authorities, all facts judicially noticed, and any oral argument that the Court may entertain at a hearing on this matter.

POINTS AND AUTHORITIES

I. STATEMENT OF FACTS.

This case pertains to the foreclosure of real property commonly known as 1740 Autumn Glen Street, Fernley, NV 89408 ("Subject Property") that took place on or about May 18, 2018 wherein Breckenridge purchased the Subject Property. The Plaintiffs filed their original complaint on June 8, 2018. In that complaint, the Plaintiffs asserted claims for relief against the Wedgewood Defendants as follows: (1) Unlawful Foreclosure, (2) Quiet Title, (3) Preliminary Injunction, (4) Slander of Title, (5) Constructive Fraud, and (6) Declaratory Relief.¹

On October 24, 2018, this Court dismissed the original complaint but granted leave for the Plaintiffs to amend it in regard to procedural allegations pertaining to the notice of foreclosure.²

On October 29, 2018, Plaintiffs filed their first amended complaint and asserted causes of action against the Wedgewood Defendants of Quiet Title and Declaratory Relief.³ The remaining causes of action in the first amended complaint – for Unlawful Foreclosure; Slander of Title; and Cancellation of Substitution of Trustee, Notice of Default, Notice of Trustee's Sale, and Trustee's Deed Upon Sale – are clearly delineated as being alleged only against NDSC.⁴ These additional allegations contained in the first amended complaint regarding the procedural allegations of the foreclosure were each alleged to have been done by other entities. The Plaintiffs do not allege in their first amended complaint that any of these procedural allegations pertaining to the notice of foreclosure were done by the Wedgewood Defendants.

Because the Plaintiffs failed to make any new allegations against the Wedgewood Defendants, the Wedgewood Defendants filed a motion to dismiss the first amended complaint on November 19, 2018. The hearing on that motion recently took place on May 1, 2019. As a result of that hearing, the only cause of action remaining against the Wedgewood Defendants is the Declaratory Relief cause of
///

¹ See Complaint filed June 8, 2018.

² See Order Granting Motion To Dismiss Plaintiff's Complaint filed October 24, 2018.

³ See First Amended Complaint filed October 29, 2018.

⁴ *Id.* at 11:13-15; 18:13-14; and 23:19-21.

1 action against Breckenridge. Furthermore, the Court ordered that an answer must be filed within twenty
2 (20) days from the hearing. Accordingly, this motion for summary judgment is premature.

3 The arguments and allegations contained in the Plaintiff's motion for summary judgment all
4 allegedly occurred prior to the foreclosure sale. The Wedgewood Defendants had no role in this dispute
5 prior to the foreclosure. Their first involvement in the matter was when Breckenridge purchased the
6 Subject Property at the foreclosure sale. Wedgewood is Breckenridge's manager. McDermott is an
7 employee of Wedgewood that was assigned as the project manager for the Subject Property once
8 Breckenridge purchased the Subject Property at foreclosure. Breckenridge, Wedgewood, and
9 McDermott's sole relationship to this case is a result of Breckenridge's purchase of the Subject Property
10 at the foreclosure sale — they were not lenders, noteholders, or beneficiaries of Plaintiffs' loan obligations.
11 Furthermore, Wedgewood and McDermott do not claim an ownership or title interest to the Subject
12 Property.

13 Plaintiffs' request for summary judgment should be denied because the undisputed facts establish,
14 as a matter of law, that the Plaintiffs have no viable claims against the Wedgewood Defendants. Plaintiffs
15 motion for summary judgment does not even address the only causes of action brought against the
16 Wedgewood Defendants — Quiet Title and Declaratory Relief.

17 **II. STANDARD OF REVIEW.**

18 NRCP 56(a) states:

19 A party may move for summary judgment, identifying each claim or defense —
20 or the part of each claim or defense — on which summary judgment is sought. The
21 court shall grant summary judgment if the movant shows that there is no genuine
22 dispute as to any material fact and the movant is entitled to judgment as a matter
23 of law. The court should state on the record the reasons for granting or denying
24 the motion.

25 In granting summary judgment, this Court must take great care. *Johnson v. Steel, Inc.*, 100 Nev.
26 181, 182 (1984). Trial judges are to exercise great caution in granting summary judgment, which is not
27 to be granted if there is the slightest doubt as to the operative facts. *Posadas v. City of Reno*, 109 Nev.
28 448, 451 (1993). The court must view the evidence in the light most favorable to the nonmoving party
and determine whether there are genuine issues of material fact. In so doing, the nonmoving party is

entitled to have the evidence and all inferences therefrom accepted as true. *Johnson*, 100 Nev. at 182. Summary judgment may not be used as a shortcut to the resolving of disputes upon facts material to the determination of the legal rights of the parties. *Parman v. Petricciani*, 70 Nev. 427 (1954).

Under NRCP 56(a), a party moving for summary judgment must establish that “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.”

The Nevada Supreme Court has stated, “[A] party seeking summary judgment always bears the initial responsibility of informing the district court of the basis for its motion.” *Maine v. Stewart*, 109 Nev. 721, 727 (1993); *Clauson v. Lloyd*, 103 Nev. 432, 435 n.3 (1987) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 91 L. Ed. 2d 265, 106 S. Ct. 2548 (1986)).

The moving party has the burden of establishing the non-existence of genuine issues of material fact. *Dennison v. Allen Group Leasing Corp.*, 110 Nev. 181 (1994); *Bird v. Casa Royale West*, 97 Nev. 67, 70-71 (1981); *Garvey v. Clark County*, 91 Nev. 127, 130 (1975). Moreover, when it comes to issues of fact, the Court must construct all pleadings and other proof “in a light most favorable to the nonmoving party.” *Wood v. Safeway, Inc.*, 121 Nev. 724, 729 (2005).

Even a slight factual dispute is sufficient to make the granting of summary judgment improper. *Sims v. General Telephone & Electronics*, 107 Nev. 516 (1991) (wherein an inference was sufficient to constitute a factual dispute on causation). Based on the arguments set forth herein, Plaintiff has failed to meet its burden of persuasion by showing there are no genuine issues of material fact. As such, this Court should deny Plaintiffs’ motion for summary judgment.

III. LEGAL ARGUMENT.

The Plaintiffs’ motion for summary judgment only addresses the Wedgewood Defendants in two instances – both of which occur in the “Statement Of Undisputed Facts” section. First, the Plaintiffs state:

NDSC, Breckenridge Property Fund 2016 LLC and its privies all lacked legal standing to cause the non-judicial foreclosure of Defendants’ [sic] real property and retirement home.⁵

///

⁵ See, Motion for Summary Judgment at 8:1-5.

1 The second and final reference to the Wedgewood Defendants states:

2 Alyssa McDermott, Wedgewood Inc., or Breckenridge Property Fund 2016 LLC
3 were aware of the disputes regarding Plaintiffs real property and participated in
4 the wrongful and unlawful foreclosure process. As such, the alleged sale of
5 Plaintiff's real property was unlawful and void ab initio and the purported sale of
6 Plaintiff's real property has no enforceable legal status and any legal document
7 that is taken to have conveyed or assigned any interest in Plaintiffs' real property
8 to Defendants, Alyssa McDermott, Wedgewood Inc., or Breckenridge Property
9 Fund 2016 LLC is void on its face.⁶

10 The motion does not even address the causes of action of the first amended complaint that are
11 brought against the Wedgewood Defendants – Quiet Title and Declaratory Relief. In fact, the only actual
12 argument that the Plaintiffs even make in support of summary judgment is that the “Defendants failed to
13 serve plaintiffs with the notice of default as required by Nevada law.”⁷ This is clearly an argument made
14 solely against NDSC as the Wedgewood Defendants had nothing to do with the foreclosure notices. In
15 fact, the Defendants make no reference to the Wedgewood Defendants or any allegations that could
16 possibly pertain to them during their entire “Argument” section of the motion.⁸ Accordingly, the motion
17 should be denied as to the Wedgewood Defendants pursuant to TJDCR 7(D) which provides, “The failure
18 of a moving party to file a memorandum of points and authorities in support of a motion shall constitute
19 a consent to the denial of the motion[.]” The Plaintiffs have not sufficiently supported their motion as to
20 their allegations against the Wedgewood Defendants and the motion should therefore be denied.

21 **A. Standing.**

22 While the Plaintiffs present the issue of standing as an undisputed fact, it clearly is a disputed fact
23 and one that the Wedgewood Defendants vehemently denies. The Wedgewood Defendants had nothing
24 to do with the Subject Property until Breckenridge purchased the Subject Property at the foreclosure.
25 Any procedural allegations pertaining to the notice of foreclosure or standing to proceed with foreclosure
26 are actions allegedly done by other entities that occurred prior to the foreclosure sale, i.e. prior to the
27 Wedgewood Defendants being involved with the dispute. These allegations against other parties, even
28 if true, do not provide either a factual or legal basis for summary judgment as it relates to the Wedgewood

⁶ *Id.* at 13:1-11.

⁷ *Id.* at 15:27-28.

⁸ *Id.* at 14-21.

1 Defendants because the Wedgewood Defendants cannot be held responsible for the alleged actions of
2 others.

3 The question of standing to foreclosure is an issue that must be examined as to the role of the
4 parties prior to the foreclosure sale. The Wedgewood Defendants had no role in this dispute prior to the
5 foreclosure. Their first involvement in the matter was when Breckenridge purchased the Subject Property
6 at the foreclosure sale. The Wedgewood Defendants' sole relationship to this case is a result of
7 Breckenridge's purchase of the Subject Property at the foreclosure sale – they were not lenders,
8 noteholders, or beneficiaries of Plaintiffs' loan obligations. Therefore, the question of standing is not
9 applicable to them.

10 In fact, the causes of actions in the first amended complaint that deal with the issue of standing to
11 foreclose – Unlawful Foreclosure; Slander of Title; and Cancellation of Substitution of Trustee, Notice of
12 Default, Notice of Trustee's Sale, and Trustee's Deed Upon Sale – are clearly delineated as being alleged
13 only against NDSC.⁹ The Wedgewood Defendants did not cause the foreclosure to happen and were not
14 involved in the foreclosure process; rather, Breckenridge simply bought the Subject Property at the
15 foreclosure as a third party purchaser. The Plaintiffs attempt to now seek summary judgment against the
16 Wedgewood Defendants based on allegations that are not even contained in their first amended complaint
17 is improper and should be denied.

18 **B. Bona Fide Purchaser Status.**

19 Plaintiffs' allegations that the Wedgewood Defendants were aware of the disputes between
20 Plaintiff and NDSC regarding standing are not supported by any factual arguments or evidence. Plaintiffs
21 do not offer sufficient allegations as to when or how the Wedgewood Defendants should have known
22 about the dispute. Breckenridge is an independent third party who took title to the Subject Property
23 pursuant to a NRS 107.080 foreclosure sale. NRS 107.080 provides in pertinent part:

24 5. Every sale made under the provisions of this section and other sections of this
25 chapter vests in the purchaser the title of the grantor and any successors in interest
26 without equity or right of redemption. Except as otherwise provided in subsection
27 7, *a sale made pursuant to this section must be declared void by any court of*
28 *competent jurisdiction in the county where the sale took place if:*

⁹ See First Amended Complaint at 11:13-15; 18:13-14; and 23:19-21.

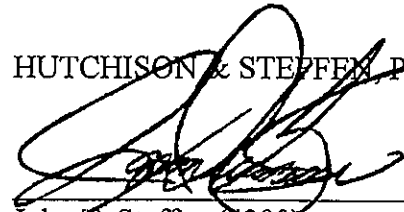
1124

1 **IV. CONCLUSION.**

2 Based on the foregoing, Plaintiff respectfully requests that the Court deny Plaintiffs' motion for
3 summary judgment as unsupported since the Wedgewood Defendants did not participate in the
4 foreclosure process and could not have been aware of any potential dispute between the Plaintiffs and
5 NDSC.

6 DATED this 1 day of May 2019.

HUTCHISON & STEFFEN, PLLC


7
8 John T. Steffen (4390)
9 Matthew K. Schriever (10745)
10 10080 West Alta Drive, Suite 200
11 Las Vegas, Nevada 89145
mschriever@hutchlegal.com

12 *Attorneys for Defendants*
13 *Alyssa McDermott, Wedgewood Inc., and*
14 *Breckenridge Property Fund 2016 LLC*
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

Leo Kramer
Audrey Kramer
2364 Redwood Road
Hercules, CA 94547
Plaintiffs

DATED this 1st day of May 2019.

-9-