

1 2018 WL 1940956, at *6 (E.D. Cal. Apr. 25, 2018) (“[S]triking an answer is not the remedy for a failure
2 to timely respond to a complaint.”) (collecting cases), *report and recommendation adopted*, No. 2:17-cv-
3 2277-JAM-EFB PS, 2018 WL 3105757 (E.D. Cal. June 25, 2018); *Cabral v. Supple, LLC*, No. ED 12-
4 00085-MWF (OPx), 2013 WL 12171760, at *1 (C.D. Cal. Feb. 12, 2013)
5 (denying motion to strike untimely answer where plaintiff would “suffer no prejudice”); *Larson v.*
6 *Liberty Mut. Fire Ins. Co.*, No. CIV. 09-00308 SOM-BMK, 2009 WL 3540897, at *1 (D. Haw. Oct. 29,
7 2009) (denying motion to strike untimely answer where answer was only filed six days late, the
8 defendant’s conduct “was not culpable,” and plaintiff suffered no prejudice). In short, there is no case
9 law which would support striking Breckenridge’s Answer for being untimely.

10 Breckenridge’s Answer was filed late due to a simple administrative mistake. The resulting delay
11 was only eight days and did not prejudice the Kramers in any way. There is no law that suggests
12 Breckenridge’s Answer should be struck. Accordingly, this Court should deny Plaintiffs’ request that
13 Breckenridge’s Answer be struck for untimeliness.

14 **B. Wedgewood And McDermott Are *Explicitly* Not Parties To Breckenridge’s Answer.**

15 The Kramers’ Motion asks that this Court strike any references in Breckenridge’s Answer to
16 either Wedgewood or McDermott, as those parties have been dismissed from this case. However, the
17 only reference to Wedgewood or McDermott in the Answer is in the caption to the document. The Answer
18 itself is filed on behalf of Breckenridge. Answer at 2:1. The reference to Wedgewood and McDermott in
19 the caption has no legal effect. Thus, the Kramers’ are asking for a result which has already been
20 specifically address by Breckenridge in the Answer, namely, the removal of Wedgewood and McDermott
21 as parties. The Kramers’ request to strike Wedgewood and McDermott from the Answer is moot and has
22 served only to increase the cost of this litigation for both Breckenridge and this Court. There was neither
23 any need nor basis for the Kramers’ request to strike references in the Answer to Wedgewood and
24 McDermott.

25 The Kramers’ also needlessly request that Breckenridge’s Answer be struck to the extent
26 Breckenridge answered the Kramers’ claims of Quiet Title and Slander of Title, which this Court
27 dismissed on May 1, 2019. Breckenridge agrees that these claims were dismissed. However, as of the
28 date the Answer was filed, no Order had yet been entered formalizing this Court’s decisions and findings

1 from the May 1, 2019 hearing. Additionally, any allegation not denied is deemed admitted under NRC
2 8(b)(6), and thus out of abundance of caution these allegations were denied by Breckenridge. Such
3 denials are entirely normal in Nevada courts. The Kramers offer no argument or explanation of why
4 striking Breckenridge's answers to these allegations is necessary or how these allegations prejudice them
5 in any way.

6 The Kramers also argue that Breckenridge's answers to its claim for "Cancellation of Written
7 Instruments" be struck. The Kramers' reason for this request is that the Court "did not dismiss any
8 allegation to Cancellation of written Instruments." Motion at 7:18-19 (internal bolding and underlining
9 omitted). It is unclear to Breckenridge why the Court's non-dismissal of a legal claim is a reason to strike
10 Breckenridge's denials of that legal claim. Nevertheless, this request by the Kramers is pointless and a
11 waste of Breckenridge's and this Court's resources to analyze. The Kramers' "cancellation of written
12 instruments" claim is asserted against NDSC, not Breckenridge. Breckenridge's denials of those
13 allegations are only made out of abundance of caution, which, as this Court is aware, is a standard practice
14 among Nevada lawyers. These denials have not prejudiced the Kramers in any way, and their request to
15 strike should be denied.

16 **C. Breckenridge's Affirmative Defenses Present Issues Of Fact And Should Not Be**
17 **Struck.**

18 The Kramers' also argue that Breckenridge's affirmative defenses each be struck for being
19 "redundant, immaterial, impertinent, or scandalous" Motion at 6:23-24. This argument arises from
20 the Kramers not understanding the nature of an affirmative defense.

21 The Kramers' initially and incorrectly claim that Breckenridge "did not assert any recognized
22 affirmative defenses" Motion at 4:19-21. This is obviously false, as Breckenridge's 2nd, 3rd, 4th, 6th,
23 and 7th affirmative defense are all specifically listed in NRC 8(c), which of course lists certain
24 affirmative defenses. Breckenridge's 1st affirmative defense, failure to state a claim, is widely recognized
25 in Nevada as an affirmative defense. See e.g., *Ransdell v. Clark County*, 192 P.3d 756, 760, 124 Nev.
26 847, 852 (Nev. 2008). Breckenridge's 5th affirmative defense, that it was a bona fide purchaser for value
27 is recognized as an affirmative defense. *Bailey v. Butner*, 176 P.2d 226, 229, 64 Nev. 1, 7 (Nev. 1947)
28 ("the right to protection as a bona fide purchaser is ordinarily regarded as an affirmative defense"). And

1 Breckenridge's 8th affirmative defenses, a denial of every allegation not specifically answered, is a clear
2 reference to NRCP 8(b)(6), which states that any allegation which is not denied is admitted. Thus, all of
3 Breckenridge's affirmative defenses are specifically "recognized" as such by Nevada law.

4 The Kramers' objections to Breckenridge's individual affirmative defenses appear to be based on
5 their misunderstanding of the nature of an affirmative defense. The Kramers seem to believe that a motion
6 to strike may be used to challenge the underlying facts of Breckenridge's affirmative defenses. This, of
7 course, is incorrect. Courts will not strike an affirmative defense based on a disputed factual issue. *See*
8 *F.T.C. v. Moneymaker*, 2011 WL 3290379, at *1 (D.Nev. 2011) (" . . . requires factfinding the court is
9 not prepared to address at the present juncture, as such questions go to the merits of the case rather than
10 to the pleading standard. Plaintiff has identified no resulting prejudice from the court's decision to allow
11 these defenses to stand until the parties have completed discovery."). "Even when the defense presents a
12 purely legal question . . . courts are very reluctant to determine disputed or substantial issues of law on a
13 motion to strike; these questions quite properly are viewed as determinable only after discovery and a
14 hearing on the merits." 5 Charles Wright & Arthur Miller, *FEDERAL PRACTICE & PROCEDURE*, §
15 1381, at 800-01. Thus, to the extent the Kramers' Motion is an attempt to litigate the underlying facts of
16 this case or the relevant affirmative defenses, it should be denied.

17 The Kramers argue that Breckenridge's first affirmative defense, failure to state a claim upon
18 which relief can be granted, is "wholly irrelevant to the causes of action alleged in the (FAC)". The
19 Kramers do not explain how the affirmative defense of failure to state a claim are "wholly irrelevant" to
20 this case. If Breckenridge is successful in proving that the Kramers' FAC fails to state a claim upon which
21 relief can be granted, Breckenridge would be dismissed from this case. NRCP 12(b)(5). Thus, Brecken's
22 first affirmative defense is more than relevant; it could be dispositive. Accordingly, the Kramers' request
23 to strike Breckenridge's first affirmative defense must be denied. Additionally, Breckenridge submits
24 that it should not have to prepare and file briefs in order to explain to the Kramers basic legal principles.

25 The Kramers next argue that Breckenridge's equitable affirmative defenses should be struck.
26 Motion at 9:15, et seq. The Kramers claim these equitable defenses are "wholly irrelevant", but they offer
27 no explanation of how they are irrelevant. The most obvious reason these defenses are relevant is that the
28 Kramers have not paid their mortgage on the Subject Property nor have they evinced any ability or intent

1 to do so, which clearly suggests the possibility that their legal claims will be rejected for equitable reasons
2 such as estoppel, waiver, and/or unclean hands. Additionally, the Kramers argue that Breckenridge
3 cannot assert equitable affirmative defenses because this Court allowed the Kramers to amend their
4 complaint. Motion at 9:18-19. This argument is incorrect, as Breckenridge is allowed to assert affirmative
5 defenses to an amended complaint. NRCP 8(c). The Kramers' arguments to strike Breckenridge's
6 equitable defenses are meritless.

7 The Kramers argue that Breckenridge's affirmative defense that it was a bona fide purchaser
8 ("BFP") of the Subject Property should be struck. The basis of this argument, according to the Kramers,
9 is that "Breckenridge . . . is not a bona fide encumbrancer of" the Subject Property. *Id.* 9:24. However,
10 "Whether the circumstances are sufficient to require inquiry as to another's interest in property [for
11 purposes of determining whether a party is a bona fide purchaser] is a **question of fact**, even where there
12 is no dispute over the historical facts." *In re Weisman*, 5 F.3d 417, 421 (9th Cir. 1993) (parenthetical
13 statement added). Breckenridge's affirmative defense that it is a BFP is a question of fact and cannot be
14 struck from Breckenridge's answer just because the Kramers disagree with the defense.

15 Similarly, the Kramers argue that Breckenridge's affirmative defenses of statute of limitations
16 and laches must be struck. Once again, their reasoning is flawed in that they simply disagree with these
17 affirmative defenses, claiming that they timely filed their lawsuit. Motion at 10:10. However, the
18 Kramers' disagreement with Breckenridge's affirmative defenses is not a reason to strike those defenses,
19 which both present questions of fact to be determined at trial. *See, e.g., Mt. Holyoke Homes, LP v.*
20 *California Coastal Com'n*, 167 Cal.App.4th 830, 840, 84 Cal.Rptr.3d 452 (Cal.Ct.App.2008) ("laches is
21 a question of fact" unless all relevant facts are undisputed) (internal quotation marks and citations
22 omitted); *TMX, Inc. v. Volk*, 2015 WL 5176619, at *1 (Nev.App. 2015) ("The date on which
23 a statute of limitations accrues is normally a question of fact . . . "). Whether the Kramers timely filed
24 their lawsuit is an issue of fact to be determined at trial, and Breckenridge's affirmative defenses should
25 not be struck.

26 The Kramers' also argue that Breckenridges "statute of frauds" affirmative defense should be
27 struck on the grounds that the Kramers believe they satisfied all requirements of the statute of frauds.
28 Motion at 10:22. Again, the Kramers' disagreement with an affirmative defense is not a reason to strike

1 it. Whether the statute of frauds was satisfied in this case is a question of fact. *See Snyder v. Bank of*
2 *America, N.A.*, 2016 WL 109981, at *5 (N.D.Cal., 2016) (“Whether a party is precluded from using
3 the statute of frauds defense in a given case is generally a question of fact.”). There are no ground for
4 striking Breckenridge’s statute of frauds affirmative defense.

5 The Kramers’ argue that Breckenridge’s affirmative defense that the Kramers’ damages were
6 caused by other parties’ acts or omissions should be struck. The Kramers’ claim this is not a viable
7 affirmative defense or that it is irrelevant. However, if the Kramers are to prevail in this case, they must
8 prove that Breckenridge caused them damages. *See Kleitz v. Raskin*, 738 P.2d 508, 510, 103 Nev. 325,
9 328 (Nev. 1987) (discussing plaintiff’s burden to prove defendant caused their damages). Thus, it would
10 obviously be relevant and “viable” for Breckenridge to show that it did not cause any damages to the
11 Kramers. Such a determination would lead to the dismissal of Breckenridge from this case, and so this
12 affirmative defense is viable, relevant, and should not be struck. The Kramers also assert “on information
13 and belief” basis that Breckenridge did cause their damages by participating in fraud. Motion at 11:27-
14 28. However, the Kramers’ theory that fraud occurred has been rejected by both a federal District Court
15 and the Ninth Circuit. **Exhibit 1**. Thus, there is no basis whatsoever for the Kramers’ scandalous fraud
16 accusations against Breckenridge.

17 The Kramers argue that Breckenridge’s seventh affirmative defense, which incorporates NRCP
18 8(c)’s affirmative defenses should be struck as irrelevant and not viable. The Kramers offer no
19 explanation of why NRCP 8(c)’s affirmative defenses are irrelevant or not viable, and many of those
20 specific defenses in NRCP 8(c) are relevant and viable, as discussed above. Further, as this Court is well-
21 aware, asserting such a catch-all affirmative defense is the normal and unquestioned practice of attorneys
22 throughout Nevada. There is no reason to strike this affirmative defense.

23 The Kramers also argue that Breckenridge’s denial of all allegations not specifically denied be
24 struck for being irrelevant. However, this defense is a clear reference to NRCP 8(d) which states that any
25 allegation which is not denied is admitted. Thus, Breckenridge’s general denial of any unaddressed
26 allegations is relevant to avoiding the effect of NRCP 8(d). Further, such “catch all” denials are entirely
27 typical of responsive pleadings filed throughout Nevada. The purpose of such an affirmative defense is

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1 to ensure that no allegations are deemed admitted, and such a defense is both relevant and viable and
2 should not be struck from the Answer.

3 Finally, the Kramers make no attempt to explain how any of these affirmative defenses prejudice
4 them. Absent such prejudice, their Motion should be denied. *California Dept. of Toxic Substances*
5 *Control v. Alco Pacific, Inc.*, 217 F. Supp. 2d 1028, 1033 (C.D. Cal. 2002) ("Given their disfavored
6 status, courts often require 'a showing of prejudice by the moving party' before granting the requested
7 relief.").

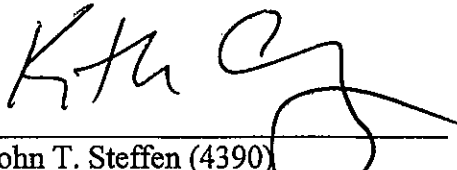
8 In summary, *all* of Breckenridges affirmative defenses are relevant and are the types of defenses
9 that are routinely asserted in responsive pleadings in Nevada. The Kramers appear not to understand the
10 nature of an affirmative defense and have pointlessly filed their motion to strike as if the merits of
11 Breckenridge's affirmative defense can be litigated on a motion to strike. "[C]ourts are very reluctant to
12 determine disputed or substantial issues of law on a motion to strike" *California Dept. of Toxic*
13 *Substances Control v. Alco Pacific, Inc.*, 217 F.Supp.2d 1028, 1033 (C.D.Cal. 2002). The Kramers have
14 given no real reasons for striking Breckenridge's affirmative defenses except that, in a few cases, the
15 Kramers simply disagree with the affirmative defense. However, this is no reason for filing a motion to
16 strike, and the Kramers' motion should be denied in its entirety.

17 **V. CONCLUSION.**

18 Based on the foregoing, Breckenridge respectfully requests that the Court deny the Kramers'
19 Motion in its entirety. Additionally, Breckenridge respectfully requests that this Court instruct the
20 Kramers to follow NRCP 11(b) *and* to avoid filing meritless motions in the future or else face sanctions.

21 DATED this 24th day of June, 2019.

HUTCHISON & STEFFEN, PLLC

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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 **OPPOSITION TO PLAINTIFFS' NOTICE OF MOTION AND MOTION TO STRIKE BRECKENRIDGE PROPERTY FUND 2016 LLC'S ANSWER IN ITS ENTIRETY FOR FAILURE TO TIMELY FILE AN ANSWER OR IN THE ALTERNATIVE TO STRIKE PORTIONS OF DEFENDANT'S ANSWER AND ALL AFFIRMATIVE DEFENSES** via U.S. Mail to the parties designated below.

Leo Kramer
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DATED this 24 day of June, 2019.


An Employee of HUTCHISON & STEFFEN

LIST OF EXHIBITS

Exhibit No.	Document Title	No. of Pages (including exhibit cover page)
1	Memorandum, Kramer v. JP Morgan Chase Bank	9

EXHIBIT 1

EXHIBIT 1

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAY 29 2019

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

LEO KRAMER; AUDREY KRAMER,

Plaintiffs-Appellants,

v.

JP MORGAN CHASE BANK, N.A.; et al.,

Defendants-Appellees.

No. 18-15959

D.C. No. 3:18-cv-00001-MMD-
WGC

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Miranda M. Du, District Judge, Presiding

Submitted May 21, 2019**

Before: THOMAS, Chief Judge, LEAVY and FRIEDLAND, Circuit Judges.

Leo Kramer and Audrey Kramer appeal pro se from the district court's judgment dismissing their action alleging federal and state law claims arising out of foreclosure proceedings. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a district court's dismissal under Federal Rule of Civil Procedure

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

12(b)(6). *Cervantes v. Countrywide Home Loans, Inc.*, 656 F.3d 1034, 1040 (9th Cir. 2011). We may affirm on any basis supported by the record. *Johnson v. Riverside Healthcare Sys., LP*, 534 F.3d 1116, 1121 (9th Cir. 2008). We affirm.

The district court did not abuse its discretion in applying judicial estoppel to the Kramers' Fair Debt Collection Practices Act ("FDCPA") and slander of title claims based on conduct before the bankruptcy discharge because these claims were omitted from Leo Kramer's bankruptcy schedules, and the Kramers failed to allege facts sufficient to show that the omission was due to inadvertence or mistake. *See Hamilton v. State Farm Fire & Cas. Co.*, 270 F.3d 778, 782-83 (9th Cir. 2001) (setting forth the standard of review and explaining that "a party is judicially estopped from asserting a cause of action not raised in a reorganization plan or otherwise mentioned in the debtor's schedules or disclosure statements"); *see also Ah Quin v. Cty. of Kauai Dep't of Transp.*, 733 F.3d 267, 271-73 (9th Cir. 2013) (explaining application of judicial estoppel in the bankruptcy context and effect of an inadvertent or mistaken omission from a bankruptcy filing; the court applies a "presumption of deliberate manipulation" when a plaintiff-debtor has not reopened bankruptcy proceedings).

Dismissal of the Kramers' FDCPA and slander of title claims arising from post-bankruptcy conduct was proper because plaintiffs failed to allege facts sufficient to state a plausible claim. *See* 15 U.S.C. § 1692a(6)(F)(ii) (excluding

from the definition of debt collector a creditor collecting debts on its behalf); 15 U.S.C. §§ 1692e, 1692f; *Obduskey v. McCarthy & Holtus, LLP*, 139 S. Ct. 1029, 1038 (2019) (“[B]ut for § 1692f(6), those who engage in only nonjudicial foreclosure proceedings are not debt collectors within the meaning of the [FDCPA].”); *Dowers v. Nationstar Mortg., LLC*, 852 F.3d 964, 971 (9th Cir. 2017) (discussing protections for borrowers set forth in § 1692f(6)); *Seeley v. Seymour*, 237 Cal. Rptr. 282, 288-89 (Ct. App. 1987) (setting forth elements of slander of title claim under California law); *see also Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (to avoid dismissal, “a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face” (citation and internal quotation marks omitted)).

Dismissal of the Kramers’ claims under 11 U.S.C. § 524 was proper because Leo Kramer’s bankruptcy discharge did not affect the enforceability of JPMorgan Chase Bank, N.A.’s security interest. *See HSBC Bank USA, Nat’l Assn v. Blendheim (In re Blendheim)*, 803 F.3d 477, 493 (9th Cir. 2015) (“[A] discharge is neither effective nor necessary to void a lien or otherwise impair a creditor’s state-law right of foreclosure.”).

The district court did not abuse its discretion in denying leave to amend because amendment would have been futile. *See Cervantes*, 656 F.3d at 1041 (setting forth standard of review and explaining that dismissal without leave to

amend is proper if amendment would be futile).

The district court did not abuse its discretion by staying discovery pending resolution of defendants' motions to dismiss because plaintiffs failed to demonstrate actual and substantial prejudice resulting from the denial. *See Childress v. Darby Lumber, Inc.*, 357 F.3d 1000, 1009 (9th Cir. 2004) (standard of review); *Sablan v. Dep't of Fin.*, 856 F.2d 1317, 1321 (9th Cir. 1988) (district court's "decision to deny discovery will not be disturbed except upon the clearest showing that denial of discovery results in actual and substantial prejudice to the complaining litigant" (citation and internal quotation marks omitted)).

We reject as without merit the Kramers' contention that the magistrate judge was biased.

We do not consider matters not specifically and distinctly raised and argued in the opening brief. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

The Kramers' request for judicial notice in support of the reply brief (Docket Entry No. 32) and the motion to file an oversized reply brief (Docket Entry No. 33) are granted. The Clerk is instructed to file the Kramers' oversized reply brief submitted at Docket Entry No. 34.

All other pending motions and requests are denied.

AFFIRMED.

United States Court of Appeals for the Ninth Circuit

Office of the Clerk
95 Seventh Street
San Francisco, CA 94103

Information Regarding Judgment and Post-Judgment Proceedings

Judgment

- This Court has filed and entered the attached judgment in your case. Fed. R. App. P. 36. Please note the filed date on the attached decision because all of the dates described below run from that date, not from the date you receive this notice.

Mandate (Fed. R. App. P. 41; 9th Cir. R. 41-1 & -2)

- The mandate will issue 7 days after the expiration of the time for filing a petition for rehearing or 7 days from the denial of a petition for rehearing, unless the Court directs otherwise. To file a motion to stay the mandate, file it electronically via the appellate ECF system or, if you are a pro se litigant or an attorney with an exemption from using appellate ECF, file one original motion on paper.

Petition for Panel Rehearing (Fed. R. App. P. 40; 9th Cir. R. 40-1)

Petition for Rehearing En Banc (Fed. R. App. P. 35; 9th Cir. R. 35-1 to -3)

(1) A. Purpose (Panel Rehearing):

- A party should seek panel rehearing only if one or more of the following grounds exist:
 - ▶ A material point of fact or law was overlooked in the decision;
 - ▶ A change in the law occurred after the case was submitted which appears to have been overlooked by the panel; or
 - ▶ An apparent conflict with another decision of the Court was not addressed in the opinion.
- Do not file a petition for panel rehearing merely to reargue the case.

B. Purpose (Rehearing En Banc)

- A party should seek en banc rehearing only if one or more of the following grounds exist:

- ▶ Consideration by the full Court is necessary to secure or maintain uniformity of the Court's decisions; or
- ▶ The proceeding involves a question of exceptional importance; or
- ▶ The opinion directly conflicts with an existing opinion by another court of appeals or the Supreme Court and substantially affects a rule of national application in which there is an overriding need for national uniformity.

(2) Deadlines for Filing:

- A petition for rehearing may be filed within 14 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the United States or an agency or officer thereof is a party in a civil case, the time for filing a petition for rehearing is 45 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the mandate has issued, the petition for rehearing should be accompanied by a motion to recall the mandate.
- See Advisory Note to 9th Cir. R. 40-1 (petitions must be received on the due date).
- An order to publish a previously unpublished memorandum disposition extends the time to file a petition for rehearing to 14 days after the date of the order of publication or, in all civil cases in which the United States or an agency or officer thereof is a party, 45 days after the date of the order of publication. 9th Cir. R. 40-2.

(3) Statement of Counsel

- A petition should contain an introduction stating that, in counsel's judgment, one or more of the situations described in the "purpose" section above exist. The points to be raised must be stated clearly.

(4) Form & Number of Copies (9th Cir. R. 40-1; Fed. R. App. P. 32(c)(2))

- The petition shall not exceed 15 pages unless it complies with the alternative length limitations of 4,200 words or 390 lines of text.
- The petition must be accompanied by a copy of the panel's decision being challenged.
- An answer, when ordered by the Court, shall comply with the same length limitations as the petition.
- If a pro se litigant elects to file a form brief pursuant to Circuit Rule 28-1, a petition for panel rehearing or for rehearing en banc need not comply with Fed. R. App. P. 32.

- The petition or answer must be accompanied by a Certificate of Compliance found at Form 11, available on our website at www.ca9.uscourts.gov under *Forms*.
- You may file a petition electronically via the appellate ECF system. No paper copies are required unless the Court orders otherwise. If you are a pro se litigant or an attorney exempted from using the appellate ECF system, file one original petition on paper. No additional paper copies are required unless the Court orders otherwise.

Bill of Costs (Fed. R. App. P. 39, 9th Cir. R. 39-1)

- The Bill of Costs must be filed within 14 days after entry of judgment.
- See Form 10 for additional information, available on our website at www.ca9.uscourts.gov under *Forms*.

Attorneys Fees

- Ninth Circuit Rule 39-1 describes the content and due dates for attorneys fees applications.
- All relevant forms are available on our website at www.ca9.uscourts.gov under *Forms* or by telephoning (415) 355-7806.

Petition for a Writ of Certiorari

- Please refer to the Rules of the United States Supreme Court at www.supremecourt.gov

Counsel Listing in Published Opinions

- Please check counsel listing on the attached decision.
- If there are any errors in a published opinion, please send a letter in writing within 10 days to:
 - ▶ Thomson Reuters; 610 Opperman Drive; PO Box 64526; Eagan, MN 55123 (Attn: Jean Green, Senior Publications Coordinator);
 - ▶ and electronically file a copy of the letter via the appellate ECF system by using "File Correspondence to Court," or if you are an attorney exempted from using the appellate ECF system, mail the Court one copy of the letter.

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

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FILED

Case No.: 18-CV-00663

2019 JUN 24 PM 3:38

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TANYA SCEIRINE
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT

Andrea Andersen

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.

**OPPOSITION TO PLAINTIFFS' NOTICE
OF MOTION AND MOTION TO STRIKE
OPPOSITION TO SUMMARY JUDGMENT
FILED BY BRECKENRIDGE PROPERTY
FUND 2016 LLC, ALYSSA MCDERMOTT,
AND WEDGEWOOD INC**

Comes now, BRECKENRIDGE PROPERTY FUND 2016 LLC ("Breckenridge") by and through its counsel of record, Hutchison & Steffen, LLC, and hereby submits its *Opposition* to Plaintiffs' Notice of Motion and Motion to Strike Opposition to Summary Judgment ("Motion"). This Opposition is based upon the papers and pleadings on file herein, 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

Plaintiffs, the Kramers, are determined to needlessly increase the cost of this litigation, as evidenced by the instant Motion to strike which is utterly without merit. The Kramers' Motion arises from their own defective filing of a motion for summary judgment. The Kramers attempted to file their defective summary judgment motion on April 14, 2019. Motion at 4:15-16. However, they failed to correctly sign that motion, and the Court rejected it. The Court sent the Kramers notice of their defective

///

1 filing on April 22, 2019. *Id.* At 4:23-24. However, the Kramers ignored the Court's mail, leaving it
2 unopened for "a couple of weeks." *Id.* At 4:27-28.

3 While the Kramers were ignoring this Court's mail, Breckenridge had been served with the
4 Kramers' motion for summary judgment on about April 18, 2019. Accordingly, Breckenridge began
5 preparing an opposition brief, which was due within 14 days and was filed on May 2, 2019. It was not
6 until four days *after* Breckenridge filed its opposition, on May 6, 2019, that the Kramers first informed
7 Breckenridge that they had failed to correctly file their motion for summary judgment. Motion, Ex. C.
8 Thus, Breckenridge was forced to expend its time and fees preparing its opposition to the Kramers'
9 motion for summary judgment when the Kramers should have known since April 22 that their motion
10 was rejected. The Kramers' lack of diligence led directly to Breckenridge wasting its resources opposing
11 the Kramers' defective motion for summary judgment.

12 The Kramers also complain that Breckenridge filed an opposition to their defective motion for
13 summary judgment on May 21, 2019. This filing was an administrative error by Breckenridge's counsel.
14 Breckenridge did accidentally file its opposition brief on May 21, 2019 – however, the intent was to file
15 an Answer to the Kramers' First Amended Complaint. Breckenridge's counsel apologizes for any
16 inconvenience caused by this accident, however the Kramers have suffered no prejudice from this errata.

17 The reality is that the Kramers have not actually filed a motion for summary judgment. Thus,
18 Breckenridge does not need to have an opposition brief on file with the Court. Accordingly, Breckenridge
19 withdraws its opposition to the Kramers' motion for summary judgment. However, what seems more
20 pertinent is to note that this entire series of events was caused by the Kramers' filing a defective motion,
21 ignoring the Court's notice that their motion had been rejected, and failing to advise Breckenridge in a
22 timely fashion that their motion had not actually been filed thereby causing Breckenridge to expend its
23 resources needlessly preparing an opposition brief. This entire process has served only to waste the
24 resources of all involved, and the Kramers' should be admonished to avoid repeating such actions in the
25 future.

26 ///

27 ///

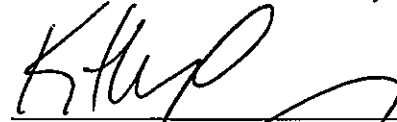
28 ///

1 CONCLUSION

2 Based on the foregoing, Breckenridge withdraws its Opposition to the Kramers' defective motion
3 for summary judgment. However, Breckenridge respectfully requests that this Court admonish the
4 Kramers for serving their defective motion for summary judgment on Breckenridge, for ignoring the
5 Court's mail, and for their failure to notify Breckenridge in a timely manner of the defective motion. All
6 of this, along with their instant Motion, has served only to cause needless increase in the cost of this
7 litigation for Breckenridge and to waste of judicial resources.

8 DATED this 24th day of June, 2019.

HUTCHISON & STEFFEN, PLLC

9 

10 John T. Steffen (4390)

11 Kenneth K. Ching (10542)

12 Matthew K. Schriever (10745)

13 10080 West Alta Drive, Suite 200

14 Las Vegas, Nevada 89145

15 *Attorneys for Defendants*

16 *Alyssa McDermott, Wedgewood Inc., and*

17 *Breckenridge Property Fund 2016 LLC*

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of Hutchison & Steffen, and that on the date indicated
3 below, I served a true and correct copy of the **OPPOSITION TO PLAINTIFFS' NOTICE OF**
4 **MOTION AND MOTION TO STRIKE OPPOSITION TO SUMMARY JUDGMENT FILED BY**
5 **BRECKENRIDGE PROPERTY FUND 2016 LLC, ALYSSA MCDERMOTT, AND**
6 **WEDGWOOD INC** via U.S. Mail to the parties designated below.

7 Leo Kramer
8 Audrey Kramer
9 2364 Redwood Road
10 Hercules, CA 94547
11 *Plaintiffs*

12 Ace Van Patten, Esq.
13 TIFFANY & BOSCO, PA
14 10100 W. Charleston Blvd., Ste. 220
15 Las Vegas, NV 89135
16 *Attorney for National Default Servicing Corporation*

17 DATED this 24 day of June, 2019.

18 
19 An Employee of HUTCHISON & STEFFEN
20
21
22
23
24
25
26
27
28

FILED

2019 JUL -5 PM 1:06

TANYA SCORINE
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT

Tanya Scoring

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

7 THIRD JUDICIAL DISTRICT COURT
8 LYON COUNTY, NEVADA

11 LEO KRAMER,
12 AUDREY KRAMER,

14 Plaintiffs,

15 vs.

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

22 Defendants.

Case No.: 18-CV-00663

PLAINTIFFS' REPLY TO
DEFENDANTS' OPPOSITION TO
PLAINTIFFS' NOTICE OF MOTION
AND MOTION TO STRIKE
OPPOSITION TO SUMMARY
JUDGMENT FILED BY
BRECKENRIDGE PROPERTY FUND
2016, ALYSSA MCDERMOTT, AND
WEDGEWOOD INC.

Dept: I

26 Plaintiffs, Leo Kramer and Audrey Kramer, ("Plaintiffs"), in pro se, hereby respectfully
27 submit the following memorandum of points and authority in REPLY to
28 DEFENDANTS' OPPOSITION TO PLAINTIFFS' NOTICE OF MOTION AND

1 MOTION TO STRIKE OPPOSITION TO SUMMARY JUDGMENT FILED BY
2 BRECKENRIDGE PROPERTY FUND 2016, ALYSSA MCDERMOTT, AND
3 WEDGEWOOD INC.

4
5 **MEMORANDUM OF POINTS AND AUTHORITIES**
6

7 **I**

8 **INTRODUCTION**
9

10 Counsel for Breckenridge, after being notified in writing that Plaintiffs' motion
11 for summary judgement was not in recordation with the court, did then frivolously,
12 wrongfully and 'untimely' file Defendant's Opposition to Plaintiffs' motion for
13 summary judgment, (34) days after receiving Plaintiffs' motion and (15) days after
14 being notified by Plaintiffs that the motion was not in recordation with the court.
15

16 On April 15, 2019, Plaintiffs mailed a 'Motion For Summary Judgment to: The
17 3rd Judicial District Court, Counsel for Defendant-NDSC and Counsel for Defendant-
18 Breckenridge. **PLEASE SEE EXHIBIT-A, Proof Of Delivery** Included with the
19 motion was a \$200 cashier's check for the filing fee, along with a 'copy' of the motion
20 and a note asking the court-clerk to please date & time stamp the copy and return to
21 Plaintiffs in a pre-paid self-addressed envelope provided by Plaintiffs. **PLEASE SEE**
22 **EXHIBIT-B, Plaintiffs' Self-Addressed Envelope**
23

24 On April 22, 2019 @ (6:14pm), approximately (7) days later, Plaintiffs received
25 the envelope back from the court. However, Plaintiffs, believing only a copy of their
26 motion was contained within, did not immediately open the envelope upon its arrival.
27 **PLEASE SEE EXHIBIT-C, Proof Of Delivery To Plaintiffs**
28

1 On April 29, 2019, Plaintiffs opened the above mentioned envelope in
2 preparation for the upcoming hearing scheduled on May 1st. It was on April 29th
3 Plaintiffs discovered for the first time that the court had rejected Plaintiffs' motion.
4 The court returned Plaintiffs' motion and check because Plaintiffs inadvertently missed
5 signing (1) of (3) required signatures.

6
7 Upon learning of the motion being rejected and in lieu of the upcoming hearing
8 just (2) days away, Plaintiffs decided it was more prudent and less burdensome to the
9 court to not resubmit their motion for summary judgment until the court ruled on
10 Defendants' Motions to Dismiss Plaintiffs' First Amended Complaint, which were
11 scheduled to be heard at the May 1st. hearing.

12
13 At the hearing on May 1, 2019, the Hon. Court recognized (2) two Causes of
14 Action in favor of Plaintiffs, and granted Plaintiffs the right to proceed with their case,
15 as well as start the discovery process. The judge also ordered Defendants' to Answer
16 Plaintiffs' First Amended Complaint within 20 days of the May 1st hearing.

17
18 In light of the judge's ruling, and in having just reviewed the updated court
19 docket, it did not occur to Plaintiffs to address their rejected motion for summary
20 judgment. As was previously stated by Plaintiffs, this was inadvertent and was not a
21 deliberate scheme to confuse the court or defendants and certainly was not intended to
22 needlessly increase the cost of litigation, as Defendants have wrongly asserted within
23 their brief. Defendant's outlandish statement is offensive, outrageous and ludicrous.
24 Any increase in the cost of litigation to Defendants is also an increase in cost to
25 Plaintiffs.

26
27 Further, Plaintiffs and Defendants are both aware that the Third Judicial District
28 Court does not provide electronic access to pleadings or to the court docket, and thus

1 the only way for the parties to keep up with filings is by regularly requesting a copy of
2 the docket directly from the court-clerk. Plaintiffs took the initiative and opportunity
3 on May 1st to obtained an updated docket from the court-clerk. Additionally Plaintiffs
4 did observe on the morning of the hearing that both attorneys also checked in with the
5 court-clerk. While Plaintiffs were not privy to either attorneys' conversations, it
6 certainly would have been prudent for the defense attorneys to likewise have obtained
7 an updated docket, whereby they would have known the motion for summary judgment
8 was not in recordation with the court.

9
10 However, on May, 2, 2019, just one day after the hearing, NDSC filed
11 Opposition to Plaintiffs' motion for summary judgment, which again was not in
12 recordation with the court, nor reflected on the court docket.

13
14 Plaintiffs learned NDSC filed their opposition (2) days after it was filed on
15 Saturday, May 4, 2019, when Plaintiffs received via (US Mail) Defendant, NDSC's
16 opposition to the motion for summary judgment. Upon this notification, Plaintiffs did
17 then first thing on Monday morning, (May 6th at 7:51am) promptly notify, via email,
18 Mr. Van Patten, counsel for NDSC, informing him that Plaintiffs' motion was not in
19 recordation with the court. Plaintiffs asked Mr. Van Patten to please withdraw the
20 opposition so as not to confuse the court. Plaintiffs further explained in a subsequent
21 email to Mr. Van Patten that the court had rejected Plaintiffs' motion due to missing
22 signatures and that this was in no way intentional or nefarious on the part of Plaintiffs.

23 **PLEASE SEE EXHIBIT-D, E-mail**

24
25 Also on Monday, May 6th at (8:09am), Plaintiffs in a separate email sent
26 notification to Mr. Schriever, counsel for Defendant Breckenridge, alerting Mr.
27 Schriever that the motion for summary judgment was not in recordation with the court.
28 Mr. Schriever, did in fact receive and reply to that email. **SEE EXHIBIT-E, E-mail**

1
2 In spite of being notified on May 6th, by Plaintiffs that Plaintiffs' motion had
3 been rejected by the court, counsel for Breckenridge did then on May 21st, frivolously,
4 wrongfully and untimely file their opposition to Plaintiffs' motion for summary
5 judgment, which was (34) days after receiving Plaintiffs' motion and (15) days after
6 being notified by Plaintiffs that the motion was not in recordation with the court.

7
8 Plaintiffs assert the rejection of Plaintiffs' motion by the court was due solely to
9 inadvertency; however, Defendant's filing of opposition was willful, frivolous and
10 deliberate because they were notified of the motion not being in recordation with the
11 court well before they filed their opposition on May 21st.

12
13 Counsel for Breckenridge has falsely accused Plaintiffs, alleging on (pg 1,
14 line23): *"The Kramers are determined to needlessly increase the cost of litigation,"*
15 Further, counsel has requested several times for the court to admonish Plaintiffs for
16 their inadvertence. Plaintiffs reply, if anyone should be admonished, it should be
17 counsel for Breckenridge. The court docket, E-mail-thread and proof-of-deliveries all
18 support the fact that Breckenridge had ample prior knowledge that no motion for
19 summary judgment was on record with the court.

20
21 Breckenridge's counsel firstly claims in his brief that he timely filed his
22 Opposition to Plaintiffs' motion for summary judgment on May 2, 2019. However, this
23 assertion is blatantly false. The court docket does not reflect that Breckenridge filed
24 opposition to summary judgment on May 2, 2019, and neither does the signature page
25 (9) of Breckenridge's opposition. The signature page (9) clearly depicts May 21, 2019.
26 Additionally, the 'Proof of Service' page also depicts the date of May 21, 2019, and
27 furthermore, the 'Proof of Service' page actually crossed out the May 21st date and
28 added a handwritten note stating: **"23rd, Fed-Ex Overnight, So Sorry!"** SEE

1 **EXHIBIT-F, DEFENDANT'S 'Opposition' Proof of Service Page**

2
3 Counsel for Breckenridge appears to be confused as to when he actually filed his
4 Opposition to Plaintiffs' motion for summary judgment. As noted in DEFENDANTS'
5 OPPOSITION TO PLAINTIFFS' NOTICE OF MOTION AND MOTION TO
6 STRIKE OPPOSITION TO SUMMARY JUDGMENT FILED BY BRECKENRIDGE
7 PROPERTY FUND 2016, ALYSSA MCDERMOTT, AND WEDGEWOOD INC.,
8 counselor states on (pg 2, lines 4-5) the following:

9 **"Accordingly, Breckenridge began preparing an opposition brief, which was due within**
10 **14 days and was filed on May 2, 2019."**

11
12 However, further down on the same page in the same opposition brief,
13 Defendants' counsel proffers to the court on (pg 2, lines 12-16 & lines 17-19) the
14 following:

15 **The Kramers also complain that Breckenridge filed an opposition to their defective**
16 **motion for summary judgment on May 21, 2019. This filing was an administrative**
17 **error by Breckenridge's counsel. Breckenridge did accidentally file its opposition brief**
18 **on May 21, 2019 – however, the intent was to file an Answer to the Kramers' First**
19 **Amended Complaint. Breckenridge's counsel apologizes for any inconvenience caused**
20 **by this accident, however the Kramers have suffered no prejudice from this errata.**
21 **The reality is that the Kramers have not actually filed a motion for summary**
22 **judgement. Thus, Breckenridge does not need to have an opposition brief on file with**
23 **the court. Accordingly, Breckenridge withdraws its opposition to the Kramers' motion**
24 **for summary judgment.**

25 The reality is counsel for Breckenridge willfully, knowingly and frivolously filed
26 their 'Opposition to Plaintiffs' motion for summary judgment', as the court docket does
27 not reflect that Breckenridge filed their opposition on May 2, 2019, as was wrongfully
28 asserted by counsel. Furthermore, there was an email on May 6th alerting counsel that
Plaintiffs' motion for summary judgement was not in recordation with the court, yet
counsel flagrantly filed their opposition on May 21st (15 days) after they were notified
that the motion was moot.

1 Counsel for Breckenridge wrongly asserts on behalf of Plaintiffs that, "*Plaintiffs*
2 *suffered no prejudice from this errata*". On the contrary, Plaintiffs incurred the cost
3 of document preparation, printing and postage in having to file a 'Notice of Intent To
4 File A Default', because Defendants, ignored the court's order and failed to Answer
5 Plaintiffs' First Amended Complaint, which was due on May 21, 2019. Counsel for
6 Breckenridge has no good excuse for missing the court ordered deadline in filing their
7 answer to Plaintiffs' First Amended Complaint, given that Mr. Ching, Breckenridge's
8 attorney, drafted the court's orders for the May 1st hearing himself. Therefore,
9 Plaintiffs respectfully request the court STRIKE all of Breckenridge's answers to
10 Plaintiffs' First Amended Complaint, as they were untimely filed, (8) days late to be
11 exact.

12
13 Additionally, Plaintiffs have also incurred the added cost of document
14 preparation, printing and postage in responding to the frivolous filing of Breckenridge's
15 opposition to the summary judgment, which they knew well in advance was moot.
16 Further, Plaintiffs are also anticipating 'unnecessary' additional cost for upcoming
17 travel, lodging, etc. in order to appear before the court regarding this matter, which
18 would not be necessary had Defendants not deliberately ignore Plaintiffs' notification
19 that the motion for summary judgment was not in recordation with the court.

20
21 Furthermore, Plaintiffs would also like to address that counsel for Breckenridge
22 continues to include McDermott and Wedgewood Inc. within his briefs, even though
23 Mr. Ching, who drafted the court's orders of the May 1st hearing, is aware that the court
24 dismissed McDermott and Wedgewood, Inc. from the suit.

25 26 CONCLUSION

27 It is clear, counsel for Defendant-Breckenridge did intentionally, willfully and
28 frivolously file opposition to a motion, for which he was notified by Plaintiffs (15) days

1 before filing the opposition, that the motion was not in recordation with the court.

2
3 It is extremely arrogant for Defendants to insist and ask this Hon. Court to
4 admonish Plaintiffs for Plaintiffs' inadvertence, while in the very same brief,
5 Defendants admit their own mistakes in the filing of their briefs.

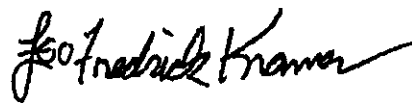
6
7 It is unfair and unjust to hold Plaintiffs, as pro se litigants, to a higher standard
8 than that of a professional attorney, from a large law firm, who is far more educated as
9 to the workings of the law than a 'pro se' litigant would be. In the instant case, counsel
10 for the Defendants clearly have far more resources to draw from in terms of
11 knowledge, multiple offices, support staff, etc. than that of Plaintiffs. Yet Defendants
12 admit to error and expect the court to excuse and give them a pass, while at the same
13 time expect the court to admonish Plaintiffs for their inadvertence. That is true
14 hypocrisy.

15
16 To error is to be human, and if Defendants can excuse their own error in
17 wrongful filings, then certainly Defendants can acknowledge Plaintiffs' inadvertence as
18 well.

19
20 Plaintiffs respectfully ask the court for its' fairness in this matter that is currently
21 before the court.

22
23 Date: 7/3/2019

Date: 7/3/2019

24
25 

26 Leo Kramer, Pro se

24
25 

26 Audrey Kramer, Pro se

1 **POOF OF SERVICE**

2 *STATE OF CALIFORNIA)*

) *SS:*

3 *COUNTY OF CONTRA COSTA)*

The UPS Store

1511 Sycamore Ave. Ste M

Hercules, CA 94547

store2796@theupsstore.com



4 I am employed in the County of Contra Costa, State of California. I am over the age of
5 18 and not a party to the within action; my business address is: _____

6 On July 3, 2019, I served the foregoing document entitled:

7 PLAINTIFFS' REPLY TO DEFENDANTS' OPPOSITION TO PLAINTIFFS'
8 NOTICE OF MOTION AND MOTION TO STRIKE OPPOSITION TO SUMMARY
9 JUDGMENT FILED BY BRECKENRIDGE PROPERTY FUND 2016, ALYSSA
MCDERMOTT, AND WEDGEWOOD INC.

10 on all parties in this action as follows:

11 **PLEASE SEE ATTACHED SERVICE LIST**

12
13 X **Mail.** By placing a true copy thereof enclosed in a sealed envelope. I am
14 "readily familiar" with the firm's practice of collection and processing for mailing.
15 Under that practice it would be deposited with the U.S. Postal Service on that same day
16 with first class postage thereon fully paid at Alameda, California in the ordinary course
17 of business. I am aware that on motion of the party served, service is presumed invalid
18 if the postal cancellation date or the postage meter is more than one day after day of
19 deposit for mailing in this Proof of Service.

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

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

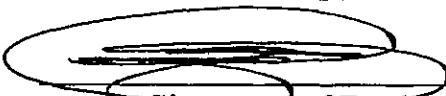
23 **By Overnight Courier.** I caused the above-referenced document(s) to be
24 delivered to an overnight courier service for next day delivery to the addressee(s) on the
25 attached Service List.

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

28 Executed on 7.3.19, at HERCULES, California.

Corina DiGrazia

Name of Declarant


Signature of Declarant

SERVICE LIST

Matthew K. Schriever

John T. Steffen

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

Ace Van Patten

Kevin S. Soderstrom

Tiffany & Bosco, P.A.

10100 W. Charleston Boulevard, Ste.220

Las Vegas, NV 89135

Attorneys for Defendant,

NATIONAL DEFAULT SERVICING CORPORATION

EXHIBITS LIST:

EXHIBIT—A PROOF OF DELIVERIES TO:
COURT, NDSC AND BREKENRIDGE

EXHIBIT—B SELF-ADDRESSED ENVELOPE TO
PLAINTIFF'S

EXHIBIT—C PROOF OF DELIVERY TO PLAINTIFFS

EXHIBIT—D E-MAIL THREAD WITH NDSC

EXHIBIT—E E-MAIL THREAD WITH BRECKENRIDGE

EXHIBIT—F DEFENDANT BRECKENRIDGE'S
'OPPOSITION' PROOF OF SERVICE PAGE

A

A PROOF OF DELIVERIES TO:
COURT, NDSC AND BREKENRIDGE

A

Your shipment information

Who sent it...

KRAMER

--

(Sender's street address omitted intentionally from this email)

Hercules, CA 94547

Who will receive it...

MATTHEW SCHRIEVER

HUTCHISON & STEFFEN

(Recipient's street address omitted intentionally from this email)

LAS VEGAS, NV 89145-8724 US

Who is carrying it...

Mail Boxes Etc. #2796

(510) 245-7060

Sender's message...

--

Carrier details...

UPS Ground

Tracking details...

Tracking No.: **1ZA832V30360971706**

Shipment ID: **MMREPGCMJGV53**

Ship Ref 1:

Ship Ref 2:

Shipping date...

Monday, April 15, 2019

Expected delivery date...

Wednesday, April 17, 2019 End of Day

Tracking your item

For complete tracking information, simply click below:

<https://iship.com/trackit/track.aspx?t=1&Track=MMREPGCMJGV53&src=e>

Your Tracking Information

Status: DELIVERED
Delivered To: LAS VEGAS, NV US
Delivery Date: Thu 18 Apr 2019
Delivery Location: Reception
Signed By: MC HALE
Carrier: UPS
Service: Ground Commercial
UPS Tracking Number: 1ZA832V30360971706

Scan History:

Thu 18 Apr 2019	12:28 PM	Delivered LAS VEGAS NV US
	9:04 AM	Out For Delivery Today Las Vegas NV US
	6:26 AM	Loaded on Delivery Vehicle Las Vegas NV US
	4:06 AM	Destination Scan Las Vegas NV US
	12:43 AM	Arrival Scan Las Vegas NV US
Wed 17 Apr 2019	11:10 PM	Departure Scan Las Vegas NV US
	10:33 PM	Arrival Scan Las Vegas NV US
	4:34 PM	Departure Scan Tonopah NV US
	4:28 PM	Arrival Scan Tonopah NV US
	12:04 PM	Departure Scan Sparks NV US
Mon 15 Apr 2019	7:24 PM	Origin Scan San Pablo CA US
	5:22 PM	Order Processed: Ready for UPS US

NOTE: The times listed in the scan details are local time.

NOTE: The times listed in the scan details are local time.

The UPS Store

Your parcel is ready to go

Just to let you know, we've processed a parcel shipping to **ACE VAN PATTEN**.

It's currently at **Mail Boxes Etc. #2796** and will be picked up by **UPS** on **Monday, April 15, 2019**.

You can expect it to arrive on **Wednesday, April 17, 2019 End of Day**

Your shipment information

Tracking your item

For complete tracking information, simply click below:

<https://iship.com/trackit/track.aspx?t=1&Track=MMREPGCHVH04A&src=e>

Your Tracking Information

Status: DELIVERED
Delivered To: LAS VEGAS, NV US
Delivery Date: Wed 17 Apr 2019
Delivery Location: Front Desk
Signed By: GRONEMAN
Carrier: UPS
Service: Ground Commercial
UPS Tracking Number: 1ZA832V30394302839

Scan History:

Wed 17 Apr 2019	12:47 PM	Delivered LAS VEGAS NV US
	9:04 AM	Out For Delivery Today Las Vegas NV US
	3:11 AM	Destination Scan Las Vegas NV US
	1:44 AM	Arrival Scan Las Vegas NV US
Tue 16 Apr 2019	7:31 PM	Arrival Scan Tonopah NV US
	3:35 PM	Departure Scan Sparks NV US
	7:11 AM	Arrival Scan Sparks NV US
	2:28 AM	Departure Scan West Sacramento CA US
Mon 15 Apr 2019	11:56 PM	Arrival Scan West Sacramento CA US
	10:37 PM	Departure Scan San Pablo CA US
	7:24 PM	Origin Scan San Pablo CA US
	5:22 PM	Order Processed: Ready for UPS US

NOTE: The times listed in the scan details are local time.

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 **Monday, April 15, 2019.**

You can expect it to arrive on **Tuesday, April 16, 2019 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

ATTN COURT CLERK

(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-

Carrier details...

UPS Ground

Tracking details...

Tracking No.: **1ZA832V30360965106**

Shipment ID: **MMREPGCBQZXZ1**

Ship Ref 1:

Ship Ref 2:

Shipping date...

Monday, April 15, 2019

Expected delivery date...

Tuesday, April 16, 2019 End of Day

Tracking your item

For complete tracking information, simply click below:

<https://iship.com/trackit/track.aspx?t=1&Track=MMREPGCBQZXZ1&src=e>

Your Tracking Information

Status: DELIVERED
Delivered To: YERINGTON, NV US
Delivery Date: Wed 17 Apr 2019
Delivery Location: Inside Delivery
Signed By: DIXON
Carrier: UPS
Service: Ground Commercial
UPS Tracking Number: 1ZA832V30360965106

Scan History:

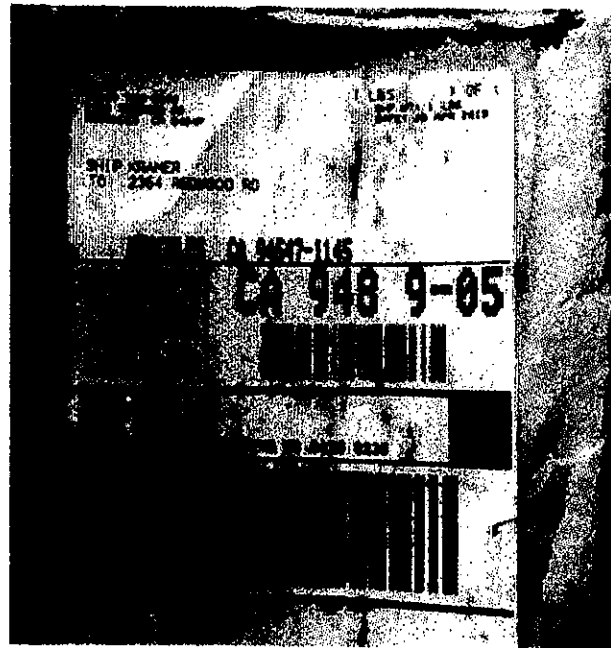
Wed 17 Apr 2019	2:17 PM	Delivered YERINGTON NV US
	8:59 AM	Out For Delivery Today Sparks NV US
	4:38 AM	Destination Scan Sparks NV US
Tue 16 Apr 2019	9:37 AM	Arrival Scan Sparks NV US
	8:22 AM	Severe weather conditions have delayed delivery. / Delivery will be delayed by one business day.
Mon 15 Apr 2019	4:35 AM	Departure Scan West Sacramento CA US
	11:56 PM	Arrival Scan West Sacramento CA US
	10:37 PM	Departure Scan San Pablo CA US
	7:26 PM	Origin Scan San Pablo CA US
	5:22 PM	Order Processed: Ready for UPS US

B

SELF-ADDRESSED ENVELOPE
TO PLAINTIFF'S

B





C

PROOF OF DELIVERY TO PLAINTIFFS

C



Your Tracking Information

[English \(US\)](#)

Status: DELIVERED
Delivered To: HERCULES, CA US
Delivery Date: Mon 22 Apr 2019
Delivery Location: Porch
Signed By: DRIVER RELEASE
Carrier: UPS
Service: Ground Residential
UPS Tracking Number: 1ZA832V30394296230

Scan History:

Mon 22 Apr 2019	6:14 PM	Delivered HERCULES CA US
	8:49 AM	Out For Delivery Today San Pablo CA US
Sat 20 Apr 2019	9:11 AM	Destination Scan San Pablo CA US
	6:19 AM	Destination Scan San Pablo CA US
	5:23 AM	Arrival Scan San Pablo CA US
	4:05 AM	Departure Scan West Sacramento CA US
	12:56 AM	Arrival Scan West Sacramento CA US
Fri 19 Apr 2019	10:12 PM	Departure Scan Sparks NV US
	8:13 PM	Origin Scan Sparks NV US
	1:49 PM	Pickup Scan Sparks NV US
Mon 15 Apr 2019	5:22 PM	Order Processed: Ready for UPS US

NOTE: The times listed in the scan details are local time.

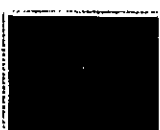
Done

Track Another Package

Carrier Tracking Number / iShip ID:

Submit

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Your parcel will soon be on its way

From: iShip_Services@iship.com (iShip_Services@iship.com)

To: AUDREYKRAMER55@YAHOO.COM

Date: Monday, April 15, 2019, 4:10 PM PDT

Your parcel is ready to go

Join our email program to receive exclusive offers and resources



Your parcel is ready to go

Just to let you know, we've processed a parcel shipping to **KRAMER**.

It's currently at **Mail Boxes Etc. #2796** and will be picked up by **UPS** on **Monday, April 15, 2019**.

You can expect it to arrive on **Tuesday, April 16, 2019 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...

KRAMER

--

(Recipient's street address omitted intentionally from this email)

HERCULES, CA 94547-1145 US

Who is carrying it...

Mail Boxes Etc. #2796
(510) 245-7060

Carrier details...

UPS Ground

Tracking details...

Tracking No.:

1ZA832V30394296230

Shipment ID:

MMREPGCSCTAAF

Ship Ref 1:

Ship Ref 2:

Shipping date...

Monday, April 15, 2019

Expected delivery date...

Tuesday, April 16, 2019 End of Day

D

E-MAIL THREAD WITH NDSC

D

Re: CASE # 18-CV-00663--OPPOSITION TO SUMMARY JUDGMENT3

Yahoo/Sent

Audrey Kramer <audreykramer55@yahoo.com>

To:AVP@tblaw.com

May 6 at 7:51 AM

Mr. Van Patten,

We received on 5/4/2019, your 4/29/2019 OPPOSITION to our MOTION FOR SUMMARY JUDGMENT.

Please be advised our MOTION FOR SUMMARY JUDGMENT is not in recordation with the court at this time.

Please withdraw your opposition.

Thank You.

Sincerely,

Leo and Audrey Kramer

510-708-9100

Sent from my iPad

• Ace Van Patten <AVP@tblaw.com>

To:Audrey Kramer

Cc:Natasha Petty

May 6 at 1:51 PM

Ms. Kramer,

We responded to the Motion for Summary Judgment as we were provided blue ink copies of the Motion, the supporting declaration and the Proof of Service for the same. There was no cover letter or any explanation at the time or any time thereafter that the Motion was not being or had not been filed, and was the process you have used for providing our office with notice on other matters in this case. My client incurred attorneys fees and costs in the amount of \$1849.25 in opposing the Motion, which you indicate now was not submitted to the Court. Our office

will withdraw the Opposition upon receipt of the attorneys fees and costs incurred. Unless you are willing to voluntarily pay those amounts, our office will likely file a Motion seeking those attorneys fees and costs and will ask for the additional amounts incurred in the preparation and filing of that action. As such, can you please confirm how you would like to proceed with regard to the attorneys fees and costs incurred in responding to your Motion for Summary Judgment?

Sincerely,

Ace C. Van Patten, Esq. | Associate Attorney* | 702.916.1686

10100 W. Charleston Blvd., Ste. 220 | Las Vegas | Nevada | 89135

P 702.258.8200 | F 702.258.8787

avp@tblaw.com | [Website](#)

Offices: Arizona | California | Nevada | New Mexico

** Licensed in Nevada and Idaho*

CONFIDENTIALITY NOTICE: The information contained in this message may be protected by the attorney-client privilege.

If you believe that it has been sent to you in error, do not read it. Please immediately reply to the sender that you have

received the message in error, then delete it. Thank you.

Audrey Kramer <audreykramer55@yahoo.com>

To: Ace Van Patten

Cc: Natasha Petty

May 7 at 2:43 PM

Mr. Van Patten,

In reply to your email of yesterday, 5/6/2019, we mailed in good faith our Motion for Summary Judgment to the court on the exact same day in which it was mailed to you and the other

defendants; however, we apparently inadvertently missed signing our signatures on page 3 of the motion, thus the court returned our motion to us. In no way was this intentional or nefarious on our part.

As far as owing any monies to your client, the Hon. Judge Schleglemilch made it quite clear at the recent May 1st hearing that we are in fact the injured parties as a result of the unlawful foreclosure & sale of our property which was perpetrated by NSDC.

It is we who have suffered an unfair monetary loss in having to pay thousands of dollars to defend the unlawful foreclosure and the unlawful sale of our property in the US Dist. Court of Reno, NV, the 9th Circuit Court of Appeals, the Canal Township Justice Court-Fernley, NV and in The 3rd. Judicial Dist. Court-Yerrington, NV. Additionally, we have suffered embarrassment and loss of rental income when our tenants were forced to leave as a result of the unlawful foreclosure and sale of our property. Please be advised we intend to recover all of the losses in which we have sustained.

With regard to the withdrawing of your opposition, you certainly are welcome to leave it on file with the court and apply it in the future should we later choose to move forward with a Motion for Summary Judgment.

Respectfully,
Leo and Audrey Kramer
510-708-9100 Cell

E

E-MAIL THREAD WITH BRECKENRIDGE

E

RE: CASE # 18-CV-00663--PLAINTIFF'S OPPOSITION FOR SUMMARY
JUDGMENT2
Yahoo/Inbox

Audrey Kramer <audreykramer55@yahoo.com>
To:mschriever@hutchlegal.com
May 6 at 8:09 AM
Mr. Schriever,

Please be advised our **MOTION FOR SUMMARY JUDGMENT** is not in
recordation with the court at this time.

On May 1, 2019, Mr. Ching appeared in court representing your firm in the above
mention case. We are uncertain as to who from your firm is now representing
your client. If it is Mr. Ching, we do not know his contact info. and respectfully
ask that you please share this email correspondence with him.

Thank you in advance for your cooperation.

Sincerely,

Leo and Audrey Kramer

510-708-9100

Sent from my iPad

Matthew K. Schriever <mschriever@hutchlegal.com>

To:Audrey Kramer

May 6 at 3:37 PM

Mr. Ching is an attorney in our Reno office and will likely make future court
appearances in this case. However, I will continue to handle the day to day aspects
of this case and you should send all correspondence, pleadings, notices, etc. to my
attention.

Matthew K. Schriever
Attorney



HUTCHISON & STEFFEN, PLLC
(702) 385-2500
hutchlegal.com

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F

DEFENDANT BRECKENRIDGE'S
'OPPOSITION' PROOF OF SERVICE PAGE

F

1
2 **IV. CONCLUSION.**

3 Based on the foregoing, Plaintiff respectfully requests that the Court deny Plaintiffs' motion for
4 summary judgment as unsupported since the Wedgewood Defendants did not participate in the
5 foreclosure process and could not have been aware of any potential dispute between the Plaintiffs and
6 NDSC.
7

8 DATED this 21st day of May 2019.

9 HUTCHISON & STEEFEN, PLLC

10
11 
12 John T. Steffen (4396)

13 Matthew K. Schriever (10745)
14 10080 West Alta Drive, Suite 200
15 Las Vegas, NV 89145
16 mschriever@hutchlegal.com

17 *Attorneys for Defendants*
18 *Alyssa McDermott, Wedgewood Inc., and*
19 *Breckenridge Property Fund 2016 LLC*
20
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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 **OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT** 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 ~~2~~^{23rd} day of May 2019.


An Employee of HUTCHISON & STEFFEN

23rd
Fed-Ex overnight
so sorry!

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
E. A. Brown
DEPUTY CLERK

RECORD ON APPEAL

VOLUME IV

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

21-09605

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Plaintiffs' Reply to Defendants' Opposition to Plaintiff's Notice of Motion and Motion to Strike Opposition to Summary Judgment Filed by Breckenridge Property Fund 2061, Alyssa McDermott and Wedgwood Inc. Filed: July 5, 2019	1401 - 1434	IV
Plaintiffs' Opposition to Defendant National Default Servicing Corporation's Motion in Limine to Exclude and Disqualify William J. Paatalo: Declaration of Updated Curriculum Vitae of William J. Paatalo filed Concurrently Herewith: Memorandum of Points and Authorities in Support Thereof Filed: January 7, 2020	3160 - 3223	VII
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Stipulation and Order Filed: February 5, 2020	3777 - 3778	VIII
Stipulation and Order to Continue Hearing Filed: March 6, 2019	1126 - 1129	III
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TANYA JOHNSON
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT

Victoria Toran

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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

OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

COMES NOW Defendant, National Default Servicing Corporation (hereinafter "NDSC" or the "Defendant"), by and through its counsel of record, Jason C. Kolbe, Esq. and Ace C. Van Patten, Esq., of Tiffany & Bosco, P.A., and hereby replies to Plaintiffs, Leo Kramer and Audrey Kramer (hereinafter collectively "the Kramers") Motion for Summary Judgment.

///

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1 This Motion is made and based upon the papers and pleadings on file herein, the
2 Memorandum of Points and Authorities, the declaration in support, and the attached documents,
3 along with any and other additional information or oral argument as may be requested by the
4 Court.

5 DATED April 29, 2019.

6 TIFFANY & BOSCO, P.A.

7
8 JASON C. KOLBE, ESQ.
Nevada Bar No. 11624
9 ACE C. VAN PATTEN, ESQ.
Nevada Bar No. 11731
10 10100 W. Charleston Blvd., Ste. 220
Las Vegas, NV 89135
11 *Attorneys for Defendant*
12 *National Default Servicing Corporation*

13 **MEMORANDUM OF POINTS AND AUTHORITIES**

14 **I.**

15 **INTRODUCTION**

16 The instant Amended Complaint is a rehashing of the same confused and jumbled
17 allegations the Plaintiffs have made before the U.S. District Court and this Court, both of which
18 resulted in dismissals. The Plaintiffs' Amended Complaint continues to raise issues previously
19 adjudicated and repeats the same confusion as to NDSC's role in the foreclosure sale,
20 incorrectly suggesting that NDSC lacked standing to conduct the foreclosure sale. NDSC was
21 acting as the Trustee under the Deed of Trust, and acquired its standing to do so not by virtue of
22 being the beneficiary or note holder but by virtue of the Substitution of Trustee. As such, it was
23 authorized to take the actions it took. Moreover, the actions it took were appropriate given that
24 the Plaintiffs had defaulted under the terms of the Note and Deed of Trust – a default which the
25 bankruptcy discharge would have neither cured nor precluded enforcement of the same. As a
26 consequence, despite the Plaintiffs' confusion and misunderstanding, the Complaint must be
27 dismissed in its entirety as to NDSC as there is no legal basis for the relief requested based upon
28 the allegations included in the Amended Complaint.

II.

FACTUAL AND PROCEDURAL HISTORY

Plaintiffs' Motion for Summary Judgment ("Motion") is filed on the heels of pending Motions to Dismiss filed by the Defendants in this action, set to be heard May 1, 2019. No discovery has been conducted to date, by any party, but despite this, the Plaintiffs move for summary judgment. Plaintiffs, however, are not entitled to summary judgment as there are material issues of disputed facts and because the Plaintiffs are not entitled to judgment as a matter of law, even based upon their own arguments presented.

Here, despite the Plaintiffs unfounded assertion that they were deprived notice under NRS 107.090, the Plaintiffs are not entitled to judgment as a matter of law because they did not qualify for notice under the provision, either as a requestor pursuant to a recorded document or as a holder of an interest subordinate to the Deed of Trust. Additionally, Plaintiffs mistakenly assert that NDSC lacked authority to conduct the sale based upon a failure to recognize that Chase wholly acquired the originating lender and so had authority to substitute NDSC as trustee by virtue of the language included in the Deed of Trust. Plaintiffs similarly misunderstand the effect of the bankruptcy discharge as well, erroneously believing it cured any default when, in actuality, it only prevents the personal enforcement of the contract and not the *in rem* related rights under the Deed of Trust, and does not cure or otherwise modify a default under the same. Finally, the Plaintiffs mischaracterize the language in the Deed of Trust which would allow a default to be enforced via a nonjudicial foreclosure sale, by utilizing an interpretation which wholly fails to account for the actual language reflected in the Deed of Trust. As such, the Plaintiffs have failed to establish that they are entitled to judgment as a matter of law on the issues raised – indeed, what they provide definitively establishes they cannot succeed as a matter of law, a situation exacerbated by the fact that motions to dismiss are pending which assert these same issues. Consequently, the Motion for Summary Judgment must be denied in its entirety.

///

///

1 Finally, in the alternative, NDSC requests relief pursuant to NRCP 56(d) for the
2 opportunity to conduct discovery in order to further support its opposition given that discovery
3 has not yet commenced in light of the pending motions to dismiss.

4 III.

5 STANDARD OF REVIEW

6 Summary Judgment is only appropriate when the pleadings and other evidence on file
7 demonstrate no genuine issue as to any material fact exist and that the moving party is entitled
8 to judgment as a matter of law. *See*, NRCP 56(c); *Wood v. Safeway, Inc.*, 121 Nev. 724, 731,
9 121 P.3d 1026, 1031 (Nev. 2005). Factual disputes are genuine when “[t]he evidence is such
10 that a rational trier of fact could return a verdict for the nonmoving party” after construing the
11 evidence in the non-moving party’s favor. *Wood*, 121 Nev. at 731, 121 P.3d at 1031. Only
12 when the moving party has carried its initial burden to produce evidence does the opposing
13 party bear the burden to establish that a genuine issue as to any material fact actually exists.
14 *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986); *Premier One*,
15 Sup. Ct. Case No. 67873 (June 22, 2016)(unpublished). All facts and inferences drawn must
16 be viewed in the light most favorable to the responding party when determining whether a
17 genuine issue of material fact exists for summary judgment purposes. *Sawyer v. Sugarless*
18 *Shops, Inc.*, 101 Nev. 265, 267, 792 P.2d 14, 15 (1990).

19 IV.

20 LEGAL ARGUMENT

21 The Plaintiffs have requested that the Court grant summary judgment in its favor.
22 However, in order for the Plaintiffs to be entitled to summary judgment in their favor, the
23 Plaintiffs must 1) establish the absence of genuine issues of material facts on which the Court
24
25
26
27
28

1 could grant judgment in favor of the Plaintiff¹, and 2) demonstrate that judgment in favor of the
2 Plaintiffs, in the absence of genuine issues of material fact, is warranted by applicable law. The
3 Plaintiff has failed to do either.

4 A. **Plaintiffs are not entitled to judgment as a matter of law and genuine issues of fact**
5 **remain disputed.**

6 1. **Plaintiffs have not established an undisputed material fact exists regarding**
7 **whether the Notice of Default was properly provided to the Plaintiffs and,**
8 **regardless, have failed to establish they were entitled to notice as a matter of law.**

9 Plaintiffs argue that they did not receive a copy of the Notice of Default as was required
10 pursuant to NRS 107.090, rendering the resulting sale void. Pursuant to NRS 107.090, however,
11 the Plaintiffs would only be entitled to notice if they had recorded a request for a copy of the
12 documents. *See e.g.*, NRS 107.090(2). Specifically, a person with an interest who desires a copy
13 of the foreclosure notices must **"record in the office of the county recorder of the county in**
14 **which any part of the real property is situated an acknowledged request for a copy of the**
15 **notice of default or of sale."** *Id.* There is no evidence or allegation that such a request was
16 recorded. As such, even under their own argument, the Plaintiffs fail to explain how or why
17 NRS 107.090 is applicable or how they were deprived notice under the same. There were
18 neither a subordinate interest holder nor a person who recorded a request for a copy of the
19 Notice. Plaintiffs claim they qualify as a person with an interest which is subordinate to the
20 deed of trust, but their interest in the Property was created by and subject to the Deed of Trust;
21 they do not qualify as a subordinate interest holder. Indeed, such an interpretation equating
22 grantors with junior lien holders would render much of the foreclosure statutes superfluous. As
23 such, under NRS 107.090, the sole basis for the Plaintiffs' request for summary judgment, the
24

25 ¹ Plaintiffs' Motion repeatedly argues that NDSC does not dispute multiple facts. *See e.g.*,
26 Motion, p. 19 ("NDSC does not dispute the fact that it failed to adhere to Nevada laws..."). This
27 is inaccurate and not based upon any actual statements or actions taken by NDSC and were
28 made despite the actual fact that NDSC has not even filed an Answer in the instant case, much
less admitted or denied any specific fact. To the extent required, NDSC objects to each and
every purported lack of dispute asserted by the Plaintiffs.

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1 Plaintiffs are not entitled to judgment as a matter of law. For this reason alone, summary
2 judgment is inappropriate, and, in fact, should be granted in favor of Defendants on this basis.

3 Moreover, Plaintiffs fail to provide any evidence that any notice was not appropriately
4 sent, instead seeming to suggest that a purported lack of receipt of the Notice of Default via
5 mail serves to render a sale void. This is an incorrect suggestion. Relatedly, the Plaintiffs also
6 argue that they were never "served with [the] Notice of Default." *See*, Motion p. 18. But service
7 is not required. The statutes only require that notices be **mailed**; neither service nor receipt of
8 the documents by the homeowners are the applicable standards. Regardless, ultimately, the
9 Plaintiffs own declarations indicate that the Property is a rental property and that the Plaintiffs
10 were not living in the Property. *See*, Declarations of Deborah Taylor and Lee Anne Chaffin
11 attached as Exhibits O and P, respectively, to the Plaintiffs' First Amended Complaint. Even
12 ignoring that the Notice of Default was appropriately sent to a variety of addresses of the
13 Plaintiffs and published, their own Motion confirms the tenant received the Notice of Default
14 and, ultimately, passed the same onto the Plaintiffs. *Id.* Relatedly, the fact that the Property was
15 non-owner occupied also defeats any contention that the Plaintiffs were entitled to participate in
16 the foreclosure mediation program and/or any statutory requirements under NRS 107.500 *et*
17 *seq.* At the end of the day, though, Plaintiffs received notice of the document but took no timely
18 action to stop the sale despite having actual and constructive notice of the same, even if they
19 would have valid grounds to do so. They chose not to do so and, consequently, the foreclosure
20 sale validly proceeded.

21 Finally, the Plaintiffs suggest that the Notice of Default should have been provided to
22 the address listed on a monthly statement, attaching a statement with the statement period of
23 August 13, 2017-September 12, 2017 as proof of the same. *See*, Exhibit D to Plaintiffs' MSJ.
24 Not only does such a statement serve as reflection of any request under NRS 107.090, but it also
25 does not even reflect the address at the time the Notice of Default was recorded in October. As
26 such, the evidence provided by the Plaintiffs do not even support their allegations, even if the
27 other requirements under NRS 107.090 had been satisfied.

28 ///

1 **2. NDSC was appropriately appointed as the Substitute Trustee.**

2 Plaintiffs also suggest that NDSC was not a duly appointed trustee because of the timing
3 of the recordation of an assignment of Deed of Trust. This, however, fails to recognize the
4 relationship between Washington Mutual, the original lender, and JP Morgan Chase, the
5 foreclosing beneficiary. Washington Mutual was placed in receivership, with the Federal
6 Deposit Insurance Corporation ("FDIC") being named as a receiver, and JP Morgan Chase
7 wholly acquired Washington Mutual in September 25, 2008. *See* Exhibit G to Plaintiffs' First
8 Amended Complaint. Chase, as a result, was authorized to execute the Substitution of Trustee.
9 In turn, NDSC had authority to act accordingly.

10
11 **3. The bankruptcy discharge does not prevent the in rem enforcement of the**
12 **outstanding debt.**

13 Plaintiffs argue, without factual or legal support, that they were not in breach of the loan
14 documents because any outstanding amount owed "from the revolving line of credit was
15 discharged in Bankruptcy Court in 2011." *See*, Motion, p. 7. This, however, is an intentional
16 and purposeful misunderstanding of a basic foundation of the effect of the bankruptcy
17 discharge. As was raised in the Motion to Dismiss, a bankruptcy discharge only affects the
18 debtors' personal liability on the debt, and does not prevent or preclude the lien holder's actions
19 to enforce the lien whereby it only seeks to recover the amount owed from the collateral its lien
20 secures. *See e.g., Johnson v. Home State Bank*, 501 U.S. 78, 84 (1991); *In re Blendheim*, 803
21 F.3d 477 (9th Cir. 2015). The discharge, then, only prevents *in personam* enforcement, and not
22 remedies relating to *in rem* enforcement such as foreclosure. The Plaintiffs' discharge, then,
23 would not prevent or cure a default from leading to a foreclosure sale and the Plaintiffs cannot
24 rely upon the same in asserting they were not in default.

25 **4. The Deed of Trust authorizes a non-judicial foreclosure.**

26 Plaintiffs also argues without a basis in law or fact that the Deed of Trust only
27 authorized a judicial foreclosure to occur. *See e.g.,* Motion, p. 5. This is a blatant
28 misrepresentation of the language in the Deed of Trust, and is clear from the Plaintiffs' own

1 Motion. Specifically, the Motion cites the language in the Deed of Trust which starts with "To
2 the extent permitted by law the power of sale conferred by this Deed of Trust is not an exclusive
3 remedy." *Id.* (citing p. 4 Exhibit A to Plaintiffs' Motion). It is clear, then, even from the
4 language cited to in the Motion, that a nonjudicial foreclosure is an allowable remedy. If it were
5 not, the next sentence indicates that while the beneficiary **may** judicially foreclose or enforce
6 the note, the beneficiary **may also** "take any other action available in equity or at law." *Id.* As
7 provision 7 of the Deed of Trust – the same provision cited to in the Plaintiffs' Motion -
8 expressly allows a nonjudicial foreclosure sale to be conducted by the Trustee, the language
9 referred to by the Plaintiffs only indicates that the beneficiary has options for addressing a
10 default including a nonjudicial foreclosure, a judicial foreclosure, or an act to enforce the note.
11 Here, the beneficiary elected to conduct a nonjudicial foreclosure as allowed.

12 **B. Plaintiffs' Motion for Summary Judgment is Premature.**

13 Plaintiffs' Motion for Summary Judgment is premature as the rules surrounding
14 answering the complaint and discovery have not been completed. To date, NDSC has not even
15 filed an Answer to the Amended Complaint. Instead, it filed a Motion to Dismiss the
16 proceedings. At this juncture of the case a pretrial conference is inappropriate, much less a
17 motion for summary judgment, as there are outstanding motions to dismiss and no answers filed
18 by any defendants in this action. Similarly, no discovery has been conducted by any party. For
19 these reasons Plaintiffs' Motion for Summary is premature and should be dismissed.

20 Alternatively, this Court should defer its ruling on the Plaintiff's Motion for Summary
21 Judgment to allow discovery on triable issues of fact. NRCP 56(d) authorizes this Court to deny
22 a motion for summary judgment or "grant a continuance when a party opposing [the] motion ...
23 is unable to marshal facts in support of its opposition." *J.E. Dunn Nw., Inc. v. Corus Const.*
24 *Venture, LLC*, 249 P.3d 501, 508 n. 7 (Nev. 2011). This continuance allows the non-moving
25 party to pursue "discovery [that] will lead to the creation of a genuine issue of material fact." *Id.*

26 In the instant matter, discovery has not proceed due to the pending Motions to Dismiss
27 filed by the defendants, which was continued from its originally scheduled date in order to
28 accommodate the Plaintiffs' family emergency. The instant Motion for Summary Judgment was

1 filed prior to the hearing on the Motion to Dismiss and before discovery had opened for any
2 party. As a result, NDSC must be allowed the opportunity to conduct discovery which is very
3 likely to create triable issues of whether the homeowners' association's foreclosure sale is valid.

4 (*See*, Van Patten Decl.) NDSC discovery serves to explore the following issues:

- 5 1. The documents, correspondence, and other forms of notice received by the
6 Plaintiffs relating to the foreclosure of the Property at issue and the
7 Nevada Foreclosure Mediation Program.
- 8 2. The failure by the Plaintiffs to make all ongoing payments and meet all
9 obligations required under the loan documents.
- 10 3. The existence of a breach, by the Plaintiffs, of the underlying loan
11 documents.
- 12 4. The existence, character, and severity of the Plaintiffs' purported damages.
- 13 5. The status of the Property at issue, including the characterization as either
14 a rental property or principle residence.
- 15 6. The Plaintiffs mailing address at the time the foreclosure notices were
16 sent.
- 17 7. The Plaintiffs' actual notice of the pending foreclosure actions.
- 18 8. NDSC's authority to act as the Trustee under the related Note and Deed of
19 Trust ("the loan documents") and the basis for the same.
- 20 9. The notices sent by NDSC relating to the foreclosure of the Property at
21 issue, in compliance with Nevada law.
- 22 10. NDSC's basis for reliance on information provided by the beneficiary as it
23 relates to the underlying loan documents in the context of enforcement of
24 the same.

25 (*Id.*) NDSC expects its discovery requests will lead to such evidence. Evidence related to each
26 of the above issues will rebut the claims made by the Plaintiffs regarding their lack of notice
27 regarding the foreclosure notices, and the appropriateness of the sale. Due to the fact that
28 motions to dismiss are still outstanding, the parties have not had the opportunity to conduct
meaningful discovery. It is therefore premature for this Court to issue summary judgment before
NDSC has an opportunity to complete the same. Since the parties may want to incorporate
additional discovery in their dispositive motions, NRCP 56(d) justifies a denial of the Plaintiffs'
motion without prejudice to allow the parties to incorporate discovery responses in any refilled
motion or, at the very least, warrants a continuance of the hearing on the motion until the
completion of discovery.

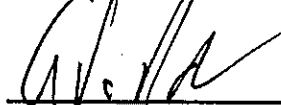
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V.
CONCLUSION

For the foregoing reasons, this Court should deny the Plaintiff's motion for summary judgment or defer ruling on the motion until the close of discovery.

DATED April 29, 2019.

TIFFANY & BOSCO, P.A.



JASON C. KOLBE, ESQ.

Nevada Bar No. 11624

ACE C. VAN PATTEN, ESQ.

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CERTIFICATE OF SERVICE

I hereby certify that on April 29, 2019, I placed a copy of the above **OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT** 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, NN 89146

Matthew Schriever, Esq.
Hutchison & Steffen
Peccole Professional Park
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Inc. and Breckenridge Property Fund 2016


An employee of Tiffany & Bosco, P.A.

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Attorney for Defendant National Default Serving 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

**DECLARATION OF COUNSEL IN
SUPPORT OF OPPOSITION TO
PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT**

I, Ace C. Van Patten, Esq., declare as follows:

1. I am an attorney licensed to practice before all courts in the State of Nevada and am an associate attorney at Tiffany & Bosco, P.A., counsel of record for National Default Servicing Corporation ("NDSC").

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1 2. I have personal knowledge of the facts set forth below, except for those facts that
2 are stated upon information and belief, and as to those matters, I believe them to be true. If
3 called upon to testify, I could and would do so truthfully and competently.
4

5 3. The Plaintiffs filed their Complaint in this case on June 8, 2018. On October 24,
6 2018, this Court entered an order dismissing the Plaintiffs' Complaint, finding all claims,
7 except for those relating to the procedural notice of the sale, were precluded from being re-
8 litigated as a result of res judicata, based upon the Plaintiffs' prior federal court action.
9

10 4. Plaintiffs thereafter amended their Complaint and, on or about January 17, 2019,
11 NDSC filed its Motion to Dismiss First Amended Complaint ("Motion to Dismiss"). The
12 Plaintiffs opposed the Motion to Dismiss and NDSC submitted a Reply in Support of its
13 Motion to Dismiss.
14

15 5. The hearing on the Motion to Dismiss is scheduled to be heard on May 1, 2019, as a
16 result of a prior continuance agreed to in order to accommodate the Plaintiffs.
17

18 6. No Early Case Conference under NRCP 16.1 has been conducted, nor has the
19 period for discovery opened.
20

21 7. No party has made any disclosures, timely served written discovery requests, nor
22 deposed any other person or party.
23

24 ///

25 ///

26 ///

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28 ///

///

1 8. Allowing NDSC additional time to conduct and complete its discovery, including
2 deposing the Plaintiffs and, if necessary, compelling discovery, will allow NDSC to complete
3 its substantiation of the following non-exhaustive factual issues and provide evidence relating
4 to:
5

- 6 a. The documents, correspondence, and other forms of notice received by
7 the Plaintiffs relating to the foreclosure of the Property at issue and the
8 Nevada Foreclosure Mediation Program.
- 9 b. The failure by the Plaintiffs to make all ongoing payments and meet all
10 obligations required under the loan documents.
- 11 c. The existence of a breach, by the Plaintiffs, of the underlying loan
12 documents.
- 13 d. The existence, character, and severity of the Plaintiffs' purported
14 damages.
- 15 e. The status of the Property at issue, including the characterization as either
16 a rental property or principle residence.
- 17 f. The Plaintiffs mailing address at the time the foreclosure notices were
18 sent.
- 19 g. The Plaintiffs' actual notice of the pending foreclosure actions.
- 20 h. NDSC's authority to act as the Trustee under the related Note and Deed
21 of Trust ("the loan documents") and the basis for the same.
- 22 i. The notices sent by NDSC relating to the foreclosure of the Property at
23 issue, in compliance with Nevada law.
- 24
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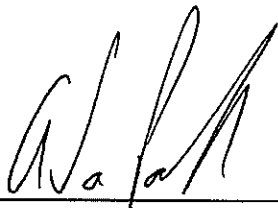
1 j. NDSC's basis for reliance on information provided by the beneficiary as
2 it relates to the underlying loan documents in the context of enforcement
3 of the same.
4

5 9. The evidence that NDSC has obtained to date demonstrates that a valid foreclosure
6 sale occurred in accordance with all applicable state law and, as such, there is a material issue
7 of facts relating to the same.

8 10. I believe that seeking additional discovery will provide facts essential to further
9 justify opposition to Plaintiffs' motion for summary judgment and for NDSC to file its own
10 motion for summary judgment.
11

12 I declare under penalty of perjury that the foregoing is true and correct.

13 Executed on April 29, 2019.

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17 Ace C. Van Patten
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TANYA SCHEIRINE
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT*Tanya Scheirine*

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6 *Attorney for Defendant National Default Servicing Corporation*

THIRD JUDICIAL DISTRICT COURT

LYON COUNTY, NEVADA

9 LEO KRAMER and AUDREY KRAMER,

Case No.: 18-CV-00663

10 Plaintiffs,

Dept. No.: I

11 vs.

**ANSWER TO FIRST AMENDED
COMPLAINT**

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

15 Defendants.

17 COMES NOW Defendant, NATIONAL DEFAULT SERVICING CORPORATION
18 ("Defendant"), by and through its counsel of record, JASON C. KOLBE, ESQ., and ACE C. VAN
19 PATTEN, ESQ., of TIFFANY & BOSCO, P.A., and hereby files its Answer to the Amended
20 Complaint filed by Plaintiffs, LEO KRAMER and AUDREY KRAMER ("Plaintiffs"), as follows:

I.

JURISDICTION AND VENUE

23 1. Answering Paragraph 1 of the Amended Complaint, Defendant admits the allegations
24 contained therein.

25 2. Answering Paragraph 2 of the Amended Complaint, Defendant lacks sufficient
26 information or knowledge to form a belief as to the truth or falsity of the allegations contained therein
27 and therefore denies said allegations.

3. Answering Paragraph 3 of the Amended Complaint, Defendant states that the allegation is a legal conclusion to which no response is required. To the extent an answer is required, Defendant denies the allegations contained therein.

4. Answering Paragraph 4 of the Amended Complaint, Defendant denies the allegations contained therein.

II.

THE PARTIES

5. Answering Paragraph 5 of the Amended Complaint, Defendant denies the allegation that Plaintiffs are the rightful owners of the real property more commonly known as 1740 Autumn Glen Street, Fernley, Nevada 89408, and lacks sufficient information or knowledge to form a belief as to the truth or falsity of the remaining allegations contained therein.

6. Answering Paragraph 6 of the Amended Complaint, Defendant lacks sufficient information or knowledge to form a belief as to the truth or falsity of the allegations contained therein and therefore denies said allegations.

7. Answering Paragraph 7 of the Amended Complaint, Defendant admits the allegations contained therein.

8. Answering Paragraph 8 of the Amended Complaint, Defendant lacks sufficient information or knowledge to form a belief as to the truth or falsity of the allegations contained therein and therefore denies said allegations.

9. Answering Paragraph 9 of the Amended Complaint, Defendant lacks sufficient information or knowledge to form a belief as to the truth or falsity of the allegations contained therein and therefore denies said allegations.

10. Answering Paragraph 10 of the Amended Complaint, Defendant lacks sufficient information or knowledge to form a belief as to the truth or falsity of the allegations contained therein and therefore denies said allegations.

11. Answering Paragraph 11 of the Amended Complaint, Defendant lacks sufficient information or knowledge to form a belief as to the truth or falsity of the allegations contained therein and therefore denies said allegations.

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III.

FACTUAL AND GENERAL ALLEGATIONS

12. Answering Paragraph 12 of the Amended Complaint, Defendant admits that the recorded records indicate that Plaintiffs' purchased the subject property on or around June 2, 2005; however, Defendant lacks sufficient information to form a belief as to the truth of the remaining allegations, and on that basis denies each and every remaining allegation contained therein.

13. Answering Paragraph 13 of the Amended Complaint, Defendant admits that the recorded records indicate that Plaintiffs' executed a Deed of Trust and Note on or around June 2, 2005; however, Defendant lacks sufficient information to form a belief as to the truth of the remaining allegations, and on that basis denies each and every remaining allegation contained therein.

14. Answering Paragraph 14 of the Amended Complaint, Defendant denies each and every allegation contained therein.

15. Answering Paragraph 15 of the Amended Complaint, Defendant states that the allegation is a legal conclusion to which no response is required. To the extent an answer is required, Defendant denies the allegations contained therein.

16. Answering Paragraph 16 of the Amended Complaint, Defendant denies each and every allegation contained therein.

17. Answering Paragraph 17 of the Amended Complaint, Defendant denies each and every allegation contained therein.

18. Answering Paragraph 18 of the Amended Complaint, Defendant denies each and every allegation contained therein.

19. Answering Paragraph 19 of the Amended Complaint, Defendant states that the allegation is a legal conclusion to which no response is required. To the extent an answer is required, Defendant denies the allegations contained therein.

20. Answering Paragraph 20 of the Amended Complaint, Defendant denies each and every allegation contained therein.

21. Answering Paragraph 21 of the Amended Complaint, Defendant admits that it recorded a Notice of Default and Election to Sell on or about October 5, 2017; however, Defendant

1 lacks sufficient information to form a belief as to the truth of the remaining allegations, and on that
2 basis denies each and every remaining allegation contained therein.

3 22. Answering Paragraph 22 of the Amended Complaint, Defendant denies each and
4 every allegation contained therein.

5 23. Answering Paragraph 23 of the Amended Complaint, Defendant denies each and
6 every allegation contained therein.

7 24. Answering Paragraph 24 of the Amended Complaint, Defendant denies each and
8 every allegation contained therein.

9 25. Answering Paragraph 25 of the Amended Complaint, Defendant admits it recorded a
10 Notice of Trustee's Sale on or about April 18, 2018, which set a sale date of May 18, 2018, however,
11 Defendant denies each and every remaining allegation contained therein.

12 26. Answering Paragraph 26 of the Amended Complaint, Defendant lacks sufficient
13 information or knowledge to form a belief as to the truth or falsity of the allegations contained therein
14 and therefore denies said allegations.

15 27. Answering Paragraph 27 of the Amended Complaint, Defendant lacks sufficient
16 information or knowledge to form a belief as to the truth or falsity of the allegations contained therein
17 and therefore denies said allegations.

18 28. Answering Paragraph 28 of the Amended Complaint, Defendant states that the
19 allegation is a legal conclusion to which no response is required. To the extent an answer is required,
20 Defendant denies the allegations contained therein.

21 **FIRST CAUSE OF ACTION**

22 **(FOR UNLAWFUL FORECLOSURE – AGAINST NDSC)**

23 29. Defendant repeats and incorporated each of its responses to Paragraph 1 through 28
24 as if fully stated herein.

25 30. Answering Paragraph 30 of the Amended Complaint, Defendant denies the
26 allegations contained therein.

27 31. Answering Paragraph 31 of the Amended Complaint, Defendant denies the
28 allegations contained therein.

1 32. Answering Paragraph 32 of the Amended Complaint, Defendant lacks sufficient
2 information or knowledge to form a belief as to the truth or falsity of the allegations contained therein
3 and therefore denies said allegations.

4 33. Answering Paragraph 33 of the Amended Complaint, Defendant denies the
5 allegations contained therein.

6 34. Answering Paragraph 34 of the Amended Complaint, Defendant denies the
7 allegations contained therein.

8 35. Answering Paragraph 35 of the Amended Complaint, Defendant denies the
9 allegations contained therein.

10 36. Answering Paragraph 36 of the Amended Complaint, Defendant denies the
11 allegations contained therein.

12 37. Answering Paragraph 37 of the Amended Complaint, Defendant denies the
13 allegations contained therein.

14 38. Answering Paragraph 38 of the Amended Complaint, Defendant denies the
15 allegations contained therein.

16 39. Answering Paragraph 39 of the Amended Complaint, Defendant denies the
17 allegations contained therein.

18 40. Answering Paragraph 40 of the Amended Complaint, Defendant denies the
19 allegations contained therein.

20 41. Answering Paragraph 41 of the Amended Complaint, Defendant denies the
21 allegations contained therein.

22 42. Answering Paragraph 42 of the Amended Complaint, Defendant denies the
23 allegations contained therein.

24 43. Answering Paragraph 43 of the Amended Complaint, Defendant denies the
25 allegations contained therein.

26 44. Answering Paragraph 44 of the Amended Complaint, Defendant denies the
27 allegations contained therein.
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1 45. Answering Paragraph 45 of the Amended Complaint, Defendant lacks sufficient
2 information or knowledge to form a belief as to the truth or falsity of the allegations contained therein
3 and therefore denies said allegations.

4 46. Answering Paragraph 46 of the Amended Complaint, Defendant lacks sufficient
5 information or knowledge to form a belief as to the truth or falsity of the allegations contained therein
6 and therefore denies said allegations.

7 47. Answering Paragraph 47 of the Amended Complaint, Defendant lacks sufficient
8 information or knowledge to form a belief as to the truth or falsity of the allegations contained therein
9 and therefore denies said allegations.

10 48. Answering Paragraph 48, Defendant admits the Plaintiffs obtained a line of credit
11 secured by the Property, denies the allegation regarding the breach, and states that the remaining
12 allegation is a legal conclusion to which no response is required.

13 49. Answering Paragraph 49 of the Amended Complaint, Defendant denies the
14 allegations contained therein.

15 50. Answering Paragraph 50 of the Amended Complaint, Defendant lacks sufficient
16 information or knowledge to form a belief as to the truth or falsity of the allegations contained therein
17 and therefore denies said allegations.

18 51. Answering Paragraph 51 of the Amended Complaint, Defendant lacks sufficient
19 information or knowledge to form a belief as to the truth or falsity of the allegations contained therein
20 and therefore denies said allegations.

21 52. Answering Paragraph 52 of the Amended Complaint, Defendant denies the
22 allegations contained therein.

23 53. Answering Paragraph 53 of the Amended Complaint, Defendant denies the
24 allegations contained therein.

25 54. Answering Paragraph 54 of the Amended Complaint, Defendant denies the
26 allegations contained therein.

27 55. Answering Paragraph 55 of the Amended Complaint, Defendant denies the
28 allegations contained therein.

56. Answering Paragraph 56 of the Amended Complaint, Defendant states that the allegation is a legal conclusion to which no response is required. To the extent an answer is required, Defendant denies the allegations contained therein.

57. Answering Paragraph 57 of the Amended Complaint, Defendant states that the allegation is a legal conclusion to which no response is required. To the extent an answer is required, Defendant denies the allegations contained therein.

58. Answering Paragraph 58 of the Amended Complaint, Defendant admits that it was acting as a representative of the beneficiary but denies the remaining allegations contained therein.

59. Answering Paragraph 59 of the Amended Complaint, Defendant denies Plaintiff is entitled to the relief requested and therefore denies the allegations contained therein.

SECOND CAUSE OF ACTION

(QUIET TITLE, AGAINST ALL DEFENDANTS)

60. Defendant repeats and incorporated each of its responses to Paragraph 1 through 59 as if fully stated herein.

61. Answering Paragraph 61 of the Amended Complaint, Defendant states that the allegation has been dismissed; therefore, no response is required.

62. Answering Paragraph 62 of the Amended Complaint, Defendant states that the allegation has been dismissed; therefore, no response is required.

63. Answering Paragraph 63 of the Amended Complaint, Defendant states that the allegation has been dismissed; therefore, no response is required.

64. Answering Paragraph 64 of the Amended Complaint, Defendant states that the allegation has been dismissed; therefore, no response is required.

65. Answering Paragraph 65 of the Amended Complaint, Defendant states that the allegation has been dismissed; therefore, no response is required.

66. Answering Paragraph 66 of the Amended Complaint, Defendant states that the allegation has been dismissed; therefore, no response is required.

67. Answering Paragraph 67 of the Amended Complaint, Defendant states that the allegation has been dismissed; therefore, no response is required.

68. Answering Paragraph 68 of the Amended Complaint, Defendant states that the allegation has been dismissed; therefore, no response is required.

69. Answering Paragraph 69 of the Amended Complaint, Defendant denies Plaintiff is entitled to the relief requested and therefore denies the allegations contained therein.

THIRD CAUSE OF ACTION

(SLANDER OF TITLE – AGAINST ALL NATIONAL DEFAULT SERVICING CORPORATION *NDSC)

8 70. Defendant repeats and incorporated each of its responses to Paragraph 1 through 69
9 as if fully stated herein.

71. Answering Paragraph 71 of the Amended Complaint, Defendant states that the allegation has been dismissed; therefore, no response is required.

72. Answering Paragraph 72 of the Amended Complaint, Defendant states that the allegation has been dismissed; therefore, no response is required.

73. Answering Paragraph 73 of the Amended Complaint, Defendant states that the allegation has been dismissed; therefore, no response is required.

74. Answering Paragraph 74 of the Amended Complaint, Defendant states that the allegation has been dismissed; therefore, no response is required.

18 75. Answering Paragraph 75 of the Amended Complaint, Defendant states that the
19 allegation has been dismissed; therefore, no response is required.

76. Answering Paragraph 76 of the Amended Complaint, Defendant states that the allegation has been dismissed; therefore, no response is required.

77. Answering Paragraph 77 of the Amended Complaint, Defendant states that the allegation has been dismissed; therefore, no response is required.

24 78. Answering Paragraph 78 of the Amended Complaint, Defendant states that the
25 allegation has been dismissed; therefore, no response is required.

79. Answering Paragraph 79 of the Amended Complaint, Defendant states that the allegation has been dismissed; therefore, no response is required.

1 80. Answering Paragraph 80 of the Amended Complaint, Defendant states that the
2 allegation has been dismissed; therefore, no response is required.

3 81. Answering Paragraph 81 of the Amended Complaint, Defendant states that the
4 allegation has been dismissed; therefore, no response is required.

5 82. Answering Paragraph 82 of the Amended Complaint, Defendant states that the
6 allegation has been dismissed; therefore, no response is required.

7 83. Answering Paragraph 83 of the Amended Complaint, Defendant states that the
8 allegation has been dismissed; therefore, no response is required.

9 84. Answering Paragraph 84 of the Amended Complaint, Defendant states that the
10 allegation has been dismissed; therefore, no response is required.

11 85. Answering Paragraph 85 of the Amended Complaint, Defendant states that the
12 allegation has been dismissed; therefore, no response is required.

13 86. Answering Paragraph 86 of the Amended Complaint, Defendant states that the
14 allegation has been dismissed; therefore, no response is required.

15 87. Answering Paragraph 87 of the Amended Complaint, Defendant denies Plaintiff is
16 entitled to the relief requested and therefore denies the allegations contained therein.

17 FOURTH CAUSE OF ACTION

18 (DECLARATORY RELIEF – AGAINST ALL DEFENDANTS)

19 88. Defendant repeats and incorporated each of its responses to Paragraph 1 through 88
20 as if fully stated herein.

21 89. Answering Paragraph 90 of the Amended Complaint, Defendant states that the
22 allegation is a legal conclusion to which no response is required. To the extent an answer is required,
23 Defendant denies the allegations contained therein.

24 90. Answering Paragraph 91 of the Amended Complaint, Defendant denies the
25 allegations contained therein.

26 91. Answering Paragraph 92 of the Amended Complaint, Defendant denies the
27 allegations contained therein.

1 92. Answering Paragraph 93 of the Amended Complaint, Defendant denies the
2 allegations contained therein.

3 93. Answering Paragraph 94 of the Amended Complaint, Defendant states that the
4 allegation is a legal conclusion to which no response is required. To the extent an answer is required,
5 Defendant denies the allegations contained therein.

6 94. Answering Paragraph 95 of the Amended Complaint, Defendant states that the
7 allegation is a legal conclusion to which no response is required. To the extent an answer is required,
8 Defendant denies the allegations contained therein.

9 95. Answering Paragraph 96 of the Amended Complaint, Defendant states that the
10 allegation is a legal conclusion to which no response is required. To the extent an answer is required,
11 Defendant denies the allegations contained therein.

12 96. Answering Paragraph 97 of the Amended Complaint, Defendant states that the
13 allegation is a legal conclusion to which no response is required. To the extent an answer is required,
14 Defendant denies the allegations contained therein.

15 97. Answering Paragraph 98 of the Amended Complaint, Defendant states that the
16 allegation is a legal conclusion to which no response is required. To the extent an answer is required,
17 Defendant denies the allegations contained therein.

18 98. Answering Paragraph 99 of the Amended Complaint, Defendant states that the
19 allegation is a legal conclusion to which no response is required. To the extent an answer is required,
20 Defendant denies the allegations contained therein.

21 99. Answering Paragraph 100 of the Amended Complaint, Defendant denies Plaintiff is
22 entitled to the relief requested and therefore denies the allegations contained therein.

FIFTH CAUSE OF ACTION

**(CANCELLATION OF WRITTEN INSTRUMENTS – SOT, NOD, NTS, and TDUS –
AGAINST ALL NATIONAL DEFAULT SERVICING CORPORATION)**

26 100. Defendant repeats and incorporated each of its responses to Paragraph 1 through 100
27 as if fully stated herein.

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FILED

2019 MAY 21 PM 3:24

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**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

1 authorities, all facts judicially noticed, and any oral argument that the Court may entertain at a hearing
2 on this matter.

3 **POINTS AND AUTHORITIES**

4 **I. STATEMENT OF FACTS.**

5 This case pertains to the foreclosure of real property commonly known as 1740 Autumn Glen
6 Street, Fernley, NV 89408 ("Subject Property") that took place on or about May 18, 2018 wherein
7 Breckenridge purchased the Subject Property. The Plaintiffs filed their original complaint on June 8,
8 2018. In that complaint, the Plaintiffs asserted claims for relief against the Wedgewood Defendants as
9 follows: (1) Unlawful Foreclosure, (2) Quiet Title, (3) Preliminary Injunction, (4) Slander of Title, (5)
10 Constructive Fraud, and (6) Declaratory Relief.¹

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13 On October 24, 2018, this Court dismissed the original complaint but granted leave for the
14 Plaintiffs to amend it in regard to procedural allegations pertaining to the notice of foreclosure.²

15 On October 29, 2018, Plaintiffs filed their first amended complaint and asserted causes of action
16 against the Wedgewood Defendants of Quiet Title and Declaratory Relief.³ The remaining causes of
17 action in the first amended complaint – for Unlawful Foreclosure; Slander of Title; and Cancellation of
18 Substitution of Trustee, Notice of Default, Notice of Trustee's Sale, and Trustee's Deed Upon Sale – are
19 clearly delineated as being alleged only against NDSC.⁴ These additional allegations contained in the
20 first amended complaint regarding the procedural allegations of the foreclosure were each alleged to have
21 been done by other entities. The Plaintiffs do not allege in their first amended complaint that any of these
22 procedural allegations pertaining to the notice of foreclosure were done by the Wedgewood Defendants.
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27 ¹ See Complaint filed June 8, 2018.

28 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 Because the Plaintiffs failed to make any new allegations against the Wedgewood Defendants,
2 the Wedgewood Defendants filed a motion to dismiss the first amended complaint on November 19,
3 2018. The hearing on that motion recently took place on May 1, 2019. As a result of that hearing, the
4 only cause of action remaining against the Wedgewood Defendants is the Declaratory Relief cause of
5 action against Breckenridge. Furthermore, the Court ordered that an answer must be filed within twenty
6 (20) days from the hearing. Accordingly, this motion for summary judgment is premature.

8 The arguments and allegations contained in the Plaintiff's motion for summary judgment all
9 allegedly occurred prior to the foreclosure sale. The Wedgewood Defendants had no role in this dispute
10 prior to the foreclosure. Their first involvement in the matter was when Breckenridge purchased the
11 Subject Property at the foreclosure sale. Wedgewood is Breckenridge's manager. McDermott is an
12 employee of Wedgewood that was assigned as the project manager for the Subject Property once
13 Breckenridge purchased the Subject Property at foreclosure. Breckenridge, Wedgewood, and
14 McDermott's sole relationship to this case is a result of Breckenridge's purchase of the Subject Property
15 at the foreclosure sale – they were not lenders, noteholders, or beneficiaries of Plaintiffs' loan obligations.
16 Furthermore, Wedgewood and McDermott do not claim an ownership or title interest to the Subject
17 Property.
18

19
20 Plaintiffs' request for summary judgment should be denied because the undisputed facts establish,
21 as a matter of law, that the Plaintiffs have no viable claims against the Wedgewood Defendants. Plaintiffs
22 motion for summary judgment does not even address the only causes of action brought against the
23 Wedgewood Defendants – Quiet Title and Declaratory Relief.
24

25 **II. STANDARD OF REVIEW.**

26 NRCP 56(a) states:

27 A party may move for summary judgment, identifying each claim or defense —
28 or the part of each claim or defense — on which summary judgment is sought. The

1 court shall grant summary judgment if the movant shows that there is no genuine
2 dispute as to any material fact and the movant is entitled to judgment as a matter
3 of law. The court should state on the record the reasons for granting or denying
4 the motion.

5 In granting summary judgment, this Court must take great care. *Johnson v. Steel, Inc.*, 100 Nev.
6 181, 182 (1984). Trial judges are to exercise great caution in granting summary judgment, which is not
7 to be granted if there is the slightest doubt as to the operative facts. *Posadas v. City of Reno*, 109 Nev.
8 448, 451 (1993). The court must view the evidence in the light most favorable to the nonmoving party
9 and determine whether there are genuine issues of material fact. In so doing, the nonmoving party is
10 entitled to have the evidence and all inferences therefrom accepted as true. *Johnson*, 100 Nev. at 182.
11 Summary judgment may not be used as a shortcut to the resolving of disputes upon facts material to the
12 determination of the legal rights of the parties. *Parman v. Petricciani*, 70 Nev. 427 (1954).

13 Under NRCP 56(a), a party moving for summary judgment must establish that "there is no
14 genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law."

15 The Nevada Supreme Court has stated, "[A] party seeking summary judgment always bears the
16 initial responsibility of informing the district court of the basis for its motion." *Maine v. Stewart*, 109
17 Nev. 721, 727 (1993); *Clauson v. Lloyd*, 103 Nev. 432, 435 n.3 (1987) (quoting *Celotex Corp. v. Catrett*,
18 477 U.S. 317, 91 L. Ed. 2d 265, 106 S. Ct. 2548 (1986)).

19 The moving party has the burden of establishing the non-existence of genuine issues of material
20 fact. *Dennison v. Allen Group Leasing Corp.*, 110 Nev. 181 (1994); *Bird v. Casa Royale West*, 97 Nev.
21 67, 70-71 (1981); *Garvey v. Clark County*, 91 Nev. 127, 130 (1975). Moreover, when it comes to issues
22 of fact, the Court must construct all pleadings and other proof "in a light most favorable to the nonmoving
23 party." *Wood v. Safeway, Inc.*, 121 Nev. 724, 729 (2005).

24 Even a slight factual dispute is sufficient to make the granting of summary judgment improper.
25 *Sims v. General Telephone & Electronics*, 107 Nev. 516 (1991) (wherein an inference was sufficient to
26

1 constitute a factual dispute on causation). Based on the arguments set forth herein, Plaintiff has failed to
2 meet its burden of persuasion by showing there are no genuine issues of material fact. As such, this Court
3 should deny Plaintiffs' motion for summary judgment.

4 **III. LEGAL ARGUMENT.**

5 The Plaintiffs' motion for summary judgment only addresses the Wedgewood Defendants in two
6 instances – both of which occur in the "Statement Of Undisputed Facts" section. First, the Plaintiffs
7 state:
8

9 NDSC, Breckenridge Property Fund 2016 LLC and its privies all lacked legal
10 standing to cause the non-judicial foreclosure of Defendants' [sic] real property
11 and retirement home.⁵

12 The second and final reference to the Wedgewood Defendants states:

13 Alyssa McDermott, Wedgewood Inc., or Breckenridge Property Fund 2016 LLC
14 were aware of the disputes regarding Plaintiffs real property and participated in
15 the wrongful and unlawful foreclosure process. As such, the alleged sale of
16 Plaintiff's real property was unlawful and void ab initio and the purported sale of
17 Plaintiff's real property has no enforceable legal status and any legal document
18 that is taken to have conveyed or assigned any interest in Plaintiffs' real property
19 to Defendants, Alyssa McDermott, Wedgewood Inc., or Breckenridge Property
20 Fund 2016 LLC is void on its face.⁶

21 The motion does not even address the causes of action of the first amended complaint that are
22 brought against the Wedgewood Defendants – Quiet Title and Declaratory Relief. In fact, the only actual
23 argument that the Plaintiffs even make in support of summary judgment is that the "Defendants failed to
24 serve plaintiffs with the notice of default as required by Nevada law."⁷ This is clearly an argument made
25 solely against NDSC as the Wedgewood Defendants had nothing to do with the foreclosure notices. In
26 fact, the Defendants make no reference to the Wedgewood Defendants or any allegations that could
27

28 ⁵ See, Motion for Summary Judgment at 8:1-5.

⁶ *Id.* at 13:1-11.

⁷ *Id.* at 15:27-28.

1 possibly pertain to them during their entire "Argument" section of the motion.⁸ Accordingly, the motion
2 should be denied as to the Wedgewood Defendants pursuant to TJD CR 7(D) which provides, "The failure
3 of a moving party to file a memorandum of points and authorities in support of a motion shall constitute
4 a consent to the denial of the motion[.]" The Plaintiffs have not sufficiently supported their motion as to
5 their allegations against the Wedgewood Defendants and the motion should therefore be denied.
6

7 **A. Standing.**

8 While the Plaintiffs present the issue of standing as an undisputed fact, it clearly is a disputed fact
9 and one that the Wedgewood Defendants vehemently denies. The Wedgewood Defendants had nothing
10 to do with the Subject Property until Breckenridge purchased the Subject Property at the foreclosure.
11 Any procedural allegations pertaining to the notice of foreclosure or standing to proceed with foreclosure
12 are actions allegedly done by other entities that occurred prior to the foreclosure sale, i.e. prior to the
13 Wedgewood Defendants being involved with the dispute. These allegations against other parties, even
14 if true, do not provide either a factual or legal basis for summary judgment as it relates to the Wedgewood
15 Defendants because the Wedgewood Defendants cannot be held responsible for the alleged actions of
16 others.
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19 The question of standing to foreclosure is an issue that must be examined as to the role of the
20 parties prior to the foreclosure sale. The Wedgewood Defendants had no role in this dispute prior to the
21 foreclosure. Their first involvement in the matter was when Breckenridge purchased the Subject Property
22 at the foreclosure sale. The Wedgewood Defendants' sole relationship to this case is a result of
23 Breckenridge's purchase of the Subject Property at the foreclosure sale – they were not lenders,
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28 ⁸ *Id.* at 14-21.

1 noteholders, or beneficiaries of Plaintiffs' loan obligations. Therefore, the question of standing is not
2 applicable to them.

3 In fact, the causes of actions in the first amended complaint that deal with the issue of standing to
4 foreclose –Unlawful Foreclosure; Slander of Title; and Cancellation of Substitution of Trustee, Notice of
5 Default, Notice of Trustee's Sale, and Trustee's Deed Upon Sale – are clearly delineated as being alleged
6 only against NDSC.⁹ The Wedgewood Defendants did not cause the foreclosure to happen and were not
7 involved in the foreclosure process; rather, Breckenridge simply bought the Subject Property at the
8 foreclosure as a third party purchaser. The Plaintiffs attempt to now seek summary judgment against the
9 Wedgewood Defendants based on allegations that are not even contained in their first amended complaint
10 is improper and should be denied.
11

12
13 **B. Bona Fide Purchaser Status.**

14 Plaintiffs' allegations that the Wedgewood Defendants were aware of the disputes between
15 Plaintiff and NDSC regarding standing are not supported by any factual arguments or evidence. Plaintiffs
16 do not offer sufficient allegations as to when or how the Wedgewood Defendants should have known
17 about the dispute. Breckenridge is an independent third party who took title to the Subject Property
18 pursuant to a NRS 107.080 foreclosure sale. NRS 107.080 provides in pertinent part:
19

20 5. Every sale made under the provisions of this section and other sections of this
21 chapter vests in the purchaser the title of the grantor and any successors in interest
22 without equity or right of redemption. Except as otherwise provided in subsection
23 7, *a sale made pursuant to this section must be declared void by any court of
24 competent jurisdiction in the county where the sale took place if:*

25 (a) The trustee or other person authorized to make the sale does not
26 substantially comply with the provisions of this section;

27 (b) Except as otherwise provided in subsection 6, an action is commenced in
28 the county where the sale took place within 30 days after the date on which the
trustee's deed upon sale is recorded pursuant to subsection 10 in the office of the
county recorder of the county in which the property is located; and

⁹ See First Amended Complaint at 11:13-15; 18:13-14; and 23:19-21.

1 (c) *A notice of lis pendens providing notice of the pendency of the action is*
2 *recorded in the office of the county recorder of the county where the sale took*
3 *place within 5 days after commencement of the action.*

4 ***

5 7. Upon expiration of the time for commencing an action which is set forth in
6 subsections 5 and 6, *any failure to comply with the provisions of this section or*
7 *any other provision of this chapter does not affect the rights of a bona fide*
8 *purchaser* as described in NRS 111.180.

9 Plaintiffs did not record a notice of lis pendens with the county recorder within 5 days of filing
10 the complaint, or at any other time of their disputes with the bank. Accordingly, Breckenridge did not
11 have actual or constructive knowledge of the dispute and is entitled to bona fide purchaser status pursuant
12 to NRS 111.180(1) which provides:

13 Any purchaser who purchases an estate or interest in any real property in good
14 faith and for valuable consideration and who does not have actual knowledge,
15 constructive notice of, or reasonable cause to know that there exists a defect in, or
16 adverse rights, title or interest to, the real property is a bona fide purchaser.

17 Even if Plaintiffs are successful in proving their procedural allegations pertaining to the notice of
18 foreclosure allegedly done by other entities prior to the foreclosure sale, the Wedgewood Defendants are
19 entitled to bona fide purchaser status because a notice of lis pendens was not recorded with the county
20 within 5 days of commencement of this action and the Plaintiffs fail to allege that the Wedgewood
21 Defendants had "actual knowledge, constructive notice of, or reasonable cause to know that there exists
22 a defect in, or adverse rights, title or interest to, the real property[.]" Accordingly, the Plaintiffs' request
23 for summary judgment against the Wedgewood Defendants should be denied.

1
2 **IV. CONCLUSION.**

3 Based on the foregoing, Plaintiff respectfully requests that the Court deny Plaintiffs' motion for
4 summary judgment as unsupported since the Wedgewood Defendants did not participate in the
5 foreclosure process and could not have been aware of any potential dispute between the Plaintiffs and
6 NDSC.
7

8 DATED this 21st day of May 2019.

9 HUTCHISON & STEEFEN, PLLC

10 
11 John T. Steffen (4396)

12 Matthew K. Schriever (10745)
13 10080 West Alta Drive, Suite 200
14 Las Vegas, NV 89145
15 mschriever@hutchlegal.com

16 *Attorneys for Defendants*
17 *Alyssa McDermott, Wedgewood Inc., and*
18 *Breckenridge Property Fund 2016 LLC*
19
20
21
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 **OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT** 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 21 day of May 2019.



An Employee of HUTCHISON & STEFFEN

FILED

2019 MAY 22 PM 2:32

TANYA SCORPINE
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT
Tanya Thomas

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

7 THIRD JUDICIAL DISTRICT COURT
8 LYON COUNTY, NEVADA
9

10
11 LEO KRAMER,
12 AUDREY KRAMER,

13
14 Plaintiffs,

15 vs.
16

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

23 Defendants.
24

Case No.: 18-CV-00663

REJECTION OF
UNCONSCIONABLE OFFER OF
JUDGMENT

Dept: I

25
26 TO: Defendants, ALYSSA MC DERMOTT, WEDGWOOD INC., AND
27 BRECKENRIDGE PROPERTY FUND 2016, LLC:
28

1 On May 11, 2019, Plaintiffs, LEO KRAMER AND AUDREY KRAMER,
2 received via US Mail the above mentioned Defendants' 'OFFER OF JUDGMENT'.
3 Plaintiffs do hereby **REJECT** Defendant/s Breckenridge's **UNCONSCIONABLE**
4 'OFFER OF JUDGMENT'.
5

6 FINDINGS OF FACT

- 7 1) The court has already found at a (May 1, 2019) hearing the foreclosure of
8 Plaintiff's real property located at: 1740 Autumn Glen Street in Fernley,
9 Nevada was **UNLAWFUL**.
10
11 2) The court also noted (at the same hearing) due to the **UNLAWFUL**
12 **FORECLOSURE & SALE** of Plaintiffs' property, the sale would most likely
13 be unwound.
14
15 3) The court, also informed counsel for Breckenridge (at the same hearing)
16 because the property had been **UNLAWFULLY FORECLOSED**
17 Breckenridge is not and cannot be considered a bonafide encumbrancer of
18 Plaintiffs' real property.
19
20
21

22 Plaintiffs maintain based on the above court findings, their significant monetary
23 loss and the very 'public' humiliation and embarrassment in which Plaintiffs have
24 personally suffered as a result of the **UNLAWFUL FORECLOSURE** of their
25 property, that Breckenridge's 'OFFER OF JUDGMENT' is **UNCONSCIONABLE** and
26 has been lodged with the court in bad faith.
27
28

1 Further, Plaintiffs deem Breckenridge's meager \$1,000 proposed offer to
2 Plaintiffs in exchange for dismissing Case 18-CV-00663 as to Defendants, ALYSSA
3 MC DERMOTT, WEDGWOOD INC., AND BRECKENRIDGE PROPERTY FUND
4
5 2016, LLC with prejudice, absurd and insulting.

6 Plaintiffs furthermore argue Breckenridge's 'OFFER OF JUDGMENT' was
7 lodged in bad faith by including Ms. Mc Dermott & Wedgewood, Inc. within their offer
8
9 because counsel for Breckenridge knew on (May 1, 2019) both Ms. McDermott &
10 Wedgewood, Inc. had been dismissed from the case per Judge Schlegelmilch's order on
11 that same day.

12
13 Breckenridge's 'OFFER OF JUDGMENT' is not only **UNCONSCIONABLE**, it
14 is an **ABUSE** of ethical legal tactics and should never have been filed with this court.
15
16 Due to the fact the FORECLOSURE was UNLAWFUL the 'OFFER OF JUDGMENT'
17 is basically null and void. For this reasons and the other reasons previously stated, the
18 'OFFER OF JUDGMENT' is hereby **REJECTED** by Plaintiffs.

19
20 Upon the court's recognition the foreclosure of Plaintiffs' real property was
21 UNLAWFUL, and that Defendant Breckenridge cannot be a bonafide encumbrancer of
22 Plaintiffs' property, Plaintiffs hereby demand Defendants vacate and return the property
23 to Plaintiffs immediately, and any encumbrance/s against the title of Plaintiffs' property
24 be removed accordingly.

25
26 Date: Leo Friedman Kramer
27 5/21/19 AK
28 Leo Kramer, Pro se

25
26 Date: Audrey Kramer
27 5/21/19 AK
28 Audrey Kramer, Pro se

POOF OF SERVICE

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

The UPS Store

1511 S. Lamore Ave. Ste M
Hercules, CA 94547

store2796@theupsstore.com



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 May 21, 2019, I served the foregoing document entitled:

REJECTION OF UNCONSCIONABLE OFFER OF JUDGMENT

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 May 21, 2019, at Hercules, California.

Corina DiGrazia
Name of Declarant


Signature of Declarant

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

Ace Van Patten

Tiffany & Bosco, P.A.

10100 W. Charleston Boulevard, Ste.220

Las Vegas, NV 89135

Attorneys for Defendant,

NATIONAL DEFAULT SERVICING CORPORATION

FILED

Case No.: 18-CV-00663

2019 MAY 24 AM 11:13

Dept No.: I

TANYA SCHEPINSKY
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT

Victoria Toran DEPUTY

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

* * *

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.

**ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANTS'
MOTIONS TO DISMISS**

THIS MATTER having come on for hearing on May 1, 2019 on the Motion to Dismiss filed by Defendants Alyssa McDermott ("McDermott"), Wedgewood Inc. ("Wedgewood"), and Breckenridge Property Fund 2016 LLC ("Breckenridge") and the Motion to Dismiss filed by National Default Servicing Corporation ("NDSC"), the Plaintiffs having opposed the motions 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, each party submitting proposed orders and/or objections to the same, the Court makes the following findings of fact and conclusions of law, and orders as follows:

///

///

///

FINDINGS OF FACT

1
2 1. This Action concerns real property commonly known as 1740 Autumn Glen Street,
3 Fernley, Nevada, 89408, Assessor's Parcel Number 022-052-02 (hereinafter the "Property").

4 2. On June 8, 2018, Plaintiffs filed a Complaint for claims of Unlawful Foreclosure, Quiet
5 Title, Preliminary Injunction, Slander of Title, Constructive Fraud, and Declaratory Relief.

6 3. Defendants Breckenridge, Wedgwood, and McDermott filed a Motion to Dismiss the
7 Complaint in its entirety. Likewise, Defendant NDSC filed a Motion to Dismiss the Complaint in its
8 entirety. On October 23, 2018, this Court entered an Order granting Defendants' Motions to Dismiss
9 without prejudice and with leave for Plaintiffs to file an amended complaint.

10 4. On October 25, 2018, Plaintiffs filed their First Amended Complaint which made claims
11 for Unlawful Foreclosure (Against NDSC), Quiet Title (Against All Defendants), Slander of Title
12 (Against NDSC), Declaratory Relief (Against All Defendants), and Cancellation of Written Instruments
13 (Against NDSC).

14 5. Defendants Breckenridge, Wedgwood, and McDermott filed a Motion to Dismiss
15 Plaintiffs' First Amended Complaint on November 19, 2018. Defendant NDSC filed a Motion to Dismiss
16 Plaintiffs First Amended Complaint on January 17, 2019. Plaintiffs opposed both of these Motions to
17 Dismiss, and the matter was submitted to this Court for its decision.

18 6. Neither Defendant Wedgwood nor Defendant McDermott has any claim to an estate,
19 interest, right, title, lien or cloud in or on the Property. The Trustee's Deed transferring the property
20 clearly shows the only owner as Breckenridge without any interest in the above parties. Prior to filing
21 their First Amended Complaint, Plaintiffs had actual knowledge that neither Wedgwood nor McDermott
22 had any claim to an estate, interest, right, title, lien or cloud in or on the Property. Despite having actual
23 knowledge that neither Wedgwood nor McDermott had any claim to an estate, interest, right, title, lien
24 or cloud in or on the Property, Plaintiffs sued Wedgwood and McDermott for Quiet Title and
25 Declaratory Relief in their First Amended Complaint.

26 7. Plaintiffs' First Amended Complaint is not verified (*see* NRS 40.090(1)); Plaintiffs have
27 not alleged that they paid all taxes levied or assessed against the Property (*see id.*); Plaintiffs did not
28 within 10 days after the filing of the First Amended Complaint file or cause to be filed in the office of

1 the county recorder of the county where the Property is situated, a notice of the pendency of the action
2 containing the matters required by NRS 14.010; Plaintiffs did not within 30 days after issuance of
3 summons post or cause to be posted a copy of summons in a conspicuous place at the Property; and the
4 Summons did not contain a legal description of the property.

5 8. Plaintiffs have made no factual allegations in their First Amended Complaint that
6 Defendant NDSC slandered the title of the Property.

7 9. Issues of fact remain regarding whether Plaintiffs were properly served with the Notice of
8 Default on the Property.

9 10. Issues of fact remain as to whether Defendant Breckenridge was a bona fide purchaser of
10 the Property.

11 11. Plaintiffs served and filed an Individual Case Conference Report ("ICCR") on about
12 March 28, 2019. Defendants Breckenridge, Wedgewood, and McDermott filed their Objection to the
13 ICCR on April 22, 2019.

14 CONCLUSIONS OF LAW

15 1. Plaintiffs have failed to state any claims against Defendants Wedgewood and McDermott,
16 as there is no allegation that Wedgewood or McDermott has any claim to an estate, interest, right, title,
17 lien or cloud in or on the Property. Therefore, all legal claims in this action against Defendants
18 Wedgewood Inc. and Alyssa McDermott are dismissed with prejudice.

19 2. Plaintiffs have failed to state a claim for Quiet Title due to their failure to allege that they
20 satisfied the relevant requirements of Chapter 40 of the Nevada Revised Statutes. Therefore, Plaintiffs'
21 claim for Quiet Title against all Defendants is dismissed with prejudice. This is not a case for Quiet Title
22 but to undo a trustee's sale.

23 3. Plaintiffs have failed to state a claim for Slander of Title as Plaintiffs have not made any
24 factual allegations that Defendant NDSC slandered their title to the Property. Therefore, Plaintiffs' claim
25 for Slander of Title against NDSC is dismissed with prejudice.

26 4. "Cancellation of Written Instrument" is a remedy and not a valid legal claim in the State
27 of Nevada. Therefore, Plaintiffs' claim of Cancellation of Written Instruments – SOT, NOD, NTS and
28 TDUS shall be treated as a prayer for relief.

5. Plaintiffs' claim for Unlawful Foreclosure against NDSC involves issues of fact which this Court cannot adjudicate on a motion made pursuant to NRCP 12(b)(5). Therefore, Plaintiffs' claim for Unlawful Foreclosure is not dismissed.

6. Plaintiffs' claim for Declaratory Relief is derivative of and a potential remedy for their claim for Unlawful Foreclosure, and therefore Plaintiffs' claim for Declaratory Relief is not dismissed.

7. Plaintiffs' ICCR, filed on or about March 28, 2019, is nugatory, as no such report was required or permitted prior to the filing of answers by the Defendants. NRCP 16.1(b)(2) & (c)(1)(A). Accordingly, Plaintiffs' ICCR is stricken.

ORDER

THE COURT HEREBY ORDERS, ADJUDGES, AND DECREES that Plaintiffs claims in their First Amended Complaint, and each of them, are dismissed with prejudice as to Wedgewood and McDermott.

THE COURT FURTHER ORDERS, ADJUDGES, AND DECREES that Plaintiffs' claim of Quiet Title is dismissed as to all Defendants with prejudice.

THE COURT FURTHER ORDERS, ADJUDGES, AND DECREES that Plaintiffs' claim of Slander of Title is dismissed with prejudice as to NDSC.

THE COURT FURTHER ORDERS, ADJUDGES, AND DECREES that Plaintiffs' claim of Cancellation of Written Instruments shall be treated as a prayer for relief.

THE COURT FURTHER ORDERS, ADJUDGES, AND DECREES that Defendants must answer or otherwise respond to Plaintiffs' First Amended Complaint on or before May 21, 2019.

THE COURT FURTHER ORDERS, ADJUDGES, AND DECREES that Plaintiffs ICCR filed on or about March 28, 2019 is stricken.

Dated this 23rd day of May, 2019.

Hon. John P. Schlegelmilch,
DISTRICT JUDGE

Certificate of Mailing

I hereby certify that I, Anne Rossi, am an employee of the Third Judicial District Court, and that on this date pursuant to NRCP 5(b), a true copy of the foregoing document was mailed at Yerington, Nevada addressed to:

Leo Kramer
Audrey Kramer
2364 Redwood Road
Hercules, CA 94547

Matthew K. Schriever, Esq.
HUTCHISON & STEFFEN, PLLC
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145

Casey J. Nelson, Esq.
WEDGEWOOD, LLC
2320 Potosi Street, Suite 130
Las Vegas, NV 89146

Ace Van Patten, Esq.
TIFFANY & BOSCO, P.A.
10100 W. Charleston Blvd., Ste. 220
Las Vegas, NV 89135

Dated this 23rd day of May, 2019.


Employee of Hon. John P. Schlegelmilch

Code: 2610

Name: Leo Kramer & Audrey Kramer, prose

Address: 2364 Redwood Rd
Hercules CA 94547

Telephone: 510-2708-9100

Email: audreykramer55@yahoo.com

Self-Represented Litigant

FILED

2019 MAY 28 PM 1:35

JANIS S. LARSEN
CLERK, COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT

Victoria Toran

IN THE FAMILY DIVISION
THIRD
OF THE ~~SECOND~~ JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE LYON

Leo Kramer
Audrey Kramer

Plaintiff / Petitioner,

Case No. 18-CV-00663

vs. National Default Servicing, Corp.,
Alyssa Mc Dermott, Wedgewood, Inc.,
Breckenridge Property Fund 2016, LLC
Defendant / Respondent.

Dept. No. 1

NOTICE OF INTENT TO TAKE DEFAULT

TO: Defendant / Respondent Breckenridge Property Fund 2016, LLC

Please take notice that the Plaintiff / Petitioner intends to take a default unless you file an
Answer or other responsive pleading with the Court and serve the Plaintiff / Petitioner on or before
seven days from the date of service of this Notice.

//

//

//

1 On (Date) May 24, 2019, I served a true and correct copy of this Notice of Intent
2 to Take Default as described below:

3 (☒ Check One):

4 ☐ I personally served (Name) _____ at the following location:
5 (Address) _____

6 ☐ I deposited a copy in the U.S. mail, postage prepaid, addressed as follows:

7 (Name) _____

8 (Address) _____

9 ☒ I deposited a copy in the U.S. mail Certified, return receipt requested, addressed as follows:

10 (Name) Matthew Schriever c/o Hutchison & Steffen

11 (Address) 10080 W. Alta Drive Ste. 200
12 Las Vegas, NV 89145

13 This document does not contain the personal information of any person as defined by NRS
14 603A.040.

15 I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true
16 and correct.

17
18 Date: May 24, 2019

19 Signature: Audrey Kramer

20 Print Your Name: Audrey Kramer
21
22
23
24
25
26
27
28

Case Summary

NATIONAL DEFAULT SERVICING CORPORATION, LEO KRAMER, AUDREY KRAMER, ALYSSA MC DERMOTT, WEDGWOOD INC., BRECKENRIDGE PROPERTY FUND 2016 LLC ~ COMPLAINT

Case Number: 18-CV-00663

Type: Other Title to Property Case

Status: Reopened

Received Date: 6/8/2018

Status Date: 10/29/2018

Agency: Third Judicial District Court

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

KRAMER, LEO Plaintiff

Disposition: Motion to Dismiss by Defendant Dispo Date: 10/24/2018

Lead/Active: True

2. NRCP 3 ~ COMPLAINT

KRAMER, AUDREY Plaintiff

Disposition: Motion to Dismiss by Defendant Dispo Date: 10/24/2018

Lead/Active: False

3. NRCP 5 ~ ANSWER

NATIONAL DEFAULT SERVICING CORPORATION Defendant

Disposition: Motion to Dismiss by Defendant Dispo Date: 10/24/2018

Lead/Active: False

4. NRCP 5 ~ ANSWER

MC DERMOTT, ALYSSA Defendant

Disposition: Motion to Dismiss by Defendant Dispo Date: 10/24/2018

Lead/Active: False

5. NRCP 5 ~ ANSWER

WEDGWOOD INC. Defendant

Disposition: Motion to Dismiss by Defendant Dispo Date: 10/24/2018

Lead/Active: False

6. NRCP 5 ~ ANSWER

BRECKENRIDGE PROPERTY FUND 2016 LLC Defendant

Disposition: Motion to Dismiss by Defendant Dispo Date: 10/24/2018

Lead/Active: False

Case Summary

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

10/24/2018 Order Granting Motion to Dismiss Plt'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 Plt'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
2/1/2019 Ex Parte Motion for Continuance (2-22-19).pdf - Filed
2/4/2019 Plaintiff's Opposition to Defendant's Motion to Dismiss Plaintiff's First Amended Complaint.pdf - Filed
3/6/2019 Stipulation and Order to Continue Hearing (2-22-19 to 5-1-19).pdf - Filed
3/18/2019 Notice of Entry of Stipulation & Order to Continue Hearing.pdf - Filed
3/29/2019 Early Case Conference Report Pursuant to NRC 16.1(b).pdf - Filed
4/22/2019 Objection to Plaintiff's Early Case Conference Report (McDermott, Wedgewood Inc., & Breckenridge).pdf - Filed
5/2/2019 Opposition to Plaintiff's Motion for Summary Judgment.pdf - Filed
5/2/2019 Opposition to Plaintiff's Motion for Summary Judgment (National Default).pdf - Filed
5/2/2019 Declaration of Counsel in Support of Opposition to Plaintiff's Motion for Summary Judgment (National Default).pdf - Filed
5/17/2019 Answer to First Amended Complaint - Natt'l Default.pdf - Filed

Events

10/5/2018 10:00:00 AM | Motion Hearing | DEPT | 18-CV-00663 | Court Room B
Andersen, Andrea Deputy Clerk -
AANDERSEN
Staff - STAFF
Court Room B - CourtRmB
lawclerk1 - LAW1
Aaron Richter

Case Summary

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.

5/1/2019 10:30:00 AM | Motion Hearing | DEPT I 18-CV-00663 | Court Room B

Thomas, Kathy Dep. Clerk - KTHOMAS

Staff - STAFF

Court Room B - CourtRmB

lawclerk1 - LAW1

CHING, KEITH S.K.

GEURTS, PATRICK JAMES J.

VanPatten, Ace C

obo NDSC w/Tiffany & Bosco

Schlegelmilch, John P. - JPS (Dept I - TJDC)

Notes: Plaintiff's appeared in Proper Person. Mr. Ching appeared on behalf of McDermott, Wedgewood, Inc., and Breckenridge Property. Mr. Van Patten, appearing on behalf of NDSC. Counsel argued the motions.

Court Found McDermott and Wedgwood are not owners in the property. Motion to Dismiss as to McDermott and Wedgwood is granted. Breckenridge will remain as a party in the case. Court dismissed the quiet title action, does not fit the proper requirements. Cause of Action 2 & 3 in the complaint is Dismissed. Cause of action 1 & 4 does exist, case will go forward on those 2 causes. In regards to the Discovery motion, court found the early case conference does not take place until after first answer is filed. Defendant to file answer within 20 days of today's date. Parties are to co-operate with the rules of 16.1 which also applies to parties in proper person. The opposition to the early case conference is granted. Mr. Ching to prepare Order and email within 10 days to the court and other parties. Parties have 5 days after the receipt to file any objection to the order.

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



On May 24, 2019, I served the foregoing document entitled:


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

Ace Van Patten

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 MAY 28 AM 10:32

TANYA SCHEINE
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT

Athy Thomas

John T. Steffen (4390)
Matthew K. Schriever (10745)
HUTCHISON & STEFFEN, PLLC
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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

AMENDED CERTIFICATE OF SERVICE

AMENDED CERTIFICATE OF SERVICE

Pursuant to NRCp 5(b), I hereby certify that I am an employee of Hutchison & Steffen, and that on the 23rd day of May, 2019, I served a true and correct copy of the **OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT** 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 24th day of May 2019.

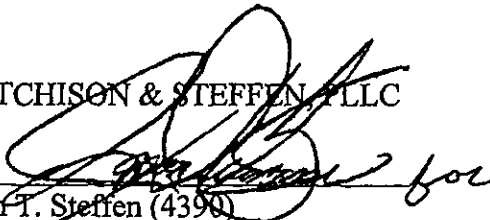

An Employee of HUTCHISON & STEFFEN

AFFIRMATION

The undersigned does hereby affirm that the foregoing document filed in this matter does not contain the social security number of any person.

DATED this 24th day of May 2019.

HUTCHISON & STEFFEN, PLLC


John T. Steffen (4390)
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10080 West Alta Drive, Suite 200
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Attorneys for Defendants
Alyssa McDermott, Wedgewood Inc., and
Breckenridge Property Fund 2016 LLC

FILED

2019 MAY 29 PM 2:03

TANYA SCHEIDT
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT

Victoria Toran

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Matthew K. Schriever (10745)
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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

**ANSWER TO FIRST AMENDED
COMPLAINT**

1 Comes now, BRECKENRIDGE PROPERTY FUND 2016 LLC ("Defendant")¹ by and through
2 its counsel of record, Hutchison & Steffen, PLLC, and hereby submits its Answer to Plaintiff's First
3 Amended Complaint.

4 1. Answering paragraph numbers 1-7, 11-25, 27, 30-51, and 53-59, Defendant is without
5 sufficient knowledge or information to form a belief as to the truth of the allegations of said paragraphs
6 and on that basis deny each and every allegation set forth therein.
7

8 2. Answering paragraph numbers 8-10, 26, 28, 52, and 90-100, Defendant denies the
9 allegations set forth therein.

10 3. Defendants repeat and reallege its prior responses to the allegations contained in
11 paragraph numbers 29, 60, 70, 89, and 101, of the Complaint.
12

13 4. Answering paragraph numbers 61-69, 71-88, and 102-104 Defendant asserts that at a
14 recent hearing on Defendants' Motion to Dismiss the Amended Complaint, the Court dismissed the
15 Cause of Action that form the basis for these allegations and therefore no response is required to these
16 allegations. To the extent a response is required, Defendant denies the allegations set forth therein.
17

18 **AFFIRMATIVE DEFENSES**

19 1. Plaintiffs' claims on file herein fail to state a claim against Defendant, upon which relief
20 can be granted.

21 2. Plaintiffs' claims are barred by the doctrine of waiver, estoppel, unclean hands and other
22 equitable defenses.

23 3. Plaintiffs' claims are barred by the applicable statute of limitations and/or the doctrine of
24 laches.
25

26
27
28 ¹ The First Amended Complaint also names ALYSSA MCDERMOTT and WEDGEWOOD INC. as Defendants. However,
at a recent hearing on Defendants' Motion to Dismiss the Amended Complaint, the Court dismissed those parties from this
action entirely and therefore an Answer is not required to be filed by those parties.

1 4. Plaintiffs' claims are barred by the statute of frauds.

2 5. Defendant was a bona fide purchaser for value of the Property in good faith and without
3 notice of any of the alleged defects to the Property.

4 6. The damages, if any, allegedly sustained by Plaintiff were caused in whole by other
5 parties' acts or omissions.
6

7 7. Defendant incorporates all affirmative defenses as set forth in NRCP 8(c).

8 8. Defendant denies each and every allegation not specifically answered.

9 9. All possible affirmative defenses may not have been alleged herein insofar as sufficient
10 facts were not available after reasonable inquiry upon the filing of Defendant's Answer to the
11 Complaint and therefore, Defendants reserves the right to amend its Answer to allege additional
12 affirmative defenses if subsequent investigations so warrant.
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1 WHEREFORE, Defendant prays:

2 1. That Plaintiff take nothing by way of its Complaint and that the Court deny Plaintiff all
3 of the relief sought therein;

4 2. For costs and attorney fees incurred in the defense of this action; and

5 3. For any such other and further relief as the Court deems just and proper

6 DATED this 29th day of May 2019.
7

8 HUTCHISON & STEFFEN PLLC

9
10 
John T. Steffen (4390)

11 Matthew K. Schriever (10745)
12 10080 West Alta Drive, Suite 200
13 Las Vegas, NV 89145
mschriever@hutchlegal.com

14 Wedgewood, LLC

15 Office of the General Counsel

16 Casey J. Nelson, Esq. (12259)

2320 Potosi Street, Suite 130

17 Las Vegas, Nevada 89146

E-mail: caseynelson@wedgewood-inc.com

18 *Attorneys for Defendant*
19
20
21
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24
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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 **ANSWER TO FIRST AMENDED COMPLAINT** via U.S. Mail to the parties designated below.

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

DATED this 29 day of May 2019.



An Employee of HUTCHISON & STEFFEN

FILED

2019 JUN -6 PM 2:15

TANYA SOOHNAT
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT

Victoria Toran

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

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

11
12 LEO KRAMER,
13 AUDREY KRAMER,

14 Plaintiffs,

15
16 vs.

17
18 NATIONAL DEFAULT SERVICING
19 CORPORATION, BRECKENRIDGE
20 PROPERTY FUND 2016 LLC, and
21 DOES 1 THROUGH 50 INCLUSIVE,

22 Defendants.

Case No.: 18-CV-00663

PLAINTIFFS, LEO KRAMER, AND
AUDREY KRAMER'S NOTICE OF
MOTION AND MOTION TO STRIKE
NATIONAL DEFAULT SERVICING
CORPORATION'S ANSWER TO
FIRST AMENDED COMPLAINT
AND/OR IN THE ALTERNATIVE TO
STRIKE DEFENDANT'S
AFFIRMATIVE DEFENSES
PURSUANT TO NRCP 12(F);
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT
THEREOF;

Date:

Time:

Dept: 1

23
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26 TO THE ABOVE-ENTITLED COURT, ALL PARTIES HEREIN, AND THEIR
27
28 ATTORNEYS OF RECORD:

1 **PLEASE TAKE NOTICE** that on _____ at 9:00 am, or as soon
2 thereafter as the matter may be heard, in Department 1 of the above-entitled Court,
3 located at 911 Harvey Way, Yerington, NV 89447, Plaintiffs Leo Kramer and Audrey
4 Kramer, ("Plaintiffs"), will and hereby do move the Court, pursuant to NRCP 12(f) to
5 Strike, Defendant, National Default Servicing Corporation's Answers to Plaintiffs' First
6 Amended Complaint.
7

8 Plaintiffs will move this Court for an order striking portions of Answer filed by
9 Defendant National Default Servicing Corporation on file herein, and/or in the
10 alternative for an order striking all of the affirmative defenses contained in the Answer
11 filed by Defendant. A motion to strike under Rule 12(f) is the proper remedy to
12 eliminate redundant, immaterial, impertinent, or scandalous matter from the pleadings
13 and is the principal procedure for objecting to an insufficient affirmative defense.
14
15

16 This Motion to Strike is made pursuant to NRCP 12(f) on the grounds that the
17 answer to Plaintiffs' First Amendment Complaint is not verified. Further, Defendant,
18 National Default Servicing Corporation's answer to Plaintiffs' First Amended
19 Complaint does not conform with the Court order of May 01, 2019, denying in part and
20 granting in part Defendant's motion to dismiss. Thus portions of Defendant's answer
21 should be stricken. **SEE EXHIBIT A—JUDGE'S ORDER OF MAY 1, 2019**
22
23

24 **HEARING**
25

26 This motion will be based on this notice and on the memorandum of points and
27 authorities served and filed herewith, and exhibit attached thereto, on all the papers and
28

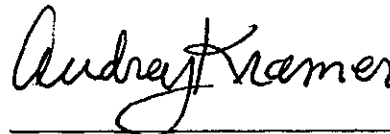
1 records of this action and such other and further oral and/or documentary evidence as
2 may be presented at a hearing on this motion for Summary Judgment.
3

4
5 Dated: 6/5/2019

Dated: 6/5/2019

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10 Leo Kramer, Pro per



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28 Audrey Kramer, Pro per

MEMORANDUM OF POINTS AND AUTHORITIES

I
INTRODUCTION

On May 1, 2019, the Honorable Court denied in part and granted in part Defendant's motion to dismiss Plaintiffs' First Amended Complaint. On May 21, 2019, Defendant, National Default Servicing Corporation filed an Answer to Plaintiff's First Amended Complaint that included purported affirmative defenses.

Rather than conform to the Court's Order, "Defendant's answers as well as Affirmative Allegations and Defenses," do not relate in substantial part to the Court's own ruling on the Motion to Dismiss. **SEE EXHIBIT A—JUDGE'S ORDER OF MAY 1, 2019 HEARING** In fact National Default Servicing Corporation did not assert any recognized affirmative defenses, and do not allege any cognizable counterclaim or answer. Instead, Defendant merely asserts a litany of immaterial, misleading, and inapt, redundant, impertinent, and scandalous allegations. Given that Defendant's answers or lack thereof; and its purported affirmative defenses are replete with redundant, impertinent, and scandalous allegations, motion to strike portions of the Defendant's answer and affirmative defenses as well as defendant's prayer is necessitated in the interest of justice and fundamental fairness and due process under law.

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///

II
ARGUMENT

A. THE COURT SHOULD STRIKE PORTIONS OF DEFENDANT NATIONAL DEFAULT SERVICING CORPORATION'S ANSWER TO PLAINTIFFS' FIRST AMENDED COMPLAINT AND ALL OF DEFENDANT'S AFFIRMATIVE DEFENSES BECAUSE THEY ARE INSUFFICIENT, IMMATERIAL, IMPERTINENT, REDUNDANT, AND SCANDALOUS UNDER NRCP RULE 12(F)

A Motion to Strike pursuant to NRCP 12(f) states as follows:

Upon motion made by any party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within 20 days after the service of the pleading upon the party or upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

Motion to Strike is governed by Nevada Rules of Civil Procedure Rule 12(f).

"The disfavored character of Rule 12(f) is relaxed somewhat in the context of

scandalous allegations and matter of this type often will be stricken from the pleadings

in order to purge the court's files and protect the subject of the allegations." 5A C.

Wright and A. Miller, *Federal Practice and Procedure (Civil)* 2d § 1382, at 714 (1990).

"Scandalous" matter "improperly casts a derogatory light on someone, most typically on a party to the action." *Armed Forces Bank, N.A. v. FSG-4, LLC*, 2011 U.S. Dist. LEXIS 130636, 9-10 (D. Nev. 2011).

Rule 12(f) also provides that pleadings that are "immaterial" or "impertinent" may be struck by a court. An "immaterial" matter is "that which has no essential or important relationship to the claim for relief or the defenses being pleaded." *Fantasy, Inc.*, 984

1 F.2d at 1527 (quoting Wright & Miller, § 1382). "Impertinent" matters are those "that
2 do not pertain, and are not necessary, to the issues in question." *Id.* Such pleadings are
3 legally insufficient because they clearly lack merit "under any set of facts the defendant
4 might allege." *Polk v. Legal Recovery Law Offices*, 291 F.R.D. 485, 489 (S.D. Cal.
5 2013) (citation and quotation marks omitted). Here, not only are Defendant's Answers
6 to Plaintiffs' First Amended Complaint not verified, further, Defendant, National
7 Default Servicing Corporation's answers to Plaintiffs' First Amended Complaint does
8 not conform with the Court order of May 01, 2019, denying in part and granting in part
9 Defendant's motion to dismiss. Thus portions of Defendant's answer should be
10 stricken.
11

12
13
14 **The grounds for this Motion to Strike Portions of Defendant's Answers are set**
15 **forth below:**
16

17 Plaintiffs move to strike in its entirety, ¶¶ 4-6 of Defendant's Answer because
18 Defendant merely asserts a litany of immaterial, misleading, and inapt, redundant,
19 impertinent, and scandalous allegations.
20

21 Additionally, Plaintiffs move to strike in its entirety, Defendant's Answers
22 pertaining to Quiet Title contained in ¶¶ 60-69 and Defendant's Answers Pertaining to
23 Slander of Title contained in ¶¶ 70-88 because these two causes of action were
24 dismissed by the Court on May 01, 2019. Defendant filed its answers to the causes of
25 action for Quiet Title and Slander of Title in bad faith because Defendant and its
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1 Attorneys were aware that these causes of action had been dismissed Ibid, when
2 Defendant filed its answer on May 21, 2019.

3
4 Moreover, Federal Rule of Civil Procedure 12(f) authorizes the Court to "strike
5 from a pleading any insufficient defense or any . . . immaterial [or] impertinent . . .
6 matter." Fed. R. Civ. P. 12(f). Rule 12(f)'s purpose is to "avoid the expenditure of time
7 and money that must arise from litigating spurious issues by dispensing with those
8 issues prior to trial." *Zytax, Inc. v. Green Plains Renewable Energy, Inc.*, No. H-09-cv-
9 2582, 2010 WL 2219179, at *5 (S.D. Tex. May 28, 2010) (quoting *Fantasy, Inc. v.*
10 *Fogerty*, 984 F.2d 1524, 1527 (9th Cir. 1993)). Rule 12(f) is also designed to "reinforce
11 the requirement in Rule 8(e) that pleadings be simple, concise, and direct." 5C Charles
12 Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1380 (3d. ed. 2014).
13
14 **The grounds to Strike Defendant's Affirmative Defenses and Prayers are set forth**
15 **below:**

16
17
18 An affirmative defense may be struck if it is insufficient. "'The key to
19 determining the sufficiency of pleading an affirmative defense is whether it gives
20 plaintiff fair notice of the defense.'" *Simmons v. Navajo Cty.*, 609 F.3d 1011, 1023 (9th
21 Cir. 2010) (quoting *Wyshak v. City Nat'l Bank*, 607 F.2d 824, 827 (9th Cir. 1979)).
22
23 "[T]he 'fair notice' required by the pleadings standards only requires describing the
24 defense in 'general terms.'" *Kohler v. Flava Enters., Inc.*, 779 F.3d 1016, 1019 (9th Cir.
25 2015) (quoting 5 Charles Alan Wright & Arthur R. Miller, *Federal Practice and*
26 *Procedure* § 1274 (3d ed. 1998) (hereinafter "Wright & Miller").
27
28

1 Rule 12(f) also provides that pleadings that are "immaterial" or "impertinent" may
2 be struck by a court. An "immaterial" matter is "that which has no essential or important
3 relationship to the claim for relief or the defenses being pleaded." *Fantasy, Inc.*, 984
4 F.2d at 1527 (quoting Wright & Miller, § 1382). "Impertinent" matters are those "that
5 do not pertain, and are not necessary, to the issues in question." *Id.* Such pleadings are
6 legally insufficient because they clearly lack merit "under any set of facts the defendant
7 might allege." *Polk v. Legal Recovery Law Offices*, 291 F.R.D. 485, 489 (S.D. Cal.
8 2013) (citation and quotation marks omitted).

11
12 This Motion to Strike is also made on the alternative grounds that all of the
13 affirmative Defenses listed in the answer filed by Defendant assert only affirmative
14 defenses that are wholly irrelevant to the causes of action alleged in the complaint, and
15 thus constitutes redundancy, impertinent, scandalous, or immaterial allegations.

16
17
18 The following affirmative defenses should be stricken:

19 1. The first affirmative defense alleging that: "The Amended Complaint, and
20 each and every cause of action contained therein, fails to state a suitable and cognizable
21 claim upon which relief may be granted." Should be stricken on the grounds that this
22 defense contains allegation that are wholly irrelevant to the causes of action alleged in
23 the First Amended Complaint and thus constitutes redundancy, impertinent, scandalous,
24 or immaterial allegations.
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1 2. The Second affirmative defense alleging "The matters complained of in the
2 Amended Complaint were proximately caused, in whole or in part, by the acts or
3 omissions of a third party or parties, or by Plaintiffs. Accordingly, the liability of the
4 Defendants and responsible parties, named or unnamed, should be apportioned and the
5 liability, if any of Defendant should be reduced accordingly.", should be stricken on the
6 grounds that this defense contains allegation that are wholly irrelevant to the causes of
7 action alleged in the First Amended Complaint and thus constitutes redundancy,
8 impertinent, scandalous, or immaterial allegations. Moreover, Defendant, National
9 Default Servicing Corporation caused the unlawful and or wrongful non-judicial
10 foreclosure of Plaintiffs' real property, hence should be held liable for its conduct.

11 3. The Third affirmative defense alleging that "The matters complained of in the
12 Amended Complaint were proximately caused, in whole or in part by the negligence of
13 a third party or parties, or the negligence of Plaintiffs.' Should be stricken on the
14 grounds that this defense contains allegation that are wholly irrelevant to the causes of
15 action alleged in the First Amended Complaint and thus constitutes impertinent,
16 redundant, scandalous, or immaterial allegations.

17 4. The Fourth affirmative defense alleging that "Plaintiffs had actual notice of
18 Defendant's foreclosure sale of the property." Should be stricken on the grounds that
19 this is not a viable affirmative defense and this defense contains allegation that are
20 wholly irrelevant to the causes of action alleged in the First Amended Complaint and
21 thus constitutes redundancy, impertinent, scandalous, or immaterial allegations.

1 5. The Fifth affirmative defense alleging that "The Plaintiffs were on inquiry
2 and/or constructive notice of foreclosure sale", Should be stricken on the grounds that
3 this is not a viable affirmative defense and this defense contains allegation that are
4 wholly irrelevant to the causes of action alleged in the First Amended Complaint and
5 thus constitutes redundancy, impertinent, scandalous, or immaterial allegations.
6

7 6. The Sixth affirmative defense alleging that "Plaintiff have sustained no damage
8 by reason of the alleged misconduct of Defendant" Should be stricken on the grounds
9 that this is not a viable affirmative defense and this defense contains allegation that are
10 wholly irrelevant to the causes of action alleged in the First Amended Complaint and
11 thus constitutes redundancy, impertinent, scandalous, or immaterial allegations.
12

13 7. The Seventh affirmative defense alleging that "None of the injuries allegedly
14 suffered by the Plaintiffs were proximately caused by any conduct of Defendant."
15 Should be stricken on the grounds that this is not a viable affirmative defense and this
16 defense contains allegation that are wholly irrelevant to the causes of action alleged in
17 the First Amended Complaint and thus constitutes redundancy, impertinent, scandalous,
18 or immaterial allegations.
19

20 8. The Eighth affirmative defense alleging that "by Plaintiffs' own conduct, they
21 are estopped from making the claims herein." Although Estoppel is an affirmative
22 defense, this allegation should be stricken on the grounds that the allegation that are
23 wholly irrelevant to the causes of action alleged in the First Amended Complaint and
24 thus constitutes redundancy, impertinent, scandalous, or immaterial allegations.
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1 9. The Ninth affirmative defense alleging that "The Plaintiffs are judicially
2 estopped from asserting the claims herein." Should be stricken on the grounds that this
3 affirmative defense war against the Court's Order finding that judicial estoppel does not
4 bar Plaintiffs' claim for "Lack of Notice, and the resulting unlawful non-judicial
5 foreclosure. Furthermore, this defense contains allegation that are wholly irrelevant to
6 the causes of action alleged in the First Amended Complaint and thus constitutes
7 redundancy, impertinent, scandalous, or immaterial allegations.
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10 10. The tenth affirmative defense alleging that "Plaintiffs claims are barred by the
11 doctrine of laches and/or unclean hands." Should be stricken on the grounds that this
12 affirmative defense wars against the Court's Order which found that judicial estoppel
13 does not bar Plaintiffs' claim for Defendant's failure to give Plaintiffs Notice of the
14 Notice of Default, which forms that basis for the unlawful non-judicial foreclosure.
15 Furthermore, this defense contains allegation that are wholly irrelevant to the causes of
16 action alleged in the First Amended Complaint and thus constitutes redundancy,
17 impertinent, scandalous, or immaterial allegations. Further, Plaintiffs' claims were
18 brought promptly therefore negating Defendant's purported laches claims. Plaintiffs are
19 the rightful owner of the subject real property.
20
21
22

23 11. The Eleventh affirmative defense alleging that "Plaintiffs' have, through their
24 own acts and/or omissions, failed to mitigate their damages, the existence of which are
25 denied, and Defendant has therefore been released and discharged from any liability"
26 Should be stricken on the grounds that this defense contains allegation that are wholly
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1 irrelevant to the causes of action alleged in the First Amended Complaint and thus
2 constitutes redundancy, impertinent, scandalous, or immaterial allegations.

3 12. The twelfth affirmative defense alleging that "The acts or omission
4 complained of by Plaintiffs were justified" should be stricken on the grounds that this
5 defense contains allegation that are wholly irrelevant to the causes of action alleged in
6 the First Amended Complaint and thus constitutes redundancy, impertinent, scandalous,
7 or immaterial allegations.
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10 13. The thirteenth affirmative defense alleging that "The Property was sold to a
11 subsequent bona fide purchase for value", should be stricken on the grounds that this
12 defense contains allegation that are wholly irrelevant to the causes of action alleged in
13 the First Amended Complaint and thus constitutes immaterial allegations. There was
14 never a valid sale of Plaintiffs' real property; as such the purported sale is *void ab initio*.
15
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17 14. The fourteenth affirmative defense alleging that "Plaintiffs' claim are barred
18 by the doctrine of equitable estoppel", should be stricken on the grounds that this
19 defense contains allegation that are wholly irrelevant to the causes of action alleged in
20 the First Amended Complaint and thus constitutes redundancy, impertinent, scandalous,
21 or immaterial allegations.
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23 15. The fifteenth affirmative defense alleging that "Plaintiffs waived any right
24 that they may have had for relief from the Court" Should be stricken on the grounds that
25 this is not a viable affirmative defense. This defense contains allegation that are wholly
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1 irrelevant to the causes of action alleged in the First Amended Complaint and thus
2 constitutes redundancy, impertinent, scandalous, or immaterial allegations.

3 16. The sixteenth affirmative defense alleging that "Defendant has complied with
4 all relevant Nevada and Federal statutes governing the relationship, if any, between
5 Plaintiffs and Defendant in regard to the conduct of Defendant alleged in the Amended
6 Complaint.". This statement and defenses is falsity; Defendant failed to comply with
7 any relevant Nevada and Federal laws. This defenses should be stricken on the grounds
8 that this is not a viable affirmative defense and this defense contains allegation that are
9 wholly irrelevant to the causes of action alleged in the First Amended Complaint and
10 thus constitutes redundancy, impertinent, scandalous, or immaterial allegations.

11 17. The seventeenth affirmative defense alleging that " It has been necessary for
12 Defendant to employ the service of attorney to defend this action and a reasonable sum
13 should be awarded to Defendant as for attorney's fees, together with its costs expended
14 in this action."; Should be stricken on the grounds that this is not a viable affirmative
15 defense and this defense contains allegation that are wholly irrelevant to the causes of
16 action alleged in the First Amended Complaint and thus constitutes redundancy,
17 impertinent, scandalous, or immaterial allegations.

18 18. The eighteenth affirmative defense alleging that " Plaintiffs' claims are barred
19 by the Applicable Statute of limitations.". Any applicable statutes of limitations have
20 been tolled by the Defendant's continuing, fraud, knowing, and active concealment of
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1 the facts alleged herein. Despite exercising reasonable diligence, Plaintiffs could not
2 have discovered, and did not discover, and was prevented from discovering, the
3 wrongdoing complained of herein. Furthermore, Defendant failed to give Plaintiffs
4 Notice regarding the "Notice of Default". This defenses should be stricken on the
5 grounds that this defense contains allegation that are wholly irrelevant to the causes of
6 action alleged in the First Amended Complaint and thus constitutes redundancy,
7
8 impertinent, scandalous, or immaterial allegations.
9

10 19. The nineteenth affirmative defense alleging that " Defendant alleges that at
11 this time it has insufficient knowledge or information on which to form a belief as to
12 whether it may have additional, as yet unstated, affirmative defenses available"...;
13 Should be stricken on the grounds that this is not a viable affirmative defense and this
14 defense contains allegation that are wholly irrelevant to the causes of action alleged in
15 the First Amended Complaint and thus constitutes redundancy, impertinent, scandalous,
16
17 or immaterial allegations.
18

19 **WHEREFORE CLAUSE:**
20

21 ¶¶ 1-3 of Defendant's prayer Should be stricken on the grounds that this is not a
22 viable affirmative defense and this defense contains allegation that are wholly irrelevant
23 to the causes of action alleged in the First Amended Complaint and thus constitutes
24 redundancy, impertinent, scandalous, or immaterial allegations.
25

26 Although not generally favored, motions to strike should nonetheless be granted
27 if the asserted defenses are insufficient as a matter of law, will confuse the issues in the
28

1 case, or will otherwise prejudice the moving party. See, e.g., Kaiser Aluminum &
2 Chemical Sales, Inc. v. Avondale Shipyards, Inc., 677 F.2d 1045, 1057-61 (5th Cir.
3 1982).
4

5 III
6 CONCLUSION

7 For the foregoing reasons, Plaintiffs respectfully request this Honorable Court
8 strike portions of Answer filed by Defendant National Default Servicing Corporation on
9 file herein, and enter an order striking all of the affirmative defenses contained in the
10 Answer filed by Defendant NATIONAL DEFAULT SERVICING CORPORATION.
11
12

13
14 Respectfully Submitted,
15

16
17 Date: 6/5/2019

18
19 Date: 6/5/2019

20 Leo Kramer
Leo Kramer, Pro se

21 Audrey Kramer
Audrey Kramer, Pro se
22
23
24
25
26
27
28

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 June 5, 2019, I served the foregoing document entitled:

PLAINTIFFS, LEO KRAMER, AND AUDREY KRAMER'S NOTICE OF MOTION AND MOTION TO STRIKE NATIONAL DEFAULT SERVICING CORPORATION'S ANSWER TO FIRST AMENDED COMPLAINT AND/OR IN THE ALTERNATIVE TO STRIKE DEFENDANT'S AFFIRMATIVE DEFENSES PURSUANT TO NRCP 12(F); MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF;

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).

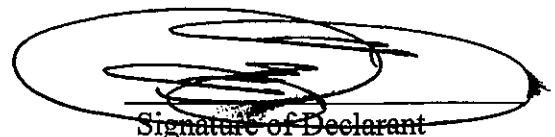
By Overnight Courier. I caused the above-referenced document(s) to be delivered to an overnight courier service for next day delivery to the addressee(s) on the attached Service List.

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

Executed on June 5, 2019 at Hercules, California.

Corina DiGrazia

Name of Declarant


Signature of Declarant

SERVICE LIST:

Matthew K. Schriever
John T. Steffen
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,
BRECKENRIDGE PROPERTY FUND 2016 LLC

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

Attorneys for Defendant,
NATIONAL DEFAULT SERVICING CORPORATION

A

JUDGE'S ORDER OF MAY 1, 2019 HEARING

A

FILED

2019 MAY 24 AM 11:13

TANYA S. SCHEIDT
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT

Victoria Tovar

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

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.

**ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANTS'
MOTIONS TO DISMISS**

THIS MATTER having come on for hearing on May 1, 2019 on the Motion to Dismiss filed by Defendants Alyssa McDermott ("McDermott"), Wedgewood Inc. ("Wedgewood"), and Breckenridge Property Fund 2016 LLC ("Breckenridge") and the Motion to Dismiss filed by National Default Servicing Corporation ("NDSC"), the Plaintiffs having opposed the motions 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, each party submitting proposed orders and/or objections to the same, the Court makes the following findings of fact and conclusions of law, and 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. On June 8, 2018, Plaintiffs filed a Complaint for claims of Unlawful Foreclosure, Quiet Title, Preliminary Injunction, Slander of Title, Constructive Fraud, and Declaratory Relief.

3. Defendants Breckenridge, Wedgewood, and McDermott filed a Motion to Dismiss the Complaint in its entirety. Likewise, Defendant NDSC filed a Motion to Dismiss the Complaint in its entirety. On October 23, 2018, this Court entered an Order granting Defendants' Motions to Dismiss without prejudice and with leave for Plaintiffs to file an amended complaint.

4. On October 25, 2018, Plaintiffs filed their First Amended Complaint which made claims for Unlawful Foreclosure (Against NDSC), Quiet Title (Against All Defendants), Slander of Title (Against NDSC), Declaratory Relief (Against All Defendants), and Cancellation of Written Instruments (Against NDSC).

5. Defendants Breckenridge, Wedgewood, and McDermott filed a Motion to Dismiss Plaintiffs' First Amended Complaint on November 19, 2018. Defendant NDSC filed a Motion to Dismiss Plaintiffs First Amended Complaint on January 17, 2019. Plaintiffs opposed both of these Motions to Dismiss, and the matter was submitted to this Court for its decision.

6. Neither Defendant Wedgewood nor Defendant McDermott has any claim to an estate, interest, right, title, lien or cloud in or on the Property. The Trustee's Deed transferring the property clearly shows the only owner as Breckenridge without any interest in the above parties. Prior to filing their First Amended Complaint, Plaintiffs had actual knowledge that neither Wedgewood nor McDermott had any claim to an estate, interest, right, title, lien or cloud in or on the Property. Despite having actual knowledge that neither Wedgewood nor McDermott had any claim to an estate, interest, right, title, lien or cloud in or on the Property, Plaintiffs sued Wedgewood and McDermott for Quiet Title and Declaratory Relief in their First Amended Complaint.

7. Plaintiffs' First Amended Complaint is not verified (*see* NRS 40.090(1)); Plaintiffs have not alleged that they paid all taxes levied or assessed against the Property (*see id.*); Plaintiffs did not within 10 days after the filing of the First Amended Complaint file or cause to be filed in the office of

1 the county recorder of the county where the Property is situated, a notice of the pendency of the action
2 containing the matters required by NRS 14.010; Plaintiffs did not within 30 days after issuance of
3 summons post or cause to be posted a copy of summons in a conspicuous place at the Property; and the
4 Summons did not contain a legal description of the property.

5 8. Plaintiffs have made no factual allegations in their First Amended Complaint that
6 Defendant NDSC slandered the title of the Property.

7 9. Issues of fact remain regarding whether Plaintiffs were properly served with the Notice of
8 Default on the Property.

9 10. Issues of fact remain as to whether Defendant Breckenridge was a bona fide purchaser of
10 the Property.

11 11. Plaintiffs served and filed an Individual Case Conference Report ("ICCR") on about
12 March 28, 2019. Defendants Breckenridge, Wedgewood, and McDermott filed their Objection to the
13 ICCR on April 22, 2019.

14 CONCLUSIONS OF LAW

15 1. Plaintiffs have failed to state any claims against Defendants Wedgewood and McDermott,
16 as there is no allegation that Wedgewood or McDermott has any claim to an estate, interest, right, title,
17 lien or cloud in or on the Property. Therefore, all legal claims in this action against Defendants
18 Wedgewood Inc. and Alyssa McDermott are dismissed with prejudice.

19 2. Plaintiffs have failed to state a claim for Quiet Title due to their failure to allege that they
20 satisfied the relevant requirements of Chapter 40 of the Nevada Revised Statutes. Therefore, Plaintiffs'
21 claim for Quiet Title against all Defendants is dismissed with prejudice. This is not a case for Quiet Title
22 but to undo a trustee's sale.

23 3. Plaintiffs have failed to state a claim for Slander of Title as Plaintiffs have not made any
24 factual allegations that Defendant NDSC slandered their title to the Property. Therefore, Plaintiffs' claim
25 for Slander of Title against NDSC is dismissed with prejudice.

26 4. "Cancellation of Written Instrument" is a remedy and not a valid legal claim in the State
27 of Nevada. Therefore, Plaintiffs' claim of Cancellation of Written Instruments – SOT, NOD, NTS and
28 TDUS shall be treated as a prayer for relief.

1 5. Plaintiffs' claim for Unlawful Foreclosure against NDSC involves issues of fact which
2 this Court cannot adjudicate on a motion made pursuant to NRCP 12(b)(5). Therefore, Plaintiffs' claim
3 for Unlawful Foreclosure is not dismissed.

4 6. Plaintiffs' claim for Declaratory Relief is derivative of and a potential remedy for their
5 claim for Unlawful Foreclosure, and therefore Plaintiffs' claim for Declaratory Relief is not dismissed.

6 7. Plaintiffs' ICCR, filed on or about March 28, 2019, is nugatory, as no such report was
7 required or permitted prior to the filing of answers by the Defendants. NRCP 16.1(b)(2) & (c)(1)(A).
8 Accordingly, Plaintiffs' ICCR is stricken.

9 **ORDER**

10 THE COURT HEREBY ORDERS, ADJUDGES, AND DECREES that Plaintiffs claims in their
11 First Amended Complaint, and each of them, are dismissed with prejudice as to Wedgewood and
12 McDermott.

13 THE COURT FURTHER ORDERS, ADJUDGES, AND DECREES that Plaintiffs' claim of
14 Quiet Title is dismissed as to all Defendants with prejudice.

15 THE COURT FURTHER ORDERS, ADJUDGES, AND DECREES that Plaintiffs' claim of
16 Slander of Title is dismissed with prejudice as to NDSC.

17 THE COURT FURTHER ORDERS, ADJUDGES, AND DECREES that Plaintiffs' claim of
18 Cancellation of Written Instruments shall be treated as a prayer for relief.

19 THE COURT FURTHER ORDERS, ADJUDGES, AND DECREES that Defendants must
20 answer or otherwise respond to Plaintiffs' First Amended Complaint on or before May 21, 2019.

21 THE COURT FURTHER ORDERS, ADJUDGES, AND DECREES that Plaintiffs ICCR filed
22 on or about March 28, 2019 is stricken.

23 Dated this 23rd day of May, 2019.

24
25 
26 Hon. John P. Schlegelmilch,
27 DISTRICT JUDGE
28

Certificate of Mailing

I hereby certify that I, Anne Rossi, am an employee of the Third Judicial District Court, and that on this date pursuant to NRCP 5(b), a true copy of the foregoing document was mailed at Yerington, Nevada addressed to:

Leo Kramer
Audrey Kramer
2364 Redwood Road
Hercules, CA 94547

Matthew K. Schriever, Esq.
HUTCHISON & STEFFEN, PLLC
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145

Casey J. Nelson, Esq.
WEDGEWOOD, LLC
2320 Potosi Street, Suite 130
Las Vegas, NV 89146

Ace Van Patten, Esq.
TIFFANY & BOSCO, P.A.
10100 W. Charleston Blvd., Ste. 220
Las Vegas, NV 89135

Dated this 23rd day of May, 2019.


Employee of Hon. John P. Schlegelmilch

FILED

2019 JUN 10 PM 1:14

TANYA SCOTT
COUNT ADMINISTRATOR
THIRD JUDICIAL DISTRICT

Victoria Toran

Case No.: 18-CV-00663

Dept No.: I

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

* * *

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

**PLAINTIFFS' 'OBJECTION' TO JUDGE'S
ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANTS'
MOTIONS TO DISMISS PLAINTIFFS'
FIRST AMENDED COMPLAINT**

DEPT. 1

PLAINTIFFS RESPECTFULLY **OBJECT** AND WISH TO ESTABLISH **"FOR THE RECORD"**
THEIR OBJECTIONS TO THE 'ORDER GRANTING IN PART AND DENYING IN PART
DEFENDANTS' MOTIONS TO DISMISS PAINTIFFS' FIRST AMENDED COMPLAINT':

THIS MATTER having come on hearing on MAY 1, 2019, on the Motion to Dismiss filed by Defendants
Alyssa McDermott ("McDermott"), Wedgewood Inc. ("Wedgewood"), and Breckenridge Property Fund
2016 LLC ("Breckenridge"), and the Motion to Dismiss filed by National Default Servicing Corporation
("NDSC"), the Plaintiffs having opposed the motions to dismiss, the Court having reviewed the papers

1 and pleadings on the file herein and having heard the arguments of the parties, the Court being fully
2 advised in the premises and good cause appearing therefore, each party submitting proposed orders and/or
3 objections to the same, the Court makes the following findings of fact and conclusions of law, and orders
4 as follows:

5
6 **OBJECTIONS:**
7

8 1) Plaintiffs vehemently **OBJECT** to: (#6. of the '**FINDINGS OF FACT**') within the ORDER).
9 In particular, Plaintiffs OBJECT to the statement which reads:

10 *"Prior to filing their First Amended Complaint, Plaintiffs had actual knowledge that neither*
11 *Wedgewood nor McDermott had any claim to an estate, interest, right, title, lien or cloud in or on the*
12 *Property. Despite having actual knowledge that neither Wedgewood nor McDermott had any claim to*
13 *an estate, interest, right, title, lien or cloud in or on the Property, Plaintiffs sued Wedgewood and*
14 *McDermott for Quiet Title and Declaratory Relief in their First Amended Complaint."* SEE
15 **EXHIBIT-A 'ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS'**
16 **MOTIONS TO DISMISS'**

17 The above allegation is just that, an allegation and Plaintiffs assert it is absolutely not true. This
18 issue has never been argued in court, nor has supporting witnesses' testimony ever had the opportunity
19 to testify in court as to the falsity of this allegation. Plaintiffs have tried to bring this matter to the court's
20 attention, but it appears the affidavits (signed under penalty of perjury) provided within Plaintiffs'
21 complaints have inadvertently been overlooked.
22

23 Plaintiffs affirmed in both their Initial Complaint and their First Amended Complaint that Ms.
24 McDermott did several times contact Plaintiffs, Plaintiffs' Property Management Company- 'Chaffin
25 Real Estate Services', and Plaintiffs' tenant-'Daniel Starling', claiming that she was the new owner of
26 the subject property. SEE EXHIBIT-B AFFIDAVITS OF AUDREY KRAMER, DEBBIE
27 TAYLOR, LEE ANNE CHAFFIN & DANIEL STARLING
28

1 At NO time did Ms. McDermott ever identify, to any of the aforementioned people, that she was
2 an employee, manager or representative of Breckenridge. On the contrary, Ms. McDermott emphatically
3 touted to each person in which she had contacted, (the Kramers, Chaffin Real Estate Services and Mr.
4 Starling) that she was the 'new owner of the subject property. Furthermore, upon Ms. McDermott
5 declaring herself as the new owner of the subject property to Plaintiff, Ms. Kramer, Plaintiff informed
6 Ms. McDermott of the pending litigation on the property, whereby, McDermott said, "That's fine", and
7 hung up on Plaintiff. Again, at no time did McDermott associate herself with any other title other than
8 being the 'new owner' of the property. Plaintiffs believed the two other entities, Wedgewood and
9 Breckenridge, were shell companies used as a shield by Ms. McDermott in which to buy and flip
10 properties.

11
12 Additionally, Plaintiff, Audrey Kramer, was contacted directly by Mr. Casey Nelson who
13 identified himself as in-house counsel for Breckenridge. Mr. Nelson informed Plaintiff that Breckenridge
14 was the owner of the property and stated neither Ms. McDermott nor Wedgewood had actual interest in
15 the property. Plaintiff, expressed to Mr. Nelson that if he would provide an affidavit to that fact, Plaintiffs
16 would be happy to remove Ms. McDermott and Wedgewood from the complaint. Plaintiffs conveyed
17 their willingness to remove Ms. McDermott and Wedgewood from their complaint and expressed this
18 verbally to Mr. Nelson and also in writing via email. Mr. Nelson was either unwilling or unable to
19 provide the requested affidavit. **SEE EXHIBIT-C E-MAIL THREAD WITH MR. NELSON**

20
21 Plaintiffs also would like the record to reflect that while Plaintiffs hired the service of 'One Source
22 Process, Inc.' to serve all defendants with Plaintiffs' Summons, service to Ms. McDermott and
23 Wedgewood Inc. was never perfected. Which further reinforced Plaintiffs' belief that shell companies
24 were in place as a protective shield. **SEE EXHIBIT-D 'ONE STEP PROCESS, INC.'S**
25 **AFFIDAVIT**

26
27 2) Plaintiffs **OBJECT** to: Plaintiffs' claim of 'QUIET TITLE', is dismissed **with prejudice**.
28 This Hon. Court as recognized the Wrongful Foreclosure of Plaintiffs' property and further

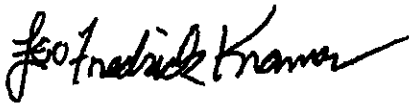
1 acknowledged the sale will most likely be unwound, Plaintiffs then should be permitted to remove the
2 'CLOUD ON TITLE' of their property.

3
4 3) Plaintiffs **OBJECT** to: Plaintiffs' claim of 'SLANDER OF TITLE' is Dismissed **with**
5 **prejudice** as to NDSC, for the same reasons as stated above with respect to Quiet Title.

6
7
8
9 Plaintiffs respectfully submit the above OBJECTIONS "**FOR THE RECORD**" of this case.

10
11
12 Date: 6/7/2019

13 Date: 6/7/2019

14
15
16 

17
18 Leo Kramer, Pro se

19
20
21 

22
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24
25
26
27
28 Audrey Kramer, Pro se

POOF OF SERVICE

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

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



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 June 7, 2019, I served the foregoing document entitled:

PLAINTIFFS' 'OBJECTION' TO JUDGE'S ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTIONS TO DISMISS PLAINTIFFS' FIRST AMENDED COMPLAINT

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 June 7, 2019, at Hercules, California.

Corina DiGrazia
Name of Declarant


Signature of Declarant

SERVICE LIST

Mathew K. Schriever

John T. Steffen

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,

BRECKENRIDGE PROPERTY FUND 2016 LLC

Ace Van Patten

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— JUDGE’S ORDER-MAY 1, 2019, DEFENDANTS’
MOTIONS TO DISMISS PLAINTIFFS’ FIRST
AMENDED COMPLAINT**

**B— AFFIDAVITS: AUDREY KRAMER, DEBBIE
TAYLOR, LEE ANNE CHAFFIN, DANIEL STARLING**

**C— E-MAIL THREAD WITH BRECKENRIDGE’S IN-
HOUSE COUNSEL CASEY NELSON AND AUDREY
KRAMER**

D— AFFIDAVIT OF ONE STEP PROCESS, INC

A

**JUDGE'S ORDER-MAY 1, 2019
DEFENDANTS' MOTIONS
TO DISMISS PLAINTIFFS'
FIRST AMENDED COMPLAINT**

A

FILED

2019 MAY 24 AM 11:13

TANYA STEPHAN
COURT ADMIN STRATEG
THIRD JUDICIAL DISTRICT

Victoria Tovar

Case No.: 18-CV-00663

Dept No.: I

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

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.

**ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANTS'
MOTIONS TO DISMISS**

THIS MATTER having come on for hearing on May 1, 2019 on the Motion to Dismiss filed by Defendants Alyssa McDermott ("McDermott"), Wedgewood Inc. ("Wedgewood"), and Breckenridge Property Fund 2016 LLC ("Breckenridge") and the Motion to Dismiss filed by National Default Servicing Corporation ("NDSC"), the Plaintiffs having opposed the motions 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, each party submitting proposed orders and/or objections to the same, the Court makes the following findings of fact and conclusions of law, and 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. On June 8, 2018, Plaintiffs filed a Complaint for claims of Unlawful Foreclosure, Quiet Title, Preliminary Injunction, Slander of Title, Constructive Fraud, and Declaratory Relief.

3. Defendants Breckenridge, Wedgewood, and McDermott filed a Motion to Dismiss the Complaint in its entirety. Likewise, Defendant NDSC filed a Motion to Dismiss the Complaint in its entirety. On October 23, 2018, this Court entered an Order granting Defendants' Motions to Dismiss without prejudice and with leave for Plaintiffs to file an amended complaint.

4. On October 25, 2018, Plaintiffs filed their First Amended Complaint which made claims for Unlawful Foreclosure (Against NDSC), Quiet Title (Against All Defendants), Slander of Title (Against NDSC), Declaratory Relief (Against All Defendants), and Cancellation of Written Instruments (Against NDSC).

5. Defendants Breckenridge, Wedgewood, and McDermott filed a Motion to Dismiss Plaintiffs' First Amended Complaint on November 19, 2018. Defendant NDSC filed a Motion to Dismiss Plaintiffs First Amended Complaint on January 17, 2019. Plaintiffs opposed both of these Motions to Dismiss, and the matter was submitted to this Court for its decision.

6. Neither Defendant Wedgewood nor Defendant McDermott has any claim to an estate, interest, right, title, lien or cloud in or on the Property. The Trustee's Deed transferring the property clearly shows the only owner as Breckenridge without any interest in the above parties. Prior to filing their First Amended Complaint, Plaintiffs had actual knowledge that neither Wedgewood nor McDermott had any claim to an estate, interest, right, title, lien or cloud in or on the Property. Despite having actual knowledge that neither Wedgewood nor McDermott had any claim to an estate, interest, right, title, lien or cloud in or on the Property, Plaintiffs sued Wedgewood and McDermott for Quiet Title and Declaratory Relief in their First Amended Complaint.

7. Plaintiffs' First Amended Complaint is not verified (*see* NRS 40.090(1)); Plaintiffs have not alleged that they paid all taxes levied or assessed against the Property (*see id.*); Plaintiffs did not within 10 days after the filing of the First Amended Complaint file or cause to be filed in the office of

1 the county recorder of the county where the Property is situated, a notice of the pendency of the action
2 containing the matters required by NRS 14.010; Plaintiffs did not within 30 days after issuance of
3 summons post or cause to be posted a copy of summons in a conspicuous place at the Property; and the
4 Summons did not contain a legal description of the property.

5 8. Plaintiffs have made no factual allegations in their First Amended Complaint that
6 Defendant NDSC slandered the title of the Property.

7 9. Issues of fact remain regarding whether Plaintiffs were properly served with the Notice of
8 Default on the Property.

9 10. Issues of fact remain as to whether Defendant Breckenridge was a bona fide purchaser of
10 the Property.

11 11. Plaintiffs served and filed an Individual Case Conference Report ("ICCR") on about
12 March 28, 2019. Defendants Breckenridge, Wedgewood, and McDermott filed their Objection to the
13 ICCR on April 22, 2019.

14 CONCLUSIONS OF LAW

15 1. Plaintiffs have failed to state any claims against Defendants Wedgewood and McDermott,
16 as there is no allegation that Wedgewood or McDermott has any claim to an estate, interest, right, title,
17 lien or cloud in or on the Property. Therefore, all legal claims in this action against Defendants
18 Wedgewood Inc. and Alyssa McDermott are dismissed with prejudice.

19 2. Plaintiffs have failed to state a claim for Quiet Title due to their failure to allege that they
20 satisfied the relevant requirements of Chapter 40 of the Nevada Revised Statutes. Therefore, Plaintiffs'
21 claim for Quiet Title against all Defendants is dismissed with prejudice. This is not a case for Quiet Title
22 but to undo a trustee's sale.

23 3. Plaintiffs have failed to state a claim for Slander of Title as Plaintiffs have not made any
24 factual allegations that Defendant NDSC slandered their title to the Property. Therefore, Plaintiffs' claim
25 for Slander of Title against NDSC is dismissed with prejudice.

26 4. "Cancellation of Written Instrument" is a remedy and not a valid legal claim in the State
27 of Nevada. Therefore, Plaintiffs' claim of Cancellation of Written Instruments – SOT, NOD, NTS and
28 TDUS shall be treated as a prayer for relief.

5. Plaintiffs' claim for Unlawful Foreclosure against NDSC involves issues of fact which this Court cannot adjudicate on a motion made pursuant to NRCp 12(b)(5). Therefore, Plaintiffs' claim for Unlawful Foreclosure is not dismissed.

6. Plaintiffs' claim for Declaratory Relief is derivative of and a potential remedy for their claim for Unlawful Foreclosure, and therefore Plaintiffs' claim for Declaratory Relief is not dismissed.

7. Plaintiffs' ICCR, filed on or about March 28, 2019, is nugatory, as no such report was required or permitted prior to the filing of answers by the Defendants. NRCP 16.1(b)(2) & (c)(1)(A). Accordingly, Plaintiffs' ICCR is stricken.

ORDER

THE COURT HEREBY ORDERS, ADJUDGES, AND DECREES that Plaintiffs claims in their First Amended Complaint, and each of them, are dismissed with prejudice as to Wedgewood and McDermott.

THE COURT FURTHER ORDERS, ADJUDGES, AND DECREES that Plaintiffs' claim of Quiet Title is dismissed as to all Defendants with prejudice.

THE COURT FURTHER ORDERS, ADJUDGES, AND DECREES that Plaintiffs' claim of Slander of Title is dismissed with prejudice as to NDSC.

THE COURT FURTHER ORDERS, ADJUDGES, AND DECREES that Plaintiffs' claim of Cancellation of Written Instruments shall be treated as a prayer for relief.

THE COURT FURTHER ORDERS, ADJUDGES, AND DECREES that Defendants must answer or otherwise respond to Plaintiffs' First Amended Complaint on or before May 21, 2019.

THE COURT FURTHER ORDERS, ADJUDGES, AND DECREES that Plaintiffs ICCR filed on or about March 28, 2019 is stricken.

Dated this 23rd day of May, 2019.

Hon. John P. Schlegelmilch,
DISTRICT JUDGE

Certificate of Mailing

I hereby certify that I, Anne Rossi, am an employee of the Third Judicial District Court, and that on this date pursuant to NRCP 5(b), a true copy of the foregoing document was mailed at Yerington, Nevada addressed to:

Leo Kramer
Audrey Kramer
2364 Redwood Road
Hercules, CA 94547

Matthew K. Schriever, Esq.
HUTCHISON & STEFFEN, PLLC
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145

Casey J. Nelson, Esq.
WEDGEWOOD, LLC
2320 Potosi Street, Suite 130
Las Vegas, NV 89146

Ace Van Patten, Esq.
TIFFANY & BOSCO, P.A.
10100 W. Charleston Blvd., Ste. 220
Las Vegas, NV 89135

Dated this 23rd day of May, 2019.


Employee of Hon. John P. Schlegelmilch

B

AFFIDAVITS:

AUDREY KRAMER

DEBBIE TAYLOR

LEE ANNE CHAFFIN

DANIEL STARLING

B

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

4 PLAINTIFFS IN PRO PER

5
6 IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7
8 IN AND FOR THE COUNTY OF LYON
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
THROUGH 50 INCLUSIVE,

20 Defendants.
21
22

) Case No. 18-CV-00663

) DECLARATION OF AUDREY KRAMER

) IN SUPPORT OF:
) PLAINTIFFS' FIRST AMENDED
) COMPLAINT

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

23
24
25
26 DECLARATION OF AUDREY KRAMER:
27
28

DECLARATION OF AUDREY KRAMER

I, AUDREY KRAMER declare as follows:

1. I am over the age 18 years.
2. I have personal knowledge of the above entitled matter and if called as a witness, I could and would competently testify thereto.
3. On or about June 2, 2005, Plaintiffs, LEO KRAMER and AUDREY KRAMER, purchased property in Fernley NV as a second home that was ultimately intended to become their retirement home. The purchase price of the property was \$204,488.00. The property address is: (1740 Autumn Glen Street in Fernley, NV (APN #: 022-052-02), and is the subject of this lawsuit. Plaintiffs maintain they do not owe any monies on this purchase. **SEE EXHIBIT-A**
4. On or about April 4, 2008, Plaintiffs, LEO KRAMER and AUDREY KRAMER, obtained a REVOLVING LINE OF CREDIT from Washington Mutual Bank with a maximum credit limit of \$176,000.00, against the subject property. The Credit Agreement Plaintiffs had with WAMU allowed Plaintiffs to borrow, repay, and re-borrow up to the maximum credit limit. Plaintiffs allege that at no time did they ever access the maximum credit limit. Plaintiffs were unable to re-borrow as per the Credit Agreement when WAMU breached the credit agreement when WAMU became a defunct banking institution. Plaintiffs further allege that the amount used by Plaintiffs from the revolving line of credit was repaid in full to Washington Mutual Bank and whatever balance was outstanding from the revolving line of credit, if any, was discharged in Bankruptcy Court in 2011. **SEE EXHIBIT-D**
6. On or about October 5, 2017, National Default Servicing Corporation (NDSC) recorded a Notice of Default (NOD) against Plaintiffs' property with Lyon County Recorder's Office. However, Plaintiffs were never served with the NOD, as is required by Nevada statute foreclosure laws, whereby the foreclosing agent NDSC is required to mail, via certified mail, return receipt requested to any and all parties of interest to their last known mailing address. Plaintiffs allege that NDSC knew or should have known Plaintiffs mailing address as an agent for Chase Bank, who authorized the foreclosure. **SEE EXHIBIT-L**
7. Plaintiffs only learned of the NOD from their property management company, Chaffin Rel Estate Services, when Plaintiffs received an email from Deborah Taylor, who is an employee of Chaffin. Ms. Taylor stated in her email that Plaintiffs' tenants had received a NOD posted on the subject property. **SEE EXHIBIT-O, P & Q**
8. In response to the NOD Plaintiffs filed a Complaint in Federal Court on January 2, 2018, the case is currently under appeal.
9. Plaintiffs allege on May 18, 2018, Defendant, NDSC, ostensibly held a public auction on the subject property, which they then unlawfully sold to Defendants, Allyssa McDermott, Wedgewood Inc. and Breckenridge Property Fund 2016 LLC. **SEE EXHIBIT-O, P & Q**

10. Plaintiffs allege they were not properly served the NOD, making it defective and VOID on its face, which in turn makes the Notice of Trustee Sale also defective and VOID on its face, which makes the Trustee Sale defective and VOID on its face, and finally the Trustee's Deed Upon Sale would also be defective and VOID on its face! **SEE EXHIBIT-O, P & Q**
11. Defendant, National Default Servicing Corporation is not a duly appointed trustee under Plaintiffs' Credit Agreement and Deed of Trust. Plaintiffs further allege that NDSC was not in possession of the Deed of Trust or the Credit Agreement at the time the NOD was recorded and therefore did not have foreclosing authority by which to foreclose on Plaintiffs' property. **SEE EXHIBIT-N**
12. Additionally, Plaintiffs never received the State of Nevada Foreclosure Mediation Program Certification, as is required by Nevada law before a foreclosure taking place. Defendant, NDSC, recorded the Nevada Foreclosure Mediation Certification March 22, 2018, 6 months after NDSC recorded the NOD against the subject property. **SEE EXHIBIT-I**
13. Plaintiffs allege that Chase recorded a fraudulent Assignment of Deed of Trust on April 10, 2018, approximately 8 months after the NOD was filed against the subject property. Approx. 10 years after Chase acquired 'Certain' Assets and Liabilities from the FDOC. Further, supporting the fact that NDSC did not have duly appointed authority to cause the non-judicial foreclosure of the subject property. **SEE EXHIBIT-N**
14. Additionally, the Credit Agreement states, *"To the extent permitted by law the power of sale conferred by the 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."* **SEE EXHIBIT D.**
15. On May 29, 2018, Plaintiffs received an email from their property management company, Chaffin Real Estate Services, alerting them that their tenants had been contacted by Ms. Allyssa McDermott purporting to be the new owner of the subject property and demanded the tenants give her a copy of their lease and all future rent payments. Shortly after Chaffin received a call from Ms. Carmen Aguilera, who identified herself as having just purchased the subject property. She later identified herself as the asset manager for a company called Wedgewood Inc. Then on June 11, 2018, Chaffin received an email from Mr. Casey Nelson, who identified himself as the in-house counsel for a company called Breckenridge Property Fund 2016 LLC, stating his company had just purchased the subject property. **SEE EXHIBIT-O, P & Q**
16. Plaintiffs filed a Complaint on June 8, 2018, with the 3rd Judicial District Court in Yerington NV for wrongful foreclosure action, etc.
17. Shortly after the filing of Plaintiffs' Complaint, Plaintiff, Audrey Kramer received a call from Mr. Nelson, asking that she drop Ms. McDermott and Wedgewood Inc. from Plaintiffs' Complaint. Mr. Nelson told Ms. Kramer that Ms. McDermott and Wedgewood Inc. had no interest in the subject property. Ms. Kramer told Mr. Nelson that if he would provide and Affidavit under penalty of perjury to that effect, that she would in fact drop Ms. McDermott and Wedgewood Inc. from the law suit. However, Mr. Nelson did not provide any such affidavit. **SEE EXHIBIT-M**

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6 I declare under penalty of perjury under the laws of the United States of America and under the
7 laws of the State of California that the foregoing is true and correct.
8

9 Executed: on Oct. 25, 2018, at Contra Costa County, State of California
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12 Audrey Kramer
13 AUDREY KRAMER
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1 LEO KRAMER, AUDREY KRAMER
2 2364 REDWOOD ROAD
3 HERCULES, CA 94547
4 PLAINTIFFS IN PRO PER

5 IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
6
7 IN AND FOR THE COUNTY OF LYON

8
9 LEO KRAMER,
10 AUDREY KRAMER,

11 Plaintiffs,

12 vs.

13
14 NATIONAL DEFAULT SERVICING
15 CORPORATION, ALYSSA MC
16 DERMOTT, WEDGWOOD INC.,
17 BRECKENRIDGE PROPERTY FUND
18 2016 LLC, and DOES 1 THROUGH 50
19 INCLUSIVE,
20 Defendants.

Case No.: 18-CV-00663

DECLARATION OF DEBORAH TAYLOR
IN SUPPORT OF PLAINTIFFS' FIRST
AMENDED COMPLAINT FOR

Date: TBA
Time: TBA
Dept: 1

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26 DECLARATION OF DEBORAH TAYLOR:
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1 I, DEBORAH TAYLOR declare as follows:

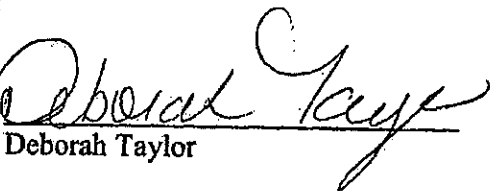
- 2
- 3 1. I am over the age of 18 years.
- 4 2. If called as a witness, I could and would competently testify thereto.
- 5 3. I make this declaration in support of Plaintiffs' First Amended Complaint.
- 6 4. I am the Assistant to Lee Anne Chaffin, who is the Broker/Owner of Chaffin Real Estate
- 7 Services, located at 200 E. Main Street, Suite 102, Fernley, Nevada. I have worked for
- 8 Chaffin Real Estate Services for approximately 12 years, as a Real Estate Agent for 8 years
- 9 and as an Assistant to Ms. Chaffin for 4 years.
- 10 5. My responsibilities at Chaffin includes the listing and marketing of properties on behalf of
- 11 property owners, vetting & running background checks of potential tenants, collecting
- 12 security deposits & rents on behalf of property owners and conducting walk-thru
- 13 inspections upon move-in & move-out, as well as periodic inspections to ensure properties
- 14 are being properly maintained. I also coordinate with tenants and landlords regarding any
- 15 repair or maintenance issues.
- 16 6. As an employee of Chaffin Real Estate Services I was the primary contact person who
- 17 interfaced with Plaintiffs, Leo and Audrey Kramer, and their tenant, Mr. Daniel Starling for
- 18 the property located at 1740 Autumn Glen Street, Fernley, Nevada 89408.
- 19 7. On October 16, 2017, the Kramer's tenant, Daniel Starling, notified me that a Notice of
- 20 Default had been posted on the Kramer's property. I took the initiative to notify the
- 21 Kramers immediately via email and attached a copy of the notice to the email. Mrs. Kramer
- 22 replied immediately and stated she had not received anything regarding a foreclosure and
- 23 would look into the matter and get back with me as soon as possible.
- 24 8. On October 24, 2017, Mrs. Kramer sent me an email stating she has never had a loan or a
- 25 mortgage with Chase Bank and further stated she believed the notice of default to be in
- 26 error and that it would be corrected.
- 27 9. Around the end of May early June 2018, I was contacted via phone by a woman who
- 28 identified herself as Allysa McDermott. Ms. McDermott informed me that she had just
- 29 purchased the subject property and claimed she was the new owner. Ms. McDermott
- 30 demanded I provide her with a copy of the tenant's rental agreement and also demanded
- 31 that all future rental payments be given to her.
- 32 In reply to Ms. McDermott's demands I requested she communicate with the Chaffin office
- 33 in writing.
- 34 I notified Ms. Kramer of the call from Ms. McDermott and Ms. Kramer said she would call
- 35 her to discuss the matter.
- 36 10. Shortly after Ms. McDermott's call, I received another call from a woman who identified
- 37 herself as Carmen Aguilera. Ms. Aguilera also claimed that she had just purchased the
- 38 subject property and stated she was the new owner. Ms. Aguilera later identified herself as
- 39 the asset manager for a company named Wedgewood Inc. and asked for the tenant's info.
- 40 and contract.

1 11. On June 11, 2018, I received an email from a Mr. Casey Nelson, who identified himself as
2 in-house counsel for Breckenridge Property Fund 2016 LLC. Saying that his company had
3 purchased the subject property. At this point, it was confusing at best as to who was
4 actually the purported legal owner of the Kramer's property.

5 12. I informed the Kramers and Lee Anne Chaffin (Owner of Chaffin Real Estate Services) of
6 all phone calls and emails regarding any and all communications from the tenants, as well
7 as the various people and companies claiming they were the purchasers/new owners of the
8 Kramer's property.

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

11 Executed: on Oct 24, 2018, at Lyon County, State of Nevada

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14 Deborah Taylor
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1 LEO KRAMER
2 AUDREY KRAMER
3 2364 REDWOOD ROAD
4 HERCULES, CA 94547
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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 LEE ANNE CHAFFIN
IN SUPPORT OF OPPOSITION TO MOTION
TO DISMISS

Date: TBA
Time: TBA
Dept: 1

DECLARATION OF LEE ANNE CHAFFIN

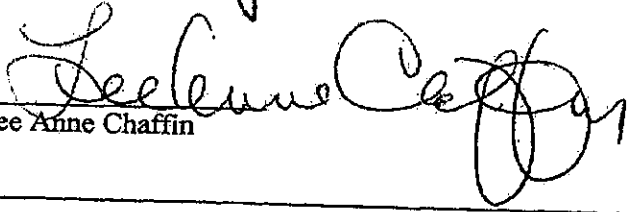
1 I, LEE ANNE CHAFFIN declare as follows:

- 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
6 PLAINTIFFS IN PRO PER
7

THIRD JUDICIAL DISTRICT COURT
LYON COUNTY, NEVADA

10 LEO KRAMER,
11 AUDREY KRAMER,
12
13 Plaintiffs,
14 vs.

Case No.: 18-CV-00663

DECLARATION OF LEE ANNE CHAFFIN
IN SUPPORT OF OPPOSITION TO MOTION
TO DISMISS

Date: TBA
Time: TBA
Dept: 1

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.
23

25 DECLARATION OF LEE ANNE CHAFFIN
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28

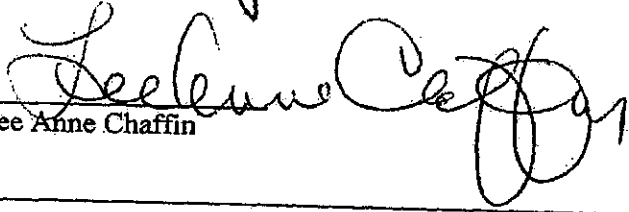
1 I, LEE ANNE CHAFFIN declare as follows:

- 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
2364 REDWOOD ROAD
3 HERCULES, CA 94547
4 PLAINTIFFS IN PRO PER
5

6 THIRD JUDICIAL DISTRICT COURT
7 LYON COUNTY, NEVADA
8

9
10 LEO KRAMER,
11 AUDREY KRAMER,
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13 Plaintiffs,

14 vs.

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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.
23

) 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

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25 DECLARATION OF DANIEL STARLING
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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

C

**E-MAIL THREAD WITH
BRECKENRIDGE'S IN-HOUSE COUNSEL
CASEY NELSON AND AUDREY KRAMER**

C

Casey J. Nelson, Esq.

Associate General Counsel

2320 Potosi Street, Suite 130

Las Vegas, Nevada 89146

702-305-9157 direct

310-469-0182 direct fax

From: Audrey Kramer [<mailto:audreykramer55@yahoo.com>]

Sent: Tuesday, June 12, 2018 8:15 AM

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

Subject: BRECKENRIDGE PROPERTY FUND 2016 LLC

Ms. Nelson,

As in-house attorney for Breckenridge Property Fund 2016, LLC, please see attached.

Sincerely,

Audrey Kramer &
Leo Kramer

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 Wedgwood 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.

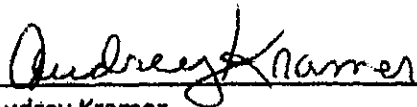
Sincerely,



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

6/15/2018

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

D

**AFFIDAVIT OF
ONE STEP PROCESS, INC**

D

AFFIDAVIT OF NON-SERVICE

Case: 18-CV-00663	Court: Third Judicial District Court of the State of Nevada In and for the County of Lyon.	County: Lyon County, NV	Job: 2365118
Plaintiff / Petitioner: Leo Kramer and Audrey Kramer		Defendant / Respondent: National Default Servicing Corp., et al.	
Received by: One Source Process, Inc.		For: Audrey Kramer	
To be served upon: Wedgewood, Inc. c/o Alyssa McDermott			

I, Daniel Action-Stevens, being duly sworn, depose and say: I am over the age of 18 years and not a party to this action, and that within the boundaries of the state where service was effected, I was authorized by law to make service of the documents and informed said person of the contents herein

Recipient Name / Address: Wedgewood, Inc. c/o Alyssa McDermott, 9 Sierra Circle, Carson City, NV 89703

Manner of Service: Non-Service

Documents: Summons and Complaint (Received Jan 2, 2018 at 2:37pm EST)

Additional Comments:

1) Unsuccessful Attempt: Jun 11, 2018, 2:50 pm EDT at Wedgewood, Inc. c/o Alyssa McDermott ONLY: 9 Sierra Circle, Carson City, NV 89703 Spoke With Mrs. Ollinghouse a woman in her 70's who has been a resident at the given address for one year. Subject is unknown.

 5/12/2018
Daniel Action-Stevens Date

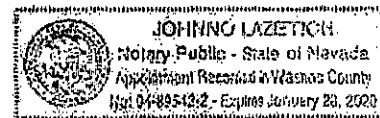
One Source Process, Inc.
1133 13th St NW Unit C 4
Washington, DC 20005
800-668-5448

Subscribed and sworn to before me by the affiant who is personally known to me.

Notary Public

Date

Commission Expires



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

5 PLAINTIFFS IN PRO PER

FILED

2019 JUN 11 PM 4:19

TANYA SCHEINE
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT

Victoria Torar

6
7 IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
8
9 IN AND FOR THE COUNTY OF LYON

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12 LEO KRAMER,
13 AUDREY KRAMER,

14 Plaintiffs,

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16 vs.

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20 NATIONAL DEFAULT SERVICING
21 CORPORATION, BRECKENRIDGE
22 PROPERTY FUND 2016 LLC, and
DOES 1 THROUGH 50 INCLUSIVE,

23 Defendants.

} Case No.: 18-CV-00663

} PLAINTIFFS, LEO KRAMER, AND
AUDREY KRAMER'S NOTICE OF
MOTION AND MOTION TO STRIKE
BRECKENRIDGE PROPERTY FUND
2016 LLC'S ANSWER IN ITS
ENTIRETY FOR FAILURE TO
TIMELY FILE AN ANSWER OR IN
THE ALTERNATIVE TO STRIKE
PORTIONS OF DEFENDANT'S
ANSWER AND ALL AFFIRMATIVE
DEFENSES; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF;
DECLARATION OF AUDREY
KRAMER

Date:

Time:

Dept: 1

1 TO THE ABOVE-ENTITLED COURT, ALL PARTIES HEREIN, AND THEIR
2 ATTORNEYS OF RECORD:

3 PLEASE TAKE NOTICE that on _____ at 9:00 am, or as soon
4 thereafter as the matter may be heard, in Department 1 of the above-entitled Court,
5 located at 911 Harvey Way, Yerington, NV 89447, Plaintiffs Leo Kramer and Audrey
6 Kramer, ("Plaintiffs"), will and hereby do move the Court, pursuant to NRCP 12(f)
7 Strike, Defendant, Breckenridge Property Fund 2016 LLC's Answers to Plaintiffs' First
8 Amended Complaint in its entirety on the ground that Defendant failed to timely file an
9 answer.
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12 In the alternative, Plaintiffs will move this Court for an order striking portions of
13 Answer filed by Defendant Breckenridge Property Fund 2016 LLC on file herein, and
14 for an order striking all of Defendant's affirmative defenses contained in the Answer
15 filed by Defendant. A motion to strike under Rule 12(f) is the proper remedy to
16 eliminate redundant, immaterial, impertinent, or scandalous matter from the pleadings
17 and is the principal procedure for objecting to an insufficient affirmative defense.
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21 Further, this Motion to Strike is made pursuant to NRCP 12(f) on the grounds that
22 the answer Defendant to Plaintiffs' First Amendment Complaint is not verified. Further
23 Defendant, Breckenridge Property Fund 2016 LLC's answers to Plaintiffs' First
24 Amended Complaint does not conform with the Court order of May 01, 2019, denying
25 in part and granting in part Defendant's motion to dismiss. Thus portions of
26 Defendant's answer should be stricken.
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1 This motion will be based on this notice and on the memorandum of points and
2 authorities served and filed herewith, on the declaration of Audrey Kramer, and exhibits
3 attached thereto, on all the papers and records of this action and such other and further
4 oral and/or documentary evidence as may be presented at the hearing on this motion for
5 Summary Judgment.
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9 Dated: 6/10/2019

Dated: 6/10/2019

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12 Leo Kramer

13 Leo Kramer, Pro per
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Audrey Kramer

Audrey Kramer, Pro per

MEMORANDUM OF POINTS AND AUTHORITIES

**I
INTRODUCTION**

Plaintiff contends that motion to strike under Rule 12(f) is mandated here because, Defendant's answer to Plaintiffs' First Amended Complaint or lack thereof, and the accompanied affirmative defenses are insufficient, unviable, or contain immaterial allegations and should be stricken to avoid having to litigate spurious issues.

On May 1, 2019 the Honorable Court denied in part and granted in part Defendant's motion to dismiss Plaintiffs' First Amended Complaint and Ordered that Defendants filed there Answers to Plaintiffs' First Amended Complaint on May 21, 2019. Not only did Defendant, Breckenridge Property Fund 2016 LLC's ("Breckenridge") defied the court Order by failing to file its answer on May 21, 2019, Breckenridge's answer is replete with redundant, immaterial, impertinent, or scandalous allegations and should be stricken in its entirety.

Furthermore, Breckenridge Property Fund 2016 LLC did not assert any recognized affirmative defenses, and do not allege any cognizable counterclaim or answer. Defendant merely asserts a litany of immaterial, misleading, and inapt, redundant, impertinent, and scandalous allegations. Given that Defendant's answer or lack thereof; and its purported affirmative defenses are replete with redundant, impertinent, and scandalous allegations, motion to strike portions of the Defendant's

1 answer and affirmative defenses as well as defendant's prayer should be Stricken in its
2 entirety.

3
4 II
ARGUMENT

5 A. THE COURT SHOULD STRIKE BRECKENRIDGE'S ANSWER IN ITS
6 ENTIRETY FOR FAILURE TO TIMELY FILE AN ANSWER OR IN THE
7 ALTERNATIVE STRIKE PORTIONS OF DEFENDANT BRECKENRIDGE
8 PROPERTY FUND 2016 LLC'S ANSWER TO PLAINTIFFS' FIRST
9 AMENDED COMPLAINT AND ALL OF DEFENDANT'S AFFIRMATIVE
DEFENSES BECAUSE THEY ARE INSUFFICIENT, IMMATERIAL,
IMPERTINENT, REDUNDANT, AND SCANDALOUS UNDER NRCP
RULE 12(F)

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11 A Motion to Strike pursuant to NRCP 12(f) states as follows:

12 Upon motion made by any party before responding to a pleading or, if no
13 responsive pleading is permitted by these rules, upon motion made by a party
14 within 20 days after the service of the pleading upon the party or upon the court's
15 own initiative at any time, the court may order stricken from any pleading any
insufficient defense or any redundant, immaterial, impertinent, or scandalous
matter.

16 Motion to Strike is governed by Nevada Rules of Civil Procedure Rule 12(f).

17
18 "The disfavored character of Rule 12(f) is relaxed somewhat in the context of
19 scandalous allegations and matter of this type often will be stricken from the pleadings
20 in order to purge the court's files and protect the subject of the allegations." 5A C.

21
22 Wright and A. Miller, *Federal Practice and Procedure (Civil)* 2d § 1382, at 714 (1990).

23 "Scandalous" matter "improperly casts a derogatory light on someone, most typically on
24 a party to the action." *Armed Forces Bank. N.A. v. FSG-4, LLC*, 2011 U.S. Dist. LEXIS
25 130636, 9-10 (D. Nev. 2011).
26
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1 Rule 12(f) also provides that pleadings that are "immaterial" or "impertinent" may
2 be struck by a court. An "immaterial" matter is "that which has no essential or
3 important relationship to the claim for relief or the defenses being pleaded." *Fantasy,*
4 *Inc.*, 984 F.2d at 1527 (quoting Wright & Miller, § 1382). "Impertinent" matters are
5 those "that do not pertain, and are not necessary, to the issues in question." *Id.* Such
6 pleadings are legally insufficient because they clearly lack merit "under any set of facts
7 the defendant might allege." *Polk v. Legal Recovery Law Offices*, 291 F.R.D. 485, 489
8 (S.D. Cal. 2013) (citation and quotation marks omitted). Here, not only is Defendant's
9 Answers to Plaintiffs' First Amended Complaint not verified. Further Defendant,
10 Breckenridge Property Fund 2016 LLC's answers to Plaintiffs' First Amended
11 Complaint does not conform with the Court order of May 01, 2019, denying in part and
12 granting in part Defendant's motion to dismiss. Thus portions of Defendant's answer
13 should be stricken.

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18 **The grounds for this Motion to Strike Portions of Defendant's Answers are**
19 **set forth below:**

20 Plaintiffs move to strike in its entirety, any and all portion of the answer
21 referencing Defendants, ALYSSA MC DERMOTT and WEDGWOOD INC as
22 redundant, immaterial, impertinent, or scandalous allegations because Defendants are
23 aware that ALYSSA MC DERMOTT and WEDGWOOD INC were dismissed from the
24 lawsuit and any and all reference to them is for improper purpose, such as to harass
25 Plaintiffs, or to cause unnecessary delay or needless increase in the cost of litigation
26 without just cause.
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1 Furthermore, Plaintiffs move to strike in its entirety, Defendant's Answer
2 pertaining to Quiet Title contained in ¶¶ 60-69 and Defendant's Answer Pertaining to
3 Slander of Title contained in ¶¶ 70-88 because these two causes of action were
4 dismissed by the Court on May 01, 2019. Defendant filed its answers to the cause of
5 action for Quiet Title and Slander of Title in bad faith because Defendant and its
6 Attorneys were aware that the Court had dismissed these causes of action *Ibid*, when
7 Defendant filed its answer on May 29, 2019, whereby Plaintiffs did not receive until
8 May 31, 2019, (10) ten days after the due date set by the court. Plaintiffs had to file a
9 'Notice of Intent to File a Default' against Breckenridge before Defendant did then
10 complied with the Court order of May 1, 2019. **SEE EXHIBIT-A & B & C**

14 Furthermore, Plaintiffs move to strike in its entirety, Defendant's Answer
15 pertaining to Cancellation of written Instruments contained therein, in Plaintiffs' First
16 Amended Complaint as redundant, immaterial, impertinent, or scandalous allegations.
17 because Defendant is well aware that the Court did not dismiss any allegation pertaining
18 to Cancellation of written Instruments.

21 Federal Rule of Civil Procedure 12(f) authorizes the Court to "strike from a
22 pleading an insufficient defense or any . . . immaterial [or] impertinent . . . matter." Fed.
23 R. Civ. P. 12(f). Rule 12(f)'s purpose is to "avoid the expenditure of time and money
24 that must arise from litigating spurious issues by dispensing with those issues prior to
25 trial." *Zytax, Inc. v. Green Plains Renewable Energy, Inc.*, No. H-09-cv-2582, 2010 WL
26 2219179, at *5 (S.D. Tex. May 28, 2010) (quoting *Fantasy, Inc. v. Fogerty*, 984 F.2d
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28

1 1524, 1527 (9th Cir. 1993)). Rule 12(f) is also designed to "reinforce the requirement in
2 Rule 8(e) that pleadings be simple, concise, and direct." 5C Charles Alan Wright &
3 Arthur R. Miller, *Federal Practice and Procedure* § 1380 (3d. ed. 2014).

4
5 **The grounds to Strike Defendant's Affirmative Defenses and Prayers are set**
6 **forth below:**

7
8 An affirmative defense may be struck if it is insufficient. "The key to
9 determining the sufficiency of pleading an affirmative defense is whether it gives
10 plaintiff fair notice of the defense." *Simmons v. Navajo Cty.*, 609 F.3d 1011, 1023 (9th
11 Cir. 2010) (quoting *Wyshak v. City Nat'l Bank*, 607 F.2d 824, 827 (9th Cir. 1979)).
12
13 "[T]he 'fair notice' required by the pleadings standards only requires describing the
14 defense in 'general terms.'" *Kohler v. Flava Enters., Inc.*, 779 F.3d 1016, 1019 (9th Cir.
15 2015) (quoting 5 Charles Alan Wright & Arthur R. Miller, *Federal Practice and*
16 *Procedure* § 1274 (3d ed. 1998) (hereinafter "Wright & Miller")).
17

18 Rule 12(f) also provides that pleadings that are "immaterial" or "impertinent" may
19 be struck by a court. An "immaterial" matter is "that which has no essential or important
20 relationship to the claim for relief or the defenses being pleaded." *Fantasy, Inc.*, 984
21 F.2d at 1527 (quoting Wright & Miller, § 1382). "Impertinent" matters are those "that
22 do not pertain, and are not necessary, to the issues in question." *Id.* Such pleadings are
23 legally insufficient because they clearly lack merit "under any set of facts the defendant
24 might allege." *Polk v. Legal Recovery Law Offices*, 291 F.R.D. 485, 489 (S.D. Cal.
25 2013) (citation and quotation marks omitted).
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1 This Motion to Strike is also made on the alternative grounds that all of the
2 affirmative Defenses listed in the answer filed by Defendant assert only affirmative
3 defenses that are wholly irrelevant to the causes of action alleged in the complaint, and
4 thus constitutes redundancy, impertinent, scandalous, or immaterial allegations.
5

6
7 The following affirmative defenses should by stricken:

8 1. The first affirmative defense alleging that: "Plaintiffs claims on file herein fail
9 to state a claim against Defendant, upon which relief can be granted" Should be stricken
10 on the grounds that this defense contains allegation that are wholly irrelevant to the
11 causes of action alleged in the First Amended Complaint and thus constitutes
12 redundancy, impertinent, scandalous, or immaterial allegations.
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14 2. The Second affirmative defense alleging that "Plaintiffs claims are barred by
15 the Doctrine of waiver, estoppel, unclean hands and other equitable defenses" should be
16 stricken on the grounds that this defense contains allegation that wars against that Court
17 order finding that Plaintiffs are entitle to Amended their complaint. Further, this
18 affirmative defenses should be stricken on the grounds that they are wholly irrelevant to
19 the causes of action alleged in the First Amended Complaint and thus constitutes
20 redundancy, impertinent, scandalous, or immaterial allegations. Moreover, Defendant,
21 Breckenridge Property Fund 2016 LLC is not a bona fide encumbrancer of Plaintiffs'
22 real property that is the subject of this litigation. Additionally, on information and
23 belief, Breckenridge Property Fund 2016 LLC is a participant in the filing of fraudulent
24 real estate documents in the zeal to conduct, fraudulent, willful, and oppressive non-
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1 judicial foreclosure of Plaintiffs' real property, hence, Breckenridge Property Fund 2016
2 LLC should be held liable for its conduct.

3 3. The Third affirmative defense alleging that "Plaintiffs' claims are barred by the
4 applicable statute of limitations and/or the doctrine of laches" Should be stricken on the
5 grounds that this defense contains allegation that are wholly irrelevant to the causes of
6 action alleged in the First Amended Complaint and thus constitutes impertinent,
7 redundant, scandalous, or immaterial allegations. Furthermore, Plaintiffs commenced
8 their lawsuit timely upon discovering of defendants' wrongful and unlawful conduct
9 alleged therein in Plaintiffs' First Amended Complaint. As such, Plaintiffs' claims are
10 NOT barred by the applicable statute of limitations and/or the doctrine of laches.

11 4. The Fourth affirmative defense alleging that "Plaintiffs claims are barred by the
12 statute of frauds" Should be stricken on the grounds that this affirmative Defense by
13 Defendant, Breckenridge Property Fund 2016 LLC is unintelligible. Further, this
14 defense contains allegation that are wholly irrelevant to the causes of action alleged in
15 the First Amended Complaint and thus constitutes redundancy, impertinent, scandalous,
16 or immaterial allegations. Where pertinent thereto, Plaintiffs satisfied all the
17 requirements of statute of frauds and all communication pertaining to the revolving line
18 of credit and Plaintiffs' First Amended Complaint are reduced in writing. Therefore,
19 Statute of Fraud is satisfied.

20 5. The Fifth affirmative defense alleging that "Defendant was a bona fide
21 purchaser for value of the Property in good faith and without notice of any of the
22

1 alleged defects to the property” Should be stricken on the grounds that this is not a
2 viable affirmative defense and this defense contains allegation that are wholly irrelevant
3 to the causes of action alleged in the First Amended Complaint and thus constitutes
4 redundancy, impertinent, scandalous, or immaterial allegations. Plaintiffs are the
5 recorder legal and/or beneficial owners of the real property, which is the subject of this
6 litigation. Furthermore, Breckenridge Property Fund 2016 LLC was aware of the
7 controversy and dispute pertaining to the ownership of Plaintiffs’ real property and
8 Breckenridge Property Fund 2016 LLC wrote out several checks to purchase Plaintiffs’
9 property while the case or dispute pertaining to Plaintiffs’ real property was in litigation
10 in the United States District Court in Nevada.
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14 Additionally, on information and belief, Breckenridge Property Fund 2016 LLC
15 is a participant in the filing of fraudulent real estate documents in the zeal to conduct,
16 fraudulent, willful, and oppressive non-judicial foreclosure of Plaintiffs’ real property,
17 hence, Breckenridge Property Fund 2016 LLC should by held liable for its conduct.
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20 6. The Sixth affirmative defense alleging that “The damages, if any, allegedly
21 sustained by Plaintiff were caused in whole by other parties’ acts or omission” Should
22 be stricken on the grounds that this is not a viable affirmative defense and this defense
23 contains allegation that are wholly irrelevant to the causes of action alleged in the First
24 Amended Complaint and thus constitutes redundancy, impertinent, scandalous, or
25 immaterial allegations. On information and belief, Breckenridge Property Fund 2016
26 LLC is a participant in the filing of fraudulent real estate documents in the zeal to
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1 conduct, fraudulent, willful, and oppressive non-judicial foreclosure of Plaintiffs' real
2 property, hence, Breckenridge Property Fund 2016 LLC should be held liable for its
3 conduct.

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5 7. The Seventh affirmative defense alleging that "Defendant incorporates all
6 affirmative defenses as for in NRCP 8(c); Should be stricken on the grounds that this is
7 not a viable affirmative defense and this defense contains allegation that are wholly
8 irrelevant to the causes of action alleged in the First Amended Complaint and thus
9 constitutes redundancy, impertinent, scandalous, or immaterial allegations.

10
11 8. The Eighth affirmative defense alleging that "Defendant denies each and every
12 allegation not specifically answered" Should be stricken on the grounds that this is not a
13 viable affirmative defense and this defense contains allegation that are wholly irrelevant
14 to the causes of action alleged in the First Amended Complaint and thus constitutes
15 redundancy, impertinent, scandalous, or immaterial allegations.

16
17 9. The Ninth affirmative defense alleging that " All possible affirmatives
18 defenses that may not have been alleged herein insofar as sufficient facts were not
19 available after reasonable inquiry upon the filing of Defendant's answer to the
20 Complaint and therefore, Defendant reserves the right to amended its answer to alleged
21 additional affirmative defenses if subsequent investigation so warrant"; Should be
22 stricken on the grounds that this is not a viable affirmative defense and this defense
23 contains allegation that are wholly irrelevant to the causes of action alleged in the First
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1 Amended Complaint and thus constitutes redundancy, impertinent, scandalous, or
2 immaterial allegations.

3 **WHEREFORE CLAUSE:**

4
5 ¶¶ 1-3 of Defendant's prayer Should be stricken on the grounds that defendant
6 takes nothing; On information and belief, Breckenridge Property Fund 2016 LLC is a
7 participant in the filing of fraudulent real estate documents in the zeal to conduct,
8 fraudulent, willful, and oppressive non-judicial foreclosure of Plaintiffs' real property,
9 hence, Breckenridge Property Fund 2016 LLC should by held liable for its conduct; and
10 on the grounds that this is not a viable affirmative defense and this defense contains
11 allegation that are wholly irrelevant to the causes of action alleged in the First Amended
12 Complaint and thus constitutes redundancy, impertinent, scandalous, or immaterial
13 allegations.
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17 Although not generally favored, motions to strike should nonetheless be granted
18 if the asserted defenses are insufficient as a matter of law, will confuse the issues in the
19 case, or will otherwise prejudice the moving party. See, e.g., Kaiser Aluminum &
20 Chemical Sales, Inc. v. Avondale Shipyards, Inc., 677 F.2d 1045, 1057-61 (5th Cir.
21 1982).
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24 **III**
25 **CONCLUSION**

26 For the foregoing reasons, Plaintiffs respectfully request this Honorable Court
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28

1 strike in its entirety Defendant Breckenridge Property Fund 2016 LLC's Answer
2 because Defendant's answer was/is untimely or in the alternative strike portions of the
3 Answer filed by Defendant Breckenridge Property Fund 2016 LLC on file herein, and
4
5 enter an order striking all of the affirmative defenses contained in the Answer filed by
6 Defendant BRECKENRIDGE PROPERTY FUND 2016 LLC.
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9 Respectfully Submitted,
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11 Date: 6/10/2019
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Date: 6/10/2019
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16 Leo Kramer
17 Leo Kramer, Pro se
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Audrey Kramer
Audrey Kramer, Pro se
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1 LEO KRAMER, Pro se
2 AUDREY KRAMER, Pro se
3 2364 REDWOOD ROAD
4 HERCULES, CA 94547

5 PLAINTIFFS IN PRO PER
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8 IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
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10 IN AND FOR THE COUNTY OF LYON

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12 LEO KRAMER,
13 AUDREY KRAMER,
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15 Plaintiffs,
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17 vs.
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20 NATIONAL DEFAULT SERVICING
21 CORPORATION, BRECKENRIDGE
22 PROPERTY FUND 2016 LLC, and
23 DOES 1 THROUGH 50 INCLUSIVE,
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25 Defendants.
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) Case No.: 18-CV-00663

) DECLARATION OF AUDREY
KRAMER

) IN SUPPORT OF:
) PLAINTIFFS, NOTICE OF MOTION
) AND MOTION TO STRIKE
) BRECKENRIDGE PROPERTY FUND
) 2016 LLC'S ANSWER IN ITS
) ENTIRETY FOR FAILURE TO
) TIMELY FILE AN ANSWER OR IN
) THE ALTERNATIVE TO STRIKE
) PORTIONS OF DEFENDANT'S
) ANSWER AND ALL AFFIRMATIVE
) DEFENSES; MEMORANDUM OF
) POINTS AND AUTHORITIES IN
) SUPPORT THEREOF;

) Date:

) Time:

) Dept: 1

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DECLARATION OF AUDREY KRAMER:

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

1. I am over the age of 18 years.
2. I have personal knowledge of the above entitled matter and if called as a witness, I could and would competently testify thereto.
3. At a hearing in this Hon. Court, the court order Defendants to 'Answer' Plaintiffs' First Amended Complaint, due (20) twenty days from the May 1st, 2019, hearing. Further stating the Answer would be due on May 21, 2019.
4. Breckenridge's counsel, Mr. Ching, was keenly aware of this date, because he was present at the May 1, 2019 hearing, and further, Mr. Ching volunteered to draft the Judge's ORDER.
5. On May 24, 2019, Plaintiffs filed 'NOTICE OF INTENT TO TAKE DEFAULT'
6. On May 31, 2019, Plaintiffs then did receive Defendant, Breckenridge's Answer to Plaintiffs' First Amended Complaint. **SEE ATTACHED EXHIBITS A & B & C**

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

Executed on 6/10/2019, at Contra Costa County, State of California

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 June 10, 2019, I served the foregoing document entitled:

PLAINTIFFS, LEO KRAMER, AND AUDREY KRAMER'S NOTICE OF MOTION AND MOTION TO STRIKE BRECKENRIDGE PROPERTY FUND 2016 LLC'S ANSWER IN ITS ENTIRETY FOR FAILURE TO TIMELY FILE AN ANSWER OR IN THE ALTERNATIVE TO STRIKE PORTIONS OF DEFENDANT'S ANSWER AND ALL AFFIRMATIVE DEFENSES; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF; DECLARATION OF AUDREY KRAMER

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 June 10, 2019 at Hercules, California.

Corina DiGrazia

Name of Declarant

Signature of Declarant

SERVICE LIST:

Matthew K. Schriever
John T. Steffen
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1008 West Alta Drive, Suite 200
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Casey J. Nelson
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Las Vegas, NV 89107

Attorneys for Defendant,
NATIONAL DEFAULT SERVICING CORPORATION

THIRD JUDICIAL DISTRICT COURT
LYON COUNTY, NEVADA

LEO KRAMER, Pro se
AUDREY KRAMER, Pro se

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 STRIKING ANSWER
AND AFFIRMATIVE DEFENSES OF
DEFENDANT, BRECKENRIDGE
PROPERTY FUND 2016 LLC

Date: TBA
Time: TBA
Dept: I

The Court has considered Plaintiffs' motion to strike Answer and Affirmation Defenses of
Breckenridge Property Fund 2016 LLC.

IT IS HEREBY ORDERED that, good cause appearing, Answer and Affirmation Defenses of
Breckenridge Property Fund 2016 LLC.
it hereby **STRICKEN** in its entirety.

IT IS SO ORDERED.

DATED: _____, 2019

The Hon. _____
JUDGE THIRD JUDICIAL DISTRICT COURT

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EXHIBIT LIST:

**A— JUDGE’S ORDER-MAY 1, 2019, DEFENDANTS’
MOTIONS TO DISMISS PLAINTIFFS’ FIRST
AMENDED COMPLAINT**

**B— PLAINTIFFS’ NOTICE OF ‘NOTICE OF INTENT
TO TAKE DEFAULT’**

**C— BRECKENRIDGE’S ANSWER TO PLAINTIFFS’
FIRST AMENDED COMPLAINT, REFLECTING FILING
DATE OF May 29, 2019**

A

**JUDGE'S ORDER-MAY 1, 2019
DEFENDANTS' MOTIONS
TO DISMISS PLAINTIFFS'
FIRST AMENDED COMPLAINT**

A

FILED

Case No.: 18-CV-00663

2019 MAY 24 AM 11:13

Dept No.: I

TANYA J. JONES
COURT ADMIN. CLERK
THIRD JUDICIAL DISTRICT

Victoria Tovar

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

* * *

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.

**ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANTS'
MOTIONS TO DISMISS**

THIS MATTER having come on for hearing on May 1, 2019 on the Motion to Dismiss filed by Defendants Alyssa McDermott ("McDermott"), Wedgewood Inc. ("Wedgewood"), and Breckenridge Property Fund 2016 LLC ("Breckenridge") and the Motion to Dismiss filed by National Default Servicing Corporation ("NDSC"), the Plaintiffs having opposed the motions 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, each party submitting proposed orders and/or objections to the same, the Court makes the following findings of fact and conclusions of law, and orders as follows:

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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. On June 8, 2018, Plaintiffs filed a Complaint for claims of Unlawful Foreclosure, Quiet Title, Preliminary Injunction, Slander of Title, Constructive Fraud, and Declaratory Relief.

3. Defendants Breckenridge, Wedgewood, and McDermott filed a Motion to Dismiss the Complaint in its entirety. Likewise, Defendant NDSC filed a Motion to Dismiss the Complaint in its entirety. On October 23, 2018, this Court entered an Order granting Defendants' Motions to Dismiss without prejudice and with leave for Plaintiffs to file an amended complaint.

4. On October 25, 2018, Plaintiffs filed their First Amended Complaint which made claims for Unlawful Foreclosure (Against NDSC), Quiet Title (Against All Defendants), Slander of Title (Against NDSC), Declaratory Relief (Against All Defendants), and Cancellation of Written Instruments (Against NDSC).

5. Defendants Breckenridge, Wedgewood, and McDermott filed a Motion to Dismiss Plaintiffs' First Amended Complaint on November 19, 2018. Defendant NDSC filed a Motion to Dismiss Plaintiffs First Amended Complaint on January 17, 2019. Plaintiffs opposed both of these Motions to Dismiss, and the matter was submitted to this Court for its decision.

6. Neither Defendant Wedgewood nor Defendant McDermott has any claim to an estate, interest, right, title, lien or cloud in or on the Property. The Trustee's Deed transferring the property clearly shows the only owner as Breckenridge without any interest in the above parties. Prior to filing their First Amended Complaint, Plaintiffs had actual knowledge that neither Wedgewood nor McDermott had any claim to an estate, interest, right, title, lien or cloud in or on the Property. Despite having actual knowledge that neither Wedgewood nor McDermott had any claim to an estate, interest, right, title, lien or cloud in or on the Property, Plaintiffs sued Wedgewood and McDermott for Quiet Title and Declaratory Relief in their First Amended Complaint.

7. Plaintiffs' First Amended Complaint is not verified (*see* NRS 40.090(1)); Plaintiffs have not alleged that they paid all taxes levied or assessed against the Property (*see id.*); Plaintiffs did not within 10 days after the filing of the First Amended Complaint file or cause to be filed in the office of

1 the county recorder of the county where the Property is situated, a notice of the pendency of the action
2 containing the matters required by NRS 14.010; Plaintiffs did not within 30 days after issuance of
3 summons post or cause to be posted a copy of summons in a conspicuous place at the Property; and the
4 Summons did not contain a legal description of the property.

5 8. Plaintiffs have made no factual allegations in their First Amended Complaint that
6 Defendant NDSC slandered the title of the Property.

7 9. Issues of fact remain regarding whether Plaintiffs were properly served with the Notice of
8 Default on the Property.

9 10. Issues of fact remain as to whether Defendant Breckenridge was a bona fide purchaser of
10 the Property.

11 11. Plaintiffs served and filed an Individual Case Conference Report ("ICCR") on about
12 March 28, 2019. Defendants Breckenridge, Wedgewood, and McDermott filed their Objection to the
13 ICCR on April 22, 2019.

14 CONCLUSIONS OF LAW

15 1. Plaintiffs have failed to state any claims against Defendants Wedgewood and McDermott,
16 as there is no allegation that Wedgewood or McDermott has any claim to an estate, interest, right, title,
17 lien or cloud in or on the Property. Therefore, all legal claims in this action against Defendants
18 Wedgewood Inc. and Alyssa McDermott are dismissed with prejudice.

19 2. Plaintiffs have failed to state a claim for Quiet Title due to their failure to allege that they
20 satisfied the relevant requirements of Chapter 40 of the Nevada Revised Statutes. Therefore, Plaintiffs'
21 claim for Quiet Title against all Defendants is dismissed with prejudice. This is not a case for Quiet Title
22 but to undo a trustee's sale.

23 3. Plaintiffs have failed to state a claim for Slander of Title as Plaintiffs have not made any
24 factual allegations that Defendant NDSC slandered their title to the Property. Therefore, Plaintiffs' claim
25 for Slander of Title against NDSC is dismissed with prejudice.

26 4. "Cancellation of Written Instrument" is a remedy and not a valid legal claim in the State
27 of Nevada. Therefore, Plaintiffs' claim of Cancellation of Written Instruments – SOT, NOD, NTS and
28 TDUS shall be treated as a prayer for relief.

1 5. Plaintiffs' claim for Unlawful Foreclosure against NDSC involves issues of fact which
2 this Court cannot adjudicate on a motion made pursuant to NRCP 12(b)(5). Therefore, Plaintiffs' claim
3 for Unlawful Foreclosure is not dismissed.

4 6. Plaintiffs' claim for Declaratory Relief is derivative of and a potential remedy for their
5 claim for Unlawful Foreclosure, and therefore Plaintiffs' claim for Declaratory Relief is not dismissed.

6 7. Plaintiffs' ICCR, filed on or about March 28, 2019, is nugatory, as no such report was
7 required or permitted prior to the filing of answers by the Defendants. NRCP 16.1(b)(2) & (c)(1)(A).
8 Accordingly, Plaintiffs' ICCR is stricken.

9 **ORDER**

10 THE COURT HEREBY ORDERS, ADJUDGES, AND DECREES that Plaintiffs claims in their
11 First Amended Complaint, and each of them, are dismissed with prejudice as to Wedgewood and
12 McDermott.

13 THE COURT FURTHER ORDERS, ADJUDGES, AND DECREES that Plaintiffs' claim of
14 Quiet Title is dismissed as to all Defendants with prejudice.

15 THE COURT FURTHER ORDERS, ADJUDGES, AND DECREES that Plaintiffs' claim of
16 Slander of Title is dismissed with prejudice as to NDSC.

17 THE COURT FURTHER ORDERS, ADJUDGES, AND DECREES that Plaintiffs' claim of
18 Cancellation of Written Instruments shall be treated as a prayer for relief.

19 THE COURT FURTHER ORDERS, ADJUDGES, AND DECREES that Defendants must
20 answer or otherwise respond to Plaintiffs' First Amended Complaint on or before May 21, 2019.

21 THE COURT FURTHER ORDERS, ADJUDGES, AND DECREES that Plaintiffs ICCR filed
22 on or about March 28, 2019 is stricken.

23 Dated this 23rd day of May, 2019.

24 
25 Hon. John P. Schlegelmilch,
26 DISTRICT JUDGE
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Certificate of Mailing

I hereby certify that I, Anne Rossi, am an employee of the Third Judicial District Court, and that on this date pursuant to NRCP 5(b), a true copy of the foregoing document was mailed at Yerington, Nevada addressed to:

Leo Kramer
Audrey Kramer
2364 Redwood Road
Hercules, CA 94547

Matthew K. Schriever, Esq.
HUTCHISON & STEFFEN, PLLC
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145

Casey J. Nelson, Esq.
WEDGEWOOD, LLC
2320 Potosi Street, Suite 130
Las Vegas, NV 89146

Ace Van Patten, Esq.
TIFFANY & BOSCO, P.A.
10100 W. Charleston Blvd., Ste. 220
Las Vegas, NV 89135

Dated this 23rd day of May, 2019.


Employee of Hon. John P. Schlegelmilch

B

**PLAINTIFFS' NOTICE OF
'NOTICE OF INTENT TO TAKE DEFAULT'**

B

Code: 2610
Name: Leo Kramer & Audrey Kramer, prose
Address: 2364 Redwood Rd
Hercules CA 94547
Telephone: 510-708-9100
Email: audreykramer55@yahoo.com
Self-Represented Litigant

IN THE FAMILY DIVISION
~~THIRD~~
OF THE ~~SECOND~~ JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE LYON

Leo Kramer
Audrey Kramer

Plaintiff / Petitioner,

Case No. 18-CV-00663

vs. National Default Servicing, Corp.,
Alyssa Mc Dermott, Wedgewood, Inc.,
Breckenridge Property Fund 2016, LLC
Defendant / Respondent.

Dept. No. 1

NOTICE OF INTENT TO TAKE DEFAULT

TO: Defendant / Respondent Breckenridge Property Fund 2016, LLC

Please take notice that the Plaintiff / Petitioner intends to take a default unless you file an Answer or other responsive pleading with the Court and serve the Plaintiff / Petitioner on or before seven days from the date of service of this Notice.

//

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1 On (Date) May 24, 2019, I served a true and correct copy of this Notice of Intent
2 to Take Default as described below:

3 (☒ Check One):

4 ☐ I personally served (Name) _____ at the following location:
5 (Address) _____

6 ☐ I deposited a copy in the U.S. mail, postage prepaid, addressed as follows:

7 (Name) _____

8 (Address) _____

9 ☒ I deposited a copy in the U.S. mail Certified, return receipt requested, addressed as follows:

10 (Name) Matthew Schriever c/o Hutchison & Steffen

11 (Address) 10080 W. Alta Drive Ste. 200
12 Las Vegas, NV 89145

13 This document does not contain the personal information of any person as defined by NRS
14 603A.040.

15 I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true
16 and correct.

17
18 Date: May 24, 2019

Signature:

Audrey Kramer

Print Your Name:

Audrey Kramer

Case Summary

NATIONAL DEFAULT SERVICING CORPORATION, LEO KRAMER, AUDREY KRAMER, ALYSSA MC DERMOTT, WEDGWOOD INC., BRECKENRIDGE PROPERTY FUND 2016 LLC - COMPLAINT

Case Number: 18-CV-00663

Type: Other Title to Property Case

Status: Reopened

Received Date: 6/8/2018

Status Date: 10/29/2018

Agency: Third Judicial District Court

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

KRAMER, LEO Plaintiff

Disposition: Motion to Dismiss by Defendant Dispo Date: 10/24/2018

Lead/Active: True

2. NRCP 3 - COMPLAINT

KRAMER, AUDREY Plaintiff

Disposition: Motion to Dismiss by Defendant Dispo Date: 10/24/2018

Lead/Active: False

3. NRCP 5 - ANSWER

NATIONAL DEFAULT SERVICING CORPORATION Defendant

Disposition: Motion to Dismiss by Defendant Dispo Date: 10/24/2018

Lead/Active: False

4. NRCP 5 - ANSWER

MC DERMOTT, ALYSSA Defendant

Disposition: Motion to Dismiss by Defendant Dispo Date: 10/24/2018

Lead/Active: False

5. NRCP 5 - ANSWER

WEDGWOOD INC. Defendant

Disposition: Motion to Dismiss by Defendant Dispo Date: 10/24/2018

Lead/Active: False

6. NRCP 5 - ANSWER

BRECKENRIDGE PROPERTY FUND 2016 LLC Defendant

Disposition: Motion to Dismiss by Defendant Dispo Date: 10/24/2018

Lead/Active: False

Case Summary

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

10/24/2018 Order Granting Motion to Dismiss Pltfs 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 Plaintiffs 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 Pltfs 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
2/1/2019 Ex Parte Motion for Continuance (2-22-19).pdf - Filed
2/4/2019 Plaintiff's Opposition to Defendant's Motion to Dismiss Plaintiff's First Amended Complaint.pdf - Filed
3/6/2019 Stipulation and Order to Continue Hearing (2-22-19 to 5-1-19).pdf - Filed
3/18/2019 Notice of Entry of Stipulation & Order to Continue Hearing.pdf - Filed
3/29/2019 Early Case Conference Report Pursuant to NRCP 16.1(b).pdf - Filed
4/22/2019 Objection to Plaintiff's Early Case Conference Report (McDermott, Wedgewood Inc., & Breckenridge).pdf - Filed
5/2/2019 Opposition to Plaintiff's Motion for Summary Judgment.pdf - Filed
5/2/2019 Opposition to Plaintiff's Motion for Summary Judgment (National Default).pdf - Filed
5/2/2019 Declaration of Counsel in Support of Opposition to Plaintiff's Motion for Summary Judgment (National Default).pdf - Filed
5/17/2019 Answer to First Amended Complaint - Natt'l Default.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

JUSTWARR

Case Summary

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.

5/1/2019 10:30:00 AM | Motion Hearing | DEPT I 18-CV-00663 | Court Room B

Thomas, Kathy Dep. Clerk - KTHOMAS

Staff - STAFF

Court Room B - CourtRmB

lawclerk1 - LAW1

CHING, KEITH S.K.

GEURTS, PATRICK JAMES J.

VanPatten, Ace C

obo NDSC w/Tiffany & Bosco

Schlegelmilch, John P. - JPS (Dept I - TJDC)

Notes: Plaintiff's appeared in Proper Person. Mr. Ching appeared on behalf of McDermott, Wedgewood, Inc., and Breckenridge Property. Mr. Van Patten, appearing on behalf of NDSC. Counsel argued the motions.

Court found McDermott and Wedgewood are not owners in the property. Motion to Dismiss as to McDermott and Wedgewood is granted. Breckenridge will remain as a party in the case. Court dismissed the quiet title action, does not fit the proper requirements. Cause of Action 2 & 3 in the complaint is Dismissed. Cause of action 1 & 4 does exist, case will go forward on those 2 causes. In regards to the Discovery motion, court found the early case conference does not take place until after first answer is filed. Defendant to file answer within 20 days of today's date. Parties are to co-operate with the rules of 16.1 which also applies to parties in proper person. The opposition to the early case conference is granted. Mr. Ching to prepare Order and email within 10 days to the court and other parties. Parties have 5 days after the receipt to file any objection to the order.

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

Ace Van Patten

Kevin S. Soderstrom

Tiffany & Bosco, P.A.

10100 W. Charleston Boulevard, Ste.220

Las Vegas, NV 89135

Attorneys for Defendant,

NATIONAL DEFAULT SERVICING CORPORATION

iShip_Services@iship.com <iShip_Services@iship.com>
To: AUDREYKRAMER55@YAHOO.COM
Apr 15 at 4:19 PM

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 **ACE VAN PATTEN**.

It's currently at **Mail Boxes Etc. #2796** and will be picked up by **UPS** on **Monday, April 15, 2019**.

You can expect it to arrive on **Wednesday, April 17, 2019 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...

ACE VAN PATTEN
TIFFANY & BOSCO

(Recipient's street address omitted
intentionally from this email)
LAS VEGAS, NV 89135-5001 US

Who is carrying it...

Mail Boxes Etc. #2796
(510) 245-7060

Carrier details...

UPS Ground

Tracking details...

Tracking No.: **1ZA832V30394302839**

Shipment ID: **MMREPGCHVH04A**

Ship Ref 1:

Ship Ref 2:

Shipping date...

Monday, April 15, 2019

Expected delivery date...

Wednesday, April 17, 2019 End of Day

Sender's message...

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Tracking your item

For complete tracking information, simply click below:

<https://iship.com/trackit/track.aspx?t=1&Track=MMREPGCHVH04A&src=e>

Please note: Tracking information may not be available until several hours after the carrier picks up the package. Carriers normally pick up in the late afternoon.

Have a question?

For any queries about this shipment, please contact **UPS** directly at **1-800-PICK-UPS (1-800-742-5877)**, and have your tracking number ready.

Great offers, direct to your inbox

At The UPS Store®, we do all we can to help our customers stay one step ahead. Join our email program today and we'll regularly send great offers and resources direct to your inbox - so you can make more of your time and money.

SHIPPING TOOLS

Your Tracking Information

Status: DELIVERED
Delivered To: LAS VEGAS, NV US
Delivery Date: Wed 17 Apr 2019
Delivery Location: Front Desk
Signed By: GRONEMAN
Carrier: UPS
Service: Ground Commercial
UPS Tracking Number: 1ZA832V30394302839

Scan History:

Wed 17 Apr 2019	12:47 PM	Delivered LAS VEGAS NV US
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	9:04 AM	Out For Delivery Today Las Vegas NV US
	3:11 AM	Destination Scan Las Vegas NV US
	1:44 AM	Arrival Scan Las Vegas NV US
Tue 16 Apr 2019	7:31 PM	Arrival Scan Tonopah NV US
	3:35 PM	Departure Scan Sparks NV US
	7:11 AM	Arrival Scan Sparks NV US
	2:28 AM	Departure Scan West Sacramento CA US
Mon 15 Apr 2019	11:56 PM	Arrival Scan West Sacramento CA US
	10:37 PM	Departure Scan San Pablo CA US
	7:24 PM	Origin Scan San Pablo CA US
	5:22 PM	Order Processed: Ready for UPS US

NOTE: The times listed in the scan details are local time.

Track Another Package

Carrier Tracking Number / iShip ID:

Tracking provided for



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C

**BRECKENRIDGE'S ANSWER TO PLAINTIFFS'
FIRST AMENDED COMPLAINT,
REFLECTING FILING DATE OF May 29, 2019**

C

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

**ANSWER TO FIRST AMENDED
COMPLAINT**

1 Comes now, BRECKENRIDGE PROPERTY FUND 2016 LLC ("Defendant")¹ by and through
2 its counsel of record, Hutchison & Steffen, PLLC, and hereby submits its Answer to Plaintiff's First
3 Amended Complaint.

4 1. Answering paragraph numbers 1-7, 11-25, 27, 30-51, and 53-59, Defendant is without
5 sufficient knowledge or information to form a belief as to the truth of the allegations of said paragraphs
6 and on that basis deny each and every allegation set forth therein.
7

8 2. Answering paragraph numbers 8-10, 26, 28, 52, and 90-100, Defendant denies the
9 allegations set forth therein.

10 3. Defendants repeat and reallege its prior responses to the allegations contained in
11 paragraph numbers 29, 60, 70, 89, and 101, of the Complaint.
12

13 4. Answering paragraph numbers 61-69, 71-88, and 102-104 Defendant asserts that at a
14 recent hearing on Defendants' Motion to Dismiss the Amended Complaint, the Court dismissed the
15 Cause of Action that form the basis for these allegations and therefore no response is required to these
16 allegations. To the extent a response is required, Defendant denies the allegations set forth therein.
17

18 AFFIRMATIVE DEFENSES

19 1. Plaintiffs' claims on file herein fail to state a claim against Defendant, upon which relief
20 can be granted.

21 2. Plaintiffs' claims are barred by the doctrine of waiver, estoppel, unclean hands and other
22 equitable defenses.

23 3. Plaintiffs' claims are barred by the applicable statute of limitations and/or the doctrine of
24 laches.
25

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28 ¹ The First Amended Complaint also names ALYSSA MCDERMOTT and WEDGEWOOD INC. as Defendants. However,
at a recent hearing on Defendants' Motion to Dismiss the Amended Complaint, the Court dismissed those parties from this
action entirely and therefore an Answer is not required to be filed by those parties.

- 1 4. Plaintiffs' claims are barred by the statute of frauds.
- 2 5. Defendant was a bona fide purchaser for value of the Property in good faith and without
- 3 notice of any of the alleged defects to the Property.
- 4 6. The damages, if any, allegedly sustained by Plaintiff were caused in whole by other
- 5 parties' acts or omissions.
- 6 7. Defendant incorporates all affirmative defenses as set forth in NRCP 8(c).
- 7 8. Defendant denies each and every allegation not specifically answered.
- 8 9. All possible affirmative defenses may not have been alleged herein insofar as sufficient
- 9 facts were not available after reasonable inquiry upon the filing of Defendant's Answer to the
- 10 Complaint and therefore, Defendants reserves the right to amend its Answer to allege additional
- 11 affirmative defenses if subsequent investigations so warrant.
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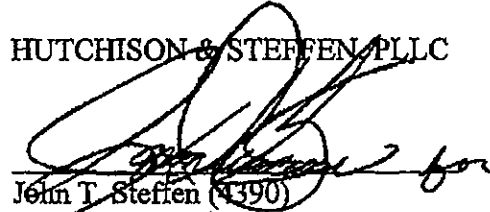
28

1 WHEREFORE, Defendant prays:

- 2 1. That Plaintiff take nothing by way of its Complaint and that the Court deny Plaintiff all
3 of the relief sought therein;
- 4 2. For costs and attorney fees incurred in the defense of this action; and
- 5 3. For any such other and further relief as the Court deems just and proper
- 6

7 DATED this 29th day of May 2019.

8 HUTCHISON & STEFFEN PLLC

9 
10 John T. Steffen (4390)
11 Matthew K. Schriever (10745)
12 10080 West Alta Drive, Suite 200
13 Las Vegas, NV 89145
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
E-mail: caseynelson@wedgewood-inc.com

19 *Attorneys for Defendant*

20

21

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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 **ANSWER TO FIRST AMENDED COMPLAINT** via U.S. Mail to the parties designated below.

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

DATED this 29 day of May 2019.



An Employee of HUTCHISON & STEFFEN

FILED

2019 JUN 12 PM 1:18

TANYA S. JONES
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT

Victoria Toran

1 LEO KRAMER, Pro se
2 AUDREY KRAMER, Pro se
3 2364 REDWOOD ROAD
4 HERCULES, CA 94547
5
6
7 PLAINTIFFS IN PRO PER
8
9

10
11
12 IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
13
14 IN AND FOR THE COUNTY OF LYON
15

16 LEO KRAMER,
17 AUDREY KRAMER,

18 Plaintiffs,

19 vs.

20 NATIONAL DEFAULT SERVICING
21 CORPORATION, ALYSSA MC
22 DERMOTT, WEDGWOOD INC.,
23 BRECKENRIDGE PROPERTY FUND
24 2016 LLC, and DOES 1 THROUGH 50
25 INCLUSIVE,

26 Defendants.
27
28

Case No.: 18-CV-00663

PLAINTIFFS, LEO KRAMER, AND
AUDREY KRAMER'S NOTICE OF
MOTION AND MOTION TO STRIKE
OPPOSITION TO SUMMARY JUDGMENT
FILED BY BRECKENRIDGE PROPERTY
FUND 2016 LLC, ALYSSA MC DERMOTT,
AND WEDGWOOD INC

Date:

Time:

Dept:

TO THE ABOVE-ENTITLED COURT, ALL PARTIES HEREIN, AND THEIR
ATTORNEYS OF RECORD:

1 PLEASE TAKE NOTICE that on _____ at 9:00 am, or as soon

2 thereafter as the matter may be heard, in Department 1 of the above-entitled Court,
3 located at 911 Harvey Way, Yerington, NV 89447, Plaintiffs Leo Kramer and Audrey
4 Kramer, ("Plaintiffs"), will and hereby do move the Court, pursuant to NRCP 12(f)
5 Strike, Mr. John T. Steffen, Attorneys for Breckenridge Property Fund 2016, LLC and
6 Casey J. Nelson, attorney for Alyssa McDermott, and Wedgewood Inc's opposition to
7 motion for summary judgment.
8
9

10 This Motion to Strike is made pursuant to NRCP 12(f) on the grounds that the
11 opposition to motion for summary judgment is Frivolous, Immaterial, Impertinent, and
12 Scandalous.
13

14 This motion will be based on this notice and on the memorandum of points and
15 authorities served and filed herewith, on the declaration of Audrey Kramer, and exhibits
16 attached thereto, on all the papers and records of this action and such other and further
17 oral and/or documentary evidence as may be presented at the hearing on this motion for
18 Summary Judgment.
19
20
21

22 Dated: 6/11/2019

Dated: 6/11/2019

25 Leo Kramer
26 Leo Kramer, Pro per

Audrey Kramer
Audrey Kramer, Pro per

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MEMORANDUM OF POINTS AND AUTHORITIES

I
INTRODUCTION

The Nevada Rules of Civil Procedure require certain minimum thresholds of propriety. For example, Rule 11 creates a requirement in any document submitted to the court. By signing a document and then presenting it to the court, the attorney or party signing it is certifying that they have performed a reasonable inquiry into the matters being represented therein. In the instant case, Mr. John T. Steffen, Attorneys for Breckenridge Property Fund 2016, LLC and Casey J. Nelson, attorney for Alyssa McDermott, and Wedgewood Inc failed to perform a reasonable inquiry into the need to filed an opposition to summary particularly when they were informed that Plaintiffs' motion for summary judgment was rejected by the clerk and has not yet been filed by the Plaintiffs.

Mr. John T. Steffen, Attorneys for Breckenridge Property Fund 2016, LLC and Casey J. Nelson, attorney for Alyssa McDermott, and Wedgewood Inc's, opposition to motion for summary judgment after Plaintiffs informed counsel that their motion for summary was rejected by the clerk and has not been filed was filed in bad faith. It is irrefutable that Defendant's opposition to a Motion for Summary Judgment filed after twenty- one days of notice of the rejection of the motion for summary judgment is unconscionable. After filing its frivolous NRCP 68 Offer of Judgment which, named the Parties that were dismissed from the lawsuit, Defendant, Breckinridge then filed its

1 Opposition to Motion for Summary Judgment that has not yet been filed with the Court.
2 Defendant's conduct of filing opposition to summary judgment that is yet to be filed,
3 after notice that the summary judgment motion has not yet been filed, was done in bad
4 faith and is being presented for improper purpose, and to harass or to cause unnecessary
5 delay or needless increase in the cost of litigation for the Plaintiffs.
6

7 Breckinridge's opposition and everything set forth therein, in the document
8 submitted to the court is not proper under the rules. Opposition motion to motion for
9 summary judgment is only proper when the motion for summary judgment has been
10 lodged and perfected with the Court.
11
12

13 II 14 STATEMENT OF FACT

15 On or about April 14, 2019, Plaintiffs mailed to the court a Motion for Summary
16 Judgment. Enclosed with the motion was the required \$200 filing fee in the form of a
17 cashier check, along with an additional copy of the motion and a self-addressed pre-paid
18 envelope intended for the court to date and time stamp the motion and return to
19 Plaintiffs. **SEE EXHIBIT-A Plaintiffs' self-addressed envelope & UPS Tracking**
20 **and Shipping Label**
21
22

23 Subsequently on April 22 @ 6:14pm, Plaintiffs did receive the envelope back
24 from the court; however, believing the envelope contained only Plaintiffs' copy, as the
25 court had been asked to return to Plaintiffs, Plaintiffs did not immediately open the
26 envelope upon its arrival. Unbeknownst to Plaintiffs for a couple of weeks was that the
27
28

1 court had rejected and returned Plaintiffs' motion and check and thus did not record the
2 motion with the court. The reason the court rejected the motion was because Plaintiffs
3 had inadvertently missed their signatures on page 3 of the motion. By the time
4 Plaintiffs realized the motion had been rejected, it was just (2) two days before a
5 scheduled hearing on May 1, 2019, to discuss both Defendants' Motions To Dismiss
6 Plaintiffs' First Amended Complaint. Plaintiffs decided it was more prudent to not
7 resubmit their Motion for Summary Judgment until the court ruled on Defendant's
8 Motions to Dismiss had been ruled on.

11 On May 1, 2019, the honorable court recognized (2) two Causes of Action
12 in favor of Plaintiffs, and granted Plaintiffs the right to proceed with their suit based on
13 the following Cause of Actions: **UNLAWFUL FORECLOSURE AND**
14 **DECLARATORY RELIEF**

17 On May 2, 2019, one day after the hearing of May 1, 2019, Plaintiffs were
18 completely unaware that NDSC filed their Opposition to the Motion for Summary
19 Judgment, which had been rejected by the court.

21 On Saturday, May 4, 2019, Plaintiffs received Defendant, NDSC's Opposition
22 and on Monday, May 6th at 7:51am, notified via email that Plaintiffs' motion for
23 Summary Judgment was not on recordation with the court and asked Defendant to
24 please withdraw their opposition so as not to confuse the court. Plaintiff explained in a
25 subsequent email to Defendant, NDSC, that the court had rejected Plaintiffs' motion due
26 to missing signatures and that this was in no way intentional or nefarious on the part of
27
28

1 Plaintiffs; however, Defendants have been unwilling to withdraw their Opposition.

2 **SEE EXHIBIT-B Plaintiffs' E-mail Thread With Ace Van Patten/NDSC.**

3 Additionally, on Monday, May 6, @ 8am, Plaintiffs notified in a separate email
4 sent to Defendants, Breckenridge, et al, of the same matter as mentioned above.

5
6 However, despite the fact that Defendant, Breckenridge was notified that Plaintiffs'
7 motion for Summary Judgment was not on recordation with the court, (18) eighteen
8 days later, Breckenridge did then frivolously file their Opposition to Summary
9 Judgment on May 21, 2019.

10 **SEE EXHIBIT-C Plaintiffs' E-mail Thread With**
11 **Matthew Schriever/BRECKENRIDGE.**

12
13 Plaintiffs understand the court judicial system operates on defined dates and
14 deadlines, and further understands the parties on both sides rely on the court docket in
15 order to respond in a timely manner.

16
17 Plaintiffs wish to bring to the court's attention again that they have had on several
18 occasions difficulty with regard to Defendants mailing to Plaintiffs in a timely manner.
19 Additionally, Plaintiffs have experienced inaccurate information by way of the court
20 docket.
21

22 On May 22, 2019, Plaintiffs contacted the court to inquire if any further
23 documents had been filed with the court by either of the Defendants and the court said
24 "NO". Plaintiffs requested a copy of the Court Docket dated (May 22, 2019) and
25 confirmed the docket did not reflect anything new. Plaintiffs contacted the court again
26 on May 23rd. and asked for an updated court docket and the docket dated (5/23/19) then
27
28

1 did reflect Breckenridge's filing of Opposition to Summary Judgment, with a
2 recordation date of (5/21/19). Plaintiffs would like to make the court aware that when
3 the court was contacted on 5/22/19, and asked if defendants had filed anything new and
4 were told no, that on the following day 5/23/19, the court docket reflected that
5 Defendants' Opposition had been recorded on 5/21/19, but was not reflected on the
6 court docket of 5/22/19? **SEE EXHIBIT-D Court Dockets Dated 5/22/19 & 5/23/19**

7
8
9 The court docket noted Breckenridge's Opposition to Summary Judgment was
10 recorded with the court on May 21, 2019, however, it was not sent to Plaintiffs on the
11 same day. The date on the proof of service of 5/21/19 was actually X'd out and the
12 (23rd) was hand written below with no initials and sent to Plaintiffs (2) two days later.

13
14 **SEE EXHIBIT-E BRECKENRIDGE'S Proof of Service, Page (10)-Last Page Of**
15 **Opposition**

16
17 Breckenridge, however, **DID NOT** file their 'Answer' to Plaintiffs' 'First
18 Amended Complaint', which the court ordered at the conclusion of the hearing on May
19 1, 2019, that Defendants' Answers to Plaintiffs' First Amended Complaint were due
20 within (20) twenty days from the date of the hearing, which would be May 21, 2019.

21
22 **SEE EXHIBIT-D Court Dockets Dated 5/22/19 & 5/23/19.**

23
24 Accordingly, Mr. John T. Steffen, Attorneys for Breckenridge Property Fund
25 2016, LLC and Casey J. Nelson, attorney for Alyssa McDermott, and Wedgewood Inc's
26 opposition to motion for summary judgment should be stricken because Mr. John T.
27 Steffen, Attorneys for Breckenridge Property Fund 2016, LLC and Casey J. Nelson,
28

1 attorney for Alyssa McDermott, and Wedgewood Inc failed to perform a reasonable
2 inquiry into the need to filed an opposition to summary particularly when they were
3 informed that Plaintiffs' motion for summary judgment was rejected by the clerk and
4 has not yet been filed by the Plaintiffs.
5

6 7 II 8 ARGUMENT

9 A. THE OPPOSITION TO MOTION FOR SUMMARY JUDGMENT SHOULD BE
10 STRICKEN BECAUSE MR. JOHN T. STEFFEN, ATTORNEYS FOR
11 BRECKENRIDGE PROPERTY FUND 2016, LLC AND CASEY J. NELSON,
12 ATTORNEY FOR ALYSSA MCDERMOTT, AND WEDGEWOOD INC'S
13 OPPOSITION TO MOTION FOR SUMMARY JUDGMENT WAS FILED IN
14 BAD FAITH AND FOR IMPROPER PURPOSE, SUCH AS TO HARASS OR
15 TO CAUSE UNNECESSARY DELAY OR NEEDLESS INCREASE IN THE
16 COST OF LITIGATION

- 17 1. The opposition to motion for summary judgment is frivolous and must me
18 stricken

19 Motion to Strike is governed by Nevada Rules of Civil Procedure Rule 12(f).

20 "The disfavored character of Rule 12(f) is relaxed somewhat in the context of
21 scandalous allegations and matter of this type often will be stricken from the pleadings
22 in order to purge the court's files and protect the subject of the allegations." Wright and
23

24 A. Miller, *Federal Practice and Procedure (Civil)* 2d § 1382, at 714 (1990).

25 "Scandalous" matter "improperly casts a derogatory light on someone, most typically on
26 a party to the action." *Armed Forces Bank. N.A. v. FSG-4, LLC*, 2011 U.S. Dist. LEXIS
27 130636, 9-10 (D. Nev. 2011). A bad faith filing of opposition to motion for summary
28 after twenty one days since Defendants and their Attorneys were informed that the

1 underline motion for Summary Judgment was rejected by the Clerk and yet to be filed
2 runs afoul N.R.C.P. 11.

3
4 **A. N.R.C.P. 11**

5 The Nevada Rules of Civil Procedure require certain minimum thresholds of
6 propriety. Rule 11 creates a requirement in any document submitted to the court. By
7 signing a document and then presenting it to the court, the attorney or party signing it is
8 certifying that they have performed a reasonable inquiry into the matters being
9 represented therein, and that to the best of their knowledge, all of the following is true
10 regarding the submittal:
11

- 12
13
14 1. it is not being presented for any improper purpose, such as to harass or to
15 cause unnecessary delay or needless increase in the cost of litigation;
16 2. the claims, defenses, and other legal contentions therein are warranted by
17 existing law or by a nonfrivolous argument for the extension,
18 modification, or reversal of existing law or the establishment of new law;
19 3. the allegations and other factual contentions have evidentiary support or,
20 if specifically so identified, are likely to have evidentiary support after a
21 reasonable opportunity for further investigation or discovery; and
22 4. the denials of factual contentions are warranted on the evidence or, if
23 specifically so identified, are reasonably based on a lack of information or
24 belief.

25 Rule 11 provides a person signing pleading certifies that he has read the paper,
26 that, to the best of his knowledge, information, or belief formed after reasonable inquiry,
27 paper is well grounded in fact, and that paper is not interposed for any improper
28 purpose. Rules Civ.Proc., Rule 11. Ford Motor Credit Co. v. Crawford, 1993, 855 P.2d
1024, 109 Nev. 616. Here, Alyssa McDermott, and Wedgewood Inc's opposition to
motion for summary judgment after they were dismissed from the case and after they

1 were informed by Plaintiffs that Plaintiff's Motion for summary judgment was rejected
2 by the Clerk, as such not yet filed, is unconscionable and was filed for improper
3 purpose, such as to harass or to cause unnecessary delay or needless increase in the cost
4 of litigation without just cause.
5

6 Additionally, Breckenridge Property Fund 2016, LLC's opposition to motion for
7 summary judgment after Defendant was informed by Plaintiffs that Plaintiff's Motion
8 for summary judgment was rejected by the Clerk, as such, not yet filed, is
9 unconscionable and was filed for improper purpose, such as to harass or to cause
10 unnecessary delay or needless increase in the cost of litigation without just cause
11 whatsoever. Nevada Courts have held that, sanctions will be imposed for filing
12 "frivolous claim," which is one that is both baseless and made without reasonably
13 competent inquiry. Please see for example, Bergmann v. Boyce, 1993, 856 P.2d 560,
14 109 Nev. 670. See also, Rules Civ.Proc., Rule 11; N.R.S. 18.010, subd. 2(b).
15
16
17

18 For purposes of determining whether sanction should be imposed on frivolous
19 action, court considers whether pleading is well grounded in fact and is warranted by
20 existing law or good-faith argument for extension, modification, or reversal of existing
21 law and whether attorney made reasonable and competent inquiry. Rules Civ.Proc.,
22 Rules 11, 12(b)(5); N.R.S. 18.010, subd. 2(b). Bergmann v. Boyce, 1993, 856 P.2d 560,
23 109 Nev. 670. In the instant case, Mr. John T. Steffen, Attorneys for Breckenridge
24 Property Fund 2016, LLC and Casey J. Nelson, attorney for Alyssa McDermott, and
25 Wedgewood Inc failed to make reasonable and competent inquiry as to whether
26
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1 Plaintiffs' Motion was lodged with the court particularly after Plaintiffs informed Mr.
2 John T. Steffen, Attorneys for Breckenridge Property Fund 2016, LLC and Casey J.
3 Nelson, attorney for Alyssa McDermott, and Wedgewood Inc that Plaintiffs' Motion for
4 Summary Judgment was rejected by the Clerk. Accordingly, the opposition to motion
5 for summary judgment should be stricken in its entirety.
6
7
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9 B. THE COURT SHOULD STRIKE THE OPPOSITION TO MOTION FOR
10 SUMMARY JUDGMENT BECAUSE THE OPPOSITION TO MOTION
11 FOR SUMMARY JUDGMENT IS IMMATERIAL, IMPERTINENT, AND
12 SCANDALOUS UNDER NRCP RULE 12(F)

13 A Motion to Strike pursuant to NRCP 12(f) states as follows:

14 Upon motion made by any party before responding to a pleading or, if no
15 responsive pleading is permitted by these rules, upon motion made by a party
16 within 20 days after the service of the pleading upon the party or upon the court's
17 own initiative at any time, the court may order stricken from any pleading any
18 insufficient defense or any redundant, immaterial, impertinent, or scandalous
19 matter.

20 Motion to Strike is governed by Nevada Rules of Civil Procedure Rule 12(f).

21 "The disfavored character of Rule 12(f) is relaxed somewhat in the context of
22 scandalous allegations and matter of this type often will be stricken from the pleadings
23 in order to purge the court's files and protect the subject of the allegations." 5A C.

24 Wright and A. Miller, *Federal Practice and Procedure (Civil)* 2d § 1382, at 714 (1990).

25 "Scandalous" matter "improperly casts a derogatory light on someone, most typically on
26 a party to the action." *Armed Forces Bank. N.A. v. FSG-4, LLC*, 2011 U.S. Dist. LEXIS
27 130636, 9-10 (D. Nev. 2011).
28

1 Rule 12(f) also provides that pleadings that are "immaterial" or "impertinent" may
2 be struck by a court. An "immaterial" matter is "that which has no essential or important
3 relationship to the claim for relief or the defenses being pleaded." *Fantasy, Inc.*, 984
4 F.2d at 1527 (quoting Wright & Miller, § 1382). "Impertinent" matters are those "that
5 do not pertain, and are not necessary, to the issues in question." *Id.* Such pleadings are
6 legally insufficient because they clearly lack merit "under any set of facts the defendant
7 might allege." *Polk v. Legal Recovery Law Offices*, 291 F.R.D. 485, 489 (S.D. Cal.
8 2013) (citation and quotation marks omitted). Here, not only was Defendant informed
9 that Plaintiffs' motion for summary judgment was rejected by the clerk and as such not
10 filed, Defendant and its Attorneys proceeded to file an opposition to summary twenty
11 days after Defendant was given notice of non-filing of the motion for summary
12 judgment.

13 Motion to Strike is governed by Nevada Rules of Civil Procedure Rule 12(f).
14 "The disfavored character of Rule 12(f) is relaxed somewhat in the context of
15 scandalous allegations and matter of this type often will be stricken from the pleadings
16 in order to purge the court's files and protect the subject of the allegations." 5A C.
17 Wright and A. Miller, *Federal Practice and Procedure (Civil)* 2d § 1382, at 714 (1990).
18 "Scandalous" matter "improperly casts a derogatory light on someone, most typically on
19 a party to the action." *Armed Forces Bank. N.A. v. FSG-4, LLC*, 2011 U.S. Dist. LEXIS
20 130636, 9-10 (D. Nev. 2011). Here, Plaintiffs respectfully request that, the frivolous
21 opposition to summary judgment by Mr. John T. Steffen, Attorneys for Breckenridge
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1 Property Fund 2016, LLC and Casey J. Nelson, attorney for Alyssa McDermott, and
2 Wedgewood Inc be stricken in its entirety. Rule 12(f) also provides that pleadings that
3 are "immaterial" or "impertinent" may be struck by a court. An "immaterial" matter is
4
5 "that which has no essential or important relationship to the claim for relief or the
6 defenses being pleaded." *Fantasy, Inc.*, 984 F.2d at 1527 (quoting Wright & Miller, §
7 1382). "Impertinent" matters are those "that do not pertain, and are not necessary, to the
8
9 issues in question." *Id.* Such pleadings are legally insufficient because they clearly lack
10 merit "under any set of facts the defendant might allege." *Polk v. Legal Recovery Law*
11 *Offices*, 291 F.R.D. 485, 489 (S.D. Cal. 2013) (citation and quotation marks omitted).
12

13
14 III
15 CONCLUSION

16 For the foregoing reasons, Plaintiffs respectfully request this Honorable Court
17
18 strike the frivolous opposition to summary judgment by Mr. John T. Steffen, Attorneys
19 for Breckenridge Property Fund 2016, LLC and Casey J. Nelson, attorney for Alyssa
20 McDermott, and Wedgewood Inc in its entirety.
21

22
23 Respectfully Submitted,

24 Date: 6/11/2019

Date: 6/11/2019

25
26
27 Leo Kramer
28 Leo Kramer, Pro se

Audrey Kramer
Audrey Kramer, Pro se

PROOF OF SERVICE

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

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



I am employed in the County of Contra Costa, State of California. I am 1 over the age of 18 and not a party to the within action; my business address is _____
On June 11, 2019, I served the foregoing document entitled:

PLAINTIFFS, LEO KRAMER, AND AUDREY KRAMER'S NOTICE OF MOTION AND MOTION TO STRIKE OPPOSITION TO SUMMARY JUDGMENT FILED BY BRECKENRIDGE PROPERTY FUND 2016 LLC, ALYSSA MC DERMOTT, AND WEDGWOOD INC

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 June 11, 2019, at Hercules, California.

Corina DiGrazia

Name of Declarant

Signature of Declarant

SERVICE LIST:

Matthew K. Schriever
John T. Steffen
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,
BRECKENRIDGE PROPERTY FUND 2016 LLC

Ace Van Patten
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— Plaintiffs' Self-Addressed Envelope &
UPS Tracking And Shipping Label**

**B— Plaintiffs' E-mail Thread With Ace Van
Patten/NDSC**

**C— Plaintiffs' E-mail Thread With Matthew
Schriever/BRECKENRIDGE**

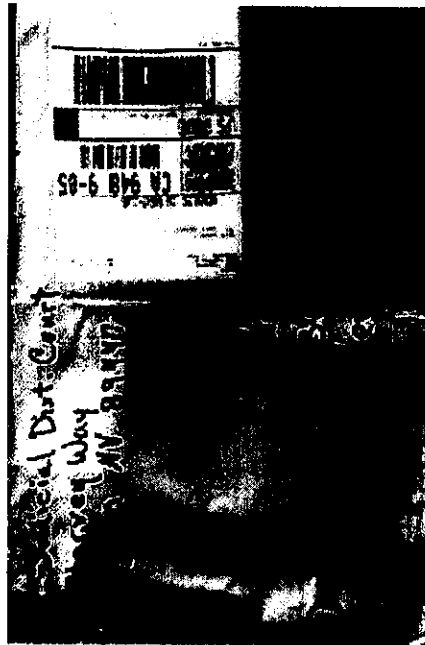
D— Court Dockets Dated 5/22/19 & 5/23/19

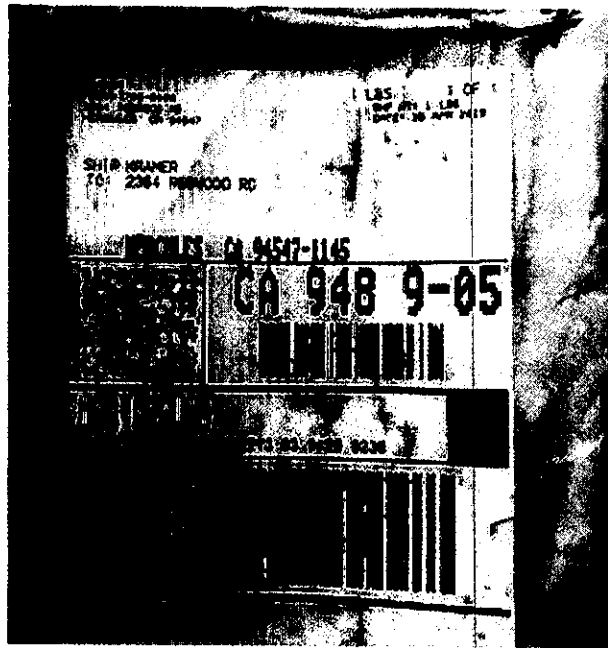
**E— BRECKENRIDGE'S Proof Of Service,
Page (10)-Last Page Of Opposition**

A

**Plaintiffs' Self-Addressed Envelope &
UPS Tracking And Shipping Label**

A







Your Tracking Information

[English \(US\)](#)

Status: DELIVERED
Delivered To: HERCULES, CA US
Delivery Date: Mon 22 Apr 2019
Delivery Location: Porch
Signed By: DRIVER RELEASE
Carrier: UPS
Service: Ground Residential
UPS Tracking Number: 1ZA832V30394296230

Scan History:

Mon 22 Apr 2019	6:14 PM	Delivered HERCULES CA US
	8:49 AM	Out For Delivery Today San Pablo CA US
Sat 20 Apr 2019	9:11 AM	Destination Scan San Pablo CA US
	6:19 AM	Destination Scan San Pablo CA US
	5:23 AM	Arrival Scan San Pablo CA US
	4:05 AM	Departure Scan West Sacramento CA US
	12:56 AM	Arrival Scan West Sacramento CA US
Fri 19 Apr 2019	10:12 PM	Departure Scan Sparks NV US
	8:13 PM	Origin Scan Sparks NV US
	1:49 PM	Pickup Scan Sparks NV US
Mon 15 Apr 2019	5:22 PM	Order Processed: Ready for UPS US

NOTE: The times listed in the scan details are local time.

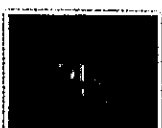
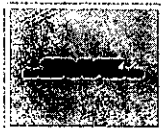
Done

Track Another Package

Carrier Tracking Number / iShip ID:

Submit

Tracking provided for



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Your parcel will soon be on its way

From: iShip_Services@iship.com (iShip_Services@iship.com)

To: AUDREYKRAMER55@YAHOO.COM

Date: Monday, April 15, 2019, 4:10 PM PDT

Your parcel is ready to go

[Join our email program to receive exclusive offers and resources](#)



Your parcel is ready to go

Just to let you know, we've processed a parcel shipping to **KRAMER**.

It's currently at **Mail Boxes Etc. #2796** and will be picked up by **UPS** on **Monday, April 15, 2019**.

You can expect it to arrive on **Tuesday, April 16, 2019 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...

KRAMER

--

(Recipient's street address omitted intentionally from this email)

HERCULES, CA 94547-1145 US

Who is carrying it...

Mail Boxes Etc. #2796
(510) 245-7060

Carrier details...

UPS Ground

Tracking details...

Tracking No.:

1ZA832V30394296230

Shipment ID:

MMREPGCSCTAAF

Ship Ref 1:

Ship Ref 2:

Shipping date...

Monday, April 15, 2019

Expected delivery date...

Tuesday, April 16, 2019 End of Day

B

Plaintiffs' E-mail Thread With Ace Van Patten/NDSC

B

Re: CASE # 18-CV-00663--OPPOSITION TO SUMMARY JUDGMENT3

Yahoo/Sent

Audrey Kramer <audreykramer55@yahoo.com>

To:AVP@tblaw.com

May 6 at 7:51 AM

Mr. Van Patten,

We received on 5/4/2019, your 4/29/2019 OPPOSITION to our MOTION FOR SUMMARY JUDGMENT.

Please be advised our MOTION FOR SUMMARY JUDGMENT is not in recordation with the court at this time.

Please withdraw your opposition.

Thank You.

Sincerely,

Leo and Audrey Kramer

510-708-9100

Sent from my iPad

• Ace Van Patten <AVP@tblaw.com>

To:Audrey Kramer

Cc:Natasha Petty

May 6 at 1:51 PM

Ms. Kramer,

We responded to the Motion for Summary Judgment as we were provided blue ink copies of the Motion, the supporting declaration and the Proof of Service for the same. There was no cover letter or any explanation at the time or any time thereafter that the Motion was not being or had not been filed, and was the process you have used for providing our office with notice on other matters in this case. My client incurred attorneys fees and costs in the amount of \$1849.25 in opposing the Motion, which you indicate now was not submitted to the Court. Our office

will withdraw the Opposition upon receipt of the attorneys fees and costs incurred. Unless you are willing to voluntarily pay those amounts, our office will likely file a Motion seeking those attorneys fees and costs and will ask for the additional amounts incurred in the preparation and filing of that action. As such, can you please confirm how you would like to proceed with regard to the attorneys fees and costs incurred in responding to your Motion for Summary Judgment?

Sincerely,

Ace C. Van Patten, Esq. | Associate Attorney* | 702.916.1686

10100 W. Charleston Blvd., Ste. 220 | Las Vegas | Nevada | 89135

P 702.258.8200 | F 702.258.8787

avp@tblaw.com | [Website](#)

Offices: Arizona | California | Nevada | New Mexico

** Licensed in Nevada and Idaho*

CONFIDENTIALITY NOTICE: The information contained in this message may be protected by the attorney-client privilege.

If you believe that it has been sent to you in error, do not read it. Please immediately reply to the sender that you have

received the message in error, then delete it. Thank you.

Audrey Kramer <audreykramer55@yahoo.com>

To: Ace Van Patten

Cc: Natasha Petty

May 7 at 2:43 PM

Mr. Van Patten,

In reply to your email of yesterday, 5/6/2019, we mailed in good faith our Motion for Summary Judgment to the court on the exact same day in which it was mailed to you and the other

defendants; however, we apparently inadvertently missed signing our signatures on page 3 of the motion, thus the court returned our motion to us. In no way was this intentional or nefarious on our part.

As far as owing any monies to your client, the Hon. Judge Schlegelmilch made it quite clear at the recent May 1st hearing that we are in fact the injured parties as a result of the unlawful foreclosure & sale of our property which was perpetrated by NSDC.

It is we who have suffered an unfair monetary loss in having to pay thousands of dollars to defend the unlawful foreclosure and the unlawful sale of our property in the US Dist. Court of Reno, NV, the 9th Circuit Court of Appeals, the Canal Township Justice Court-Fernley, NV and in The 3rd. Judicial Dist. Court-Yerrington, NV. Additionally, we have suffered embarrassment and loss of rental income when our tenants were forced to leave as a result of the unlawful foreclosure and sale of our property. Please be advised we intend to recover all of the losses in which we have sustained.

With regard to the withdrawing of your opposition, you certainly are welcome to leave it on file with the court and apply it in the future should we later choose to move forward with a Motion for Summary Judgment.

Respectfully,
Leo and Audrey Kramer
510-708-9100 Cell

C

**Plaintiffs' E-mail Thread With Matthew
Schriever/BRECKENRIDGE**

C

RE: CASE # 18-CV-00663--PLAINTIFF'S OPPOSITION FOR SUMMARY
JUDGMENT2
Yahoo/Inbox

•
Audrey Kramer <audreykramer55@yahoo.com>
To:mschriever@hutchlegal.com
May 6 at 8:09 AM
Mr. Schriever,

Please be advised our **MOTION FOR SUMMARY JUDGMENT** is not in
recordation with the court at this time.

On May 1, 2019, Mr. Ching appeared in court representing your firm in the above
mention case. We are uncertain as to who from your firm is now representing
your client. If it is Mr. Ching, we do not know his contact info. and respectfully
ask that you please share this email correspondence with him.

Thank you in advance for your cooperation.

Sincerely,

Leo and Audrey Kramer

510-708-9100

Sent from my iPad

Matthew K. Schriever <mschriever@hutchlegal.com>

To:Audrey Kramer

May 6 at 3:37 PM

Mr. Ching is an attorney in our Reno office and will likely make future court
appearances in this case. However, I will continue to handle the day to day aspects
of this case and you should send all correspondence, pleadings, notices, etc. to my
attention.

Matthew K. Schriever
Attorney



HUTCHISON & STEFFEN, PLLC
(702) 385-2500
hutchlegal.com

Notice of Confidentiality: The information transmitted is intended only for the person or entity to whom it is addressed and may contain confidential and/or privileged material. Any review, retransmission, dissemination or other use of, or taking any action in reliance upon, this information by anyone other than the intended recipient is not authorized.

D

Court Dockets Dated 5/22/19 & 5/23/19

D

Case Summary

NATIONAL DEFAULT SERVICING CORPORATION, LEO KRAMER, AUDREY KRAMER, ALYSSA MC DERMOTT, WEDGWOOD INC., BRECKENRIDGE PROPERTY FUND 2016 LLC ~ COMPLAINT

Case Number: 18-CV-00663

Type: Other Title to Property Case

Status: Reopened

Received Date: 6/8/2018

Status Date: 10/29/2018

Agency: Third Judicial District Court

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

KRAMER, LEO Plaintiff

Disposition: Motion to Dismiss by Defendant Dispo Date: 10/24/2018

Lead/Active: True

2. NRCP 3 ~ COMPLAINT

KRAMER, AUDREY Plaintiff

Disposition: Motion to Dismiss by Defendant Dispo Date: 10/24/2018

Lead/Active: False

3. NRCP 5 ~ ANSWER

NATIONAL DEFAULT SERVICING CORPORATION Defendant

Disposition: Motion to Dismiss by Defendant Dispo Date: 10/24/2018

Lead/Active: False

4. NRCP 5 ~ ANSWER

MC DERMOTT, ALYSSA Defendant

Disposition: Motion to Dismiss by Defendant Dispo Date: 10/24/2018

Lead/Active: False

5. NRCP 5 ~ ANSWER

WEDGWOOD INC. Defendant

Disposition: Motion to Dismiss by Defendant Dispo Date: 10/24/2018

Lead/Active: False

6. NRCP 5 ~ ANSWER

BRECKENRIDGE PROPERTY FUND 2016 LLC Defendant

Disposition: Motion to Dismiss by Defendant Dispo Date: 10/24/2018

Lead/Active: False

Case Summary

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6/8/2018 12:31:00 PM | Open
10/24/2018 | Closed
10/29/2018 | Reopened

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6/8/2018 Complaint .pdf - Filed
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Notes: Filed and Served on August 2, 2018
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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
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5/17/2019 Answer to First Amended Complaint - Natt'l Default.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

Case Summary

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, Plaintiffs 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.

5/1/2019 10:30:00 AM | Motion Hearing | DEPT I 18-CV-00663 | Court Room B

Thomas, Kathy Dep. Clerk - KTHOMAS

Staff - STAFF

Court Room B - CourtRmB

lawclerk1 - LAW1

CHING, KEITH S.K.

GEURTS, PATRICK JAMES J.

VanPatten, Ace C

obo NDSC w/Tiffany & Bosco

Schlegelmilch, John P. - JPS (Dept I - TJDC)

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Court Found McDermott and Wedgwood are not owners in the property. Motion to Dismiss as to McDermott and Wedgwood is granted. Breckenridge will remain as a party in the case. Court dismissed the quiet title action, does not fit the proper requirements. Cause of Action 2 & 3 in the complaint is Dismissed. Cause of action 1 & 4 does exist, case will go forward on those 2 causes. In regards to the Discovery motion, court found the early case conference does not take place until after first answer is filed. Defendant to file answer within 20 days of today's date. Parties are to co-operate with the rules of 16.1 which also applies to parties in proper person. The opposition to the early case conference is granted. Mr. Ching to prepare Order and email within 10 days to the court and other parties. Parties have 5 days after the receipt to file any objection to the order.

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NATIONAL DEFAULT SERVICING CORPORATION, LEO KRAMER, AUDREY KRAMER, ALYSSA MC DERMOTT, WEDGWOOD INC., BRECKENRIDGE PROPERTY FUND 2016 LLC ~ COMPLAINT

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KRAMER, AUDREY Plaintiff

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MC DERMOTT, ALYSSA Defendant

WEDGWOOD INC. Defendant

BRECKENRIDGE PROPERTY FUND 2016 LLC Defendant

Other Involvements

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Soderstrom, Kevin S. Esq. Defendant's Attorney

KRAMER, LEO Pro Per

KRAMER, AUDREY Pro Per

Third Judicial District Court (18-CV-00663)

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Disposition: Motion to Dismiss by Defendant Dispo Date: 10/24/2018

Lead/Active: False

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AANDERSEN
Staff - STAFF
Court Room B - CourtRmB

Case Summary

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.

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Staff - STAFF

Court Room B - CourtRmB

lawclerk1 - LAW1

CHING, KEITH S.K.

GEURTS, PATRICK JAMES J.

VanPatten, Ace C

obo NDSC w/Tiffany & Bosco

Schlegelmilch, John P. - JPS (Dept I - TJDC)

Notes: Plaintiff's appeared in Proper Person. Mr. Ching appeared on behalf of McDermott, Wedgewood, Inc., and Breckenridge Property. Mr. Van Patten, appearing on behalf of NDSC. Counsel argued the motions.

Court Found McDermott and Wedgwood are not owners in the property. Motion to Dismiss as to McDermott and Wedgwood is granted. Breckenridge will remain as a party in the case. Court dismissed the quiet title action, does not fit the proper requirements. Cause of Action 2 & 3 in the complaint is Dismissed. Cause of action 1 & 4 does exist, case will go forward on those 2 causes. In regards to the Discovery motion, court found the early case conference does not take place until after first answer is filed. Defendant to file answer within 20 days of today's date. Parties are to co-operate with the rules of 16.1 which also applies to parties in proper person. The opposition to the early case conference is granted. Mr. Ching to prepare Order and email within 10 days to the court and other parties. Parties have 5 days after the receipt to file any objection to the order.

E

**BRECKENRIDGE'S Proof of Service,
Page (10)-Last Page Of Opposition**

E

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 **OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT** 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 ~~21~~ day of May 2019.

23rd
Fed-Ex Overnight
so sorry!


An Employee of HUTCHISON & STEFFEN

FILED

2019 MAY 21 PM 3:24

TANYA SEEIGNE
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT
ANDREA ANDERSEN
MAY 21

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

**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

1 authorities, all facts judicially noticed, and any oral argument that the Court may entertain at a hearing
2 on this matter.

3 **POINTS AND AUTHORITIES**

4 **I. STATEMENT OF FACTS.**

5 This case pertains to the foreclosure of real property commonly known as 1740 Autumn Glen
6 Street, Fernley, NV 89408 ("Subject Property") that took place on or about May 18, 2018 wherein
7 Breckenridge purchased the Subject Property. The Plaintiffs filed their original complaint on June 8,
8 2018. In that complaint, the Plaintiffs asserted claims for relief against the Wedgewood Defendants as
9 follows: (1) Unlawful Foreclosure, (2) Quiet Title, (3) Preliminary Injunction, (4) Slander of Title, (5)
10 Constructive Fraud, and (6) Declaratory Relief.¹

11
12 On October 24, 2018, this Court dismissed the original complaint but granted leave for the
13 Plaintiffs to amend it in regard to procedural allegations pertaining to the notice of foreclosure.²

14
15 On October 29, 2018, Plaintiffs filed their first amended complaint and asserted causes of action
16 against the Wedgewood Defendants of Quiet Title and Declaratory Relief.³ The remaining causes of
17 action in the first amended complaint – for Unlawful Foreclosure; Slander of Title; and Cancellation of
18 Substitution of Trustee, Notice of Default, Notice of Trustee's Sale, and Trustee's Deed Upon Sale – are
19 clearly delineated as being alleged only against NDSC.⁴ These additional allegations contained in the
20 first amended complaint regarding the procedural allegations of the foreclosure were each alleged to have
21 been done by other entities. The Plaintiffs do not allege in their first amended complaint that any of these
22 procedural allegations pertaining to the notice of foreclosure were done by the Wedgewood Defendants.
23
24
25
26

27 ¹ See Complaint filed June 8, 2018.

28 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 Because the Plaintiffs failed to make any new allegations against the Wedgewood Defendants,
2 the Wedgewood Defendants filed a motion to dismiss the first amended complaint on November 19,
3 2018. The hearing on that motion recently took place on May 1, 2019. As a result of that hearing, the
4 only cause of action remaining against the Wedgewood Defendants is the Declaratory Relief cause of
5 action against Breckenridge. Furthermore, the Court ordered that an answer must be filed within twenty
6 (20) days from the hearing. Accordingly, this motion for summary judgment is premature.

8 The arguments and allegations contained in the Plaintiff's motion for summary judgment all
9 allegedly occurred prior to the foreclosure sale. The Wedgewood Defendants had no role in this dispute
10 prior to the foreclosure. Their first involvement in the matter was when Breckenridge purchased the
11 Subject Property at the foreclosure sale. Wedgewood is Breckenridge's manager. McDermott is an
12 employee of Wedgewood that was assigned as the project manager for the Subject Property once
13 Breckenridge purchased the Subject Property at foreclosure. Breckenridge, Wedgewood, and
14 McDermott's sole relationship to this case is a result of Breckenridge's purchase of the Subject Property
15 at the foreclosure sale — they were not lenders, noteholders, or beneficiaries of Plaintiffs' loan obligations.
16 Furthermore, Wedgewood and McDermott do not claim an ownership or title interest to the Subject
17 Property.
18

19
20 Plaintiffs' request for summary judgment should be denied because the undisputed facts establish,
21 as a matter of law, that the Plaintiffs have no viable claims against the Wedgewood Defendants. Plaintiffs
22 motion for summary judgment does not even address the only causes of action brought against the
23 Wedgewood Defendants — Quiet Title and Declaratory Relief.
24

25 II. STANDARD OF REVIEW.

26 NRCP 56(a) states:

27 A party may move for summary judgment, identifying each claim or defense —
28 or the part of each claim or defense — on which summary judgment is sought. The

1 court shall grant summary judgment if the movant shows that there is no genuine
2 dispute as to any material fact and the movant is entitled to judgment as a matter
3 of law. The court should state on the record the reasons for granting or denying
4 the motion.

5 In granting summary judgment, this Court must take great care. *Johnson v. Steel, Inc.*, 100 Nev.
6 181, 182 (1984). Trial judges are to exercise great caution in granting summary judgment, which is not
7 to be granted if there is the slightest doubt as to the operative facts. *Posadas v. City of Reno*, 109 Nev.
8 448, 451 (1993). The court must view the evidence in the light most favorable to the nonmoving party
9 and determine whether there are genuine issues of material fact. In so doing, the nonmoving party is
10 entitled to have the evidence and all inferences therefrom accepted as true. *Johnson*, 100 Nev. at 182.
11 Summary judgment may not be used as a shortcut to the resolving of disputes upon facts material to the
12 determination of the legal rights of the parties. *Parman v. Petricciani*, 70 Nev. 427 (1954).

13 Under NRCP 56(a), a party moving for summary judgment must establish that "there is no
14 genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law."

15 The Nevada Supreme Court has stated, "[A] party seeking summary judgment always bears the
16 initial responsibility of informing the district court of the basis for its motion." *Maine v. Stewart*, 109
17 Nev. 721, 727 (1993); *Clauson v. Lloyd*, 103 Nev. 432, 435 n.3 (1987) (quoting *Celotex Corp. v. Catrett*,
18 477 U.S. 317, 91 L. Ed. 2d 265, 106 S. Ct. 2548 (1986)).

19 The moving party has the burden of establishing the non-existence of genuine issues of material
20 fact. *Dennison v. Allen Group Leasing Corp.*, 110 Nev. 181 (1994); *Bird v. Casa Royale West*, 97 Nev.
21 67, 70-71 (1981); *Garvey v. Clark County*, 91 Nev. 127, 130 (1975). Moreover, when it comes to issues
22 of fact, the Court must construct all pleadings and other proof "in a light most favorable to the nonmoving
23 party." *Wood v. Safeway, Inc.*, 121 Nev. 724, 729 (2005).

24 Even a slight factual dispute is sufficient to make the granting of summary judgment improper.
25
26 *Sims v. General Telephone & Electronics*, 107 Nev. 516 (1991) (wherein an inference was sufficient to
27
28

1 constitute a factual dispute on causation). Based on the arguments set forth herein, Plaintiff has failed to
2 meet its burden of persuasion by showing there are no genuine issues of material fact. As such, this Court
3 should deny Plaintiffs' motion for summary judgment.

4 **III. LEGAL ARGUMENT.**

5 The Plaintiffs' motion for summary judgment only addresses the Wedgewood Defendants in two
6 instances -- both of which occur in the "Statement Of Undisputed Facts" section. First, the Plaintiffs
7 state:
8

9 NDSC, Breckenridge Property Fund 2016 LLC and its privies all lacked legal
10 standing to cause the non-judicial foreclosure of Defendants' [sic] real property
11 and retirement home.⁵

12 The second and final reference to the Wedgewood Defendants states:

13 Alyssa McDermott, Wedgwood Inc., or Breckenridge Property Fund 2016 LLC
14 were aware of the disputes regarding Plaintiffs real property and participated in
15 the wrongful and unlawful foreclosure process. As such, the alleged sale of
16 Plaintiff's real property was unlawful and void ab initio and the purported sale of
17 Plaintiff's real property has no enforceable legal status and any legal document
18 that is taken to have conveyed or assigned any interest in Plaintiffs' real property
19 to Defendants, Alyssa McDermott, Wedgwood Inc., or Breckenridge Property
20 Fund 2016 LLC is void on its face.⁶

21 The motion does not even address the causes of action of the first amended complaint that are
22 brought against the Wedgewood Defendants -- Quiet Title and Declaratory Relief. In fact, the only actual
23 argument that the Plaintiffs even make in support of summary judgment is that the "Defendants failed to
24 serve plaintiffs with the notice of default as required by Nevada law."⁷ This is clearly an argument made
25 solely against NDSC as the Wedgewood Defendants had nothing to do with the foreclosure notices. In
26 fact, the Defendants make no reference to the Wedgewood Defendants or any allegations that could

27 ⁵ See, Motion for Summary Judgment at 8:1-5.

28 ⁶ *Id.* at 13:1-11.

⁷ *Id.* at 15:27-28.

1 possibly pertain to them during their entire "Argument" section of the motion.⁸ Accordingly, the motion
2 should be denied as to the Wedgewood Defendants pursuant to TJDRCR 7(D) which provides, "The failure
3 of a moving party to file a memorandum of points and authorities in support of a motion shall constitute
4 a consent to the denial of the motion[.]" The Plaintiffs have not sufficiently supported their motion as to
5 their allegations against the Wedgewood Defendants and the motion should therefore be denied.
6

7 **A. Standing.**

8 While the Plaintiffs present the issue of standing as an undisputed fact, it clearly is a disputed fact
9 and one that the Wedgewood Defendants vehemently denies. The Wedgewood Defendants had nothing
10 to do with the Subject Property until Breckenridge purchased the Subject Property at the foreclosure.
11 Any procedural allegations pertaining to the notice of foreclosure or standing to proceed with foreclosure
12 are actions allegedly done by other entities that occurred prior to the foreclosure sale, i.e. prior to the
13 Wedgewood Defendants being involved with the dispute. These allegations against other parties, even
14 if true, do not provide either a factual or legal basis for summary judgment as it relates to the Wedgewood
15 Defendants because the Wedgewood Defendants cannot be held responsible for the alleged actions of
16 others.
17

18
19 The question of standing to foreclosure is an issue that must be examined as to the role of the
20 parties prior to the foreclosure sale. The Wedgewood Defendants had no role in this dispute prior to the
21 foreclosure. Their first involvement in the matter was when Breckenridge purchased the Subject Property
22 at the foreclosure sale. The Wedgewood Defendants' sole relationship to this case is a result of
23 Breckenridge's purchase of the Subject Property at the foreclosure sale — they were not lenders,
24
25
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27

28 ⁸ *Id.* at 14-21.

1 noteholders, or beneficiaries of Plaintiffs' loan obligations. Therefore, the question of standing is not
2 applicable to them.

3 In fact, the causes of actions in the first amended complaint that deal with the issue of standing to
4 foreclose -Unlawful Foreclosure; Slander of Title; and Cancellation of Substitution of Trustee, Notice of
5 Default, Notice of Trustee's Sale, and Trustee's Deed Upon Sale-- are clearly delineated as being alleged
6 only against NDSC.⁹ The Wedgewood Defendants did not cause the foreclosure to happen and were not
7 involved in the foreclosure process; rather, Breckenridge simply bought the Subject Property at the
8 foreclosure as a third party purchaser. The Plaintiffs attempt to now seek summary judgment against the
9 Wedgewood Defendants based on allegations that are not even contained in their first amended complaint
10 is improper and should be denied.
11

12
13 **B. Bona Fide Purchaser Status.**

14 Plaintiffs' allegations that the Wedgewood Defendants were aware of the disputes between
15 Plaintiff and NDSC regarding standing are not supported by any factual arguments or evidence. Plaintiffs
16 do not offer sufficient allegations as to when or how the Wedgewood Defendants should have known
17 about the dispute. Breckenridge is an independent third party who took title to the Subject Property
18 pursuant to a NRS 107.080 foreclosure sale. NRS 107.080 provides in pertinent part:
19

20 5. Every sale made under the provisions of this section and other sections of this
21 chapter vests in the purchaser the title of the grantor and any successors in interest
22 without equity or right of redemption. Except as otherwise provided in subsection
23 7, *a sale made pursuant to this section must be declared void by any court of
24 competent jurisdiction in the county where the sale took place if:*

25 (a) The trustee or other person authorized to make the sale does not
26 substantially comply with the provisions of this section;

27 (b) Except as otherwise provided in subsection 6, an action is commenced in
28 the county where the sale took place within 30 days after the date on which the
trustee's deed upon sale is recorded pursuant to subsection 10 in the office of the
county recorder of the county in which the property is located; and

⁹ See First Amended Complaint at 11:13-15; 18:13-14; and 23:19-21.

1 (c) *A notice of lis pendens providing notice of the pendency of the action is*
2 *recorded in the office of the county recorder of the county where the sale took*
3 *place within 5 days after commencement of the action.*

4 ***

5 7. Upon expiration of the time for commencing an action which is set forth in
6 subsections 5 and 6, *any failure to comply with the provisions of this section or*
7 *any other provision of this chapter does not affect the rights of a bona fide*
8 *purchaser as described in NRS 111.180.*

9 Plaintiffs did not record a notice of lis pendens with the county recorder within 5 days of filing
10 the complaint, or at any other time of their disputes with the bank. Accordingly, Breckenridge did not
11 have actual or constructive knowledge of the dispute and is entitled to bona fide purchaser status pursuant
12 to NRS 111.180(1) which provides:

13 Any purchaser who purchases an estate or interest in any real property in good
14 faith and for valuable consideration and who does not have actual knowledge,
15 constructive notice of, or reasonable cause to know that there exists a defect in, or
16 adverse rights, title or interest to, the real property is a bona fide purchaser.

17 Even if Plaintiffs are successful in proving their procedural allegations pertaining to the notice of
18 foreclosure allegedly done by other entities prior to the foreclosure sale, the Wedgewood Defendants are
19 entitled to bona fide purchaser status because a notice of lis pendens was not recorded with the county
20 within 5 days of commencement of this action and the Plaintiffs fail to allege that the Wedgewood
21 Defendants had "actual knowledge, constructive notice of, or reasonable cause to know that there exists
22 a defect in, or adverse rights, title or interest to, the real property[.]" Accordingly, the Plaintiffs' request
23 for summary judgment against the Wedgewood Defendants should be denied.

1
2 IV. CONCLUSION.

3 Based on the foregoing, Plaintiff respectfully requests that the Court deny Plaintiffs' motion for
4 summary judgment as unsupported since the Wedgewood Defendants did not participate in the
5 foreclosure process and could not have been aware of any potential dispute between the Plaintiffs and
6 NDSC.
7

8 DATED this 21st day of May 2019.

9 HUTCHISON & STEEFEN, PLLC

10
11 
12 John T. Steffen (4396)

13 Matthew K. Schriever (10745)
14 10080 West Alta Drive, Suite 200
15 Las Vegas, NV 89145
16 mschriever@hutchlegal.com

17 *Attorneys for Defendants*
18 *Alyssa McDermott, Wedgewood Inc., and*
19 *Breckenridge Property Fund 2016 LLC*
20
21
22
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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 STRIKING
DEFENDANTS, ALYSSA MC DERMOTT,
WEDGWOOD INC., BRECKENRIDGE
PROPERTY FUND 2016 LLC'S
OPPOSITION TO MOTION FOR
SUMMARY JUDGMENT

Date: TBA

Time: TBA

Dept: I

The Court has considered Plaintiffs' motion to strike opposition to motion for summary judgment filed by Alyssa McDermott, Wedgwood Inc., and Breckenridge Property Fund 2016 LLC.

IT IS HEREBY ORDERED that, good cause appearing, Defendants, Alyssa McDermott, Wedgwood Inc., and Breckenridge Property Fund 2016 LLC's Opposition to Summary Judgment is hereby **STRICKEN** in its entirety.

IT IS SO ORDERED.

DATED: _____, 2019

The Hon. _____

JUDGE THIRD JUDICIAL DISTRICT COURT

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FILED

2019 JUN 19 PM 12:41

TANYA STEPHEN
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT

Andrea Andersen

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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

**OPPOSITION TO PLAINTIFFS', LEO
KRAMER, AND AUDREY KRAMER'S
NOTICE OF MOTION AND MOTION
TO STRIKE NATIONAL DEFAULT
SERVICING CORPORATION'S
ANSWER TO FIRST AMENDED
COMPLAINT AND/OR IN THE
ALTERNATIVE TO STRIKE
DEFENDANT'S AFFIRMATIVE
DEFENSES PURSUANT TO NRCP
12(F); MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT
THEREOF**

COMES NOW Defendant, National Default Servicing Corporation ("NDSC" or
"Defendant"), by and through its counsel of record, Ace C. Van Patten, Esq. of Tiffany &
Bosco, P.A., and opposes Plaintiffs, Leo Kramer and Audrey Kramer's (collectively
"Plaintiffs") Notice of Motion and Motion to Strike National Default Servicing Corporation's
Answer to First Amended Complaint and/or in the Alternative to Strike Defendant's
Affirmative Defenses Pursuant to NRCP 12(f); Memorandum of Points and Authorities in
Support Thereof.

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1 This Opposition is made and based upon the papers and pleadings on file herein, the
2 Memorandum of Points and Authorities, the attached documents, and any other additional
3 information or oral argument as may be requested by the Court.

4 DATED June 17, 2019.

5 TIFFANY & BOSCO, P.A.

6 
7 JASON C. KOLBE, ESQ.

8 Nevada Bar No. 11624

9 ACE C. VAN PATTEN, ESQ.

10 Nevada Bar No. 11731

11 10100 W. Charleston Blvd., Ste. 220

12 Las Vegas, NV 89135

13 Attorney for Defendant,

14 National Default Servicing Corporation

15 **MEMORANDUM OF POINTS AND AUTHORITIES**

16 **I.**

17 **LEGAL ARGUMENT**

18 **A. PLAINTIFFS FAIL TO ESTABLISH HOW ANY PORTION OF THE ANSWER**
19 **SHOULD BE STRICKEN UNDER NRCP 12(f).**

20 **1. Legal Standard**

21 Nevada Rules of Civil Procedure ("NRCP") 12(f), like its federal counterpart Federal
22 Rule of Civil Procedure ("FRCP") 12(f), allows a court to strike "an insufficient defense or any
23 redundant, immaterial, impertinent, or scandalous matter." NRCP 8(b) provides that a defendant
24 need only "state in short and plain terms its defenses to each claim asserted against it." Courts
25 disfavor striking affirmative defenses, and should only grant the same when, after viewing the
26 pleading in the light most favorable to the defendant, the defense is insufficient as a matter of
27 law or presents insubstantial questions of fact or law. *See e.g., Cardinale v. La Petite Acad.,*
28 *Inc.*, 207 F.Supp.2d 1158, 1162 (D.Nev.2002). As the Plaintiffs' own Motion indicates, "[t]he
key to determining the sufficient of pleading an affirmative defense is whether it gives plaintiff

1 fair notice of the defense” and “fair notice’ required by the pleadings standards only requires
2 describing the defense in ‘general terms.’” Motion, p. 7 (citing *Wyshak v. City Nat’l Bank*, 607
3 F.2d 824, 827 (9th Cir. 1979) and *Kohler v. Flaba Enters. Inc.* 779 F.3d 1016, 1019 (9th Cir.
4 2015)). An affirmative defense fails to provide fair notice only if “no set of facts” supports the
5 defense. *Id.* This means that a motion to strike an affirmative defense should be granted only if
6 “the Court [is] convinced that there are no questions of fact, that any questions of law are clear
7 and not in dispute, and that under no set of circumstances could the defenses succeed.” *Id.* The
8 Plaintiffs here do not establish striking any of the portion of the Answer is appropriate under
9 this standard.

10
11
12 Plaintiffs seek to strike certain paragraphs of NDSC’s Answer and the affirmative
13 defenses and prayers for relief contained in the Answer. Plaintiffs, however, fail to establish
14 how such relief is appropriate and rely on blanket statements of the character of the answer,
15 affirmative relief, or prayer which have no basis in fact or law. Plaintiffs confuse legal
16 sufficiency of the responses with their own factual dispute and simply attempt to hide behind a
17 rote bare recitation that everything they disagree with is redundant, impertinent, scandalous or
18 immaterial. NDSC’s answers, affirmative defenses and prayer for relief are all appropriately
19 asserted and the Plaintiffs’ Motion must be denied as a result.

20
21
22 **2. Plaintiffs’ request to strike ¶¶60-69 and ¶¶70-88 of the Answer is improper as it**
23 **accurately reflects the dismissal of the Plaintiffs’ causes of action.**

24 The Plaintiffs request to have the Answers pertaining to the dismissed causes of action
25 struck, arguing that NDSC’s responses were “in bad faith because Defendant and its Attorneys
26 were aware that these causes of action had been dismissed...” See, Motion, pp.6-7. This is not a
27 basis for striking the Answers, especially where, as here, the Answering Paragraphs at issue
28 state that “...Defendant states that the allegation has been dismissed; therefor, no response is

1 required." *See e.g.*, Answer, ¶¶60-86. Interestingly, the Plaintiffs did not move to strike the
2 identical answers filed to the other dismissed actions. In any event, however, the responses were
3 appropriate and accurate. NDSC's responses simply reflect that the corresponding paragraphs of
4 the First Amended Complaint have been dismissed in order to allow for a complete response to
5 the Complaint in its entirety and to ease with readability. Plaintiffs' request to strike the
6 provisions when they admit that those causes of action have been dismissed lacks any factual or
7 legal support, and their request must be denied.
8

9
10 **3. Plaintiffs' request to strike ¶¶4-6 of the Answer must be denied as the Plaintiffs**
wholly fail to explain or suggest, much less establish, any impropriety.

11 Plaintiffs seek to strike paragraphs 4-6 of the Answer on the basis that NDSC "merely
12 asserts a litany of immaterial, misleading, and inapt, redundant, impertinent and scandalous
13 allegations." *See*, Motion, p. 6. There is no analysis or suggestion of how answering paragraphs
14 4, 5, or 6 are any of the above. Answering Paragraph 4 is a simple denial. *See*, Answer ¶4.
15 Answering Paragraph 5 is a denial that the Plaintiffs are the owner of the Property and that
16 NDSC lacks knowledge as to the remainder of the allegation and answering Paragraph 6
17 indicates NDSC lacks information or knowledge as to the entirety of the allegation. *Id.* at ¶¶5-6.
18 There are no allegations contained in any of the applicable paragraphs, much less an improper
19 allegation, and the Plaintiffs fail to establish how striking the same is warranted or appropriate,
20 and its requires for the same must be denied.
21
22

23 **4. Plaintiffs' request to strike the affirmative defenses and prayer for relief similarly**
24 **fails to establish any basis for striking the same.**

25
26 NDSC provides for 19 affirmative defenses and three additional prayers for relief. *See e.g.*,
27 Answer pp. 11-12. Plaintiff's Motion seeks to strike them in their entirety. Plaintiff's argument
28 that affirmative defenses 1, 3-8, 11-12, 14-15, 17, 19, and the entirety of the prayers for relief

1 are all identical rote recitations that the respective affirmative defense or prayer for relief "is not
2 a viable affirmative defense and this defense contains allegation[s] that are wholly irrelevant to
3 the causes of action alleged in the First Amended Complaint and thus constitutes redundancy,
4 impertinent, scandalous or immaterial allegations." *See e.g.*, Motion, pp 8-14. There is no
5 analysis, explanation, argument or even suggestion as to how each of the affirmative defenses is
6 appropriate, the basis for the same, or under which category striking is appropriate. This alone is
7 a fatal defect and warrants denial of the Motion.
8

9
10 Even among the non-identical blanket recitations of the standard, the Plaintiffs utilize the
11 same analysis, with an additional line or two which still falls well short of establishing how any
12 of the defenses should be struck. In response to affirmative defense number 2, asserts that
13 NDSC should be held liable for its conduct. The additional explanation for affirmative defenses
14 9 and 10 are essentially the same, that judicial estoppel and laches have already been
15 adjudicated. The explanation for number 13 is that the Plaintiffs allege the sale is void. The
16 response to the 16th affirmative defense is a statement that NDSC did not comply with all state
17 and federal statutes and the 18th indicates that there was a component of fraud – not actually
18 alleged in the Complaint – which prevented them from discovering the wrongdoing. None of
19 these are sufficient for striking an affirmative defense. These are statements whereby the
20 Plaintiffs are asserting factual disputes disguised as challenges to the affirmative defenses.
21 These responses, though, also confirm that the Plaintiffs were provided with fair notice of the
22 defense as the Plaintiffs attempted to respond to the defenses raised.
23
24

25 The standard for granting the Motion, however, is after considering the Answer in the
26 light most favorable to NDSC whether the Plaintiff has established that there are no questions of
27 fact or law and that under no set of circumstances could the defense succeed. The Plaintiffs have
28

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1 failed to establish the same here. There are no allegations as to why any of the defenses are
2 legally insufficient or how there are no sets of facts which would allow NDSC to prevail.
3 Instead, the Plaintiffs merely regurgitate the rule without any application to the facts or law at
4 hand; Plaintiffs fail to even suggest whether each affirmative action is respectively redundant or
5 immaterial or impertinent or scandalous, leaving NDSC and the Court without any means of
6 determining on which basis it should even be struck. As a consequence, Plaintiffs have wholly
7 failed to meet the standard required to strike any of the affirmative defenses or prayers for relief
8 and it must be denied in its entirety as a result.
9

10 DATED June 17, 2019.

11 TIFFANY & BOSCO, P.A.

12 
13 JASON C. KOLBE, ESQ.

14 Nevada Bar No. 11624

15 ACE C. VAN PATTEN, ESQ.

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17 10100 W. Charleston Blvd., Ste. 220

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19 Attorney for Defendant,

20 National Default Servicing Corporation
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CERTIFICATE OF SERVICE

I hereby certify that on June 17, 2019, I placed a copy of the above **OPPOSITION TO PLAINTIFFS', LEO KRAMER, AND AUDREY KRAMER'S NOTICE OF MOTION AND MOTION TO STRIKE NATIONAL DEFAULT SERVICING CORPORATION'S ANSWER TO FIRST AMENDED COMPLAINT AND/OR IN THE ALTERNATIVE TO STRIKE DEFENDANT'S AFFIRMATIVE DEFENSES PURSUANT TO NRCP 12(F): MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** 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.

FILED

2019 JUN 24 PM 3:39

TANYA SCHEINE
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT

Andrea Andersen

Case No.: 18-CV-00663

Dept No.: I

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.

**OPPOSITION TO PLAINTIFFS' NOTICE
OF MOTION AND MOTION TO STRIKE
BRECKENRIDGE PROPERTY FUND 2016
LLC'S ANSWER IN ITS ENTIRETY FOR
FAILURE TO TIMELY FILE AN ANSWER
OR IN THE ALTERNATIVE TO STRIKE
PORTIONS OF DEFENDANT'S ANSWER
AND ALL AFFIRMATIVE DEFENSES**

Comes now, BRECKENRIDGE PROPERTY FUND 2016 LLC ("Breckenridge"), by and through its counsel of record, Hutchison & Steffen, LLC, and hereby files its *Opposition* to Plaintiffs' Notice of Motion and Motion to Strike ("Motion") Breckenridge Property Fund 2016 LLC's Answer in its Entirety for Failure to Timely File an Answer or in the Alternative to Strike Portions of Defendant's Answer and All Affirmative Defenses. This *Opposition* is based upon the papers and pleadings on file herein, 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. INTRODUCTION

Plaintiffs, the Kramers, have filed an ill-conceived motion to strike under NRCP 12(f) which should be denied in its entirety. A motion to strike is appropriate when a pleading contains "redundant,

///

1 immaterial, impertinent, or scandalous matter.” NRCP 12(f). However, it is the Kramers’ Motion which
2 is “redundant, immaterial, impertinent, or scandalous matter.”

3 The Kramers’ Motion makes no attempt to show that they have been prejudiced by any of the
4 matters they wish to have struck, yet a showing of prejudice is necessary in order to grant a motion to
5 strike. For that reason alone, the Motion should be denied in its entirety.

6 The Kramers’ ask that Breckenridge’s entire Answer be struck for being filed eight days late,
7 however counsel for Breckenridge is unable to locate any case in the United States in which a court has
8 struck a party’s pleading for such minor, nonprejudicial, and unintentional untimeliness.

9 The Kramers’ Motion is largely based on their misunderstanding of and disagreement with
10 Breckenridge’s affirmative defenses, but this is not a reason to file a motion to strike. For example,
11 Breckenridge asserts the recognized affirmative defense that they are a bona fide purchaser (“BFP”) of
12 the property at-issue in this case. The Kramers argue that this affirmative defense should be struck
13 because, in their opinion, Breckenridge is not a BFP. This is an issue for trial, not for a motion to strike.
14 The rest of the Kramers’ arguments are equally meritless: either the Kramers’ simply disagree with
15 Breckenridge’s affirmative defenses, or they assert boilerplate objections (“wholly irrelevant”) to the
16 affirmative defenses, but these objections are completely unsupported by any meaningful explanation or
17 argument and certainly provide no basis for striking Breckenridge’s affirmative defenses.

18 It is clear from the Kramers’ Motion that they do not understand what an affirmative defense is
19 or what the purpose of a motion to strike is, yet this has not prevented them from filing the instant
20 meritless motion and expending this Court’s and Breckenridge’s time and fees in dealing with their ill-
21 conceived Motion. Breckenridge respectfully requests that this Court instruct the Kramers about their
22 duties and obligations under NRCP 11(b). The Kramers should be instructed to avoid filing meritless
23 motions in the future or else face sanctions such as paying Defendants’ attorney fees.

24 **II. STATEMENT OF FACTS**

25 This case pertains to the foreclosure of real property known as 1740 Autumn Glen Street, Fernley,
26 NV 89408 (“Subject Property”) that took place on or about May 18, 2018 wherein Breckenridge
27 purchased the Subject Property. The Kramers filed their original complaint on June 8, 2018. On October
28 24, 2018, this Court dismissed the original complaint but granted leave for the Kramers to amend it in

1 regard to procedural allegations pertaining to the notice of foreclosure.¹ On October 29, 2018, Plaintiffs
2 filed their First Amended Complaint ("FAC").

3 Breckenridge, Wedgewood or McDermott filed a motion to dismiss the FAC on November 19,
4 2018. The hearing on that motion recently took place on May 1, 2019. At that hearing, the Court ordered
5 that Wedgewood and McDermott be dismissed from this case and also ordered that an answer to the FAC
6 be filed within twenty (20) days from the hearing. As of today's date, no written Order has been entered
7 from the May 1, 2019 hearing.

8 *Breckenridge* (not Wedgewood or McDermott, as the Kramers erroneously assert in their Motion)
9 attempted to file its Answer to the FAC on May 21, 2019. However, Breckenridge's law firm, Hutchison
10 & Steffen, inadvertently filed the wrong document, filing their opposition brief to the Kramers'
11 improperly "filed" Motion for Summary Judgment instead of the Answer. Shortly thereafter, the Kramers
12 filed their notice of intent to take default, alerting Breckenridge that the wrong document had been filed.
13 Accordingly, Breckenridge promptly filed its Answer on May 29, 2019.

14 Because Wedgewood and McDermott were dismissed from this case on May 1, 2019, the Answer
15 clearly indicates that it is filed on behalf of Breckenridge, not Wedgewood or McDermott. Answer to
16 FAC at 2 ("Comes now, BRECKENRIDGE PROPERTY FUND 2016 LLC ("Defendant") . . . and hereby
17 submits its Answer . . ."). Nevertheless, the Kramers have filed the instant Motion on the grounds that
18 the Answer was filed on behalf of Wedgewood and McDermott, which it explicitly was not.

19 Additionally, the Kramers' Motion argues that Breckenridge's affirmative defenses should be
20 struck from its Answer because it "did not assert any recognized affirmative defenses . . ." Motion at
21 4:19-4:20. However, Breckenridge's 2nd, 3rd, 4th, 6th, and 7th affirmative defense are all specifically listed
22 in NRCP 8(c), which lists certain recognized affirmative defenses. Additionally, Breckenridge's 1st
23 affirmative defense, failure to state a claim, is widely recognized in Nevada as an affirmative defense.
24 *See e.g., Ransdell v. Clark County*, 192 P.3d 756, 760, 124 Nev. 847, 852 (Nev. 2008). Breckenridge's
25 5th affirmative defense, that it was a bona fide purchaser for value, is recognized as an affirmative defense.
26 *Bailey v. Butner*, 176 P.2d 226, 229, 64 Nev. 1, 7 (Nev. 1947) ("the right to protection as
27 a bona fide purchaser is ordinarily regarded as an affirmative defense"). And Breckenridge's 8th
28

¹ See Order Granting Motion To Dismiss Plaintiff's Complaint filed October 24, 2018.

1 affirmative defenses, a denial of every allegation not specifically answered, is a clear reference to NRCP
2 8(d) which states that any allegation which is not denied is admitted. Such general "catch all" denials are
3 entirely typical of responsive pleadings filed throughout Nevada.

4 Based on the foregoing, the Kramers filed the instant Motion, arguing that Breckenridge's Answer
5 to their FAC is somehow filed for an "improper purpose, such as to harass Plaintiffs, or to cause
6 unnecessary delay or needless increase in the cost of litigation" Motion to Strike ("Motion") at 6:25-
7 28. However, the Motion contains no discussion whatsoever of how the FAC does any of these things.
8 Similarly, the Kramers also argue that the well-established affirmative defenses contained in
9 Breckenridge's Answer are somehow redundant, impertinent, scandalous or immaterial. Motion at 9, et
10 seq. However, the Motion offers' little explanation of how Breckenridge's affirmative defenses are
11 defective.

12 Instead, Plaintiffs' Motion relies on unanalyzed boilerplate objections and reckless speculation,
13 such as asserting "on information and belief" that Breckenridge participated in filing fraudulent
14 documents, a scandalous assertion for which there is no evidence. *See* Motion at 9:27. In fact, although
15 the Kramers have repeatedly argued to this Court that their federal lawsuit would establish that the
16 Subject Property was foreclosed upon fraudulently, that lawsuit was dismissed by the federal District
17 Court, and the dismissal of that lawsuit was recently affirmed in its entirety by the Ninth Circuit. **Exhibit**
18 **1**, Memorandum, *Kramer v. JP Morgan Chase Bank*. Thus, there is no basis for the Kramers to claim "on
19 information and belief" that fraud is at-issue in this case.

20 **III. STANDARD OF REVIEW**

21 NRCP 12(f) states "The court may strike from a pleading an insufficient defense or any redundant,
22 immaterial, impertinent, or scandalous matter." "Motions to strike are generally regarded
23 with disfavor because of the limited importance of pleading in federal practice, and because they are
24 often used as a delaying tactic." *California Dept. of Toxic Substances Control v. Alco Pacific, Inc.*, 217
25 F. Supp. 2d 1028, 1033 (C.D. Cal. 2002). "Given their disfavored status, courts often require 'a showing
26 of prejudice by the moving party' before granting the requested relief." *Id.* (quoting *Securities &*
27 *Exchange Comm'n v. Sands*, 902 F. Supp. 1149, 1166 (C.D. Cal. 1995)).

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1 “The key to determining the sufficiency of pleading an affirmative defense is whether it gives
2 plaintiff fair notice of the defense.” *Wyshak v. City Nat. Bank*, 607 F.2d 824, 827 (9th Cir. 1979) (citing
3 5 Wright & Miller, Federal Practice and Procedure, s 1274 at 323). “In exercising its discretion, the court
4 views the pleadings in the light most favorable to the non-moving party, and resolves any doubt as to the
5 relevance of the challenged allegations or sufficiency of a defense in defendant's favor. This is
6 particularly true if the moving party can demonstrate no resulting prejudice.” *California Dept. of Toxic*
7 *Substances Control v. Alco Pacific, Inc.*, 217 F.Supp.2d 1028, 1033 (C.D.Cal. 2002) (internal citations
8 omitted).

9 **IV. LEGAL ARGUMENT.**

10 **A. Breckenridge's Answer Should Not Be Struck For Untimeliness.**

11 The Kramers have asked this Court to strike Breckenridge's Answer because it was filed on May
12 29, 2019, as opposed to May 21, 2019. Breckenridge acknowledges its Answer to the FAC was filed late.
13 However, the reason for the late filing was simply an administrative accident. Breckenridge's counsel
14 intended to file the Answer on May 21, 2019, however Breckenridge's counsel accidentally uploaded its
15 Opposition to the Kramers' improperly filed Motion for Summary Judgment. Breckenridge's counsel
16 was unaware of this mistake until the Plaintiffs noticed their intent to take a default against Breckenridge.
17 At that time, Breckenridge promptly filed its Answer. Again, Breckenridge acknowledges this filing was
18 late, and counsel apologizes for any inconvenience caused.

19 Nevertheless, the Answer was filed only eight days late. Plaintiffs have suffered no prejudice
20 from the filing of the Answer. The case has not been delayed at all by the late filing. There is no
21 substantive reason to strike Breckenridge's Answer.

22 Counsel for Breckenridge has been unable to locate even a single case in Nevada in which a
23 party's Answer was stricken for being filed eight days late. Other jurisdictions have refused to strike a
24 responsive pleadings for being untimely. “[F]ederal courts in this and other circuits generally hold that
25 the untimeliness of an answer, even if extreme . . . is not, by itself, a sufficient reason for granting a
26 motion to strike.” See e.g., *Wynes v. Kaiser Permanente Hosps.*, No. 2:10-cv-00702-MCE, 2013 WL
27 2449498, at *1 (E.D. Cal. June 5, 2013) (declining to strike entirety of answer to counterclaims filed
28 more than nine months late); see also *Franklin v. County of Placer*, No. 2:17-cv-2277-JAM-EFB PS,