

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

In the Matter of the Estates of Thelma Ailene Sarge
and Edwin John Sarge.

ESTATE OF THELMA AILENE SARGE;
ESTATE OF EDWIN JOHN SARGE; AND
JILL SARGE,
Appellants,
vs.
ZACHARY PEDERSON; MICHELL PEDERSON;
AND ROSEHILL, LLC,
Respondents.

No. 82623

Electronically Filed
Mar 16 2021 10:53 a.m.

DOCKETING Elizabeth Brown
CIVIL APPEALS Clerk of Supreme Court

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District First Department I

County Carson City Judge James T. Russel

District Ct. Case No. 16 RP 00009 1B

2. Attorney filing this docketing statement:

Attorney Tory M. Pankopf Telephone (775) 384-6956

Firm Tory M. Pankopf Ltd

Address 748 S Meadows Pkwy, Ste 244
Reno, NV 89521

Client(s) Estates of Sarge and Jill Sarge

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney James M. Walsh Telephone (775) 853-0883

Firm Walsh & Rosevear

Address 9468 Double R Bl, Ste A
Reno, NV 89521

Client(s) Rosehill, LLC; Zachary Pederson; Michele Pederson

Attorney _____ Telephone _____

Firm _____

Address _____

Client(s) _____

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- | | |
|---|---|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal: |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input checked="" type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify): _____ |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input type="checkbox"/> Other disposition (specify): _____ |

5. Does this appeal raise issues concerning any of the following?

- Child Custody
- Venue
- Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

Prior case: Supreme Court Case No. 73286

Case Name: ESTATE OF THELMA AILENE SARGE; ESTATE OF EDWIN JOHN SARGE; JILL SARGE,

Appellants,

vs.

QUALITY LOAN SERVICE CORPORATION; AND ROSE HILL, LLC,

Respondents.

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

N/A

8. Nature of the action. Briefly describe the nature of the action and the result below:

Action for violation of NRS 107.080 and related claims where defendants, Quality Loan Service Corp and Nationstar Mortgage failed to give the required notice to the Estates or the heirs of the Estates prior to conducting foreclosure sale.

Respondents, Pedersons, purchased the real property from respondent, Rosehill, who had purchased it at the foreclosure sale. Prior to the complaint being filed, b/w 10/13 and 10/31/16 just after the 10/13/16 foreclosure sale, Pedersons went into to contract with Rosehill to purchase the real property. Pedersons' MSJ contended they were bona fide purchasers (BFPs) pursuant to NRS 14.017. Appellants contended they were not BFPs according to NRS 14.017 and 107.080(7) which specifically referred to NRS 111.180 to define BFPs. Pedersons had actual knowledge of the timely recorded notice of pendency of action (NPA). Pedersons were "equitable owners" of the real property at the time the notice of pendency of action was recorded given they were in contract to purchase it. *Harrison v Rice*. 510 P.2d 633, 635 (Nev. 1973).

The district court granted Pedersons' MSJ and denied Appellants'.

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

Whether the district court's order granting Pedersons' MSJ is an error of law by concluding Pedersons were BFPs where the undisputed facts confirmed Pedersons were in contract to purchase the property and had actual notice of the recorded NPA?

Whether the Pedersons were "equitable owners" (*Harrison v. Rice*, 510 P.2d 633, 635 (Nev. 1973)) of the real property where they had gone into contract with Rosehill to purchase it between 10/13/2016 and 10/31/2016, and had opened up escrow to close the sale?

Whether the district court erred by applying NRS 14.017 and concluding Pedersons were BFPs?

Whether the district court erred by not applying NRS 107.080(7) and NRS 111.180 to conclude Pedersons were BFPs where NRS 107.080(7) refers specifically to NRS 111.180 to define a BFP as "any purchaser who purchases [] real property.... and who does not have actual knowledge, constructive notice, or reasonable cause to know that there exists a defect in, or adverse rights, title or interest to, the real property....."

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

N/A

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

N/A

Yes

No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

Reversal of well-settled Nevada precedent (identify the case(s))

An issue arising under the United States and/or Nevada Constitutions

A substantial issue of first impression

An issue of public policy

An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

A ballot question

If so, explain:

13. Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

This case does not fall w/in any of the presumptive assignments to the Court of Appeals nor does it fall w/in any of the categories the Supreme Court must retain. The case may be assigned to the Court of Appeals by the Supreme Court.

14. Trial. If this action proceeded to trial, how many days did the trial last? _____

Was it a bench or jury trial? _____

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?
No.

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from Dec 24, 2020

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

17. Date written notice of entry of judgment or order was served Dec 31, 2020

Was service by:

Delivery

Mail/electronic/fax

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCp 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

NRCp 50(b) Date of filing _____

NRCp 52(b) Date of filing _____

NRCp 59 Date of filing _____

NOTE: Motions made pursuant to NRCp 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. ____, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion _____

(c) Date written notice of entry of order resolving tolling motion was served _____

Was service by:

Delivery

Mail

19. Date notice of appeal filed Mar 11, 2021

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other

NRCP 54(b) and NRAP 4(a)(1)

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

- | | |
|---|---------------------------------------|
| <input checked="" type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205 |
| <input type="checkbox"/> NRAP 3A(b)(2) | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3) | <input type="checkbox"/> NRS 703.376 |
| <input checked="" type="checkbox"/> Other (specify) <u>NRCP 54(b)</u> | |
-

(b) Explain how each authority provides a basis for appeal from the judgment or order:

The order on the MSJ was not a final order until, pursuant to NRCP 54(b), appellants moved the district court for an order certifying it as a final order/judgment. Upon certification of the order/judgment as a final judgment, it became immediately appealable. The order certifying the order/judgment was entered on Feb 10, 2021 but not served until Feb 22. Notice of entry of the order and notice of appeal were both served and filed on Mar 11, 2021.

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

Quality Loan Services Corp - Defendant
Nationstar Mortgage, dba, Champion Mortgage - Defendant
Rosehill, LLC - Defendant
Zachary and Michelle Pederson - Defendant
Jill Sarge - Plaintiff
Estate of Edwin Sarge - Plaintiff
Estate of Thelma Sarge - Plaintiff

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

All the claims in the underlying action, save quiet title, pertain to Quality and Nationstar. The Pedersons and Rosehill are parties to the underlying action so that they will be bound by the ultimate judgment rendered in it. That is, they were made parties to it because Rosehill had purchased the real property from the foreclosure sale and immediately flipped the property to Pedersons.

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

Appellants are currently adjudicating claims for breach of NRS 107.080, breach of NRS 107.550, quiet title, unjust enrichment, and conversion against Quality and Nationstar. Rosehill and Pedersons are parties because they purchased the real property from and after the foreclosure sale.

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

Yes

No

25. If you answered "No" to question 24, complete the following:

(a) Specify the claims remaining pending below:

Appellants are currently adjudicating claims for breach of NRS 107.080, breach of NRS 107.550, quiet title, unjust enrichment, and conversion against only Quality and Nationstar given Pedersons' MSJ has been certified as a final judgment by the district court.

(b) Specify the parties remaining below:

Quality Loan Service Corp - Defendant

Nationstar Mortgage, dba Champion Mortgage - Defendant

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

Yes

No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

Yes

No

26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Jill Sarge; Estates of Sarge
Name of appellant

Tory M. Pankopf
Name of counsel of record

3/16/2021
Date

s/Tory M. Pankopf
Signature of counsel of record

Washoe
State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 16th day of March, 2021, I served a copy of this completed docketing statement upon all counsel of record:

- By personally serving it upon him/her; or
- By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

James M. Walsh, Esq., WALSH & ROSEVEAR, 9468 Double R Bl, Ste A, Reno, NV 89521 for Rosehill, LLC, Zachary Pederson, and Michelle Pederson;

Melanie D. Morgan, Esq., AKERMAN LLP, 1635 Village Center Cir, Ste 200, Las Vegas, NV, 89134 for Nationstar Mortgage dba Champion Mortgage;

Matthew D. Dayton, Esq., MCCARTHY HOLTHUS LLP, 9510 W Sahara Av, Ste 200, Las Vegas, NV, 89117 for Qulaity Loan Service Corp.

Dated this 16th day of March, 2021

s/Tory M. Pankopf
Signature

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REC'D & FILED
2020 DEC -3 PM 1:42
AUBREY ROWLATT
CLERK
BY ~~C. GOOPER~~
DEPUTY

**IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE CARSON CITY**

ESTATE OF THELMA AILENE SARGE and
ESTATE OF EDWIN JOHN SARGE,

Plaintiffs,

v.

QUALITY LOAN SERVICE CORPORATION
and DOES I - X, inclusive,

Defendant(s).

CASE NO: 16 RP 00009 1B
DEPT NO: I

Consolidated with Case Nos.:

16 PBT 00107 1B and
16 PBT 00108 1B

ZACHARY PEDERSON and MICHELLE
PEDERSON,

Plaintiff Intervenors/Defendants

And Related Consolidated Cases.

AMENDED COMPLAINT

Plaintiffs, ESTATE OF THELMA AILENE SARGE, ESTATE OF EDWIN JOHN SARGE (collectively, "Estates"), and JILL SARGE ("Sarge") (collectively "Plaintiffs") by and through their attorney of record, Tory M. Pankopf, of the Law Offices of Tory M. Pankopf, Ltd., allege and complain against defendants named herein as follows:

1 **PARTIES**

2 1. Plaintiff, Estate of Thelma Ailene Sarge ("Estate" or "Plaintiff"), is the successor in
3 interest to the reverse mortgage/note and secured by the deed of trust on the subject property
4 identified below.

5 2. Plaintiff, Estate of Edwin John Sarge ("Estate" or "Plaintiff"), is the successor in interest
6 to the reverse mortgage/note and secured by the deed of trust on the subject property identified
7 below.

8 3. Plaintiff, Jill Sarge ("Sarge" or "Plaintiff"), is a title holder to the subject property
9 identified below and an heir to the Estates. Plaintiff was the title holder at the time of the illegal
10 foreclosure sale.

11 4. Defendant, Quality Loan Service Corporation ("QLS" or "Defendant"), is a California
12 Corporation doing business in Carson City, Nevada.

13 5. Defendant, Nationstar Mortgage, LLC, doing business as Champion Mortgage Company
14 ("Nationstar" or "Defendant"), is a Delaware Corporation, doing business in Carson City,
15 Nevada.

16 6. Defendant, Rosehill, LLC ("Rosehill" or "Defendant"), is a Nevada Corporation doing
17 business in Carson City, Nevada.

18 7. Defendant, Zachary Pederson ("Mr. Pederson" or "Defendant"), is an individual who
19 resides in Carson City, Nevada.

20 8. Defendant, Michelle Pederson ("Ms. Pederson" or "Defendant"), is an individual who
21 resides in Carson City, Nevada.

22 9. Defendant, Mortgage Equity Conversion Asset Trust 2011-1, a.k.a. Mortgage Equity
23 Conversion Asset Trust 2011-1, Mortgage-Backed Securities 2011-1 ("Trust" or "Defendant"),
24 is a Delaware Statutory Trust doing business in Carson City.¹

25 10. Defendant, U.S. Bank, National Association ("US Bank" or "Defendant"), is a national
26 bank doing business in Carson City.²

27 _____

28 ¹ The Trust failed to answer the complaint and a default was entered on or about September 3, 2020.

² U.S. Bank failed to answer the complaint and a default was entered on or about September 3, 2020.

1 11. Plaintiffs are informed and believe, and upon such information and belief allege, that each
2 defendant designated herein as fictitiously named DOES I through X, inclusive, claims and interest
3 in, occupies or utilizes the real property described herein, claims to be the landlord, or is responsible
4 in some manner for the events and happenings herein referred to and causes damage proximately
5 hereby to Plaintiffs as hereafter alleged. When the true names of defendants are discovered, Plaintiffs
6 will seek leave to amend this complaint and proceedings herein to substitute the true names of
7 defendants. Plaintiffs believe each defendant designated herein as DOE claim an interest in the
8 Property adverse to Plaintiffs.

9 12. Plaintiffs are informed and believe and thereon allege that at all times herein mentioned
10 each defendant was the agent, employee, joint venture or partner with each of the remaining
11 defendants and was at all times herein mentioned acting within the course and scope of their
12 employment relationship and/or in the course and scope of their agency, joint venture or partner
13 relationship with each of the other.

14 **FACTUAL ALLEGATIONS**

15 **Failure to Comply with NRS 107.080 Voids Foreclosure Sale.**

16 13. The real property illegally foreclosed on or about October 13, 2016 is situated in Carson
17 City, Nevada, and described as:

18 All that certain real property situated in Carson City, State of Nevada, described as
19 follows:

20 That portion of the Northwest 1/4 of the Northwest 1/4 of Section 28,
21 Township 15 North, Range 20 East, M.D.B.&M., further described as
follows:

22 Parcel 86 as shown of the Parcel Map for M. G. Stafford, Inc., filed for record
23 in the office of the Recorder of Carson City, Nevada, on August 22, 1989, in
Book 6, page 1714, as Document No. 89571.

24 APN 010-513-07

25 1636 Sonoma Street, Carson City, Nevada.

26 (“Property”)

27 14. Plaintiff, Estates, had a reverse mortgage/note (“reverse mortgage” or “note”) secured by
28 a deed of trust and Plaintiff, Sarge, as an heir to the decedents and record title holder at the time

1 of the unlawful foreclosure sale is a third party beneficiary to the reverse mortgage and deed of
2 trust.

3 15. The Property was unlawfully foreclosed on by defendants, Nationstar, QLS, Trust and US
4 Bank, (collectively, “Foreclosing Defendants”) by virtue of the deed of trust.

5 16. At the time of the unlawful foreclosure sale, Plaintiff, Jill Sarge, was a title holder of the
6 Property by virtue of the deed upon death recorded in Carson City by her parents, Edwin and
7 Thelma Sarge (“decedents”) and an heir to their Estates.

8 17. Defendants had, at the least, constructive knowledge and, at the most, actual knowledge
9 of the recorded deed upon death.

10 18. Defendant, Nationstar, is and was the beneficiary of the deed of trust and holder of the
11 note/reverse mortgage at the time of the unlawful foreclosure sale by virtue of a recorded
12 assignment of deed of trust.

13 19. Defendant, Nationstar, is and was the servicer of the reverse mortgage by virtue of a
14 servicing agreement with defendants, US Bank and Trust, at the time of the unlawful foreclosure
15 sale.

16 20. Prior to the recording of the notice of default (“NOD”), plaintiff, Sarge, had notified
17 defendant, Nationstar, that her mother, Thelma Sarge, had passed away. At the same time, she
18 notified Nationstar her physical and mailing address was 159 Empire Lane, Carson City, Nevada,
19 89701 (“Empire Lane” or “Known Address”). She directed Nationstar to send all notices,
20 mortgage statements, and correspondence regarding her mother and father’s reverse mortgage to
21 the Empire Lane address.

22 21. After receiving notice from plaintiff, Sarge, and prior to the unlawful foreclosure sale,
23 defendant, Nationstar, began sending notices, mortgage statements, and correspondence
24 addressed to the Estates at Plaintiffs’ Known Address.

25 22. The doctrine of the law of the case provides that the law or ruling of a first appeal must
26 be followed in all subsequent proceedings, both in the lower court and on any later appeal.” *Tien*
27 *Fu Hsu v. County of Clark* (Nev. 2007) 123 Nev. 625, 629.

1 23. The law of this case is found in the Nevada Supreme Court’s opinion reversing and
2 remanding the order dismissing Plaintiff’s complaint. *Estate of Sarge v. Quality Loan Serv. Corp.*
3 (In re Estate of Sarge) (Nev., Feb. 27, 2020, No. 73286).

4 24. Plaintiffs’ known address is Empire Lane. *Sarge* at 5.

5 25. Defendant, Nationstar, had actual notice of Plaintiffs’ Known Address.

6 26. Based on information and belief, defendant, Trust, actually owned or was the holder of
7 the note/reverse mortgage at the time of the unlawful foreclosure sale. That is, the note/reverse
8 mortgage was part of its res.

9 27. Based on information and belief, defendant, US Bank, was the trustee of the Trust at the
10 time of the illegal foreclosure sale.

11 28. Based on information and belief, defendant, Nationstar was the agent for US Bank and the
12 Trust by virtue of their servicing agreement regarding the reverse mortgage and deed of trust.

13 29. Defendant, QLS, served as the agent for defendant, Nationstar, by virtue of the
14 substitution of trustee of the deed of trust executed and recorded by Nationstar.

15 30. Foreclosing Defendants are all liable for the unlawful foreclosure by their acts, failures to
16 act, and agency relationship with one another.

17 31. Foreclosing Defendants had a duty to comply with Nevada’s non-judicial foreclosure
18 statutes i.e., NRS Chapter 107 while it unlawfully foreclosed on the Property.

19 32. Nevada’s non-judicial foreclosure notice statute i.e., NRS 107.080³, required defendant,
20 QLS, to make “a good-faith effort to ascertain the [Plaintiffs’] current address” i.e., “known
21 address.” *Sarge* at 4 citing *In re Smith*, 866 F.2d 576, 586 (3d Cir 1989).

22 33. A “known address” shall be determined with reference to the [note/reverse mortgage]
23 servicer’s (i.e., defendant, Nationstar) actual and constructive knowledge of it. *Id.* citing *Wanger*
24 *v EMC Mortg. Corp.*, 127 Cal.Rptr.2d 685, 693 (Ct.App. 2002).

25 34. Based upon information and belief, in addition to the constructive knowledge defendant,
26 QLS, had regarding Plaintiffs’ Known Address, defendant QLS also had actual knowledge of
27

28 _____
³ Any reference to NRS 107.080 is in reference to the statute as amended by SB239 and enacted on June 1, 2015.

1 Plaintiffs' Known Address prior to recording the Notice of Default and Election to Sell ("NOD")
2 on September 2, 2015 and unlawfully recording the Notice of Sale ("NOS") on August 29, 2016.

3 35. Foreclosing Defendants, including QLS, failed to provide written notice of the NOD or
4 NOS to the Estates and record titleholders (i.e., the heirs) of the Property at their Known Address.
5 See NRS 107.080(2), (3), and (4).

6 36. Defendant, QLS, has freely admitted that it did not make any "good-faith effort to
7 ascertain" Plaintiffs' Known Address in its motion to dismiss the complaint that this pleading
8 now amends because it argued that NRS 107.080 only required it to serve notices to Plaintiffs at
9 the recorded address.⁴ Of course, the law of this case requires the NOD and NOS to be sent to
10 the Known Address of Plaintiffs. *Sarge* at 5.

11 37. Defendant's, QLS, affidavits of servicer re the NOD and NOS that QLS filed in support
12 of its 2016 motion to dismiss the complaint confirms Foreclosing Defendants did not serve
13 Plaintiffs at their Known Address.

14 38. This action to remedy Foreclosing Defendants', including Nationstar and QLS, unlawful
15 foreclosure sale had to be commenced 15-days after the date the trustee's deed was recorded i.e.,
16 November 2, 2016 and the notice of pendency of action recorded 5-days after the commencement
17 of the action. Plaintiffs timely commenced the action and recorded the notice of pendency of
18 action on October 31, 2016 before the trustee's deed was recorded. Consequently, as a matter of
19 law, the unlawful foreclosure sale is void and the Court must declare the sale void.

20 **Failure to Comply with NRS 107.550 Voids Foreclosure Sale.**

21 **Cancelation of NOD – Expiration After Nine Months.**

22 39. Foreclosing Defendants, including QLS and Nationstar, violated NRS 107.550.

23 40. NRS 107.550(1) requires any NOD recorded pursuant to subsection 2 of NRS 107.080 or
24 any NOS recorded pursuant to subsection 4 of NRS 107.080 must be rescinded, and any pending
25 foreclosure sale must be cancelled, if the borrower accepts a permanent foreclosure prevention
26

27 _____
28 ⁴ "In interpreting NRS 107.080(3) harmoniously with NRS 107.080(4)(a), [] pertinent notices must be sent to the
current title holder's last known address, not just one known address as [Defendants contend]." *Daygo Funding
Corp. v. Mona* (Nev., Oct. 2, 2018, No. 70833) [pp. 9].

1 alternative or an NOS is not recorded within 9 months after the NOD is recorded pursuant to
2 subsection 2 of NRS 107.080.

3 41. Foreclosing Defendants, including QLS, caused the NOD to be recorded on September 2,
4 2015. Thereafter, Foreclosing Defendants, including QLS, caused the NOS to be recorded on
5 August 29, 2016. That is the NOS was recorded almost exactly 12 months after the NOD was
6 recorded. Foreclosing Defendants, including QLS, were required to cancel the NOD because it
7 had ceased to be valid after 9 months. NRS 107.550(1).

8 42. Foreclosing Defendants, including QLS, were precluded by law from recording the NOS
9 because the NOD had expired. Id.

10 43. Regardless, Foreclosing Defendants, including QLS and Nationstar, to Plaintiffs'
11 detriment and prejudice, proceeded with the unlawful foreclosure sale.

12 44. As a matter of law, the foreclosure sale is void and must be declared void.

13 **Cancelation of NOD – Acceptance of Foreclosure Prevention Alternative.**

14 45. Foreclosing Defendants, including Nationstar, notified the record title holders and Estates
15 that, pursuant to the terms of the reverse mortgage and deed of trust, the Estates and its heirs
16 (record title holders) could pay off the outstanding balance on the reverse mortgage for 95% of
17 the appraised value.

18 46. Plaintiffs notified Foreclosing Defendants, including Nationstar, they were
19 exercising/accepting the reverse mortgage option to satisfy the note by paying 95% of the
20 appraised value of the subject property i.e., their foreclosure prevention alternative.

21 47. Foreclosing Defendants, including Nationstar, acknowledged receipt of their notification
22 of acceptance. Thereafter, Plaintiffs marketed the house for sale and had received an offer to
23 purchase the house.

24 48. Foreclosing Defendants, including QLS and Nationstar, were required to cancel the NOD
25 and were precluded from recording the NOS because Plaintiffs had accepted their foreclosure
26 prevention alternative. NRS 107.550.

27 49. Regardless, Foreclosing Defendants, including QLS and Nationstar, to Plaintiffs'
28 detriment and prejudice, proceeded with the unlawful foreclosure sale.

1 50. As a matter of law, the unlawful foreclosure sale is void and the Court must declare it
2 void.

3 **Foreclosing Defendants' Failure to Provide Statutory Notice Prejudiced Plaintiffs.**

4 51. Foreclosing Defendants', including QLS and Nationstar, violations of both NRS 107.080
5 and 107.550 prejudiced Plaintiffs by: 1) Depriving them of their contractual right under the terms
6 of the reverse mortgage and deed of trust to exercise the 95% pay off option; 2) unilaterally
7 terminating the foreclosure prevention alternative they had accepted; 3) retiring \$32,000.00 in
8 additional principal and interest without having to pay; 4) realizing \$15,000.00⁵ cash; 5) Saving
9 money by avoiding fees added to the loan balance; and 6) Preventing the foreclosure sale.

10 52. Foreclosing Defendants, including Nationstar, advised Plaintiffs that the benefits of
11 choosing/accepting 95% option contained in the terms of the reverse mortgage/note and deed of
12 trust were: 1) Keeping the home in the family; 2) Preventing a foreclosure; and 3) Saving money
13 by avoiding fees added to the loan balance. Probably the most important benefit was paying off
14 the entire loan balance for only 95% of the appraised value.

15 53. According to Foreclosing Defendants, including Nationstar and QLS, the amount due and
16 owing on the reverse mortgage at the time of the unlawful foreclosure sale was about \$317,000.00.

17 54. At the time of the unlawful foreclosure sale the fair market value ("FMV") of the subject
18 property was \$300,000.00 given defendant, Rosehill, purchased it for \$255,100.00 at the
19 distressed sale and immediately (the next day) flipped it to defendants, Pedersons, for the
20 \$300,000.00.

21 55. Ninety-five percent (95%) of the FMV is \$285,000.00.

22 56. Foreclosing Defendants', including QLS and Nationstar, unlawful foreclosure sale of the
23 Property prejudiced Plaintiffs by denying them the benefit of the bargain of the reverse mortgage
24 and the benefits identified by Foreclosing Defendants, including Nationstar. That is, but not
25 limited to, retiring the \$317,000.00 note for \$285,000.00 which would have been a savings of
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⁵ The actual number is \$300,000.00 as discussed infra.

1 \$32,000.00. Moreover, Plaintiffs would have been able to keep the difference between the FMV
2 and the 95% of FMV i.e., \$15,000.00.

3 **Discharge of Amount Tendered by Plaintiffs.**

4 57. However, as a consequence of Foreclosing Defendants', including QLS and Nationstar,
5 unlawful foreclosure, the amount Plaintiffs have been damaged is considerably more because the
6 reverse mortgage/note is a negotiable instrument as defined by Nevada's Uniform Commercial
7 Code ("UCC") and is, therefore, governed by the UCC.

8 58. Pursuant to NRS 104.3603(2), if tender of payment of an obligation to pay an
9 instrument is made to a person entitled to enforce the instrument and the tender is refused, there
10 is discharge, to the extent of the amount of the tender, of the obligation.

11 59. Plaintiffs' exercise of their reverse mortgage option to pay 95% of the appraised value in
12 full satisfaction of the loan balance constituted a tender of payment to Foreclosing Defendants,
13 including Nationstar.

14 60. Foreclosing Defendants', including QLS and Nationstar, unlawful foreclosure sale of the
15 Property constituted a refusal of Plaintiffs' amount tendered. Given the FMV is \$300,000.00 as
16 discussed above, \$285,000.00 has been discharged. NRS 104.3603(2).

17 61. Given Foreclosing Defendants', including QLS and Nationstar, refusal to accept
18 Plaintiffs' tender, Foreclosing Defendants, including QLS and Nationstar, had no right in monies
19 paid at the unlawful foreclosure sale because of the discharge of the debt. That sum is the
20 \$255,100.00 defendant, Rosehill, paid at the unlawful foreclosure sale and Foreclosing
21 Defendants, including QLS and Nationstar, accepted.

22 62. Foreclosing Defendants have converted \$255,100.00 of the monies rightfully belonging
23 to Plaintiffs and have prejudiced Plaintiffs from realizing the remaining \$44,900.00.

24 63. Foreclosing Defendants, including QLS and Nationstar, as a matter of law, have damaged
25 Plaintiffs in the amount of \$300,000.00.

26 **Unlawful Foreclosure Sale is Void as a Matter of Law.**

27 64. Pursuant to subsection 5, the sale must be declared void where Plaintiffs timely
28 commenced this action, timely recorded a notice of pendency of action, and the trustee did not

1 substantially comply with NRS 107.080.⁶ Substantial compliance is found when the Estates and
2 title holders "had actual knowledge of the default and the pending foreclosure sale" and "were not
3 prejudiced by the lack of statutory notice."⁷

4 65. Plaintiffs timely commenced this action on October 31, 2016, after the unlawful
5 foreclosure sale and before the trustee's deed was recorded.

6 66. Foreclosing Defendants, including QLS and Nationstar, did not provide statutory notice
7 of either the NOD or NOS to Plaintiffs at their Known Address.

8 67. Foreclosing Defendants, including QLS and Nationstar, did not substantially comply with
9 NRS 107.080 because Plaintiffs have been prejudiced by their lack of statutory notice (discussed
10 supra). In fact, it is impossible for Foreclosing Defendants, including QLS and Nationstar, to
11 have substantially complied with the statute because of the undeniable prejudice suffered by
12 Plaintiffs due to the lack of statutory notice (discussed supra).⁸

13 68. Moreover, Plaintiffs did not receive any actual notice regarding the NOD and only learned
14 of the sale date for the unlawful foreclosure, virtually contemporaneously, the day before it was
15 set to go to sale i.e., October 6, 2016. At that time, Plaintiffs sought legal counsel to advise them
16 of their rights and whether they could stop sale.

17 69. As a matter of law, the unlawful foreclosure sale is void for three (3) separate reasons.
18 They are: 1) Failing to provide statutory notice; 2) Failing to cancel/rescind NOD after nine (9)
19 months; and 3) Failing to cancel/rescind NOD after Plaintiffs accepted foreclosure prevention
20 alternative. The unlawful foreclosure sale must be declared void each and any of the three separate
21 reasons.

22 **Punitive Damages**

23 70. As discussed supra, on or about February 2016, Plaintiffs notified Foreclosing Defendants,
24 including Nationstar, that they were accepting the foreclosure prevention alternative and were
25 exercising their right pursuant to the terms of the reverse mortgage/note and deed of trust.

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27 _____
⁶ *Daygo Funding* at 15.

⁷ *Id.* at 10.

⁸ *Id.*

1 71. Regardless, Foreclosing Defendants, including QLS and Nationstar, with malice and
2 oppression, and a conscious disregard of Plaintiffs' rights proceeded with the unlawful
3 foreclosure sale and did unlawfully foreclose on Plaintiffs' Property.

4 72. At all times stated herein, Foreclosing Defendants, including Nationstar and QLS, knew
5 Nevada's foreclosure statutes i.e., NRS 107.550, required them to rescind/cancel the NOD upon
6 Plaintiffs acceptance of the foreclosure prevention alternative.

7 73. At all times stated herein, Foreclosing Defendants, including Nationstar and QLS, knew
8 Nevada's foreclosure statutes i.e., NRS 107.550, required them to rescind/cancel the NOD nine
9 (9) months after they recorded the NOD.

10 74. At all time stated herein, Foreclosing Defendants, including Nationstar and QLS, knew
11 Nevada's legislature and governor enacted NRS 107.550 for the purpose of remedying the
12 foreclosing industry's unfair and unjust practice of "dual tracking."

13 75. "Dual tracking" occurs when a mortgage servicer i.e., Foreclosing Defendants, including
14 Nationstar and QLS, continues to foreclose on a borrowers' home i.e., Plaintiffs, while
15 simultaneously considering the borrowers' application for a foreclosure prevention alternative or,
16 as is the case here, when borrowers' have accepted a foreclosure prevention alternative.

17 76. Foreclosing Defendants', including Nationstar and QLS, dual tracked (continued) the
18 unlawful foreclosure sale after Plaintiffs' accepted the foreclosure prevention alternative by
19 unlawfully foreclosing on the Property. Foreclosing Defendants', including Nationstar and QLS,
20 "dual tracking" conduct was despicable, unfair, unjust, and is morally reprehensible.

21 77. At all times stated herein, Foreclosing Defendants, including Nationstar and QLS, knew
22 Nevada's foreclosure statutes i.e., NRS 107.080, required them to provide statutory notice of the
23 NOD and NOS to Plaintiffs at Plaintiffs Known Address.

24 78. At the time Foreclosing Defendants, including Nationstar and QLS, received Plaintiffs'
25 notice of acceptance of their foreclosure prevention alternative and election to exercise Plaintiffs'
26 95% option under the terms of the reverse mortgage/note and deed of trust, Foreclosing
27 Defendants, including Nationstar and QLS, considered their obligations under Nevada's
28 foreclosure statutes and the terms of the reverse mortgage/note and deed of trust and reasoned

1 whether proceeding with the unlawful foreclosure sale would pose any probable harmful
2 consequences to Plaintiffs.

3 79. Foreclosing Defendants', including Nationstar and QLS, reasoning concluded that there
4 would be possible harmful consequences that Plaintiffs would suffer if they proceeded with the
5 unlawful foreclosure. Those harmful consequences included are, but not limited to, Plaintiffs
6 being precluded from: 1) Realizing the benefit of the foreclosure prevention alternative
7 Foreclosing Defendants had offered and Plaintiffs had accepted; 2) Exercising their 95% pay off
8 option under the terms of the reverse mortgage/note and deed of trust; 3) Keeping the home in the
9 family; 4) Preventing the foreclosure sale; and 3) Saving money by avoiding fees added to the
10 loan balance.

11 80. Regardless of Foreclosing Defendants', including Nationstar and QLS, conclusions
12 regarding the harmful consequences Plaintiffs would suffer, Foreclosing Defendants, including
13 Nationstar and QLS, willfully and deliberately decided they would not act to avoid the harmful
14 consequences Plaintiffs would suffer.

15 81. Instead, Foreclosing Defendants, including Nationstar and QLS, acted with malice and
16 oppression, with a conscious disregard of Plaintiffs' rights when they egregiously elected to
17 proceed with the unlawful foreclosure sale by consciously ignoring their obligations, pursuant to
18 NRS 107.080, 107.550, and under the terms of the reverse mortgage/note and deed of trust, to
19 cancel the NOD.

20 82. Foreclosing Defendants, including Nationstar and QLS, intended to cause the harmful
21 consequences resulting from the unlawful foreclosure sale Plaintiffs have suffered because they
22 had considered the harmful effect of the unlawful foreclosure sale on Plaintiffs and proceeded
23 with the unlawful foreclosure sale rather than avoiding the harmful consequences by simply
24 following the Nevada's law, i.e., NRS 107.080, 107.550, and the terms of the reverse
25 mortgage/note and deed of trust, and canceling the unlawful foreclosure sale.

26 83. Foreclosing Defendants', including Nationstar and QLS, conscious decision to proceed
27 with the unlawful foreclosure sale despite the harmful consequences Plaintiffs would suffer was
28 despicable conduct because Plaintiffs have been subjected to cruel and unjust hardship by: 1)

1 Losing their home; 2) Being cheated after accepting the foreclosure prevention alternative; 3)
2 Being prevented from exercising their 95% Option in the terms of the reverse mortgage/note and
3 deed of trust; 4) Having the home unlawfully foreclosed upon; 5) Not saving money by avoiding
4 fees added to the loan balance; 6) Having to Retain legal counsel to right their wrong; and because
5 6) It was the unfair, unjust and despicable conduct Nevada's legislature and governor were
6 specifically trying to remedy when enacting NRS 107.550.

7 84. Prior to Foreclosing Defendants, including Nationstar and QLS, recording the NOS on or
8 about August 29, 2016, Foreclosing Defendants, again considered and reasoned whether their
9 unlawful foreclosure of Plaintiffs' Property would have any possible harmful consequences.

10 85. Plaintiffs incorporate by reference herein paragraphs 72-83 supra.

11 86. After Foreclosing Defendants', including Nationstar and QLS, second deliberation
12 regarding their obligations under Nevada law, the terms of the reverse mortgage/note and deed of
13 trust, and the harmful consequences Plaintiffs would suffer if they proceeded with the unlawful
14 foreclosure sale, Foreclosing Defendants egregiously opted to proceed with the unlawful
15 foreclosure sale by recording the unlawful NOS.

16 87. Thereafter, on October 6, 2016, the morning before the afternoon of the unlawful
17 foreclosure sale, Plaintiffs faxed and FedEx'd a cease and desist letter advising Foreclosing
18 Defendants, including QLS, of their violations of NRS 107.080 and Plaintiffs' intent to file suit
19 and seek damages if the unlawful foreclosure sale is not canceled.

20 88. Upon receipt of Plaintiffs' cease and desist letter, Foreclosing Defendants, including QLS
21 and Nationstar, postponed the unlawful foreclosure sale from October 6, 2016 to the following
22 week on October 13, 2016.

23 89. During Foreclosing Defendants', including QLS and Nationstar, postponement of the
24 unlawful foreclosure sale, Foreclosing Defendants, including QLS and Nationstar, took that time
25 to review the status of their unlawful foreclosure sale of Plaintiffs' Property and review their two
26 prior egregious decisions to proceed with the unlawful foreclosure sale that they knew would
27 cause Plaintiffs to suffer harmful consequences.

1 90. Based upon information and belief, defendant, QLS, contacted and consulted with
2 defendant, Nationstar, to advise it regarding Plaintiffs' cease and desist letter and to consider
3 whether they should cancel or proceed with the unlawful foreclosure sale.

4 91. Foreclosing Defendants, including Nationstar and QLS, reviewed the Plaintiffs' cease and
5 desist letter.

6 92. Foreclosing Defendants, including Nationstar, confirmed again with defendant, QLS, that
7 Plaintiffs had accepted the foreclosure prevention alternative and were exercising their option
8 under the terms of the reverse mortgage/note and deed of trust.

9 93. Foreclosing Defendants, including Nationstar and QLS, confirmed again that NRS
10 107.550 required them to cancel the NOD after Plaintiffs had accepted the foreclosure prevention
11 alternative and were exercising their option under the terms of the reverse mortgage/note and deed
12 of trust.

13 94. Foreclosing Defendants, including Nationstar and QLS, confirmed again that NRS
14 107.550 required them to cancel the NOD nine (9) months after it had been recorded if the NOS
15 had not been recorded within the stated time frame.

16 95. Foreclosing Defendants, including Nationstar and QLS, confirmed again that NRS
17 107.550 precluded them from having recorded the unlawful NOS.

18 96. Foreclosing Defendants, including Nationstar and QLS, confirmed that Plaintiffs were not
19 served either the NOD or unlawful NOS at Plaintiffs' Known Address.

20 97. Prior to Foreclosing Defendants, including Nationstar and QLS, proceeding with their
21 unlawful foreclosure sale on October 13, 2016, Foreclosing Defendants, for a third time
22 considered and reasoned whether their unlawful foreclosure of Plaintiffs' Property would pose
23 any possible harmful consequences.

24 98. Plaintiffs incorporate by reference herein paragraphs 72-83 supra.

25 99. Foreclosing Defendants, including Nationstar and QLS, after considering the effect of the
26 unlawful foreclosure sale on Plaintiffs and reasoning they would suffer harmful consequences,
27 Foreclosing Defendants, on about October 13, 2016, for the third time acted with malice and
28

1 oppression, with a conscious disregard of Plaintiffs' rights by proceeding with and concluding the
2 unlawful foreclosure sale.

3 100. The harmful consequences Foreclosing Defendants, including Nationstar and QLS,
4 considered, contemplated and reasoned Plaintiffs would suffer as a result of their despicable
5 conduct did in fact occur.

6 101. After the unlawful foreclosure sale, Plaintiffs timely filed this action.

7 102. In response, Foreclosing Defendants, including Nationstar and QLS, have doubled down
8 on their position by wrongly contending they did not have to notice Plaintiffs at their Known
9 Address and completely ignoring their statutory obligations under NRS 107.550 and obligations
10 under the terms of the reverse mortgage/note and deed of trust.

11 103. Foreclosing Defendants', each of them, despicable, malicious and oppressive conduct
12 with their conscious disregard of Plaintiffs' rights must be punished. Foreclosing Defendants',
13 each of them, conduct must be deterred.

14 104. Punitive damages must be awarded against each of the Foreclosing Defendants in addition
15 to the treble damages identified in NRS 107.080 and 107.560^{9, 10}

16 **Attorneys' Fees as Special Damages.**

17 105. Plaintiffs are entitled to their attorney's fees as special damages where they have incurred
18 fees in recovering real property and clearing the cloud on the title i.e., the Property herein
19 described above.¹¹

20 106. Plaintiffs incorporate by reference herein paragraphs 1-104 supra.

21 107. Plaintiffs have incurred attorney's fee in their efforts to recover the Property and clear the
22 cloud on its title caused by Foreclosing Defendants' unlawful foreclosure sale i.e., the recorded
23 trustees's deed and defendants', Pedersons, subsequently recorded grant deed.

24 _____
25 ⁹ The rights, remedies and procedures provided by NRS 107.560 are in addition to and independent of any other
rights, remedies or procedures provided by law." Nev. Rev. Stat. § 107.560(7).

26 ¹⁰ Regarding whether a statute for treble damages is punitive, Webb v. Shull (Nev. 2012) 270 P.3d 1266, 1267 states
27 "[] when a statute lacks an express or implied mental culpability element, we presume that the Legislature intended
to omit such an element. Furthermore, deferring to legislative intent, we decline to imply a heightened level of
mental culpability to a statute that is not punitive in nature."

28 ¹¹ *Sandy Valley Assocs. v. Sky Ranch Estates* (Nev. 2001) 117 Nev. 948, 957.

1 108. Foreclosing Defendants' intentional and calculated action unlawfully foreclosing on
2 Plaintiffs' Property left Plaintiffs with only one course of action, that is litigation.

3 109. Plaintiffs' attorney's fees are a foreseeable consequence of Foreclosing Defendants'
4 conduct and are the natural and proximate consequence of the unlawful foreclosure sale.

5 110. Based thereon, Plaintiffs are entitled to their attorney's fees as special damages according
6 to proof at trial.

7 **CAUSE OF ACTION**

8 **(Violations of NRS 107.080)**

9 **As to Foreclosing Defendants Only.**

10 111. Paragraphs 1 through 110 of this Amended Complaint are incorporated herein as if the
11 same were set forth herein in full and at length.

12 112. Foreclosing Defendants, DOES I – X, and each of them, had a duty to comply with NRS
13 107.080 prior to unlawfully foreclosing on the Property.

14 113. Foreclosing Defendants, DOES I – X, and each of them, owed the duty to Plaintiffs.

15 114. Foreclosing Defendants, DOES I – X, and each of them, breached NRS 107.080.

16 115. As a direct and proximate cause of Foreclosing Defendants', DOES I – X, and each of
17 them, violations of NRS 107.080, Plaintiffs have been damaged.

18 116. The sale must be declared void and statutory damages rendered unto Plaintiffs.

19 **CAUSE OF ACTION**

20 **(Violations of NRS 107.550)**

21 **As to Foreclosing Defendants Only.**

22 117. Paragraphs 1 through 110 of this Amended Complaint are incorporated herein as if the
23 same were set forth herein in full and at length.

24 118. Foreclosing Defendants, DOES I – X, and each of them, had a duty to comply with NRS
25 107.550 prior to unlawfully foreclosing on the Property.

26 119. Foreclosing Defendants, DOES I – X, and each of them, owed the duty to Plaintiffs.

27 120. Foreclosing Defendants, DOES I – X, and each of them, breached NRS 107.550.

1 121. As a direct and proximate cause of Foreclosing Defendants', DOES I – X, and each of
2 them, violations of NRS 107.550, Plaintiffs have been damaged.

3 122. The sale must be declared void and statutory damages rendered unto Plaintiffs.

4 **CAUSE OF ACTION**

5 **(Conversion)**

6 **As to Foreclosing Defendants Only.**

7 123. Paragraphs 1 through 110 of this Amended Complaint are incorporated herein as if the
8 same were set forth herein in full and at length.

9 124. Foreclosing Defendants, DOES I – X, and each of them, converted \$255,100.00 they
10 received from the unlawful foreclosure sale rightfully belonging to Plaintiffs as discussed above.

11 125. Foreclosing Defendants, DOES I – X, and each of them, conversion damaged Plaintiffs in
12 the amount \$255,100.00 they received from the unlawful foreclosure sale rightfully belonging to
13 Plaintiffs as discussed above.

14 **CAUSE OF ACTION**

15 **(Unjust Enrichment)**

16 **As to Foreclosing Defendants Only.**

17 126. Paragraphs 1 through 110 of this Amended Complaint are incorporated herein as if the
18 same were set forth herein in full and at length.

19 127. Foreclosing Defendants, DOES I – X, and each of them, have been unjustly enriched by
20 converting the \$255,100.00 they received from the unlawful foreclosure sale and failing to
21 forward the entire proceeds to rightfully belonging to Plaintiffs as discussed above.

22 **CAUSE OF ACTION**

23 **(Quiet/Slander of Title)**

24 **As to All Defendants Only.**

25 128. Paragraphs 1 through 110 of this Amended Complaint are incorporated herein as if the
26 same were set forth herein in full and at length.

1 129. Foreclosing Defendants, DOES I – X, and each of them have slandered Plaintiffs’ title to
2 the Property by unlawfully foreclosing on it and causing a trustee’s deed, the NOD, and the NOS
3 to be recorded against it and divesting recorded title from Plaintiffs.

4 130. Defendants, Rosehill and Pedersons, and each of them, have slandered Plaintiffs’ title by
5 causing the grant deed to be recorded against the Property

6 131. Plaintiffs remain equitable title holders to the Property despite the unlawfully recorded
7 NOD, NOS, trustee’s deed, and defendants’, Pedersons, grant deed.

8 132. Plaintiffs seek to quiet title to the Property by declaring the recorded slanders void and
9 expunging them from Carson City’s recorded documents.

10 133. As a direct and proximate cause of defendants’, DOES I – X, and each of them, slandering
11 Plaintiffs’ title to the Property, Plaintiffs have been damaged.

12 134. The unlawful foreclosure sale and subsequent sale to defendants, Pedersons, must be
13 declared void and expunged from the Property’s chain of title.

14 135. Plaintiffs seek attorney’s fees as special damages.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiffs pray for judgment as follows:

- 17 1. Against each Foreclosing Defendant for violating NRS 107.080 and 107.550;
- 18 2. Against each Foreclosing Defendant for, pursuant to NRS 107.080, mandatory
19 statutory damages in the amount of \$5000.00 for Plaintiffs or treble the amount of
20 actual damages, whichever is greater;
- 21 3. Against each Foreclosing Defendant for, pursuant to NRS 107.560, mandatory
22 statutory damages in the amount of \$50,000.00 for Plaintiffs or treble the amount of
23 actual damages, whichever is greater;
- 24 4. Against each Foreclosing Defendant for conversion;
- 25 5. Against each Foreclosing Defendant for \$255,100.00 for their conversion of the
26 unlawful foreclosure sale proceeds;
- 27 6. Against each Foreclosing Defendant for Punitive damages for their conversion;
- 28 7. Against each Foreclosing Defendant for unjust enrichment;

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- 8. Against each Foreclosing Defendant for \$255,100.00 for their unjust enrichment;
- 9. Against all defendants for slandering Plaintiffs' title to the Property;
- 10. Against all defendants declaring the unlawful foreclosure sale void pursuant to NRS 107.080 and 107.550;
- 11. Against all defendants restoring clear title in the Property to Plaintiffs;
- 12. Reasonable Attorney's fees as specially pled and proved at trial;
- 13. An injunction enjoining Foreclosing Defendants, and each of them, their agents or successors in interest from executing the power of sale under the deed of trust until it complies with subsections 2, 3, and 4 of NRS 107.080;
- 14. Against each Foreclosing Defendants for reasonable Attorney's fees pursuant to NRS 107.080;
- 15. Against each Foreclosing Defendants for reasonable Attorney's fees pursuant to NRS 107.560;
- 16. Against each Foreclosing Defendant for punitive damages pursuant to NRS 42.005;
- 17. Against all defendants for prejudgment interest on all damages;
- 18. Against all defendants for statutory costs; and
- 19. For any other relief the Court deems proper.

AFFIRMATION Pursuant to NRS 239B.030

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

Dated: December 2, 2020.

TORY M. PANKOPF LTD

By: s/ TORY M. PANKOPF
TORY M. PANKOPF, ESQ.
Attorney for Plaintiffs

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5, I hereby certify that on the 2nd day of December 2020, I mailed a true and correct copy of the following document(s):

Amended Complaint

By email and depositing in the U.S. Mail, first class postage prepaid thereon, addressed to the following:

Quality Loan Services Corporation
c/o Kristin Schuler-Hintz, Esq.
MCCARTHY HOLTHUS LLP
9510 W Sahara Ave, Suite 200
Las Vegas, NV 89117
Fax (866) 339-5691
khintz@McCarthyHolthus.com

Zachary and Michelle Pederson
Rosehill LLC
c/o James M. Walsh, Esq.
WASLSH & ROSEVEAR
9468 Double R Bl, Ste A
Reno, NV 89521
Fax (775) 853-0860
jmwash@wbrl.net

NATIONSTAR MORTGAGE LLC
fbn Champion Mortgage Company
c/o Melanie D. Morgan, Esq.
AKERMAN LLP
1635 Village Center Cir, Suite 200
Las Vegas, NV 89134
melanie.morgan.akerman.com

DATED on this 2nd day of December 2020.

s/Tory M. Pankopf
Tory M. Pankopf

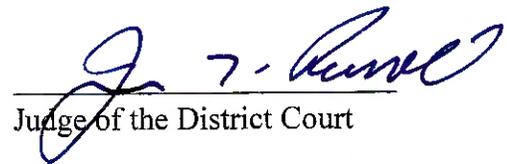
1 defendant's, Rosehill, motion to dismiss ("Order"), pursuant to NRCP 54(b), and good cause
2 appearing, the motion is granted.

3 IT IS HEREBY ORDERED that the Court's order entered on December 24, 2020 granting
4 defendants'/plaintiffs' in Intervention motion for summary judgment, denying plaintiffs' motion
5 for summary judgment, and denying defendant's, Rosehill, motion to dismiss is certified as a final
6 judgment and, given there is no just reason for delay, final judgment is to be entered forthwith.

7 FURTHER, plaintiffs will serve a notice of entry of order on all other parties and file proof
8 of service within 7 days after the date the court sends this order to plaintiffs' counsel.

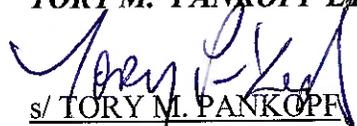
9 **IT IS SO ORDERED**

10
11 DATED: ~~January~~ ^{February} 10, 2021.

12
13 
14 Judge of the District Court

15
16
17 Respectfully Submitted by,

18 **TORY M. PANKOPF LTD**

19 
20 By: s/ TORY M. PANKOPF
21 TORY M. PANKOPF, ESQ.
22 *Attorney for Plaintiffs*
23 748 S Meadows Parkway, Suite 244
24 Reno, Nevada 89521
25 Telephone: (775) 384-6956
26 tory@pankopfuslaw.com
27
28

1 **CERTIFICATE OF MAILING**

2 Pursuant to NRCP 5(b), I certify that I am an employee of the First Judicial District
3 Court, and that on this 22nd day of February, 2021, I sent via electronic mail, a true and correct
4 copy of the foregoing Order addressed as follows:

5 James M. Walsh, Esq.
6 Email: jmwalsh@wbrl.net

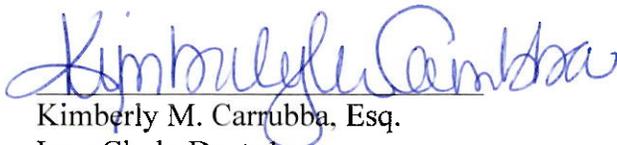
Donna M. Wittig, Esq.
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7 Tory M. Pankopf, Esq.
8 Email: tory@pankopfuslaw.com

Kristin Schuler-Hintz, Esq.
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15 Law Clerk, Dept. 1
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5 Reno, Nevada 89521
6 Tel: (775) 853-0883
7 Email: jmw Walsh@wbrl.net
8 Attorney for Pedersen

REC'D & FILED

2020 DEC 24 AM 11:35

AUBREY ROWLAND
CLERK

BY  DEPUTY

6 **IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
7 **IN AND FOR CARSON CITY**

9 ESTATE OF THELMA AILENE SARGE and
10 ESTATE OF EDWIN JOHN SARGE,

11 Plaintiffs,

12 vs.

13 QUALITY LOAN SERVICE CORPORATION and
14 DOES I – X, inclusive,

15 Defendants.

16 In the Matter of the Estate of:

17 THELMA AILENE SARGE,

18 Decedent.

19 In the Matter of the Estate of:

20 EDWIN JOHN SARGE,

21 Decedent.

Case No.: 16 RP 0009 1B

Dept. No: I

Consolidated With Case No.:

16 PBT 00107 1B and
16 PBT 00108 1B

22 **FINDINGS OF FACT CONCLUSIONS OF LAW AND SUMMARY JUDGMENT**

23 **INTRODUCTION**

24 Plaintiffs in Intervention Zachary and Michele Pedersen (“Pedersen”) having filed a Motion for
25 Summary Judgment against Plaintiffs claiming they are BFP’s pursuant to NRS 107.560 and 14.017.
26 Plaintiffs opposed and filed a counter motion for Summary Judgment against Pedersen. The Court having
27 read and considered the motions and exhibits, the papers and pleadings on file hear in and the arguments,
28 makes the following Findings of Fact, Conclusions of Law and Judgment.

FINDINGS OF FACT

- 1 1. Plaintiff, the Estate of Thelma Ailene Sarge and Edwin John Sarge, filed their complaint for
2 “reentry” contending the foreclosure sale conducted by Quality Loan Service on or about October
3 13, 2016 was defective for lack of proper notice to the Estates.
- 4 2. Rosehill, LLC, was the successful bidder at that sale, paying the sum of \$255,100 for the real
5 property at issue herein, that being, 1636 Sonoma Street, Carson City, Nevada.
- 6 3. The Deed of Trust in question herein, was executed by Edwin J. Sarge and Thelma A. Sarge,
7 Trustees of the Sarge Trust dated March 28, 1988, recorded April 26, 2006 as Document No. 352840,
8 Official Records of Carson City.
- 9 4. Both Sarges passed away and the heirs have not occupied 1636 Sonoma St. as their full time
10 residence.
- 11 5. On September 2, 2015, the Sarges being in default under the terms and conditions of the Deed of
12 Trust, a Notice of Breach and Default and of Election to Cause Sale of Real Property under Deed of
13 Trust was recorded by Quality Loan Corporation. The Notice of Breach and Default and of Election
14 to Cause Sale of Real Property under Deed of Trust was recorded September 22, 2015 as Document
15 No. 457307, Official Records of Carson City.
- 16 6. Thereafter, on or about August 29, 2016, Quality Loan Corporation did record a Notice of
17 Trustee’s Sale as Document No. 467446, Official Records of Carson City.
- 18 7. At the duly noticed trustee’s sale, as indicated, Rosehill, LLC was the successful bidder in the
19 amount of \$255,100, and a Trustee’s Deed Upon Sale was issued to Rosehill, LLC and recorded
20 November 2, 2016, as Document No. 469496, Official Records of Carson City Recorder.
- 21 8. Plaintiff brought the instant action and recorded a Lis Pendens against the subject property.
- 22 9. On or about November 2, 2016, Rosehill moved to expunge the Lis Pendens, and after hearing
23 December 5, 2016, this Court entered its order expunging the Lis Pendens. At such hearing, the
24 Court indicated that Plaintiff having failed to meet the requirements of NRS 14.015, that Rosehill’s
25 title had a priority from the date of the Deed of Trust in 2006, that Plaintiffs had failed to meet their
26 burden to provide any evidence that a default did not exist under the terms and conditions of the
27 Deed of Trust at the time of foreclosure, that Plaintiffs produced no evidence of a tender of the
28 amounts due and owing under the Deed of Trust and that the provisions of NRS 107.080 required

1 no notice to the estate or the beneficiaries. Sarge did not seek any stay of the order and it was not
2 until over six months after the sale to Pedersen did Sarge file a Notice of Appeal of the dismissal.
3 NOA filed June 14, 2017.

4 10. The Order Expunging the Lis Pendens was recorded with the Carson City Recorders Office
5 December 7, 2016 File No. 470500. Sarge sought no stay of this order pending appeal.

6 11. After expunging of the Lis Pendens, Rosehill sold the subject property by Grant Bargain and
7 Sale Deed to Pedersen. Said Deed was dated December 13, 2016 and recorded December 15,
8 2016, as Document No. 470725, Official Records of Carson City Recorder.

9 12. Rose Hill and Quality Loan Service subsequently both filed Motions to Dismiss.

10 13. Sarge's opposed the motions and specifically filed a Supplemental Opposition wherein they
11 admit that they had made an election to pursue their Loss Mitigation Options under NRS 107.530.
12 See exhibit D to the supplement. 7.

13 14. Sarge has made additional judicial admissions in their motion for summary judgment against
14 Pedersen at P6, L2. Wherein they contend that their election to participate in the Banks loss
15 mitigation process constituted a tender.

16 15. Sarge and their counsel had actual knowledge of the pending foreclosure and elected to
17 participate in a loss mitigation option offered by the lender.

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23 **CONCLUSIONS OF LAW**

24
25 1. Summary judgment is appropriate when the pleadings and admissible evidence show there is
26 no genuine issue as to any material fact and that the movant is entitled to judgment as a matter
27 of law. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). *See Celotex*
28 *Corp. v. Catrett*, 477 U.S. 317, 330 (1986) (*citing* Fed. R. Civ. Pro. 56(c)); NRCP 56. When

1 deciding a motion for summary judgment, the evidence and any reasonable inferences drawn
2 from it, must be viewed in a light most favorable to the non-moving party. NRCP 56; *Winn v.*
3 *Sunrise Hospital and Medical Center*, 128 Nev. Adv. Op. 23 (2012). If reasonable minds could
4 differ on material facts, summary judgment is inappropriate because summary judgment's
5 purpose is to avoid unnecessary trials when the facts are undisputed, and the case must then
6 proceed to the trier of fact. *Warren v. City of Carlsbad*, 58 F.3d 439, 441 (9th Cir. 1995); *see*
7 *also Nw. Motorcycle Ass'n v. U.S. Dept. of Agric.*, 18 F.3d 1468, 1471 (9th Cir. 1994).

8
9
10 2. Rosehill's title and that of its successor in interest, the Pedersens, is derivative and has the
11 priority of the Deed of Trust foreclosed on by Quality Loan Corporation. That Deed of Trust
12 was dated March 4, 2006, recorded April 26, 2006. This relation back of priority of the
13 Trustee's Deed extinguishes any claims, liens or encumbrances with regard to the real property
14 after April 26, 2006 in favor of the purchaser Rosehill and its successors in interest. United
15 States of America v. Real Property at 2659 Roundhill Dr., Alamo, CA, 194 F.3d 1020 (9th Cir.
16 1999). It is clear therefrom that any claims or interest of Sarge, the Sarge Estate or any interest
17 arriving therefrom were extinguished by the Quality Loan Corporation foreclosure.
18

19
20 3. The Pedersen's and Rosehill's title is also protected by NRS 14.017. That statute provides in
21 pertinent part:
22

23 Upon... the recordation of a certified copy of a court order for the
24 cancellation of a notice of the pendency of such an action with the
25 recorder of the county in which the notice was recorded, each person
26 who thereafter acquires an interest in the property as a purchaser,
27 transferee, mortgagee or other encumbrancer for valuable consideration
28 , except a party to the action who is not designated by a fictitious name
at that time of the withdrawal or order of cancellation, shall be deemed
to be without knowledge of the action or any matter, claim or allegation
contained therein, irrespective of whether the person has or at any time

1 had actual knowledge of the action... (2) the purpose of this section
2 is to provide for the absolute and complete transferability of real
3 property after the withdrawal or cancellation of a notice of the pendency
4 of an action affecting the property.

4 4. The order of cancellation was recorded December 7, 2016 and at that time Pedersen's were
5 not parties to this action. Based upon the statute they have presumptive status as bona fide
6 purchasers.

7 5. Sarge has admitted that long before the foreclosure occurred in October 2016 that they had
8 been in communication with Champion Mortgage to pursue their Loss Mitigation Options pursuant to
9 NRS 107.530. In fact, as noted Jill Sarge on February 4, 2016 executed a Loss Mitigation Option
10 Acknowledgment wherein, she elected to short sale of the property. See exhibit D to the Supplement to
11 Opposition to Motion to Dismiss Complaint.

12 6. Once Sarge made this election her remedies became those of NRS 107.560. If the lender
13 pursued foreclosure, in violation of NRS 107.530(1), the sole remedy of Sarge was to enjoin the sale. If
14 Sarge allowed the sale to go forward, as happened here, the remedy is solely against the bank as set forth
15 in NRS 107.560(2).

16 7. After recordation of the Trustee's Deed of Sale NRS 107.560(4) provides
17 a safe haven for any purchaser at the foreclosure sale. It states "a violation of NRS 107.400 to 107.560,
18 inclusive, does not affect the validity of a sale to a bona fide purchaser for value..."

19 8. During this period time Sarge was represented by current counsel who was in communication
20 with the lender's representatives specifically about the foreclosure schedule. See Sarge's Opposition to
21 Motion to Dismiss complaint filed December 30, 2016 at p. 3 line 15 wherein Sarge states

22 "Counsel for the Estates notified the trustee it had failed to serve
23 The NOD and NOS on the Estates and demanded it cease and desist
24 from foreclosing on the property..."

25
26 9. In addition to the foregoing Sarge in their motion admits their election to participate in the loss
27 mitigation process offered by the Bank and even threatened injunctive remedy should the bank proceed.
28

1 This brought them squarely within the foreclosure prevention alternatives defined in NRS 107.420 and
2 limited their remedy once they allowed the foreclosure to proceed to those against the bank as set forth
3 in NRS 107.560. And NRS 107.560 (4) specifically grants BFP protection to subsequent purchasers.

4
5 10. Sarge's pleadings constitute Judicial Admissions. Judicial admissions are defined as
6 deliberate, clear, unequivocal statements by a party about a concrete fact within that party's knowledge.
7 *Reyburn Lawn & Landscape Designers, Inc. v. Plaster Dev. Co., Inc.*, 255 P.3d 268, 127 Nev. 331 (2011)
8 citing *Smith v. Pavlovich*, 394 Ill.App.3d 458, 333 Ill.Dec. 446, 914 N.E.2d 1258, 1267 (2009). What
9 constitutes a judicial admission should be determined by the circumstances of each case and evaluated in
10 relation to the other testimony presented in order to prevent disposing of a case based on an unintended
11 statement made by a nervous party. *Id.*, 333 Ill.Dec. 446, 914 N.E.2d at 1268. *See Scalf v. D.B. Log*
12 *Homes, Inc.*, 128 Cal. App.4th 1510, 27 Cal.Rptr.3d 826, 833 (2005) (reasoning that concessions in
13 pleadings are judicial admissions whereas oral testimony subject to traditional impeachment is construed
14 as evidence); *Chaffee v. Kraft General Foods, Inc.*, 886 F.Supp. 1164 (D.N.J.1995) (explaining the
15 difference between a judicial admission, which is conclusively binding, and an evidentiary party
16 admission, which may be challenged).

17 "Judicial admissions are formal admissions in the pleadings which have the effect of withdrawing
18 a fact from issue and dispensing wholly with the need for proof of the fact." *In re Barker*, 839 F.3d 1189
19 (9th Cir. 2016); "Judicial admissions are 'conclusively binding on the party who made them'" *Am. Title*
20 *Ins. Co. v. Lacelaw Corp.*, 861 F.2d 224, 226 (9th Cir. 1988). "Where, however, the party making an
21 ostensible judicial admission explains the error in a subsequent pleading or by amendment, the trial court
22 must accord the explanation due weight." *Sicor Ltd. v. Cetus Corp.*, 51 F.3d 848 (9th Cir. 1995). *See*
23 *Lacelaw*, 861 F.2d at 226 ("Factual assertions in pleadings and pretrial orders, unless amended, are
24 considered judicial admissions conclusively binding on the party who made them."); *Hooper v. Romero*,
25 68 Cal.Rptr. 749, 753, 262 Cal.App.2d 574, 580 (1968) (same).

26 11. That Pedersen's are Bona Fide Purchasers for value pursuant to the provisions of
27 NRS 14.017 and 107.560.

28 12. That Sarge's damage remedy, if any, is limited to parties other than Pedersen or Rosehill

1 By NRS 107.560 and therefore based on the foregoing Sarge's Motion for Summary Judgment should
2 be denied, Pedersen's Motion for Summary Judgment will be granted and Rosehill's Motion to Dismiss
3 denied as moot.

4
5 Based upon the foregoing IT IS HEREBY ORDERED DECREED AND AJUDGED,
6 That Plaintiff's Motion for Summary Judgment is denied Pedersen's Motion for Summary Judgment is
7 granted and judgement is hereby granted and entered in favor of Zachary and Michelle Pedersen and
8 against Plaintiffs that Pedersen's are Bona Fide Purchasers for Value of 1636 Sonoma Street, Carson
9 City, Nevada APN: 010-513-07. And described as follows:

10
11 All that certain property situated in the County of Carson City, State of Nevada
12 , described as follows:

13 That portion of the Northwest ¼ of the Northwest ¼ of Section 28, Township 15
14 North, Range 20 East, M.D.B. & M., further described as follows:

15 Parcel 86 as shown on the Parcel Map for M.G. STAFFORD, INC., filed for
16 Record in the office of the Recorder of Carson City, Nevada, on August 22, 1989,
17 In Book 6, Page 1714, as Document No. 89571.

18 TOGETHER with all tenements, hereditaments and appurtenances, if any, thereto
19 belonging or appertaining, and any reversions, remainders, rents, issues or profits
20 thereof.

21 And further that Zachary and Michelle Pedersen hold title free and clear of any claims of the
22 Plaintiff's with a priority date of April 26, 2006, said date being the recordation date of Document No.
23 352840, their title is derived from that of Rosehill, LLC the purchaser at foreclosure per Document No.
24 469496. Any and all other claims by Plaintiffs against Pedersen are hereby dismissed.

25 It is further hereby ordered that Rosehill LLC, Motion to Dismiss is denied as moot based upon
26 the foregoing as all claims against Rosehill are disposed and dismissed by these findings.

27 Dated: December 24th, 2020.

28 
Judge of the District Court

1 **CERTIFICATE OF MAILING**

2 Pursuant to NRCP 5(b), I certify that I am an employee of the First Judicial District
3 Court, and that on this 24th day of December, 2020, I deposited for mailing, postage paid, at
4 Carson City, Nevada, a true and correct copy of the foregoing Order addressed as follows:

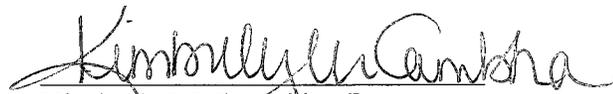
5 Tory M. Pankopf, Esq.
6 748 S. Meadows Pkwy., Ste. 244
7 Reno, NV 89701

8 Kristin Schuler-Hintz, Esq.
9 Matthew Dayton, Esq.
10 9510 W. Sahara Ave., Ste. 200
11 Las Vegas, NV 89117

12 Melanie D. Morgan, Esq.
13 1635 Village Center Cir., Ste. 200
14 Las Vegas, NV 89134

15 James M. Walsh, Esq.
16 9468 Double R. Blvd., Ste. A
17 Reno, NV 89521

18 Melissa Vermillion, Esq.
19 7251 W. Lake Mead Blvd., Ste. 300
20 Las Vegas, NV 89128

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Kimberly M. Carrubba, Esq.
Law Clerk, Dept. I

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TORY M. PANKOPF (SBN 7477)
TORY M PANKOPF, LTD.
748 S Meadows Parkway, Suite 244
Reno, Nevada 89521
Telephone: (775) 384-6956
Facsimile: (775) 384-6958
Attorney for the Estate and Petitioner

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AUSREY ROWLATT
CLERK
BY S. BARAJAS
DEPUTY

**IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE CARSON CITY**

ESTATE OF THELMA AILENE SARGE,
ESTATE OF EDWIN JOHN SARGE, and JILL
SARGE

Plaintiffs,

v.

QUALITY LOAN SERVICE CORPORATION,
ROSEHILL, LLC, NATIONSTAR
MORTGAGE, dba CHAMPION MORTGAGE,
ZACHARY PEDERSON and MICHELLE
PEDERSON,

Defendant(s).

CASE NO: 16 RP 00009 1B
DEPT NO: I

Consolidated with Case Nos.:

16 PBT 00107 1B and
16 PBT 00108 1B

ZACHARY PEDERSON and MICHELLE
PEDERSON,

Plaintiff Intervenors.

And Related Consolidated Cases.

**NOTICE OF ENTRY OF ORDER
CERTIFYING FINAL JUDGMENT**

PLEASE TAKE NOTICE that the order certifying final judgment of the orders granting defendants', Pedersons, motion for summary judgment, denying plaintiffs', Sarge, motion for

1 summary judgment, and denying defendant's, Rosehill, motion to dismiss as moot was entered
2 on February 10, 2021 and served on February 22, 2021. A copy of the order is attached hereto as
3 Exhibit "1".

4 **AFFIRMATION Pursuant to NRS 239B.030**

5 The undersigned does hereby affirm that this document does not contain the social
6 security number of any person.

7 Dated: March 11, 2021

8 s/Tory M. Pankopf
9 TORY M. PANKOPF, ESQ.
10 *Attorney for Plaintiffs*

11 **CERTIFICATE OF SERVICE**

March 7th

12 Pursuant to NRCP 5, I hereby certify that on the 11th day of ~~February~~ 2021, I mailed a
13 true and correct copy of the following document(s):

- 14 1. Notice of Entry of Order Certifying Final Judgment.

15 By depositing in the U.S. Mail, first class postage prepaid thereon, addressed to the following:

16 Quality Loan Services Corporation
17 c/o Matthew D. Dayton, Esq.
18 MCCARTHY HOLTHUS LLP
19 9510 W Sahara Ave, Suite 200
20 Las Vegas, NV 89117
21 Fax (866) 339-5691
22 mdayton@sMcCarthyHolthus.com

23 James M. Walsh, Esq.
24 WALSH & ROSEVEAR
25 9468 Double R Bl., Ste A
26 Reno, NV 89521
27 Fax (775) 853-0860
28 wbaker@wbrl.net

21 NATIONSTAR MORTGAGE LLC
22 fbn Champion Mortgage Company
23 c/o Melanie D. Morgan, Esq.
24 AKERMAN LLP
25 1635 Village Center Cir, Suite 200
26 Las Vegas, NV 89134
27 melanie.morgan.akerman.com

28 DATED on this 11th day of ~~February~~ 2021.

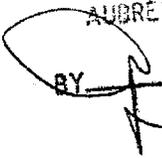
7th
March

s/Tory M. Pankopf
Tory M. Pankopf

REC'D & FILED ✓

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AUDREY ROWLAND
CLERK

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**IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY**

ESTATE OF THELMA AILENE SARGE and
ESTATE OF EDWIN JOHN SARGE,

Plaintiffs,

v.

QUALITY LOAN SERVICE CORPORATION
and DOES I – X, inclusive,

Defendant(s).

CASE NO: 16 RP 00009 1B
DEPT NO: I

Consolidated with Case Nos.:

16 PBT 00107 1B and
16 PBT 00108 1B

ZACHARY PEDERSON and MICHELLE
PEDERSON,

Plaintiff Intervenors/Defendants

And Related Consolidated Cases.

ORDER RE FINAL JUDGMENT

Having read and considered plaintiffs' motion for an order certifying and directing entry of final judgment as the December 24, 2020 orders granting defendants'/plaintiffs' in Intervention motion for summary judgment, denying plaintiffs' motion for summary judgment, and denying

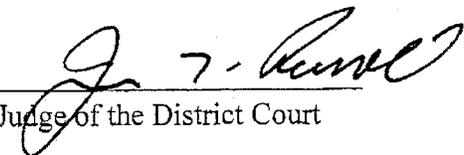
1 defendant's, Rosehill, motion to dismiss ("Order"), pursuant to NRCP 54(b), and good cause
2 appearing, the motion is granted.

3 IT IS HEREBY ORDERED that the Court's order entered on December 24, 2020 granting
4 defendants'/plaintiffs' in Intervention motion for summary judgment, denying plaintiffs' motion
5 for summary judgment, and denying defendant's, Rosehill, motion to dismiss is certified as a final
6 judgment and, given there is no just reason for delay, final judgment is to be entered forthwith.

7 FURTHER, plaintiffs will serve a notice of entry of order on all other parties and file proof
8 of service within 7 days after the date the court sends this order to plaintiffs' counsel.

9 **IT IS SO ORDERED**

10
11 DATED: ~~January~~ ^{February} 10, 2021.

12
13 
14 Judge of the District Court

15
16 Respectfully Submitted by,

17
18 **TORY M. PANKOPF LTD**

19 
20 By: s/ TORY M. PANKOPF
21 TORY M. PANKOPF, ESQ.
22 Attorney for Plaintiffs
23 748 S Meadows Parkway, Suite 244
24 Reno, Nevada 89521
25 Telephone: (775) 384-6956
26 tory@pankopfuslaw.com
27
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CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of the First Judicial District Court, and that on this 22nd day of February, 2021, I sent via electronic mail, a true and correct copy of the foregoing Order addressed as follows:

James M. Walsh, Esq.
Email: jmwalsh@wbri.net

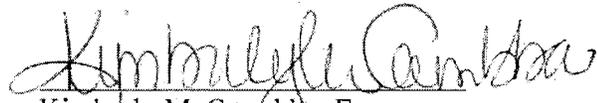
Donna M. Wittig, Esq.
Email: donna.wittig@akerman.com

Tory M. Pankopf, Esq.
Email: tory@pankopfustlaw.com

Kristin Schuler-Hintz, Esq.
Email: khintz@mccarthyholthus.com

Melanie D. Morgan, Esq.
Email: melanie.morgan@akerman.com

Matthew Dayton, Esq.
Email: mdayton@mccarthyholthus.com


Kimberly M. Carrubba, Esq.
Law Clerk, Dept. I

1 James M. Walsh, Esq.
2 Nevada State Bar No. 796
3 Walsh & Rosevear
4 9468 Double R. Blvd., Suite A
5 Reno, Nevada 89521
6 Tel: (775)853-0883
7 Email: jmw Walsh@wbrl.net
8 Attorney for intervenors

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IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY

ESTATE OF THELMA AILENE SARGE and
ESTATE OF EDWIN JOHN SARGE,

Plaintiffs,

vs.

QUALITY LOAN SERVICE CORPORATION an
DOES I - X, inclusive,

Defendants.

In the Matter of the Estate of:

THELMA AILENE SARGE,

Decedent.

In the Matter of the Estate of:

EDWIN JOHN SARGE,

Decedent.

Case No.: 16 RP 0009 IB

Dept. No: I

Consolidated With Case No.:

16 PBT 00107 IB and
16 PBT 00108 IB

NOTICE OF ENTRY OF FINDINGS OF FACT CONCLUSION OF LAW AND SUMMARY JUDGMENT

COMES NOW, Plaintiffs in Intervention, by and through their counsel, James M. Walsh, Esq. of Walsh & Rosevear, and hereby gives notice of the courts entry of FINDINGS OF FACT CONCLUSIONS OF LAW AND SUMMARY JUDGMENT, entered December 24,2020,. A copy of said Order is enclosed herewith.

Affirmation Pursuant to NRS 239B.030

1
2 The undersigned does hereby affirm that the preceding document does not contain the social
3 security number of any person.

4
5
6
7 DATED this 31st day of December 2020.

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/s/
JAMES M. WALSH, ESQ.

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am an employee of WALSH & ROSEVEAR that I am over the age of eighteen (18) years, and that I am not a party to, nor interested in, this action. On this date, I caused to be served a true and correct copy of the foregoing document on all parties to this action by:

- xx Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada postage paid, following the ordinary course of business practices;
- Hand Delivery
- Facsimile

addressed as follows:

Tory M. Pankopf
748 South Meadows Pkwy, Ste 244
Reno, Nevada 89521
Attorneys for Estate and Petitioner

Kristin A. Schuler-Hintz
9510 W. Sahara Ave. Ste 200
Las Vegas, NV 89117
Attorney for Quality Loan Service

Melissa Vermillion Esq.
Barrett Daffin
7251 W. Lake Mead Blvd. Ste 300
Las Vegas, NV 89128

Mathew Dayton, Esq.
McCarthy & Holthus LLP
9510 W. Sahara Ave Ste.200
Las Vegas, NV 89117

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

Executed this ²⁴7th day of December, 2020.

/s/ James M. Walsh

James M. Walsh
Walsh & Rosevear

1. Plaintiff, the Estate of Thelma Ailene Sarge and Edwin John Sarge, filed their complaint for “reentry” contending the foreclosure sale conducted by Quality Loan Service on or about October 13, 2016 was defective for lack of proper notice to the Estates.
2. Rosehill, LLC, was the successful bidder at that sale, paying the sum of \$255,100 for the real property at issue herein, that being, 1636 Sonoma Street, Carson City, Nevada.
3. The Deed of Trust in question herein, was executed by Edwin J. Sarge and Thelma A. Sarge, Trustees of the Sarge Trust dated March 28, 1988, recorded April 26, 2006 as Document No. 352840, Official Records of Carson City.
4. Both Sarges passed away and the heirs have not occupied 1636 Sonoma St. as their full time residence.
5. On September 2, 2015, the Sarges being in default under the terms and conditions of the Deed of Trust, a Notice of Breach and Default and of Election to Cause Sale of Real Property under Deed of Trust was recorded by Quality Loan Corporation. The Notice of Breach and Default and of Election to Cause Sale of Real Property under Deed of Trust was recorded September 22, 2015 as Document No. 457307, Official Records of Carson City.
6. Thereafter, on or about August 29, 2016, Quality Loan Corporation did record a Notice of Trustee’s Sale as Document No. 467446, Official Records of Carson City.
7. At the duly noticed trustee’s sale, as indicated, Rosehill, LLC was the successful bidder in the amount of \$255,100, and a Trustee’s Deed Upon Sale was issued to Rosehill, LLC and recorded November 2, 2016, as Document No. 469496, Official Records of Carson City Recorder.
8. Plaintiff brought the instant action and recorded a Lis Pendens against the subject property.
9. On or about November 2, 2016, Rosehill moved to expunge the Lis Pendens, and after hearing December 5, 2016, this Court entered its order expunging the Lis Pendens. At such hearing, the Court indicated that Plaintiff having failed to meet the requirements of NRS 14.015, that Rosehill’s title had a priority from the date of the Deed of Trust in 2006, that Plaintiffs had failed to meet their burden to provide any evidence that a default did not exist under the terms and conditions of the Deed of Trust at the time of foreclosure, that Plaintiffs produced no evidence of a tender of the amounts due and owing under the Deed of Trust and that the provisions of NRS 107.080 required

1 no notice to the estate or the beneficiaries. Sarge did not seek any stay of the order and it was not
2 until over six months after the sale to Pedersen did Sarge file a Notice of Appeal of the dismissal.
3 NOA filed June 14, 2017.

4 10. The Order Expunging the Lis Pendens was recorded with the Carson City Recorders Office
5 December 7, 2016 File No. 470500. Sarge sought no stay of this order pending appeal.

6 11. After expunging of the Lis Pendens, Rosehill sold the subject property by Grant Bargain and
7 Sale Deed to Pedersen. Said Deed was dated December 13, 2016 and recorded December 15,
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9 12. Rose Hill and Quality Loan Service subsequently both filed Motions to Dismiss.

10 13. Sarge's opposed the motions and specifically filed a Supplemental Opposition wherein they
11 admit that they had made an election to pursue their Loss Mitigation Options under NRS 107.530.
12 See exhibit D to the supplement. 7.

13 14. Sarge has made additional judicial admissions in their motion for summary judgment against
14 Pedersen at P6, L2. Wherein they contend that their election to participate in the Banks loss
15 mitigation process constituted a tender.

16 15. Sarge and their counsel had actual knowledge of the pending foreclosure and elected to
17 participate in a loss mitigation option offered by the lender.

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23 **CONCLUSIONS OF LAW**

24
25 1. Summary judgment is appropriate when the pleadings and admissible evidence show there is
26 no genuine issue as to any material fact and that the movant is entitled to judgment as a matter
27 of law. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). *See Celotex*
28 *Corp. v. Catrett*, 477 U.S. 317, 330 (1986) (*citing* Fed. R. Civ. Pro. 56(c)); NRCp 56. When

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3 *Sunrise Hospital and Medical Center*, 128 Nev. Adv. Op. 23 (2012). If reasonable minds could
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6 proceed to the trier of fact. *Warren v. City of Carlsbad*, 58 F.3d 439, 441 (9th Cir. 1995); *see*
7 *also Nw. Motorcycle Ass'n v. U.S. Dept. of Agric.*, 18 F.3d 1468, 1471 (9th Cir. 1994).

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10 2. Rosehill's title and that of its successor in interest, the Pedersens, is derivative and has the
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13 Trustee's Deed extinguishes any claims, liens or encumbrances with regard to the real property
14 after April 26, 2006 in favor of the purchaser Rosehill and its successors in interest. United
15 States of America v. Real Property at 2659 Roundhill Dr., Alamo, CA, 194 F.3d 1020 (9th Cir.
16 1999). It is clear therefrom that any claims or interest of Sarge, the Sarge Estate or any interest
17 arriving therefrom were extinguished by the Quality Loan Corporation foreclosure.
18

19
20 3. The Pedersen's and Rosehill's title is also protected by NRS 14.017. That statute provides in
21 pertinent part:
22

23 Upon... the recordation of a certified copy of a court order for the
24 cancellation of a notice of the pendency of such an action with the
25 recorder of the county in which the notice was recorded, each person
26 who thereafter acquires an interest in the property as a purchaser,
27 transferee, mortgagee or other encumbrancer for valuable consideration
28 , except a party to the action who is not designated by a fictitious name
at that time of the withdrawal or order of cancellation, shall be deemed
to be without knowledge of the action or any matter, claim or allegation
contained therein, irrespective of whether the person has or at any time

1 had actual knowledge of the action... (2) the purpose of this section
2 is to provide for the absolute and complete transferability of real
3 property after the withdrawal or cancellation of a notice of the pendency
4 of an action affecting the property.

5 4. The order of cancellation was recorded December 7, 2016 and at that time Pedersen's were
6 not parties to this action. Based upon the statute they have presumptive status as bona fide
7 purchasers.

8 5. Sarge has admitted that long before the foreclosure occurred in October 2016 that they had
9 been in communication with Champion Mortgage to pursue their Loss Mitigation Options pursuant to
10 NRS 107.530. In fact, as noted Jill Sarge on February 4, 2016 executed a Loss Mitigation Option
11 Acknowledgment wherein, she elected to short sale of the property. See exhibit D to the Supplement to
12 Opposition to Motion to Dismiss Complaint.

13 6. Once Sarge made this election her remedies became those of NRS 107.560. If the lender
14 pursued foreclosure, in violation of NRS 107.530(1), the sole remedy of Sarge was to enjoin the sale. If
15 Sarge allowed the sale to go forward, as happened here, the remedy is solely against the bank as set forth
16 in NRS 107.560(2).

17 7. After recordation of the Trustee's Deed of Sale NRS 107.560(4) provides
18 a safe haven for any purchaser at the foreclosure sale. It states "a violation of NRS 107.400 to 107.560,
19 inclusive, does not affect the validity of a sale to a bona fide purchaser for value..."

20 8. During this period time Sarge was represented by current counsel who was in communication
21 with the lender's representatives specifically about the foreclosure schedule. See Sarge's Opposition to
22 Motion to Dismiss complaint filed December 30, 2016 at p. 3 line 15 wherein Sarge states

23 "Counsel for the Estates notified the trustee it had failed to serve
24 The NOD and NOS on the Estates and demanded it cease and desist
25 from foreclosing on the property..."

26 9. In addition to the foregoing Sarge in their motion admits their election to participate in the loss
27 mitigation process offered by the Bank and even threatened injunctive remedy should the bank proceed.
28

1 This brought them squarely within the foreclosure prevention alternatives defined in NRS 107.420 and
2 limited their remedy once they allowed the foreclosure to proceed to those against the bank as set forth
3 in NRS 107.560. And NRS 107.560 (4) specifically grants BFP protection to subsequent purchasers.

4
5 10. Sarge's pleadings constitute Judicial Admissions. Judicial admissions are defined as
6 deliberate, clear, unequivocal statements by a party about a concrete fact within that party's knowledge.
7 *Reyburn Lawn & Landscape Designers, Inc. v. Plaster Dev. Co., Inc.*, 255 P.3d 268, 127 Nev. 331 (2011)
8 citing *Smith v. Pavlovich*, 394 Ill.App.3d 458, 333 Ill.Dec. 446, 914 N.E.2d 1258, 1267 (2009). What
9 constitutes a judicial admission should be determined by the circumstances of each case and evaluated in
10 relation to the other testimony presented in order to prevent disposing of a case based on an unintended
11 statement made by a nervous party. *Id.*, 333 Ill.Dec. 446, 914 N.E.2d at 1268. *See Scalf v. D.B. Log*
12 *Homes, Inc.*, 128 Cal. App.4th 1510, 27 Cal.Rptr.3d 826, 833 (2005) (reasoning that concessions in
13 pleadings are judicial admissions whereas oral testimony subject to traditional impeachment is construed
14 as evidence); *Chaffee v. Kraft General Foods, Inc.*, 886 F.Supp. 1164 (D.N.J.1995) (explaining the
15 difference between a judicial admission, which is conclusively binding, and an evidentiary party
16 admission, which may be challenged).

17 "Judicial admissions are formal admissions in the pleadings which have the effect of withdrawing
18 a fact from issue and dispensing wholly with the need for proof of the fact." *In re Barker*, 839 F.3d 1189
19 (9th Cir. 2016); "Judicial admissions are 'conclusively binding on the party who made them'" *Am. Title*
20 *Ins. Co. v. Lacelaw Corp.*, 861 F.2d 224, 226 (9th Cir. 1988). "Where, however, the party making an
21 ostensible judicial admission explains the error in a subsequent pleading or by amendment, the trial court
22 must accord the explanation due weight." *Sicor Ltd. v. Cetus Corp.*, 51 F.3d 848 (9th Cir. 1995). *See*
23 *Lacelaw*, 861 F.2d at 226 ("Factual assertions in pleadings and pretrial orders, unless amended, are
24 considered judicial admissions conclusively binding on the party who made them."); *Hooper v. Romero*,
25 68 Cal.Rptr. 749, 753, 262 Cal.App.2d 574, 580 (1968) (same).

26 11. That Pedersen's are Bona Fide Purchasers for value pursuant to the provisions of
27 NRS 14.017 and 107.560.

28 12. That Sarge's damage remedy, if any, is limited to parties other than Pedersen or Rosehill

1 By NRS 107.560 and therefore based on the foregoing Sarge's Motion for Summary Judgment should
2 be denied, Pedersen's Motion for Summary Judgment will be granted and Rosehill's Motion to Dismiss
3 denied as moot.

4
5 Based upon the foregoing IT IS HEREBY ORDERED DECREED AND AJUDGED,
6 That Plaintiff's Motion for Summary Judgment is denied Pedersen's Motion for Summary Judgment is
7 granted and judgement is hereby granted and entered in favor of Zachary and Michelle Pedersen and
8 against Plaintiffs that Pedersen's are Bona Fide Purchasers for Value of 1636 Sonoma Street, Carson
9 City, Nevada APN: 010-513-07. And described as follows:

10 All that certain property situated in the County of Carson City, State of Nevada
11 , described as follows:

12 That portion of the Northwest 1/4 of the Northwest 1/4 of Section 28, Township 15
13 North, Range 20 East, M.D.B. & M., further described as follows:

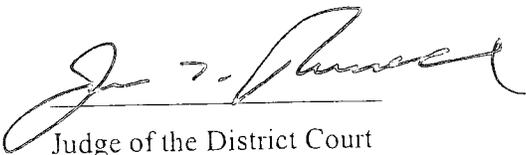
14 Parcel 86 as shown on the Parcel Map for M.G. STAFFORD, INC., filed for
15 Record in the office of the Recorder of Carson City, Nevada, on August 22, 1989.
16 In Book 6, Page 1714, as Document No. 89571.

17 TOGETHER with all tenements, hereditaments and appurtenances, if any, thereto
18 belonging or appertaining, and any reversions, remainders, rents, issues or profits
19 thereof.

20 And further that Zachary and Michelle Pedersen hold title free and clear of any claims of the
21 Plaintiff's with a priority date of April 26, 2006, said date being the recordation date of Document No.
22 352840, their title is derived from that of Rosehill, LLC the purchaser at foreclosure per Document No.
23 469496. Any and all other claims by Plaintiffs against Pedersen are hereby dismissed.

24 It is further hereby ordered that Rosehill LLC, Motion to Dismiss is denied as moot based upon
25 the foregoing as all claims against Rosehill are disposed and dismissed by these findings.

26 Dated: December 24th 2020.

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Judge of the District Court

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CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of the First Judicial District Court, and that on this 24th day of December, 2020, I deposited for mailing, postage paid, at Carson City, Nevada, a true and correct copy of the foregoing Order addressed as follows:

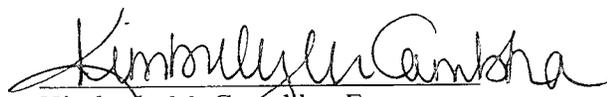
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