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Elizabeth A. Brown
Clerk of Supreme Court

8 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

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10
11 IN THE MATTER OF ESTATE OF THELMA
12 AILENE SARGE and ESTATE OF EDWIN
13 JOHN SARGE.

Supreme Court No. 82623

District Court Case No. 16 RP 00009 1B

14 ESTATE OF THELMA AILENE SARGE;
15 ESTATE OF EDWIN JOHN SARGE; AND
16 JILL SARGE,
17 Appellants,
18 vs.
19 ZACHARY PEDERSON; MICHELLE
20 PEDERSON; and ROSEHILL, LLC,
21 Respondents.

22 **MOTION TO STAY ORDER PENDING APPEAL**

23 Appellants, ESTATE OF THELMA AILENE SARGE, ESTATE OF EDWIN JOHN
24 SARGE (collectively, "Estates"), and JILL SARGE ("Sarge") (collectively "Appellants") by and
25 through their attorney of record, Tory M. Pankopf, of the Law Offices of Tory M. Pankopf, Ltd.,
26 having moved the district court for an order staying the order pending this appeal without success,
27 move this Court for an order staying order/judgment granting, respondents', ZACHARY and
28 MICHELLE PEDERSON ("Pedersons") and Defendant, ROSEHILL, LLC ("Rosehill"),
(collectively, "Respondents") motion for summary judgment ("MSJ") and its order denying

1 Plaintiff's MSJ for the purpose of maintaining the status quo while orders are on appeal
2 ("Motion").

3 **I.**

4 **Points and Authorities.**

5 **A. Request for Stay of Orders.**

6 Appellants request the Court issue an order staying the district court's orders¹ granting
7 Respondents' MSJ, denying Appellants' MSJ, and denying defendant's, Rosehill, motion to
8 dismiss as moot for the purpose of maintain the 'status quo ante' among the parties while the
9 appeal is pending. *Westside Chtr. Serv. v. Gray Line Tours*, (Nev. 1983) 99 Nev. 456, 460. The
10 factors the court should consider when deciding whether to issue a stay are the same factors the
11 appellate court considers when ruling on a motion to stay judgment under NRAP 8(c). The factors
12 the court considers are (1) whether the object of the appeal will be defeated in the absence of a
13 stay, (2) whether the appellant will suffer irreparable or substantial harm in the absence of a stay,
14 (3) whether the respondent will suffer irreparable or substantial harm if a stay is granted, and (4)
15 whether the appellant is likely to prevail on the merits of the appeal. *Clark Cnty. Office of the*
16 *Coroner/Med. Exam'r v. Las Vegas Review-Journal*. (Nev. 2018) 415 P.3d 16, 20.

17 **1. First Factor**

18 As to the first factor, the object of the appeal i.e., reversing the district court's decision
19 concluding Respondents are bona fide purchasers ("BFPs") will be defeated because the status
20 quo ante will not be maintained. That is, Pursuant to NRS 107.080² and the Nevada Constitution
21 i.e., Article I, Section 1, Appellants are guaranteed to have the foreclosure sale declared void if a
22 jury finds co-defendants, Quality Loan Service Corp ("Quality") and Nationstar Mortgage dba
23 Champion Mortgage ("Nationstar") ("co-defendants"), did not substantially comply with NRS
24 107.080. If the status quo ante is not maintained, then Respondents will be free to market and
25 sell the subject real property resulting in Appellants' divestiture of their equitable title to the subject

26
27 ¹ On December 24, 2020, the court's order was entered. See also declaration of Tory M. Pankopf in support
("Pankopf Dec") filed concurrently herewith.

28 ² Any reference herein to NRS 107.080 is in reference to the statute as amended by SB239 and enacted as of June 1,
2015.

1 property being maintained by the recorded pendency of actions. Moreover, their right to have the
2 foreclosure sale voided will be forever lost upon sale to a third party who would be an actual BFP.
3 Based thereon, this factor tips in favor of the court entering a stay order pending appeal.

4 **2. Second Factor**

5 As to the second factor, Appellants will suffer irreparable or substantial harm in the
6 absence of the stay. In Nevada, real property and its attributes are considered unique and loss of
7 real property rights generally results in irreparable harm. *Dixon v. Thatcher* (Nev. 1987) 103
8 Nev. 414, 416. Appellants will be irreparably harmed in the event the Defendants were to sell
9 the real property while it was being appealed and the order is later reversed. Moreover, Appellants
10 will be denied their right to have the foreclosure sale declared void in the event a jury finds co-
11 defendants did not substantially comply with NRS 107.080.

12 Here, Appellants have been contending co-defendants' foreclosure sale was illegal
13 because they were not served with either the notice of default or notice of sale at their "known
14 address". Appellants have been seeking to reverse the illegal foreclosure sale since October 2016.
15 Appellants' have preserved the status quo by timely filing their complaint and recording their
16 notice of pendency of action on October 31, 2016 ("Notice").³ Subsequently, the district court
17 erred by issuing an order expunging the Notice which was reversed on appeal.⁴ This Court's
18 opinion also concluded the district court erred by granting summary judgment because a genuine
19 issue of material fact remains as to whether Quality notified titleholders at their known address.
20 *Estate of Sarge v. Quality Loan Serv. Corp. (In re Estate of Sarge)*, (Nev., Feb. 27, 2020, No.
21 73286) [pp. 5]

22 Presently, Appellants contend the district court's order concluding Respondents are BFPs
23 is an error in law and the uncontroverted facts do not support the decision. Pursuant to NRS
24 107.080, if co-defendants did not substantially comply with the statute, then the district court must
25 declare the foreclosure sale void which will put title back in the Appellants' names. However,
26

27 ³ Attached hereto as Exhibits "1" and "2" are true and correct copies of Appellants complaint and recorded Notice.

28 ⁴ Supreme Court No. 73286; *Estate of Sarge, Jill Sarge v. Quality et. al.*; See footnote 3 of the opinion. The order reversing and remanding did not issue until almost 3-years after the appeal was filed.

1 the district court's order prevents title being restored to Appellants in the event a jury finds co-
2 defendants have not substantially complied with the statute. Consequently, the district court's
3 order, if not stayed, Appellants could be permanently divested of their title to the subject real
4 property. Thus, irreparably injuring them. Wrobel, supra. Based thereon, this factor tips in favor
5 of the Court entering a stay order pending appeal.

6 **3. Third Factor**

7 As to the third factor, Respondents will not suffer irreparable or substantial harm if the
8 stay is granted. The only effect a stay order will have on Respondents is preventing them from
9 marketing and selling the subject real property while the appeal is pending. Not being able to
10 market and sell the subject real property while the appeal is pending does not amount to
11 irreparable or substantial harm. Especially given Defendant knowingly opted to continue with
12 the purchase despite being keenly aware of the defect in title.

13 Respondents knew shortly after becoming equitable owners, discussed infra, of the
14 property that Appellants' claim existed. Given Respondents' counsel is representing both
15 Rosehill and Pedersons, it can be assumed that they consulted with their counsel prior to closing
16 the sale. Undoubtedly, Pedersons' counsel provided them with a cogent and detailed analysis of
17 the risks they faced moving forward with the sale. That is counsel must have explained to them
18 that if a jury were to conclude Nationstar and Quality failed to provide the requisite statutory
19 notices in NRS 107.080, then the sale would have to be voided. After receiving counsel's
20 admonitions, Respondents consciously accepted the risk that the foreclosure sale may be voided.
21 Respondents cannot now claim they are being victimized by Appellants' claim or may suffer
22 irreparable or substantial harm.

23 Based thereon, this factor tips in favor of the Court entering a stay order pending appeal.

24 **4. Fourth Factor**

25 Respondents' MSJ contended, pursuant to NRS 107.560 and 14.017, they were entitled to
26 judgment as a matter of law.⁵ They contended Appellants' rights and remedies were limited to
27

28 ⁵ At the time (11/24/20) Respondents filed their MSJ, Appellants' complaint alleged a single action for breach of
NRS 107.080. See Exhibit "I"; Pankopf Dec. Thereafter, in response to Respondent's, Rosehill, motion to dismiss

1 and by NRS 107.560 because Appellants had contended they had been offered and accepted a
2 foreclosure prevention alternative.⁶ They also contended they were BFPs pursuant to NRS 14.017
3 because they had taken title to the property after the district court's order expunging the Notice
4 had been entered and recorded. This Court reversed the order in its opinion. *Sarge*, supra.

5 The issue(s) presented on appeal are subject to de novo review i.e., order on MSJs and
6 statutory interpretation. The issues are straight forward and require interpretation of the statutes
7 applied by the district court. The statutes are not ambiguous. Moreover, as discussed below, the
8 facts are undisputed, undenied, and have been admitted by Respondents. Therefore, Appellants
9 will succeed on the merits of their appeal.

10 "Statutory interpretation is a question of law subject to de novo review." *Williams v. State*
11 (Nev. 2017) 402 P.3d 1260, 1262. The goal of statutory interpretation "is to give effect to the
12 Legislature's intent." *Id.* To ascertain the Legislature's intent, we look to the statute's plain
13 language. *Id.* "[W]hen a statute's language is clear and unambiguous, the apparent intent must be
14 given effect, as there is no room for construction." *Id.* This court "avoid[s] statutory
15 interpretation that renders language meaningless or superfluous," and "whenever possible ... will
16 interpret a rule or statute in harmony with other rules or statutes. *Id.* "If, however, a statute is
17 susceptible to more than one reasonable meaning, it is ambiguous, and the plain meaning rule
18 does not apply." *Edgington v. Edgington* (Nev. 2003) 119 Nev. 577, 583.

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22
23 the complaint, Appellants, pursuant to NRC 15, on November 30, 2020 filed an amended complaint alleging,
24 among other things, breach of NRS 107.080 and 107.560. Attached hereto as Exhibit "3" is a true and correct copy
25 of Appellants' complaint.

26 ⁶ Appellants actually contended the subject mortgage was a reverse mortgage and, pursuant to the terms of the
27 reverse mortgage and 24 CFR § 206.125 federal regulation, upon the death of the last trustor the heirs had the right
28 to either: 1) pay the outstanding loan balance in full; 2) sell the property for 95% of the appraised value; or 3)
provide the mortgagee with a deed in lieu of foreclosure. Originally, the heirs had opted to provide co-defendant,
Nationstar, with a deed in lieu of foreclosure. Then after having received an offer to purchase the property from a
local realtor, they opted to sell the property and submitted the offer to Nationstar. Pursuant to 24 CFR § 206.55(f),
the heirs of the estate are permitted to dispose of the property as set forth above. Thus, as a matter of law, the heirs
exercise of their rights under the federal regulation brought them under the protection of NRS 107.560; See Pankopf
Dec.

1 **a. NRS 107.560(7) Augments Appellants' Rights and Remedies.**

2 Appellants' rights and remedies are not limited to NRS 107.560(2).⁷ The district court's
3 conclusion that they are is erroneous because NRS 107.560(7) states "[t]he rights, remedies and
4 procedures provided by this section are in addition to and independent of any other rights,
5 remedies or procedures provided by law." Nev. Rev. Stat. § 107.560(7). Moreover, NRS 107.560
6 is not applicable because Appellants' complaint has not alleged a violation of NRS 107.400 to
7 107.560.⁸ The district court's order, Respondent's MSJ and Reply completely ignore subsection
8 7.⁹

9 When interpreting subsection 7, the words should be given their plain meaning. *Williams*,
10 supra. The words within the statute do not limit Appellants' rights, remedies and procedures.
11 Contrarily, subsection 7 augments their rights, remedies and procedures because there is only one
12 reasonable meaning to be given to the phrase "are in addition to and independent of any other
13 rights, remedies or procedures." That is the remedies, rights, and procedures provided by section
14 107.560 are in addition to and independent of any other rights, remedies or procedures provided
15 by law. Which means Appellants may bring a claim for breach of NRS 107.080, NRS 107.560,
16 and any other claims that are appropriate. Appellants will prevail on this issue.

17 **b. District Court Erred by Applying NRS 107.560.**

18 The district court's conclusion Respondents are BFPs pursuant to NRS 107.560 is an error
19 of law.¹⁰ Subsection 4 of NRS 107.560 states "[a] violation of NRS 107.400 to 107.560,
20 inclusive, does not affect the validity of a sale to a bona fide purchaser for value and any of its
21 encumbrances for value without notice." Nev. Rev. Stat. § 107.560. Subsection 4 is clear that it
22 is applicable to determining whether a person is a BFP when a "violation of NRS 107.400 to
23 _____

24 ⁷ Attached hereto as Exhibit "4" is a true and correct copy of the district court's email denying Appellants' MSJ,
25 granting Respondents' MSJ, and directing Respondents to prepare a proposed order incorporating its conclusion,
26 including, but not limited to, Appellants are precluded from bringing an action for breach of NRS 107.080.

27 Attached as Exhibit "5" is a true and correct copy of the order Respondents' prepared and the district court entered;
28 See Pankopf Dec.

⁸ See Exhibit "1".

⁹ Attached hereto as Exhibits "6" and "7" are true and correct copies of Respondents' MSJ and Reply to Appellants' opposition without exhibits. Neither the MSJ nor the reply have declarations supporting any facts asserted; Pankopf Dec.

¹⁰ See Exhibits "4" and "5".

1 107.560” has been alleged. Here, Appellants’ complaint does not allege a violation of NRS
2 107.400 to 107.560.¹¹ It alleges only a violation of NRS 107.080. Thus, subsection 4 is not
3 applicable to determine whether Respondents are BFPs. Therefore, NRS 107.080(7) is
4 determinative of whether Respondents are BFPs. Appellants will prevail on this issue.

5 **1. Respondents are Not BFPs Under an Analysis of NRS 107.080(7) and 111.180.**

6 Regardless of whether Respondents were BFPs under subsection 4, Respondents are not
7 BFPs under an analysis of NRS 107.080(7). As set forth above, Appellant’s claims are not limited
8 to NRS 107.560. See NRS 107.560(7). Accordingly, Appellants’ complaint alleges a breach of
9 only NRS 107.080. NRS 107.080(7) identifies who are BFPs following a non-judicial foreclosure
10 sale. It provides:

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

14 The substance of NRS 107.080(5) and (6) provides that a sale made under the provisions of NRS
15 107.080 must be declared void if the provisions are not complied with and if a complaint and
16 notice of pendency of action are not timely commenced and recorded. see NRS 107.080(5). The
17 substance of subsection (7) provides that if subsections (5) and (6) are not complied with i.e.,
18 timely commencement of action and recordation of notice, then the rights of a BFP will not be
19 affected. NRS 107.080(7). Here, Appellants timely filed their complaint pursuant to either time
20 constraints set forth in sections 5 and 6.¹²

21 NRS 111.180(1) provides:

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

25 The BFP described in subsection 7 according to NRS 111.180 is a person who does not have
26 actual or constructive notice Appellants’ action. Id. Here, Appellants’ Notice was timely
27

28 ¹¹ See Exhibit “1”.

¹² In this case, the complaint was filed and the Notice recorded on October 31, 2016. See Exhibits “1” and “2”.

1 recorded on October 31, 2016. Generally, the purpose of recording statutes is to provide
2 subsequent purchasers with knowledge concerning the state of title for real property. *Hines v.*
3 *Nat'l Default Servicing Corp.*, (Nev., July 31, 2015, No. 62128) [pp. 7]. The recording of a
4 document constructively "impart[s] notice to all persons of the contents thereof; and subsequent
5 purchasers and mortgagees shall be deemed to purchase and take with notice." *Id.* at 7 citing NRS
6 111.320 and *Id.* at 21 citing NRS 247.190(1). Thus, a recorded document serves to inform others
7 about the information contained in the document and makes third parties legally responsible for
8 knowledge of its contents. *Hines* at 7. Thus, as a matter of law, Respondents had, at a minimum,
9 constructive notice of Appellants' adverse rights, title and interest in the property. NRS
10 247.190(1); NRS 111.320.

11 Moreover, Respondent, Rosehill, has admitted and Pedersons do not deny they went into
12 contract to purchase the property after the foreclosure sale on October 13, 2016 and before the
13 complaint was filed and the Notice recorded on October 31, 2016.¹³ The escrow was scheduled
14 to close on November 30, 2016 and the escrow company provided them with the Notice.¹⁴
15 Neither Pedersons' MSJ nor their reply to Appellants' opposition deny they had notice of the
16 Notice.¹⁵ Consequently, Pedersons had actual knowledge of this action. As a matter of law,
17 Pedersons are not BFPs. Appellants will prevail on this issue.

18 **c. District Court Erred by Applying NRS 14.017.**

19 The district court's conclusion Respondents are BFPs pursuant to NRS 14.017 is an error
20 of law. As discussed above, the applicable statutes are NRS 107.080(7) and 111.180 when a
21 claim is made pursuant to NRS 107.080. Assuming for the sake of argument Respondents were
22 correct and NRS 14.017 is applicable, Respondents are still not BFPs under the statute. Section
23 14.017(1) provides in part that "...upon the recordation of a certified copy of a court order for
24 the cancellation of a notice of the pendency of such an action with the recorder of the county in
25

26 ¹³ See paragraphs 1, 3, 4, 5, 6, 8 and 9 of Rosehill's statement of facts in support of its motion to expunge the
27 Notice. Attached hereto as Exhibit "8" is a true and correct copy of Rosehill's motion to expunge the Notice;
28 Pankopf Dec

¹⁴ *Id.* paragraphs 6 and 9.

¹⁵ See Exhibits "6" and "7".

1 which the notice was recorded, each person who thereafter acquires an interest in the property as
2 a purchasershall be deemed to be without knowledge of the action...., irrespective of
3 whether the person has or at any time had actual knowledge of the action....” NRS § 14.017(1).
4 The operative phrase in the statute is “each person who thereafter acquires and interest in the
5 property as a purchaser.” The key word is “thereafter.” As discussed above, Respondents
6 acquired their interest in the property “before” the order was recorded. Moreover, the order
7 expunging the Notice was reversed on appeal. *Sarge*, supra.

8 Rosehill has admitted and Pederson do not deny they “promptly” went into contract to
9 purchase the subject property some time between October 13, 2016 and prior to October 31,
10 2016.¹⁶ Thus, Respondents became “equitable owners” of the subject real property sometime
11 between October 13, 2016 and prior to October 31, 2016. *Harrison v. Rice*, 510 P.2d 633, 635
12 (Nev. 1973). Rosehill filed its motion to expunge the Notice on November 10, 2016. The order
13 expunging the Notice was recorded on December 7, 2016.¹⁷ Consequently, the undisputed facts
14 establish Respondents acquired their interest in the property prior to the recording of the district
15 court’s order canceling Appellants’ Notice. As a matter of law, NRS 14.017 does not establish
16 Pedersons are BFPs. Based thereon, Appellants will prevail on this issue.

17 **B. Stay Should Issue Without Bond.**

18 The purpose of posting a bond when seeking a stay protects the prevailing party from the
19 risk of a later uncollectible judgment i.e., a money judgment. *Espiritu v. Capital One, N.A.* (D.
20 Nev., June 27, 2017, 2:15-cv-01933-JAD-PAL) [pp. 2] citing *NLRB v. Westphal*, 859 F.2d
21 818,819 (9th Cir. 1988). Appellants are not seeking a stay of execution on a money judgment.
22 Therefore, a supersedeas bond should not be required.

23 **B. Conclusion.**

24 Based upon the foregoing, Appellants request the Court stay the order(s) without bond
25 pending the outcome of the appeal.
26
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28 ¹⁶ As stated in paragraphs 1, 3, 4, 5, 6, 8 and 9 of Exhibit “8”.

¹⁷ Attached hereto as Exhibit “9” is a true and correct copy of the recorded order canceling the Notice; Pankopf Dec.

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AFFIRMATION

Pursuant to NRS 239B.040, this document does not contain the Social Security Number of any person.

DATED: This 18th day of March 2021.

TORY M. PANKOPF LTD

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

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5, I hereby certify that on the 19th day of March 2021, I served a true and correct copy of the following document(s):

Motion to Stay Order Pending Appeal.

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

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
jmw Walsh@wbri.net

DATED on this 19th day of March 2021.

s/Tory M. Pankopf
Tory M. Pankopf

1 TORY M. PANKOPF (SBN 7477)
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7 Attorney for the Estates and Jill Sarge

8 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

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11 IN THE MATTER OF ESTATE OF THELMA
12 AILENE SARGE and ESTATE OF EDWIN
13 JOHN SARGE.

Supreme Court No. 82623

District Court Case No. 16 RP 00009 1B

14 ESTATE OF THELMA AILENE SARGE;
15 ESTATE OF EDWIN JOHN SARGE; AND
16 JILL SARGE,
17 Appellants,
18 vs.
19 ZACHARY PEDERSON; MICHELLE
20 PEDERSON; and ROSEHILL, LLC,
21 Respondents.

22 **EXHIBITS 1 - 9**

23 **IN SUPPORT MOTION TO STAY ORDER PENDING APPEAL**

24 Attached hereto are Appellants, ESTATE OF THELMA AILENE SARGE, ESTATE OF
25 EDWIN JOHN SARGE (collectively, "Estates"), and JILL SARGE ("Sarge") (collectively
26 "Appellants") Exhibits "1" through "9" in support of their motion for an order staying the
27 order/judgment granting, respondents', ZACHARY and MICHELLE PEDERSON ("Pedersons")
28 and Defendant, ROSEHILL, LLC ("Rosehill"), (collectively, "Respondents") motion for
summary judgment ("MSJ") and its order denying Plaintiff's MSJ for the purpose of maintaining
the status quo while orders are on appeal ("Motion").

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Exhibit	Description	Bates Nos.
1	Complaint	001 - 006
2	Recorded Notice of Pendency of Action	007 - 011
3	Amended Complaint	012 – 033
4	Notice of Ruling/District Court Email	034 - 038
5	Order on MSJ	039 – 047
6	Amended MSJ w/o Exhibits	048 - 056
7	Reply to Opposition to MSJ	057 – 066
8	Rosehill’s Motion to Expunge Notice	067 – 090
9	Recorded Order Expunging Notice	091 - 094

DATED: This 18th day of March 2021.

TORY M. PANKOPF LTD

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

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EXHIBITS 1 - 9 IN SUPPORT MOTION TO STAY ORDER PENDING APPEAL

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
jmwals@wburl.net

s/Tory M. Pankopf
Tory M. Pankopf

EXHIBIT “1”

EXHIBIT “1”

EXHIBIT “1”

EXHIBIT “1”

EXHIBIT “1”

EXHIBIT “1”

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7 Attorney for the Estate and Petitioner

REC'D & FILED
2016 OCT 31 AM 11:09
SUSAN HERRMETHEN
CLERK
BY _____
G. JONES DEPUTY

8 IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
9
10 IN AND FOR THE CARSON CITY

11 In the matter of the estate of:

12 THELMA AILENE SARGE,
13 Deceased.

16RP000091B
CASE NO: 16RP000091B
DEPT NO: 7
I

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

17 Plaintiffs,

18 v.

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

20 Defendant(s).

21
22 COMPLAINT

23 COMES NOW plaintiffs, Estates of Thelma Ailene Sarge and Edwin John Sarge, by and
24 through the proposed executor, Jill Sarge, by and through her attorney, Tory M. Pankopf, of the
25 Law Offices of T M Pankopf PLLC, alleges and complain against defendants, QUALITY
26 LOAN SERVICE CORPORATION, and Does 1-10 Inclusive (collectively "Defendants") as
27 follows:
28

469424

PARTIES

1. A petition to set aside the estate of Plaintiff, Estate of Thelma Ailene Sarge ("Estate" or "Plaintiff"), has been filed on its behalf by the proposed executor of the Estate, Jill Sarge, in Carson City, Nevada.

2. A petition to set aside the estate of Plaintiff, Estate of Edwin John Sarge ("Estate" or "Plaintiff"), has been filed on its behalf by the proposed executor of the Estate, Jill Sarge, in Carson City, Nevada.

3. Defendant, Quality Loan Service Corporation ("Quality" or "Defendant"), is a California Corporation doing business in the City of Carson, Nevada.

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

5. Plaintiff is informed and believes and thereon allege that at all times herein mentioned each Defendant was the agent, employee, joint venture or partner with each of the remaining Defendants and was at all times herein mentioned acting within the course and scope of their employment relationship and/or in the course and scope of their agency, joint venture or partner relationship with each of the other.

CAUSE OF ACTION

(Violation of NRS 107.080)

6. At the time of the deaths of the decedents each of them were the legal owners of real property situated in Carson City, Nevada, and described as:

1
2 All that certain real property situated in the Carson City, State of Nevada,
3 described as follows:

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

7 Parcel 86 as shown of the Parcel Map for M. G. Stafford, Inc., filed for
8 record in the office of the Recorder of Carson City, Nevada, on August 22,
9 1989, in Book 6, page 1714, as Document No. 89571.

10 APN 010-513-07

11 1636 Sonoma Street, Carson City, Nevada.

12 ("Property")

13 7. The Property is an asset of their estates.

14 8. On or about October 13, 2016, Quality foreclosed on the Property.

15 9. Quality and Does I - X had a duty mandated by NRS 107.080 to provide the notice of
16 default and election to sell ("NOD") and the notice of sale ("NOS") to the Estates.

17 10. Quality was notified for the Estates prior to the foreclosure sale that the Estates had not
18 been served with the NOD and NOS, and that Quality had a duty to serve the NOD and NOS on
19 the Estates prior to foreclosing on the Property.

20 11. Quality's advised Estates it did not have to provide notice to the Estates and the
21 foreclosure sale would proceed as scheduled.

22 12. As a direct and proximate cause of Quality's violation of NRS 107.080, the Estates have
23 been damaged.
24

25 **PRAYER FOR RELIEF**

26 WHEREFORE, Estates pray for judgment as follows:

27 1. Judgment against Quality Loan Services Corporation and Does I - X;
28

2. An order declaring the foreclosure sale void to restore title in the Property to Estates;
3. Mandatory statutory damages in the amount of \$5000 for each Estate or treble the amount of actual damages, whichever is greater;
4. An injunction enjoining the beneficiary, its agents or successors in interest from executing the power of sale under the deed of trust until it complies with section 2, 3, or 4 of Section 107.080;
5. Reasonable Attorney fees and costs pursuant to statute; and
6. 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: This 26th day of October, 2016.

T M PANKOPF PLLC

By:



/S/ TORY M. PANKOPF
TORY M. PANKOPF, ESQ. (SBN 7477)
9460 Double R Blvd., Suite 104
Reno, NV 89521
Attorney for the Estate and Petitioner

CERTIFIED COPY

The document to which this certificate is attached is a full, true and correct copy of the original on file and of record in my office.

Date October 3, 2014
Susan Moriwether, City Clerk and Clerk of the First Judicial District
Court of the State of Nevada, in and for Carson City.

By [Signature] Deputy

Per NRS 239 Sec. 6 the SSN may be redacted, but in no way affects the legality of the document.

469424

EXHIBIT “2”

EXHIBIT “2”

EXHIBIT “2”

EXHIBIT “2”

EXHIBIT “2”

EXHIBIT “2”

APN _____

APN _____

APN _____

RECORDED AT THE
REQUEST OF
T. Pankopf
2016 OCT 31 PM 3:36
FILE NO. 469423
SUSAN HERRIWETHER
CARSON CITY RECORDER
FEES 17.00 Pa

FOR RECORDER'S USE ONLY

Notice of Tendency of Action
TITLE OF DOCUMENT

☒ I, the undersigned, hereby affirm that the attached document, including any exhibits, hereby submitted for recording does not contain personal information of any person or persons. (NRS 239B.030)

☐ I, the undersigned, hereby affirm that the attached document, including any exhibits, hereby submitted for recording does contain personal information of a person or persons as required by law. State specific law:

Jack Hartman
Signature

Jack Hartman - Broker
Print Name & Title

WHEN RECORDED MAIL TO:

Tory Pankopf
9460 Double R Blvd #104
Reno NV 89521

469423

1 TORY M. PANKOPF (SBN 7477)
2 T M PANKOPF, PLLC
3 9460 Double R Boulevard, Suite 104
4 Reno, Nevada 89521
5 Telephone: (775) 384-6956
6 Facsimile: (775) 384-6958
7 Attorney for the Estate and Petitioner

REC'D & FILED
2016 OCT 31 AM 11:09
SUSAN MERRIWEATHER
CLERK
DEPUTY

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

10 In the matter of the estate of:

11 THELMA AILENE SARGE,
12
13 Deceased.

CASE NO: 16-000013
DEPT NO: F

14
15 ESTATE OF THELMA AILENE SARGE
16 and ESTATE OF EDWIN JOHN SARGE,

17 Plaintiffs,

18 v.

19 QUALITY LOAN SERVICE
20 CORPORATION and DOES I - X,
21 inclusive,

22 Defendant(s).

23 **NOTICE OF PENDENCY OF ACTION**

24 PLEASE TAKE NOTICE that Petitioner, JILL SARGE, has filed a Petition to Set Aside
25 Estate, which is now pending before the above entitled Court, in the above referenced matter,
26 in the property described in the Petition to Set Aside Estate adverse to the Estate's title, or any
27 cloud on the Estate's title thereto, and concerning and affecting real property as described

28 469423

1 herein.

2 All that certain real property situated in the Carson City, State of Nevada,
3 described as follows:

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

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

9 APN 010-513-07

10 1636 Sonoma Street, Carson City, Nevada.

11 The purpose of Petitioner's action, among other things, includes setting the property
12 aside to herself and her siblings, heirs to their father's estate, such that the pending sale can be
13 finalized and pay all of the indebtedness on the property, in full. Said sale is pending entry of
14 the Order Granting the Petition to Set Aside and is ready to be closed.

15 Further, the purpose of Petitioner's action is to enforce Chapter 107 of the Nevada
16 Revised Statutes relating to the Notice of Default recorded on said property which is defective
17 for the notice required to be made for residential real property under NRS 107 et seq.


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

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

21
22 DATED: This 26th day of October, 2016.

23 ***T M PANKOPF PLLC***

24
25 By:


26 TORY M. PANKOPF, ESQ. (SBN 7477)
27 9460 Double R Blvd., Suite 104
28 Reno, NV 89521
Attorney for the Estate and Petitioner

CERTIFIED COPY

The document to which this certificate is attached is a full, true and correct copy of the original on file and of record in my office.

Date October 31, 2010

Susan Merriwether, City Clerk and Clerk of the First Judicial District Court of the State of Nevada, in and for Carson City.

By [Signature]

Deputy

Per NRS 239 Sec. 6 the SSN may be redacted, but in no way affects the legality of the document.

469423

EXHIBIT “3”

EXHIBIT “3”

EXHIBIT “3”

EXHIBIT “3”

EXHIBIT “3”

EXHIBIT “3”

1 TORY M. PANKOPF (SBN 7477)
2 **TORY M PANKOPF, LTD**
3 748 S Meadows Parkway, Suite 244
4 Reno, Nevada 89521
5 Telephone: (775) 384-6956
6 Facsimile: (775) 384-6958
7 Attorney for the Estates and Jill Sarge

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

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

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

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

13 Plaintiffs,

Consolidated with Case Nos.:

14 v.

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

16 PBT 00107 1B and
17 PBT 00108 1B

18 Defendant(s).

19 ZACHARY PEDERSON and MICHELLE
20 PEDERSON,

21 Plaintiff Intervenors/Defendants

22 And Related Consolidated Cases.

23 **AMENDED COMPLAINT**

24 Plaintiffs, ESTATE OF THELMA AILENE SARGE, ESTATE OF EDWIN JOHN
25 SARGE (collectively, “Estates”), and JILL SARGE (“Sarge”) (collectively “Plaintiffs”) by and
26 through their attorney of record, Tory M. Pankopf, of the Law Offices of Tory M. Pankopf, Ltd.,
27 allege and complain against defendants named herein as follows:
28

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 Estates and Jill Sarge

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).

ZACHARY PEDERSON and MICHELLE
PEDERSON,

Plaintiff Intervenors/Defendants

And Related Consolidated Cases.

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

Consolidated with Case Nos.:

16 PBT 00107 1B and
16 PBT 00108 1B

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.

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

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

FACTUAL ALLEGATIONS

Failure to Comply with NRS 107.080 Voids Foreclosure Sale.

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

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

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

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

APN 010-513-07

1636 Sonoma Street, Carson City, Nevada.

("Property")

14. Plaintiff, Estates, had a reverse mortgage/note ("reverse mortgage" or "note") secured by 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.

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

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

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

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

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

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

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

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

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

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

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

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

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 **Cancellation 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 ⁴ "In interpreting NRS 107.080(3) harmoniously with NRS 107.080(4)(a), [] pertinent notices must be sent to the
28 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
26
27

28 _____
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.

27 ⁶ *Daygo Funding* at 15.

28 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;

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

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

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

21 Dated: December 2, 2020.

22 ***TORY M. PANKOPF LTD***

23 By: s/ TORY M. PANKOPF
24 TORY M. PANKOPF, ESQ.
25 *Attorney for Plaintiffs*
26
27
28

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
jmwalth@wbri.net

NATIONSTAR MORTGAGE LLC
fhn 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

EXHIBIT “4”

EXHIBIT “4”

EXHIBIT “4”

EXHIBIT “4”

EXHIBIT “4”

EXHIBIT “4”

1 TORY M. PANKOPF (SBN 7477)
2 **TORY M PANKOPF, LTD**
3 748 S Meadows Parkway, Suite 244
4 Reno, Nevada 89521
5 Telephone: (775) 384-6956
6 Facsimile: (775) 384-6958
7 Attorney for the Estates and Jill Sarge

REC'D & FILED
2020 DEC 21 PM 3:16
AUBREY ROWLATT
CLERK
BY S. PANKOPF
DEPUTY

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

10
11 ESTATE OF THELMA AILENE SARGE and
12 ESTATE OF EDWIN JOHN SARGE,
13
14 Plaintiffs,
15 v.
16 QUALITY LOAN SERVICE CORPORATION
17 and DOES I – X, inclusive,
18 Defendant(s).

CASE NO: 16 RP 00009 1B
DEPT NO: I
Consolidated with Case Nos.:
16 PBT 00107 1B and
16 PBT 00108 1B

17 ZACHARY PEDERSON and MICHELLE
18 PEDERSON,
19 Plaintiff Intervenor/Defendants

20
21 And Related Consolidated Cases.
22

23 **NOTICE OF RULING RE AMENDED MOTION FOR SUMMARY JUDGMENT**

24 PLEASE TAKE NOTICE that, on December 10, 2020, the above-entitled court ruled on
25 Defendants', ZACHARY and MICHELLE PEDERSON ("Defendants"), amended motion for
26 summary judgment ("Motion"). The court's ruling granted the Motion based upon NRS 107.560
27 and 14.017. The ruling was issued despite the Motion having been mooted via Plaintiffs' filing
28

1 of their amended complaint, pursuant to NRCP 15, in response to Defendant's, Rosehill, motion
2 to dismiss the complaint.

3 DATED: This 18th day of December 2020.

4
5 ***TORY M. PANKOPF LTD***

6 By: s/ TORY M. PANKOPF
7 TORY M. PANKOPF, ESQ.
8 *Attorney for Plaintiffs*
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Tory Pankopf

From: Kimberly Carrubba <KCarrubba@carson.org> on behalf of Kimberly Carrubba
Sent: Thursday, December 10, 2020 8:59 AM
To: jmwash@wbri.net
Cc: Angela Jeffries; tory@pankopfuslaw.com; khintz@mccarthyholthus.com;
mdayton@mccarthyholthus.com; melissve@bdfgroup.com
Subject: 16 RP 00009 1B - Estate of Sarge

Good morning,

The Court would like a proposed order submitted for its consideration regarding the above referenced matter. Pursuant to FJDCR 3.10, the Court requests a proposed order from Mr. Walsh that:

- (1) Grants the Pedersen Motion for Summary-Judgment ("MSJ") based on NRS 107.560 and 14.017;
- (2) Denies the Sarge MSJ and specifically noting that Sarge is limited to damages under 107.560(2) against the other parties; and
- (3) Denies the Motion to Dismiss as MOOT because the Court will be granting the Pedersen MSJ.

You may submit the proposed order directly to me by email (cc: Angela Jeffries: ajeффries@carson.org) in Word format.

Thank you for your attention on this matter. If you have any questions, please do not hesitate to contact me.

Best,

Kimberly M. Carrubba, Esq.

Law Clerk to
Hon. James T. Russell
First Judicial District Court, Dept. 1
885 E. Musser St. #3061
Carson City, NV 89701
(775) 882-1996
kcarrubba@carson.org

Please be advised that Carson City has enabled the use of encrypted email for transferring sensitive information electronically. Upon first receipt of an encrypted email the recipient will be required to create a password to view the message. I apologize for the inconvenience.

This message and attachments are intended only for the addressee(s) and may contain information that is privileged and confidential. If the reader of the message is not the intended recipient or an authorized representative of the intended recipient, I did not intend to waive and do not waive any privileges or the confidentiality of the messages and attachments, and you are hereby notified that any dissemination of this communication is strictly prohibited. If you receive this communication in error, please notify me immediately by e-mail at kcarrubba@carson.org and delete the message and attachments from your computer and network.

CERTIFICATE OF SERVICE

Pursuant to NRCP 5, I hereby certify that on the 18th day of December 2020, I mailed a true and correct copy of the following document(s):

Notice of Ruling re Amended Motion for Summary.

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
jmwalth@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 18th day of December 2020.

s/Tory M. Pankopf
Tory M. Pankopf

EXHIBIT “5”

EXHIBIT “5”

EXHIBIT “5”

EXHIBIT “5”

EXHIBIT “5”

EXHIBIT “5”

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@wb rl.net
8 Attorney for Pedersen

REC'D & FILED

2020 DEC 24 AM 11:35

AUBREY ROHLATT
CLERK

BY JB DEPUTY

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

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

13 Plaintiffs,

14 vs.

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

17 Defendants.

18 In the Matter of the Estate of:

19 THELMA AILENE SARGE,

20 Decedent.

21 In the Matter of the Estate of:

22 EDWIN JOHN SARGE,

23 Decedent.

Case No.: 16 RP 0009 1B

Dept. No: I

Consolidated With Case No.:

16 PBT 00107 1B and
16 PBT 00108 1B

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

25 **INTRODUCTION**

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

FINDINGS OF FACT

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 Records 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.

18 CONCLUSIONS OF LAW

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

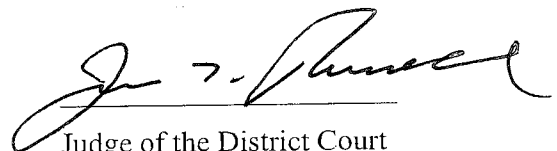
15 Parcel 86 as shown on the Parcel Map for M.G. STAFFORD, INC., filed for
16 Record in the office of the Recorder of Carson City, Nevada, on August 22, 1989,
17 In Book 6, Page 1714, as Document No. 89571.

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

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:

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

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

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

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

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

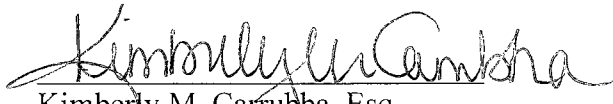

Kimberly M. Carrubba, Esq.
Law Clerk, Dept. 1

EXHIBIT “6”

EXHIBIT “6”

EXHIBIT “6”

EXHIBIT “6”

EXHIBIT “6”

EXHIBIT “6”

James M. Walsh, Esq.
Nevada State Bar No. 796.
Walsh & Rosevear
9468 Double R. Blvd., Suite A
Reno, Nevada 89521
Tel: (775) 853-0883
Email: jmwalth@wbri.net
Attorney for Pedersen

**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 and
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 1B

Dept. No: I

Consolidated With Case No.:

16 PBT 00107 1B and
16 PBT 00108 1B

AMENDED MOTION FOR SUMMARY JUDGMENT

COMES NOW, Plaintiffs in Intervention ZACHARY AND MICHELLE PEDERSEN ("PEDERSEN"), by and through their counsel, James M. Walsh, Esq. of Walsh & Rosevear, and amends their motion for an order granting judgment on Plaintiffs Complaint, pursuant to the provisions of NRCPC 56.

STATEMENT OF FACTS

1 Plaintiff, the Estate of Thelma Ailene Sarge and Edwin John Sarge, having filed their complaint
2 for "reentry" contending the foreclosure sale conducted by Quality Loan Service on or about October 13,
3 2016 was in some manner defective.

4 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. Plaintiff apparently
6 contending that the foreclosure sale was defective for lack of notice to the estate.

7 The Deed of Trust in question herein, was recorded by Edwin J. Sarge and Thelma A. Sarge,
8 Trustees of the Sarge Trust dated March 28, 1988, recorded April 26, 2006 as Document No. 352840,
9 Official Records of Carson City. A true and correct copy of said Deed of Trust is attached hereto as
10 **Exhibit 1.**

11 It is unknown when the Sarges passed away, but on September 2, 2015, the Sarges being in default
12 under the terms and conditions of the Deed of Trust, a Notice of Breach and Default and of Election to
13 Cause Sale of Real Property under Deed of Trust was recorded by Quality Loan Corporation. A true and
14 correct copy of the Notice of Breach and Default and of Election to Cause Sale of Real Property under
15 Deed of Trust recorded September 22, 2015 as Document No. 457307, Official Records of Carson City,
16 is attached hereto as **Exhibit 2.**

17 Thereafter, on or about August 29, 2016, Quality Loan Corporation did properly record a Notice
18 of Trustee's Sale as Document No. 467446, Official Records of Carson City. A true and correct copy of
19 said Notice of Trustee's Sale is attached hereto as **Exhibit 3.**

20 At the duly noticed trustee's sale, as indicated, Rosehill, LLC was the successful bidder in the
21 amount of \$255,100, and a Trustee's Deed Upon Sale was issued to Rosehill, LLC and recorded
22 November 2, 2016, as Document No. 469496, Official Records of Carson City Recorder. A true and
23 correct copy of said Trustee's Deed Upon Sale is attached hereto as **Exhibit 4.**

24 Plaintiff brought the instant action and recorded a Lis Pendens against the subject property.

25 On or about November 2, 2016, Rosehill moved to expunge the Lis Pendens, and after hearing
26 December 5, 2016, this Court entered its order expunging the Lis Pendens. At such hearing, the Court
27 indicated that Plaintiff having failed to meet the requirements of NRS 14.015, that Rosehill's title had a
28 priority from the date of the Deed of Trust in 2006, that Plaintiffs had failed to meet their burden to

1 provide any evidence that a default did not exist under the terms and conditions of the Deed of Trust at
2 the time of foreclosure, that Plaintiffs produced no evidence of a tender of the amounts due and owing
3 under the Deed of Trust and that the provisions of NRS 107.080 required no notice to the estate or the
4 beneficiaries. Sarge did not seek any stay of the order and it was not until over six months after the sale
5 to Pedersen did Sarge file a Notice of Appeal of the dismissal. NOA filed June 14, 2017.

6 **The Order Expunging the Lis Pendens was recorded with the Carson City Records Office**
7 **December 7, 2016 File No. 470500. Sarge sought no stay of this order pending appeal.** A true and
8 correct copy of the recorded order is attached hereto marked **Exhibit 5**.

9
10 After expunging of the Lis Pendens, Rosehill sold the subject property by Grant Bargain and Sale
11 Deed to Zachary and Michele Pedersen. Said Deed was dated December 13, 2016 and recorded
12 December 15, 2016, as Document No. 470725, Official Records of Carson City Recorder. A true and
13 correct copy of the Grant, Bargain and Sale Deed is attached hereto as **Exhibit 6**.

14 Rose Hill and Quality Loan Service subsequently both filed Motions to Dismiss. Sarge's opposed
15 the motions and specifically filed a Supplemental Opposition wherein they admit that they had made an
16 election to pursue their Loss Mitigation Options under NRS 107.530. See exhibit D to the supplement.
17 A true and correct copy of the Supplement to Opposition is attached hereto marked **Exhibit 7**.

18 **ARGUMENT**

19 **Standard Governing a Motion for Summary Judgment**

20
21
22 Summary judgment is appropriate when the pleadings and admissible evidence show there is no
23 genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law. *Wood*
24 *v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). *See Celotex Corp. v. Catrett*, 477 U.S.
25 317, 330 (1986) (*citing* Fed. R. Civ. Pro. 56(c)); NRCP 56. When deciding a motion for summary
26 judgment, the evidence and any reasonable inferences drawn from it, must be viewed in a light most
27 favorable to the non-moving party. NRCP 56; *Winn v. Sunrise Hospital and Medical Center*, 128 Nev.
28

1 Adv. Op. 23 (2012). If reasonable minds could differ on material facts, summary judgment is
2 inappropriate because summary judgment's purpose is to avoid unnecessary trials when the facts are
3 undisputed, and the case must then proceed to the trier of fact. *Warren v. City of Carlsbad*, 58 F.3d 439,
4 441 (9th Cir. 1995); *see also Nw. Motorcycle Ass'n v. U.S. Dept. of Agric.*, 18 F.3d 1468, 1471 (9th Cir.
5 1994).

7 FAILURE TO STATE A CLAIM

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

16 Plaintiffs attempts to disparage the foreclosure are equally unavailing. Chapter 107 of the Nevada
17 Revised Statutes, foreclosure provisions, contain no requirements of additional notice to estates or
18 beneficiaries.

19 Plaintiffs Complaint is equally flawed in that they failed to allege and did not state any requisite
20 claim for wrongful foreclosure. In order to maintain a claim for wrongful foreclosure, Plaintiffs must
21 establish that there was no default on the payment obligation at the time of the foreclosure. Collins v.
22 Union Fed. Sav. & Loan Ass'n, 662 P.2d 610, 623, 99 Nev 284 (1983). Hughes v. Wells Fargo Bank,
23 NA., No. CV-09-2496-PHX-MHM, 2009 WL 5174987, at *2 (D. Ariz. Dec. 18, 2009) (plaintiffs unlikely
24 to succeed on merits of wrongful foreclosure claim because they "freely admit that their loan is in
25 default"); Contreras v. US Bank as Trustee for CSMC Mortgage Backed Pass-Through Certificates,
26 Series 2006-5, No. CV-09-0137-PI-IX-NVW, 2009 WL 4827016, at *6 (D. Ariz. Dec. 15, 2009)
27 (dismissing claim where "Plaintiffs admit they were in default") Compare Herring v. Countrywide Home
28

1 Loans, Inc., No. CV 06-2622-PHX-PGR, 2007 WL 2051394, at *5 (D. Ariz. July 13, 2007) (plaintiff
2 could maintain claim because she “cured any defaults” by entering into modification plan).

3 Plaintiffs also fail to make any allegation of tender. This is also a prerequisite to the claim. Since
4 the action attacking the foreclosure sale sounds in equity, a trustor seeking to set aside the sale is required
5 to due equity before the court will exercise any equity powers. Therefore, precedent to an action by the
6 trustor to set aside the Trustee’s sale as voidable, the trustor must pay or offer to pay the secured debt, or
7 at least all delinquencies and costs due for redemption, if there be one. See, Miller & Starr California
8 Real Estate 4th Ed. § 13:256, Abdallah v. United Savings Bank, 51 Cal. Rptr. 2d. 286 (1st. Dist. 1996),
9 and FBCI RE-HAB 01 v. E & G Investments, Ltd., 207 Cal. App. 3d. 1018, 255 Cal. Rptr. 157 (1989).

10
11 **NRS 14.017 and NRS 107.560 BFP PROTECTION**
12

13 The Pedersen’s and Rosehill’s title is also protected by NRS 14.017. That statute provides in
14 pertinent part:

15
16 Upon... the recordation of a certified copy of a court order for the
17 cancellation of a notice of the pendency of such an action with the
18 recorder of the county in which the notice was recorded, each person
19 who thereafter acquires an interest in the property as a purchaser,
20 transferee, mortgagee or other encumbrancer for valuable consideration
21 , except a party to the action who is not designated by a fictitious name
22 at that time of the withdrawal or order of cancellation, shall be deemed
23 to be without knowledge of the action or any matter, claim or allegation
24 contained therein, irrespective of whether the person has or at any time
25 had actual knowledge of the action... (2) the purpose of this section
26 is to provide for the absolute and complete transferability of real
27 property after the withdrawal or cancellation of a notice of the pendency
28 of an action affecting the property.

24 The order of cancellation was recorded December 7, 2016 (Ex. 5) and at that time Pedersen’s
25 were not parties to this action. Based upon the statute they have presumptive status as bona fide
26 purchasers and Sarges claims as to them must fail.
27
28

1 Sarge's reliance upon the notice requirements of NRS 107.080 is misplaced. Sarge has admitted
2 that long before the foreclosure occurred in October 2016 that they had been in communication with
3 Champion Mortgage to pursue their Loss Mitigation Options pursuant to NRS 107.530. In fact, as noted
4 Jill Sarge on February 4, 2016 executed a Loss Mitigation Option Acknowledgment wherein she elected
5 to short sale of the property. See exhibit D to the Supplement to Opposition to Motion to Dismiss
6 Complaint, attached hereto as Exhibit 7.

7
8 Once Sarge made this election her remedies became exclusively the provisions of NRS 107.560.
9 If the lender pursued foreclosure, in violation of NRS 107.530(1), the sole remedy of Sarge was to enjoin
10 the sale. If Sarge allowed the sale to go forward, as happened here, the remedy is solely against the bank
11 as set forth in NRS 107.560(2). After recordation of the Trustee's Deed of Sale NRS 107.560(4) provides
12 a safe haven for any purchaser at the foreclosure sale. It states "a violation of NRS 107.400 to 107.560,
13 inclusive, does not affect the validity of a sale to a bona fide purchaser for value..." During this period
14 time Sarge was represented by current counsel who was in communication with the lender's
15 representatives specifically about the foreclosure schedule. See Sarge's Opposition to Motion to Dismiss
16 complaint filed December 30, 2016 at p. 3 line 15 wherein Sarge states

17
18 "Counsel for the Estates notified the trustee it had failed to serve
19 The NOD and NOS on the Estates and demanded it cease and desist
20 from foreclosing on the property..."

21
22 Based upon the foregoing it is respectfully requested that the Motion be granted.

23
24 **Affirmation Pursuant to NRS 239B.030**

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

27 DATED this 23rd day of November, 2020.
28

WALSH & ROSEVEAR

/s/ James M. Walsh

JAMES M. WALSH, ESQ.
Attorney for Pedersen

1 CERTIFICATE OF SERVICE

2 I, the undersigned, declare under penalty of perjury, that I am an employee of WALSH &
3 ROSEVEAR that I am over the age of eighteen (18) years, and that I am not a party to, nor interested in,
4 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:

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

8 Hand Delivery

9 Facsimile

10 addressed as follows:
11

12 Tory M. Pankopf
13 748 South Meadows Pkwy, Ste 244
14 Reno, Nevada 89521
Attorneys for Estate and Petitioner

15 Kristin A. Schuler-Hintz
16 9510 W. Sahara Ave. Ste 200
17 Las Vegas, NV 89117
Attorney for Quality Loan Service

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

21 Mathew Dayton, Esq.
22 McCarthy & Holthus LLP
23 9510 W. Sahara Ave Ste.200
Las Vegas, NV 89117

24
25
26 I declare under penalty of perjury that the foregoing is true and correct.

27 Executed this 23rd day of November, 2020.
28

EXHIBIT “7”

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James M. Walsh, Esq.
Nevada State Bar No. 796.
Walsh & Rosevear
9468 Double R. Blvd., Suite A
Reno, Nevada 89521
Tel: (775) 853-0883
Email: jmw Walsh@wbri.net
Attorney for Pedersen

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
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vs.

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Defendants.

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In the Matter of the Estate of:

EDWIN JOHN SARGE,

Decedent.

Case No.: 16 RP 0009 1B

Dept. No: I

Consolidated With Case No.:

16 PBT 00107 1B and
16 PBT 00108 1B

REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

COMES NOW, Plaintiffs in Intervention ZACHARY AND MICHELLE PEDERSEN (“PEDERSEN”), by and through their counsel, James M. Walsh, Esq. of Walsh & Rosevear, and hereby hereby file this reply in support of their Motion for Summary Judgment.

INTRODUCTION

Plaintiffs in Intervention filed their Motion for Summary Judgment the Estates and Sarge having replied claiming Pedersen’s are not BFP’. The opposition ignores the effect of NRS 107.560. Failing to

1 address this issue constitutes an admission warranting granting of the motion. In fact in their opposition
2 that Sarge further admits they had elected to pursue the foreclosing lender's loss mitigation option
3 (Declaration of Jill Sarge attached to opposition) and they had knowledge of the pending foreclosure,
4 threatened injunctive relief. (Declaration of Tory M. Pankopf and attached letter dated October 6, 2016)
5 of the bank off letter is attached hereto marked **Exhibit 1**. They took no further action, and the foreclosure
6 went forward. This triggered the election of remedies set forth in NRS 107.560(2),(4). Pedersen would
7 submit that based upon the judicial admissions of plaintiffs Pedersen are entitled to BFP protection
8 pursuant to NRS 107.560 as well as NRS 14.017.

9 Sarge seems to make the further argument in their opposition that the complaint is not for
10 wrongful foreclosure but as to the purchasers only that they are not BFP's. This argument ignores the
11 statutory language of NRS 14.017 and 107.560 (4). This argument also seems to be an further admission
12 that Sarge had elected to pursue the offered loss mitigation option.

14 **ARGUMENT**

15 Sarge's reliance upon the notice requirements of NRS 107.080 is misplaced. Sarge has admitted
16 that long before the foreclosure occurred in October 2016 that they had been in communication with
17 Champion Mortgage to pursue their Loss Mitigation Options pursuant to NRS 107.530. In fact, as noted
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8 In addition to the foregoing Sarge in their motion admits their election to participate in the loss
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10 This brought them squarely within the foreclosure prevention alternatives defined in NRS 107.420 and
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14 Judicial admissions are defined as deliberate, clear, unequivocal statements by a party about a
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16 *Inc.*, 255 P.3d 268, 127 Nev. 331 (2011) citing *Smith v. Pavlovich*, 394 Ill.App.3d 458, 333 Ill.Dec. 446,
17 914 N.E.2d 1258, 1267 (2009). What constitutes a judicial admission should be determined by the
18 circumstances of each case and evaluated in relation to the other testimony presented in order to prevent
19 disposing of a case based on an unintended statement made by a nervous party. *Id.*, 333 Ill.Dec. 446, 914
20 N.E.2d at 1268. See *Scalf v. D.B. Log Homes, Inc.*, 128 Cal. App.4th 1510, 27 Cal.Rptr.3d 826, 833 (2005)
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22 impeachment is construed as evidence); *Chaffee v. Kraft General Foods, Inc.*, 886 F.Supp. 1164
23 (D.N.J.1995) (explaining the difference between a judicial admission, which is conclusively binding, and an
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25 "Judicial admissions are formal admissions in the pleadings which have the effect of withdrawing a
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28 *v. Lacelaw Corp.*, 861 F.2d 224, 226 (9th Cir. 1988). "Where, however, the party making an ostensible

1 judicial admission explains the error in a subsequent pleading or by amendment, the trial court must accord
2 the explanation due weight.” *Sicor Ltd. v. Cetus Corp.*, 51 F.3d 848 (9th Cir. 1995). *See Lacelaw*, 861 F.2d
3 at 226 (“Factual assertions in pleadings and pretrial orders, unless amended, are considered judicial
4 admissions conclusively binding on the party who made them.”); *Hooper v. Romero*, 68 Cal.Rptr. 749, 753,
5 262 Cal.App.2d 574, 580 (1968) (same).

6
7
8 Based upon the foregoing it is respectfully requested that the Motion be granted.
9

10
11
12 **Affirmation Pursuant to NRS 239B.030**

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

15 DATED this 7th day of December, 2020.
16

17 **WALSH & ROSEVEAR**
18

19
20 /s/ James M. Walsh

21 JAMES M. WALSH, ESQ.
22 Attorney for Pedersen
23
24
25
26
27
28

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 7th day of December, 2020.

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/s/ James M. Walsh

James M. Walsh
Walsh & Rosevear

EXHIBIT 1

EXHIBIT 1

Law Offices of
T M PANKOFF, PLLC
Nevada Bar License 7477 ~ California Bar License 202581
9460 Double R Boulevard, Suite 104
Reno, Nevada 89521
Telephone (775) 384-6956
Facsimile (775) 384-6958
E-mail tory@pankopflaw.com

10/6/2016

FedEx Overnight and Facsimile (619) 568-3518

Quality Loan Service Corporation
411 Ivy Street
San Diego, CA 92101

Re: Real Property : 1636 Sonoma Street, Carson City, NV 89701
APN : 010-513-07
TS No : NV-15-679709-HL
Trustor : Estates of Edwin J. Sarge and Thelma A. Sarge
Sale Date : Thursday, 10/6/2016, at 2:00 p.m.

NOTICE OF TO CEASE AND DESIST

Dear Quality Loan Service Corporation:

My law firm represents the Estates of Edwin J. Sarge and Thelma A. Sarge ("Estate") who are the owners of the real property identified above. On August 13, 2011, Mr. Sarge died and on April 28, 2015, Ms. Sarge died. Obviously, neither Mr. Sarge nor Ms. Sarge could not have been provided the notice of default and election to sell ("NOD") because they were dead. As the attorney representing the Estates, I am notifying you I was not served with and have never been served with the NOD or the Notice of Sale recorded on August 29, 2016. Consequently, the NOD has not complied with Chapter 107 of the Nevada Revised Statutes and the foreclosure sale currently set for Thursday, October 6, 2016, at 2:00 p.m., must be taken off-calendar. Furthermore, the declaration of the mortgage servicer attached to the NOD certifying the mortgage servicer complied with Nevada Senate Bill 321, Section 11(6) is not accurate given both persons have been deceased and no efforts were made by the mortgage servicer to contact me to enquire as the options available to the heirs of the Estates.

Please cease and desist from foreclosing on real property identified above. In the event you should proceed with the foreclosure sale I will proceed to file an action against Western Progressive, the mortgage servicer, and the beneficiary of the deed of trust for violating NRS 107.080. The statute provides the court must award a minimum of \$5,000 or treble the amount of actual damages plus attorney's fees and costs and injunction prohibiting the trustee from proceeding with a foreclosure sale until it has complied with the statute.

T M P a n k o p f , P L L C

Quality Loan Service Corporation

Re: Real Property : 1636 Sonoma Street, Carson City, NV 89701
APN : 010-513-07
TS No : NV-15-679709-HL
Trustor : Estates of Edwin J. Sarge and Thelma A. Sarge
Sale Date : Thursday, 10/6/2016, at 2:00 p.m.

October 6, 2016

Page 2

Please confirm with my office the sale has been taken off-calendar. Please contact me if you would like copies of the redacted death certificates.

Sincerely,

T. M. Pankopf, PLLC

s/ Tory M Pankopf

TORY M. PANKOPF
Attorney and Counselor at Law

TMP/bbl

Enclosure as noted.

EXHIBIT “8”

EXHIBIT “8”

EXHIBIT “8”

EXHIBIT “8”

EXHIBIT “8”

EXHIBIT “8”

CODE:

William A. Baker, Esq.
Walsh, Baker & Rosevear
9468 Double R. Blvd., Suite A
Reno, Nevada 89521
Tel: (775) 853-0883
Fax: (775) 853-0860
Email: wbaker@wbrl.net
Attorney for Rosehill, LLC

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

IN THE MATTER OF THE ESTATE OF:

Case No.:

EDWIN JOHN SARGE,

Dept. No:

Deceased.

MOTION TO EXPUNGE LIS PENDENS

COMES NOW, Rosehill, LLC, a Nevada limited liability company, by and through its attorneys, William A. Baker, Esq. of Walsh, Baker & Rosevear, and hereby moves this Court for an Order expunging the Lis Pendens filed in the above entitled action and recorded on October 31, 2016 as Document No. 469390, Official Records of Carson City Recorder.

STATEMENT OF FACTS

1. On or about October 31, 2016, the attorney for the Estate of Edwin John Sarge did cause to be recorded a Notice of Pendency of Action (Lis Pendens) against the real property owned by movant on the real property located at 1636 Sonoma Street, Carson City, Nevada APN 010-513-07. A true and correct copy of said Notice of Lis Pendens is attached hereto as **Exhibit 1**.

2. A Lis Pendens may only be recorded pursuant to the provisions of NRS 14.010 in actions affecting title to real property. There is no quiet title litigation pending with regard to the property encumbered by the notice of pendency of action, 1636 Sonoma Street, Carson City, Nevada.

3. Movant, Rosehill, LLC (hereinafter referred to as "Rosehill"), took title to the real property designated as APN 010-513-07, commonly known as 1636 Sonoma Street, Carson City,

1 Nevada, by virtue of a Trustee's Deed Upon Sale given by Trustee Quality Loan Service Corporation
2 as Grantor to Rosehill dated October 21, 2016 and only just provided to Rosehill by mail for recording
3 purposes. A true and correct copy of said Grant, Bargain and Sale Deed is attached hereto as **Exhibit**

4 **2.**

5 4. Rosehill currently has the subject property sold and in escrow to a third party buyer and
6 it was the escrow company that brought to the attention of Rosehill the most recent Notice of Pendency
7 of Action filing.

8 5. Rosehill purchased the vacant subject property at a Trustee's Sale on October 13, 2016
9 and took possession immediately.

10 6. Rosehill promptly sold the property in AS-IS condition and the present escrow is set to
11 close escrow to the third party buyer on November 30, 2016.

12 7. That Rosehill will be promptly recording its Trustee's Deed now that it has been
13 provided by the trustee service company.

14 8. That at the time the Notice of Pendency of Action was recorded (October 31, 2016), the
15 subject property had been sold to Rosehill more than two weeks prior (October 13, 2016) and had been
16 re-sold by Rosehill to a third party buyer within that time period.

17 9. That the Notice of Pendency of Action that was recorded and which the title company
18 provided to Rosehill, has no case number or department number on it. See **Exhibit 1.**

19 10. Good and valuable consideration was paid by Rosehill at the Trustee's Sale for purchase
20 of the property on October 13, 2016 and it remains the due and lawful owner of the subject property
21 since that time.
22

23 **ARGUMENT**

24 NRS 14.015 provides that after the recordation of a Notice of Lis Pendens, the party opposing
25 the Notice may request the Court to hold a hearing upon 15 days' notice, which shall take president
26 over all other civil matters except for motions for preliminary injunction. Rosehill hereby opposes the
27 recorded Notice of Pendency of Action and seeks a hearing to expunge it. At said time and place, the
28 party filing the Lis Pendens must appear to establish to the satisfaction of the Court that the pending

1 action affects title or possession to real property, the action was not brought in bad faith or for an
2 improper motive, the party who recorded the notice will be able to perform any and all conditions
3 precedent to their relief sought, and that the party who recorded the notice will not be injured by a
4 transfer. In addition, the recording party must establish to the satisfaction of the court that it is likely to
5 prevail in the action, has a fair chance of success on the merits, and the injury described is sufficiently
6 serious that the hardship to the recording party would be greater than the hardship to the Defendant.

7 Rosehill would submit herein that the Estate can satisfy none of these criteria.

8 Rosehill purchased the property at a Trustee's Sale in which the amount in default at the time of
9 the sale was \$316,960.37 and Rosehill paid \$255,100.00 for the subject property at that time. See
10 **Exhibit 2.** To the knowledge of Rosehill for purposes of this motion, the Estate of Edwin John Sarge
11 has filed no action pending affecting the title to the real estate or challenging the sale by the Trustee at
12 any time. Rosehill has paid substantial and valuable consideration for the subject property and has
13 sold the property to a third party. Rosehill will be substantially damaged in the event that its current
14 sale is negatively impacted by the tardy notice of pendency of action that has been recorded against the
15 subject property. The title company has indicated that it cannot close the property and provide title
16 insurance as long as the notice of pendency of action effectively encumbers the subject property.

17 CONCLUSION

18 Well before the subject lis pendens was recorded, the property to which it has attached was
19 sold for good and valuable consideration to Rosehill, LLC. After that sale was consummated by the
20 payment of \$255,100.00 by Rosehill, the property was placed for sale and Rosehill accepted an offer to
21 purchase the subject property and opened an escrow to accomplish the sale. Rosehill awaited the
22 Trustee's Deed Upon Sale to be prepared and sent to it. That has just recently been received and will
23 be recorded promptly. That sale is scheduled to be closed on November 30, 2016.

24 Based upon the foregoing, it is respectfully request that Rosehill's motion to expunge the notice
25 of pendency of action be granted. In the event the Court is unable or unwilling to grant the motion
26 upon the pleadings, Rosehill would request that the Court set an expedited hearing as contemplated by
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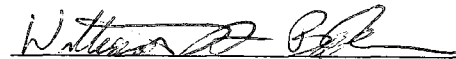
1 the statute so that, if possible, a determination can be made with regard to the notice of pendency of
2 action prior to the current escrow closing date of November 30, 2016.

3
4 **Affirmation Pursuant to NRS 239B.030**

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

7
8 DATED this 2nd day of November, 2016.

9
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11 **WALSH, BAKER & ROSEVEAR**

12 

13 William A. Baker, Esq.
14 Attorneys for Plaintiffs
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CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am an employee of WALSH, BAKER & 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:

Electronic filing with the Clerk of the Court by using the ECF system which will send a notice of electronic filing

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;

xx Hand Delivery

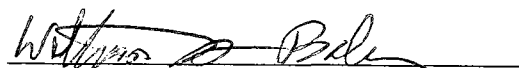
Facsimile

addressed as follows:

Troy Pankopf 9460 Double R. Boulevard, #104 Reno, NV 89521 <i>Attorney for Estate of Edwin John Sarge</i>	
--	--

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

Executed this 2nd day of November, 2016.


William A. Baker, an employee of
Walsh, Baker & Rosevear

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INDEX OF EXHIBITS

EX. NO.	DESCRIPTION	PAGES
1	Notice of Pendency of Action, Document No. 469390	4
2	Trustee's Deed Upon Sale	2

EXHIBIT 0

EXHIBIT 1

Sarge074

APN _____

APN _____

APN _____

RECORDED AT 11:11
REQUEST OF

T. Pankovf

2016 OCT 31 PM 12:21

FILE NO. 469390

SUSAN MERRIWETHER
CARSON CITY RECORDER

FEES 17.00 DEP. 20

FOR RECORDER'S USE ONLY

Notice of Pendency of Action
TITLE OF DOCUMENT

☒ I, the undersigned, hereby affirm that the attached document, including any exhibits, hereby submitted for recording does not contain personal information of any person or persons. (NRS 239B.030)

☐ I, the undersigned, hereby affirm that the attached document, including any exhibits, hereby submitted for recording does contain personal information of a person or persons as required by law. State specific law:

Jack Hartman
Signature

Jack Hartman Realtor
Print Name & Title

WHEN RECORDED MAIL TO:

Tory Parlept

9460 Double R Boulevard #104

Reno NV 89521

469390

1 TORY M. PANKOPF (SBN 7477)
2 T M PANKOPF, PLLC
3 9460 Double R Boulevard, Suite 104
4 Reno, Nevada 89521
5 Telephone: (775) 384-6956
6 Facsimile: (775) 384-6958
7 Attorney for the Estate and Petitioner

REC'D & FILED
2816 OCT 31 AM 11:10
SUSAN HERRIWEATHER
CLERK
BY ~~CLERK~~ DEPUTY

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

10 In the matter of the estate of:

11 EDWIN JOHN SARGE,

12 Deceased.

CASE NO:
DEPT NO:

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16 NOTICE OF PENDENCY OF ACTION

17 PLEASE TAKE NOTICE that Petitioner, JILL SARGE, has filed a Petition to Set Aside
18 Estate, which is now pending before the above entitled Court, in the above referenced matter,
19 in the property described in the Petition to Set Aside Estate adverse to the Estate's title, or any
20 cloud on the Estate's title thereto, and concerning and affecting real property as described
21 herein.

22 All that certain real property situated in the Carson City, State of Nevada,
23 described as follows:

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

27
28 469390

Law Offices of
T. M. Pankopf PLLC
9460 Double R Boulevard
Suite 104
Reno, Nevada 89521
(775) 384-6956

- 1 -

NOTICE OF PENDENCY OF ACTION

1 Parcel 86 as shown of the Parcel Map for M. G. Stafford, Inc., filed for
2 record in the office of the Recorder of Carson City, Nevada, on August 22,
3 1989, in Book 6, page 1714, as Document No. 89571.

4 APN 010-513-07

5 1636 Sonoma Street, Carson City, Nevada.

6 The purpose of Petitioner's action, among other things, includes setting the property
7 aside to herself and her siblings, heirs to their father's estate, such that the pending sale can be
8 finalized and pay all of the indebtedness on the property, in full. Said sale is pending entry of
9 the Order Granting the Petition to Set Aside and is ready to be closed.

10 Further, the purpose of Petitioner's action is to enforce Chapter 107 of the Nevada
11 Revised Statutes relating to the Notice of Default recorded on said property which is defective
12 for the notice required to be made for residential real property under NRS 107 et seq.

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

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

16 DATED: This 26th day of October, 2016.

17
18 ***T M PANKOPF PLLC***

19
20 By:



21 TORY M. PANKOPF, ESQ. (SBN 7477)
22 9460 Double R Blvd., Suite 104
23 Reno, NV 89521
24 *Attorney for the Estate and Petitioner*

25
26
27 ~ 469390
28

469390

CERTIFIED COPY

The document to which this certificate is attached is a full, true and correct copy of the original on file and on record in my office.

Date October 9, 1957

Susan Mariwether, City Clerk and Clerk of the First Judicial District Court of the State of Nevada, In and for Carson City.

By [Signature]

Deputy

Per N.S. 39 Section 60, may be released, but in no way affects the legality of the document.

EXHIBIT 2

EXHIBIT 2

Sarge079

APN No.: 010-513-07
Recording Requested by:

When Recorded Mail to:

Rosehill, LLC
6770 S. Mccarran Blvd. #202
Reno, NV 89509

Forward tax statements to the address given above

TS No.: NV-15-679709-HL
Order No.: 733-1501111-70

Space above this line for recorders use only

It is hereby affirmed that this document submitted for recording does not contain the social security number of any person or persons. (Per NRS 239B.030).

Trustee's Deed Upon Sale

Transfer Tax:

The undersigned grantor declares:
The grantee herein WASN'T the foreclosing beneficiary.
The amount of the unpaid debt together with costs was: **\$316,960.37**
The amount paid by the grantee at the trustee sale was: **\$255,100.00**
The documentary transfer tax is:
Said property is in the City of: **CARSON CITY**, County of **CARSON CITY**

QUALITY LOAN SERVICE CORPORATION, as Trustee, (whereas so designated in the Deed of Trust hereunder more particularly described or as duly appointed Trustee) does hereby **GRANT** and **CONVEY** to

Rosehill, LLC

(herein called Grantee) but without covenant or warranty, expressed or implied, all right title and interest conveyed to and now held by it as Trustee under the Deed of Trust in and to the property situated in the county of **CARSON CITY**, State of Nevada, described as follows:

That portion of the Northwest 1/4 of the Northwest 1/4 of Section 28, Township 15 North, Range 20 East, M.D.B. & M., further described as follows: Parcel 86 as shown on the parcel map for M.G. Stafford, Inc., filed for record in the Office of the Recorder of Carson City, Nevada on August 22, 1989, Book 6, Page 1714, as Document No. 89571.

This conveyance is made in compliance with the terms and provisions of the Deed of Trust executed by **Edwin J. Sarge and Thelma A. Sarge, Trustees of the Sarge Trust dated March 28, 1988**, as trustor, dated **3/4/2006**, and recorded on **4/26/2006** as Instrument No. 352840 of Official Records in the office of the Recorder of **CARSON CITY**, Nevada, under the authority and powers vested in the Trustee designated in the Deed of Trust or as the duly appointed trustee, default having occurred under the Deed of Trust pursuant to the Notice of Breach and Election to Sell under the Deed of Trust recorded on **9/3/2015**, instrument no **457307**, Book , Page , of Official

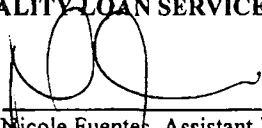
records. The Trustee of record at the relevant time having complied with all applicable statutory requirements of the State of Nevada and performed all duties required by the Deed of Trust including sending a Notice of Default and Election to Sell within ten days after its recording and a Notice of Sale at least twenty days prior to the Sale Date by certified mail, postage pre-paid to each person entitled to notice in compliance with Nevada Revised Statute 107.090.

All requirements per Nevada Statutes regarding the mailing, personal delivery and publication of copies of Notice of Breach and Election to Sell under Deed of Trust and Notice of Trustee's Sale, and the posting of copies of Notice of Trustee's sale have been complied with. Trustee, in compliance with said Notice of Trustee's sale and in Exercise of its powers under said Deed of Trust sold said real property at public auction on **10/13/2016**. Grantee, being the highest bidder at said sale became the purchaser of said property for the amount bid, being **\$255,100.00**, in lawful money of the United States, in pro per, receipt thereof is hereby acknowledged in full/partial satisfaction of the debt secured by said Deed of Trust.

QUALITY MAY BE CONSIDERED A DEBT COLLECTOR ATTEMPTING TO COLLECT A
DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.
TS No.: **NV-15-679709-HL**

Date: 10/21/2016

QUALITY LOAN SERVICE CORPORATION


By: Nicole Fuentes, Assistant Vice President

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of: California

County of: San Diego

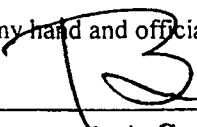
On OCT 21 2016 before me, Brenda A. Gonzalez a notary public, personally appeared Nicole Fuentes, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under *PENALTY OF PERJURY* under the laws of the State of **California** that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

(Seal)

Signature


Brenda A. Gonzalez



CODE:

William A. Baker, Esq.
Walsh, Baker & Rosevear
9468 Double R. Blvd., Suite A
Reno, Nevada 89521
Tel: (775) 853-0883
Fax: (775) 853-0860
Email: wbaker@wbri.net
Attorney for Rosehill, LLC

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

IN THE MATTER OF THE ESTATE OF:

EDWIN JOHN SARGE,

Deceased.

Case No.: 16PBT001081B

Dept. No: 1

SUPPLEMENT TO MOTION TO EXPUNGE LIS PENDENS

COMES NOW, Rosehill, LLC, a Nevada limited liability company, by and through its attorneys, William A. Baker, Esq. of Walsh, Baker & Rosevear, and hereby supplements its motion to expunge the Lis Pendens filed in the above entitled action by including for the record the duly recorded Trustee's Deed Upon Sale. The title company duly recorded the deed as Document Number 469496 in the Office of the Carson City Recorder on November 2, 2016.

A copy of said recorded document is attached hereto as Exhibit 1.

DATED this 3rd day of November, 2016.

WALSH, BAKER & ROSEVEAR



William A. Baker, Esq.
Attorneys for Rosehill, LLC

AFFIRMATION PURSUANT TO NRS 239b.030

THE UNDERSIGNED DOES HEREBY AFFIRM THAT THE PRECEDING
DOCUMENT DOES NOT CONTAIN THE SOCIAL SECURITY NUMBER OF ANY
PERSON.

DATED THIS 3rd day of November, 2016.

By: Wm. A. Baker

William A. Baker

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am an employee of WALSH, BAKER & 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:

☐ Electronic filing with the Clerk of the Court by using the ECF system which will send a notice of electronic filing

☐ 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

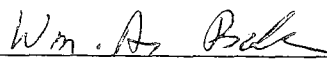
☐ Facsimile

addressed as follows:

Troy Pankopf 9460 Double R. Boulevard, #104 Reno, NV 89521 <i>Attorney for Estate of Edwin John Sarge</i>	
--	--

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

Executed this 3rd day of November, 2016.



William A. Baker, an employee of
Walsh, Baker & Rosevear

INDEX OF EXHIBITS

EX. NO.	DESCRIPTION	PAGES
1	Recorded Trustee's Deed Upon Sale	

STATE OF NEVADA DECLARATION OF VALUE

FOR RECORDERS OPTIONAL USE ONLY

Document #: 469496

Date of Recording: 11/02/2016

1. Assessors Parcel Number(s)

a) 010-513-07

2. Type of Property:

a) ☐ Vacant Land

b) ☒ Single Fam. Res.

c) ☐ Condo/Twnhse

d) ☐ 2-4 Plex

e) ☐ Apt. Bldg

f) ☐ Comm'l/Ind'l

g) ☐ Agricultural

h) ☐ Mobile Home

i) ☐ Other _____

FOR RECORDERS OPTIONAL USE ONLY

DOCUMENT/INSTRUMENT #: _____

BOOK _____ PAGE _____

DATE OF RECORDING: _____

NOTES: _____

3. Total Value/Sales Price of Property:

\$255,100.00

Deed in Lieu of Foreclosure Only (value of property)

(

Transfer Tax Value:

\$255,100.00

Real Property Transfer Tax Due:

\$946.45

4. If Exemption Claimed:

a. Transfer Tax Exemption per NRS 375.090, Section

b. Explain Reason for Exemption:

5. Partial Interest: Percentage being transferred: 100 %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month.

Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature

Capacity

Signature

Capacity

SELLER (GRANTOR) INFORMATION
(REQUIRED)

Print Name: Quality Loan Service Corp

Name:

Address: 411 Ivy Street

City: San Diego

State: Ca

Zip: 92101

BUYER (GRANTEE) INFORMATION
(REQUIRED)

Print Name: Rosehill, LLC

Address: 6770 S. McCarran Bl #202

City: Reno

State: Nv

Zip: 89509

COMPANY/PERSON REQUESTING RECORDING

(required if not the seller or buyer)

Print Name: eTRCo, LLC. On behalf of Western Title Company

Esc. #: 084561-DIA

Address: McCarran Branch

6774 So. McCarran Blvd. Suite 102A

City/State/Zip: Reno, NV 89509

(AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED)

APN#: 010-513-07

Recording Requested By:
Western Title Company, Inc.
Escrow No.: 084561-DJA

When Recorded Mail To:
Rosehill, LLC
6770 S. McCarran Blvd. #202
Reno, Nv. 89509

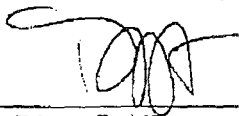
RECORDED AT THE REQUEST OF
ETRCO, LLC
11/02/2016 02:03PM
FILE NO. 469496
SUSAN MERRIWETHER
CARSON CITY RECORDER
FEE \$16.00 DEP RMH

Mail Tax Statements to: (deeds only)
same as above

(space above for Recorder's use only)

I the undersigned hereby affirm that the attached document, including any exhibits, hereby
submitted for recording does not contain the social security number of any person or persons.
(Per NRS 239B.030)

Signature



Diane J. Allen

Escrow Officer

This document is being
recorded as an
accommodation only.

Trustee's Deed Upon Sale

This page added to provide additional information required by NRS 111.312
(additional recording fee applies)

APN No.: 010-513-07
Recording Requested by:

When Recorded Mail to:

Rosehill, LLC
6770 S. Mccarran Blvd. #202
Reno, NV 89509

Forward tax statements to the address given above

TS No.: NV-15-679709-HL
Order No.: 733-1501111-70

Space above this line for recorders use only

It is hereby affirmed that this document submitted for recording does not contain the social security number of any person or persons. (Per NRS 239B.030).

Trustee's Deed Upon Sale

Transfer Tax:

The undersigned grantor declares:
The grantee herein WASN'T the foreclosing beneficiary.
The amount of the unpaid debt together with costs was: \$316,960.37
The amount paid by the grantee at the trustee sale was: \$255,100.00
The documentary transfer tax is: \$946.45
Said property is in the City of: CARSON CITY, County of CARSON CITY

QUALITY LOAN SERVICE CORPORATION, as Trustee, (whereas so designated in the Deed of Trust hereunder more particularly described or as duly appointed Trustee) does hereby **GRANT** and **CONVEY** to

Rosehill, LLC

(herein called Grantee) but without covenant or warranty, expressed or implied, all right title and interest conveyed to and now held by it as Trustee under the Deed of Trust in and to the property situated in the county of **CARSON CITY**, State of Nevada, described as follows:

That portion of the Northwest 1/4 of the Northwest 1/4 of Section 28, Township 15 North, Range 20 East, M.D.B. & M., further described as follows: Parcel 86 as shown on the parcel map for M.G. Stafford, Inc., filed for record in the Office of the Recorder of Carson City, Nevada on August 22, 1989, Book 6, Page 1714, as Document No. 89571.

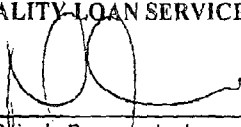
This conveyance is made in compliance with the terms and provisions of the Deed of Trust executed by **Edwin J. Sarge and Thelma A. Sarge, Trustees of the Sarge Trust dated March 28, 1988**, as trustor, dated **3/4/2006**, and recorded on **4/26/2006** as Instrument No. 352840 of Official Records in the office of the Recorder of **CARSON CITY**, Nevada, under the authority and powers vested in the Trustee designated in the Deed of Trust or as the duly appointed trustee, default having occurred under the Deed of Trust pursuant to the Notice of Breach and Election to Sell under the Deed of Trust recorded on **9/3/2015**, instrument no **457307**, Book , Page , of Official

records. The Trustee of record at the relevant time having complied with all applicable statutory requirements of the State of Nevada and performed all duties required by the Deed of Trust including sending a Notice of Default and Election to Sell within ten days after its recording and a Notice of Sale at least twenty days prior to the Sale Date by certified mail, postage pre-paid to each person entitled to notice in compliance with Nevada Revised Statute 107.090.

All requirements per Nevada Statutes regarding the mailing, personal delivery and publication of copies of Notice of Breach and Election to Sell under Deed of Trust and Notice of Trustee's Sale, and the posting of copies of Notice of Trustee's sale have been complied with. Trustee, in compliance with said Notice of Trustee's sale and in Exercise of its powers under said Deed of Trust sold said real property at public auction on 10/13/2016. Grantee, being the highest bidder at said sale became the purchaser of said property for the amount bid, being \$255,100.00, in lawful money of the United States, in pro per, receipt thereof is hereby acknowledged in full/partial satisfaction of the debt secured by said Deed of Trust.

QUALITY MAY BE CONSIDERED A DEBT COLLECTOR ATTEMPTING TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.
TS No.: NV-15-679709-HL

Date: 10/21/2016 QUALITY-LOAN SERVICE CORPORATION

By: 
Nicole Fuentes, Assistant Vice President

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of: California

County of: San Diego

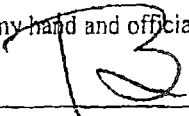
On OCT 21 2016 before me, Brenda A. Gonzalez a notary public, personally appeared Nicole Fuentes, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

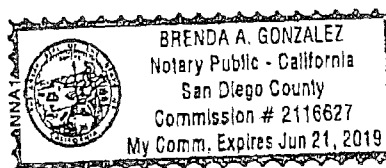
I certify under *PENALTY OF PERJURY* under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

(Seal)

Signature


Brenda A. Gonzalez



APN# : 010-513-07

Recording Requested By:

Western Title Company, Inc.

Escrow No.: 084331-CAL

RECORDED AT THE REQUEST OF
ETRCO, LLC

12/07/2016 11:07AM

FILE NO.470500

SUSAN MERRIWETHER

CARSON CITY RECORDER

FEE \$17.00 DEP LRD

When Recorded Mail To:

Western Title Company

2310 S. Carson St.

Carson City, NV 89701

Mail Tax Statements to: (deeds only)

(space above for Recorder's use only)

I the undersigned hereby affirm that the attached document, including any exhibits, hereby submitted for recording does not contain the social security number of any person or persons.
(Per NRS 239B.030)

Signature

Carrie Lindquist
Carrie Lindquist

Escrow Officer

**Order Cancelling Notices Recorded Against 1636 Sonoma Street,
Carson City, Nevada**

This page added to provide additional information required by NRS 111.312
(additional recording fee applies)

EXHIBIT “9”

EXHIBIT “9”

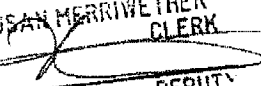
EXHIBIT “9”

EXHIBIT “9”

EXHIBIT “9”

EXHIBIT “9”

REC'D & FILED
2016 DEC -6 PM 1:43

SUSAN HERRIWETHER
CLERK
BY  DEPUTY

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

IN THE MATTER OF THE ESTATE OF:

Case No.: 16 RP00009 1B
~~16PBT001081B~~

EDWIN JOHN SARGE,

Dept. No: 1

THELMA AILENE SARGE,

Consolidated with 16PBT001071b and

Deceased.

~~16RP000091B~~
16PBT001081B

ORDER CANCELLING NOTICES RECORDED AGAINST 1636 SONOMA STREET,
CARSON CITY, NEVADA

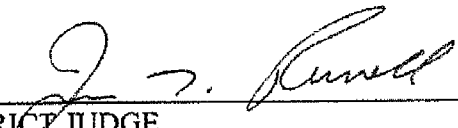
This matter came on regularly before this Court on the 5th day of December, 2016 upon the motion of Rosehill, LLC seeking the cancellation or withdrawal of certain notices of pendency of action that encumber the real property located at 1636 Sonoma Street, Carson City, Nevada pursuant to the provisions of NRS 14.015. The Court, having reviewed the pleadings filed by the parties and having conducted the requested hearing and considered the oral arguments of counsel therein, being fully advised therein, NOW, THEREFORE

IT IS HEREBY ORDERED that the Notice of Pendency of Action recorded on October 31, 2016 as Document Number 469390, Official Records of Carson City County, Nevada, is hereby ordered cancelled pursuant to this order and the provisions of NRS 14.015 (5). This order of cancellation shall have the same effect as an expungement of said recorded notice.

1 IT IS FURTHER ORDERED that the Notice of Pendency of Action recorded on October 31,
2 2016 as Document Number 469423, Official Records of Carson City County, Nevada, is hereby
3 ordered cancelled pursuant to this order and the provisions of NRS 14.015 (5). This order of
4 cancellation shall have the same effect as an expungement of said recorded notice.

5 IT IS FURTHER ORDERED that the document entitled "complaint For Reentry" recorded on
6 October 31, 2016 as Document Number 469424 is hereby expunged and cancelled from the Official
7 Records of Carson City County, Nevada pursuant to this order and the provisions of NRS 14.015 (5).
8 This order of cancellation shall have the same effect as an expungement of said recorded notice.
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11 DATED this 6th day of December, 2016.
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15 _____
16 DISTRICT JUDGE
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CERTIFICATE OF MAILING

Pursuant to NRC 5(b), I certify that I am an employee of the First Judicial District Court, and that on this 6th day of December, 2016, I deposited for mailing at Carson City, Nevada, a true and correct copy of the foregoing Order addressed as follows:

Tory M. Pankopf, Esq.
9460 Double R Blvd., Suite 104
Reno, NV 89521

William A. Baker, Esq.
9468 Double R. Blvd., Suite A
Reno, NV 89521



Angela Jeffries
Judicial Assistant, Dept. 1

CERTIFIED COPY

The document to which this certificate is attached is a full, true and correct copy of the original on file and of record in my office.

Date December 7, 2016

Susan Merriwether, City Clerk and Clerk of the First Judicial District Court of the State of Nevada, in and for Carson City.

By  Deputy

Per NRS 239 Sec. 6 the SSN may be redacted, but in no way affects the legality of the document.

1 TORY M. PANKOPF (SBN 7477)
2 **TORY M PANKOPF, LTD**
3 748 S Meadows Parkway, Suite 244
4 Reno, Nevada 89521
5 Telephone: (775) 384-6956
6 Facsimile: (775) 384-6958
7 Attorney for the Estates and Jill Sarge

8 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

9
10
11 IN THE MATTER OF ESTATE OF THELMA
12 AILENE SARGE and ESTATE OF EDWIN
13 JOHN SARGE.

Supreme Court No. 82623

District Court Case No. 16 RP 00009 1B

14 ESTATE OF THELMA AILENE SARGE;
15 ESTATE OF EDWIN JOHN SARGE; AND
16 JILL SARGE,
17 Appellants,
18 vs.
19 ZACHARY PEDERSON; MICHELLE
20 PEDERSON; and ROSEHILL, LLC,
21 Respondents.

22 **DECLARATION OF TORY M. PANKOPF**

23 I, TORY M PANKOPF, declare and state:

24 1. I am the attorney representing the Estates of Edwin and Thelma Sarge, and Jill
25 Sarge. I am a member in good standing of the State Bar of Nevada and licensed to practice law
26 before all the courts of this state. If called as a witness, I could competently testify as to all the
27 matters contained herein. All the facts set forth in this declaration are based on my own personal
28 knowledge.

2. Filed concurrently with the motion for an order staying order while on appeal as Exhibit "1" (Bates 001 - 6) is a true and correct copy of Appellants' complaint filed in the underlying action.

3. Filed concurrently with the motion for an order staying order while on appeal as Exhibit "2" (Bates 007 - 11) is a true and correct copy of Appellants' recorded notice of pendency of action.

4. Filed concurrently with the motion for an order staying order while on appeal as Exhibit "3" (Bates 012 - 33) is a true and correct copy of Appellants' amended complaint filed in the underlying action.

5. Filed concurrently with the motion for an order staying order while on appeal as Exhibit "4" (Bates 034 - 38) is a true and correct copy of Appellants' notice of ruling with the district court's email attached.

6. Filed concurrently with the motion for an order staying order while on appeal as Exhibit "5" (Bates 039 - 47) is a true and correct copy of the order on the MSJ filed in the underlying action.

7. Filed concurrently with the motion for an order staying order while on appeal as Exhibit "6" (Bates 048 - 56) is a true and correct copy of Respondents' amended MSJ filed in the underlying action.

8. Filed concurrently with the motion for an order staying order while on appeal as Exhibit "7" (Bates 057 - 66) is a true and correct copy of Respondents' reply to Appellants' opposition to their MSJ filed in the underlying action.

9. Filed concurrently with the motion for an order staying order while on appeal as Exhibit "8" (Bates 067 - 90) is a true and correct copy of Respondent's, Rosehill, motion to expunge Appellants' notice of pendency of action filed in the underlying action.

10. Filed concurrently with the motion for an order staying order while on appeal as Exhibit "9" (Bates 091 - 94) is a true and correct copy of the recorded district court order expunging Appellants' notice of pendency of action filed in the underlying action.

11. The district court's order was entered and filed on December 24, 2020.

12. Appellants actually contend the subject mortgage was a reverse mortgage and, pursuant to the terms of the reverse mortgage and 24 CFR § 206.125 federal regulation, upon the death of the last trustor the heirs had the right to either: 1) pay the outstanding loan balance in full; 2) sell the property for 95% of the appraised value; or 3) provide the mortgagee with a deed in lieu of foreclosure.

13. Originally, the heirs had opted to provide co-defendant, Nationstar, with a deed in lieu of foreclosure. Then after having received an offer to purchase the property from a local realtor, they opted to sell the property and submitted the offer to Nationstar.

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

AFFIRMATION

Pursuant to NRS 239B.040, this document does not contain the Social Security Number of any person.

DATED: This 18th day of March 2021.

TORY M. PANKOPF LTD

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

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5, I hereby certify that on the 19th day of March 2021, I served a true
3 and correct copy of the following document(s):

4 **DECLARATION OF TORY M. PANKOPF**

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

7 Zachary and Michelle Pederson
8 Rosehill LLC
9 c/o James M. Walsh, Esq.
10 WASLSH & ROSEVEAR
11 9468 Double R Bl, Ste A
12 Reno, NV 89521
13 Fax (775) 853-0860
14 jmwalth@wbri.net

15 DATED on this 19th day of March 2021.

16 s/Tory M. Pankopf
17 Tory M. Pankopf
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