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ELIZABETH A. BROWN  
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BY *[Signature]*  
DEPUTY CLERK

CASE NO.: 82379

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IN THE SUPREME COURT OF THE STATE OF NEVADA

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LEO KRAMER and AUDREY KRAMER, PRO SE

Plaintiffs-Appellants

v.

NATIONAL DEFAULT SERVICING CORPORATION, et al.,

Defendants-Appellees

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ON APPEAL FROM THE JUDGMENT OF THE THIRD JUDICIAL DISTRICT  
COURT IN AND FOR THE COUNTY OF LYON, STATE OF NEVADA

JOHN P. SCHLEGELMILCH, Judge Presiding

Case No. 18-CV-00663

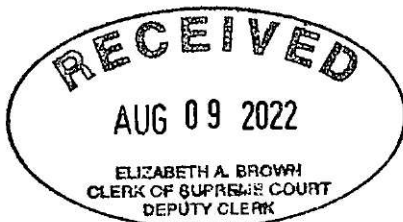
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**PETITIONERS' REPLY TO RESPONDENT, BRECKENRIDGE  
PROPERTY FUND 2016, LLC'S OPPOSITION TO PETITIONERS'  
REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF  
APPELLANTS/PETITIONERS' PETITION FOR BILL OF REVIEW**

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August 8, 2022

Leo Kramer and Audrey Kramer  
Petitioners-Appellants, in Pro se  
2364 Redwood Road  
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22-24858

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**TO THE HONORABLE SUPREME COURT JUSTICES OF THE  
SUPREME COURT OF NEVADA:**

Petitioners, Leo Kramer and Audrey Kramer, (“Petitioners”), hereby, file this their Reply to Breckenridge Property Fund 2016, LLC’s opposition to Petitioners’ Request for Judicial Notice in Support of Appellants/Petitioners’ Petition for Bill of Review and in support thereof show as follows:

**I. Introduction**

Appellee/Respondent, Breckenridge Property Fund 2016, LLC (“Respondent”), is neither a bonafide purchaser nor bonafide encumbrancer of Appellants/Petitioners’ retirement home for following reasons: First there was no public auction for the purported sale of Petitioners’ retirement home as mandated by Nevada law for non-judicial foreclose sale; Breckenridge Property Fund 2016, LLC proffered no evidence in the District Court or in any court to date, to demonstrate they lawfully purchased Petitioners’ home in a public auction in a non-judicial foreclosure proceeding to wit, Breckenridge Property Fund 2016 was the highest bidder; any purported interest Respondent thought it may have had in Petitioners’ retirement home is vitiated by fraud and as such, Breckenridge Property Fund 2016, lack standing to challenge Petitioners’ Requested for Judicial Notice because the documents which judicial Notice is sought will help this Honorable Court to conclude that documents that were proffered by National Default Servicing

Corporation and its Attorneys Ace Van Pattern, an Officer of the Court to effectuate the unlawful and wrongful foreclosure of Petitioner's retirement home were fabricated and false documents in violation of Nevada civil and penal laws. Accordingly, Breckenridge Property Fund 2016, LLC's Opposition to Petitioners motion for Judicial Notice must be denied for *inter alia*, lack of standing.

## **II. Argument**

**A. The documents or matters sought by way of judicial notice are capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned, so that the fact is not subject to reasonable dispute and will assist this honorable court to conclude that the documents that were proffered by National Default Servicing Corporation and its Attorney Ace Van Patten, an Officer of the Court, to deprive Petitioners' of their Constitutionally protected interest in their real property were false and fabricated real estate documents.**

Under Nevada Rule NRS 47.130 Matters of fact:

1. The facts subject to judicial notice are facts in issue or facts from which they may be inferred.

2. A judicially noticed fact must be:

(a) Generally known within the territorial jurisdiction of the trial court; or

(b) Capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned, so that the fact is not subject to reasonable dispute.

In the case at bar, the documents or matters sought by way of judicial notice are capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned; the facts are not subject to reasonable dispute and will assist this honorable to conclude that the documents that were proffered by National Default Servicing Corporation and its Attorney, Ace Van Patten, an Officer of the Court, to deprive Petitioners' of their Constitutionally protected interest in their real property were false and fabricated real estate documents.

Respondent contends that it opposes Appellants' Motion for Judicial Notice as there is no rule of Appellate procedure to allow for such a request after the Court of Appeals issued its decision on May 6, 2022. (**Opp. At. p.2., ¶ 2.** ). However, Petitioners argue that nothing in the rules of Nevada Appellate procedure prohibits a motion such as this one.

“An application for an order or other relief is made by motion unless these Rules prescribe another form. A motion must be in writing and be accompanied by proof of service.” Nev. R. App. P. 27. Further, A motion must state with particularity the grounds for the motion, the relief sought, and the legal argument necessary to support it. The motion shall contain or be accompanied by any matter required by a specific provision of these Rules governing such a motion. If a motion is supported by affidavits or other papers, they shall be served and filed with the motion. Nev. R. App. P. 27. Petitioners are in compliance with Nev. R. App. P. 27

and have made an application for an order and relief in writing and accompanied by proof of service. Furthermore, NRAP 1(c) provides that these Rules shall be liberally construed to secure the proper and efficient administration of the business and affairs of the courts and to promote and facilitate the administration of justice by the courts.

Here, Petitioners contend that the Request for Judicial Notice is relevant to this Court's disposition of this pending Petition for Review.

Additionally, this court announced that the circumstances under which it would take judicial notice of matters outside the record existing on the date of Appeal in *Mack v. Estate of Mack*, 125 Nev. 80, 206 P.3d 98 (2009), where this court stated:

We may take judicial notice of facts generally known or capable of verification from a reliable source, whether we are requested to or not. NRS 47.150(1). Further, we may take judicial notice of facts that are "[c]apable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned, so, that the fact is not subject to reasonable dispute" see NRS 47.130(2)(b).

While on appeal, a court can only consider those matters that are contained in the record made by the court below and the necessary inferences that can be drawn therefrom. *Toigo v. Toigo*, 109 Nev. 350, 350, 849 P.2d 259, 259 (1993) (citing *Lindauer v. Allen*, 85 Nev. 430, 433, 456 P.2d 851, 853 (1969)). This Court generally does not consider on appeal statements made by counsel



portraying what purportedly occurred below. See, *Wichinsky v. Mosa*, 109 Nev. 84, 87, 847 P.2d 727, 729 (1993) (citing *Lindauer*, 85 Nev. at 433, 456 P.2d at 852-53). Here, the matter which Petitioners are seeking judicial notice are contained in the record of the court below and necessary inferences can be drawn therefrom to adjudge that fabricated “Assignment of Deed of Trust”, fabricated Proof of Claim, fabricated Expired Limited Power of Attorney and fabricated “Purchase and Assumption Agreement” that were offered in evidence by Ace Van Patten, an Officer of Court, and National Default Servicing Corporation cannot form the basis for lawful “Notice of Default, Notice of Trustee’s Sale and Trustee’s Deed Upon Sale. Noteworthy: *(The expired LPOA states within the body of the document [and also in the lower left hand corner of every page] that the document was specific and applied to sold/paid off WAMU loans. Which included the Kramers’ loan.)*

In *Mack v. Estate of Mack*, 125 Nev. 80, 206 P.3d 98 (2009), this court further held:

... we may take judicial notice of facts generally known or capable of verification from a reliable source, whether we are requested to or not. NRS 47.150(1). Further, we may take judicial notice of facts that are “[c]apable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned, so that the fact is not subject to reasonable dispute.” See NRS 47.130(2)(b).

This Court further held that:

As a general rule, we will not take judicial notice of records in another and different case, even though the cases are connected. *Occhiuto v. Occhiuto*, 97 Nev. 143, 145, 625 P.2d 568, 569 (1981) (citing *Giannopoulos v. Chachas*, 50 Nev. 269, 270, 257 P. 618, 618 (1927)). However, this rule is flexible in its application and, under some circumstances, we will invoke judicial notice to take cognizance of the record in another case. *Id.*

To determine if a particular circumstance falls within the exception, we examine the closeness of the relationship between the two \*92cases. *Id.* We have taken judicial notice of other state court and administrative proceedings when a valid reason presented itself. *See, e.g., id.; Cannon v. Taylor*, 88 Nev. 89, 92, 493 P.2d 1313, 1314-15 (1972); *State Farm Mut. v. Comm'r of Ins.*, 114 Nev. 535, 539, 958 P.2d 733, 735 (1998).

Petitioners contend that circumstances in present case falls within the exception articulated *Ibid*, because of the closeness of the relationship between the case to be judicially noticed and Petitioners' case, and a valid reason presents itself as demonstrated below:

In *In re: Washington Mutual, Inc.*, et al., in the United States Bankruptcy Court for the District of Delaware, Case #: 08-12229; "**Final Report Of The Examiner**" clearly and concisely stated that "ALL of WASHINGTON MUTUAL BANK'S (WMB'S) assets were transferred to FEDERAL HOME LOAN BANK OF SAN FRANCISCO ("FHLB-SF") prior to being taken into receivership by the FDIC.

Similarly, in Petitioners' case, just as that Court held *Ibid*, ALL of WASHINGTON MUTUAL BANK'S (WMB'S) line of credit assets were transferred to FEDERAL HOME LOAN BANK OF SAN FRANCISCO ("FHLB-SF") prior to being taken into receivership by the FDIC which means that FDIC **Did**

Not convey Petitioners' Line of Credit to JPMorgan Chase Bank. It also means that the "Assignment of Deed of Trust and the Purchase and Assumption Agreement offered by Mr. Ace Van Patten were all fabricated. Therefore, fraudulent, false and fabricated Assignment of Deed of Trust cannot form the basis of a lawful "Notice of Default", "Notice of Trustees' sale" and "Trustee's deed upon sale".

William Pataalo, a private investigator and Petitioners' expert witness also discovered with reasonable diligence, irrefutable facts that bears the closeness of the relationship between *In re: Washington Mutual, Inc.*, et al., *Ibid*, and Petitioners' case. Just as in *In re: Washington Mutual, Inc.*, et al, the \$176,000.00 line of credit, which Petitioners did not expend all of the line of credit, were transferred to FEDERAL HOME LOAN BANK OF SAN FRANCISCO ("FHLB-SF") prior to being taken into receivership by the FDIC, which means that the "Assignment of Deed of Trust and the Purchase and Assumption Agreement offered by Mr. Ace Van Patten purported to transfer Petitioners' Deed of Trust which forms the basis of Notice of Default, Notice of Trustees' sale and Trustee's deed upon sale were fabricated all which precludes the entry of Summary Judgment in favor of Respondents.

In *Mack*, *Ibid*, this Court held that "judicial notice may be taken of the outcome of murder trial in which the deceased stood to gain from the killer because of the close relationship between the murder trials and the benefits to which the

deceased's estate is entitled.” In the instant case, judicial notice of the documents and case that was adjudicated in *In re: Washington Mutual, Inc.*, et al., in the United States Bankruptcy Court for the District of Delaware, Case #: 08-12229; “**Final Report Of The Examiner**”, is relevant because National Default Servicing Corporation and its Attorneys Ace Van Patten, an Officer of the Court, sought to benefit from filing false and fabricated real estate document to effectuate wrongful and unlawful non-judicial foreclosure of Petitioners' home for the benefit of JPMorgan Chase Bank.

*NRAP 10(c )*

Respondent contends that any pursuant to NRAP 10(c ) any correction to the record should have been handled at the district court level. (**Opp. At. p.2., ¶ 2.** ). Respondent wittingly or unwittingly misapplied the NRAP 10(c ) and seems to confuse Request for Judicial Notice and Correction or Modification of the Record.

***Correction or Modification of the Record.***

If any difference arises about whether the trial court record truly discloses what occurred in the district court, the difference shall be submitted to and settled by that court and the record conformed accordingly. Questions as to the form and content of the appellate court record shall be presented to the clerk. Nev. R. App. P. 10(c).

Here, Petitioners **did not** file a Motion for Correction or Modification of the Record in this Court. Rather, Petitioners filed a Motion for Judicial Notice which Respondent opposed hence this reply.

Moreover, Respondent is not disputing the fact the matters for which Petitioners are seeking notices are capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned, so, that the fact is not subject to reasonable dispute. Further, Respondent is not disputing that there was no public auction which Breckenridge Property Fund 2016, LLC was the highest bidder for Petitioners' home which Petitioners purchased with the specific intent use as their retirement home in the State of Nevada. Additionally, Breckenridge Property Fund 2016 proffered no evidence in the District Court or in any court to demonstrate that it lawfully purchased Petitioners' home in a public auction in a non-judicial foreclosure proceeding nor has Breckenridge Property Fund 2016, LLC and its various attorneys dispute the fact Ace Van Patten proffered fabricated Assignment of Deed of Trust, fabricated Limited Power of Attorney, fabricated Proof of Claim, fabricated Purchase and Assumption Agreement and other fabricated documents as evidence to support their unlawful and wrongful non-judicial foreclosure of Petitioners' real property in the State of Nevada.

Respondent further contends that: "On February 17, 2021, pursuant to NRAP 11, this court has already directed the lower court to submit the entire record. NRAP

30(f) further indicates a pro se party is not to file appendix unless ordered by the court. (**Opp. At. p.2., ¶ 2.** ). “[T]he right of access to the courts is a fundamental right protected by the Constitution.” *Delew v. Wagner*, 143 F.3d 1219, 1222 (9th Cir.1998). The First Amendment “right of the people ... to petition the Government for a redress of grievances,” which secures the right to access the courts, has been termed “one of the most precious of the liberties safeguarded by the Bill of Rights.” *BE & K Const. Co. v. NLRB*, 536 U.S. 516, 524–25, 122 S.Ct. 2390, 153 L.Ed.2d 499 (2002); *see also Christopher v. Harbury*, 536 U.S. 403, 415 n. 12, 122 S.Ct. 2179, 153 L.Ed.2d 413 (2002) (noting that the Supreme Court has located the court access right in the Privileges and Immunities clause, the First Amendment petition clause, the Fifth Amendment due process clause, and the Fourteenth Amendment equal protection clause). Petitioners contend that Respondent’s assertion *Ibid*, further illuminate why Request for Judicial Notice is essential here to adequately allow Petitioners to have access to court.

### **III- Conclusion**

For the foregoing reasons and in accordance with NRS 47.150(1) and NRS 47.130(2)(b) this court may take judicial notice of facts in Petitioners’ Motion for Judicial Notice because they are capable of verification from a reliable source, and

are capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned, so, that the fact is not subject to reasonable dispute; as such, Breckenridge Property Fund 2016's Opposition to Appellants/Petitioners' Request for Judicial Notice must be denied in its entirety.

Date: 8/08/22

Leo Kramer  
Leo Kramer, Appellant, Pro se

Date: 8/8/2022

Audrey Kramer  
Audrey Kramer, Appellant, Pro se

CERTIFICATE OF SERVICE

Leo Kramer and Audrey Kramer, as Appellants/Petitioners in pro se, Hereby Certify

Under Penalty of Perjury that on August 8, 2022, that the foregoing for:

**PETITIONERS' REPLY TO RESPONDENT, BRECKENRIDGE  
PROPERTY FUND 2016, LLC'S OPPOSITION TO PETITIONERS'  
REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF  
APPELLANTS/PETITIONERS' PETITION FOR BILL OF REVIEW**

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