

EXHIBIT C

Received 11-10-11
via certified mail

1 \$3550
2 Carole M. Pope, SBN 3779
3 The Law Office of Carole M. Pope
4 a professional corporation
5 301 Flint Street
6 Reno, NV 89501
7 Telephone: (775) 337-0773
8 Attorney for Borrowers/Petitioners

9
10 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

11 IN AND FOR THE COUNTY OF WASHOE

12 * * *

13 DUKE RENSLOW and TINA
14 RENSLOW,

15 Petitioners,

16 vs.

CASE NO.

17 WELLS FARGO BANK, and DOES
18 1 through 10,

DEPT. NO.

19 Respondents.

20 PETITION FOR JUDICIAL REVIEW

21 COME NOW Petitioners Duke Renslow and Tina Renslow, husband
22 and wife, through their attorney, Carole M. Pope, and hereby
23 petition the Court for judicial review pursuant to Rule 6 of the
24 Foreclosure Mediation Rules approved by the Supreme Court of
25 Nevada of the Mediator's Statement, generated pursuant to a
26 mediation held October 19, 2010 and NRS 107.086(5). This
27 verified petition is based upon the accompanying points and
28 authorities and the accompanying exhibits, including the
Mediator's Statement written by Mediator Mark E. Rosenberg.

Statement of Facts

1. Petitioners hold title of record for the property at 10200 Shenandoah Drive, Reno, Nevada 89506 ("Subject Property").

2. Petitioners occupy and reside at the Subject Property.

3. Petitioners executed a Deed of Trust recorded against the Subject Property on May 13, 2003 to secure a promissory note in the amount of \$184,000.00. Wells Fargo Home Mortgage, Inc. is listed as the Lender. The interest rate on the loan is 5.125%, and this is a 15 year mortgage.

4. Petitioners received a recorded notice of default and election to sell the subject property pursuant to NRS 107.080, which notice was recorded August 6, 2010. The Notice of Default states that Wells Fargo Bank, N.A. is the beneficiary of the Deed of Trust, and that a default occurred with the payment due on January 1, 2010. Petitioners presently owe approximately \$119,876.80 in principal under the note.

5. Petitioners have not surrendered the Subject Property.

6. Petitioners have not filed a petition in bankruptcy.

7. Petitioners filed an Election of Mediation pursuant to NRS 107, as amended by AB 149, Section 1 (2009) and Nevada Supreme Court Foreclosure Mediation.

8. Petitioners appeared before the Mediator, Mark E. Rosenberg, on October 19, 2010. Petitioners were represented by a HUD counselor, Benjamin Alsasua. Respondent Wells Fargo was represented by Stephen R. Wassner, Esquire.

1 9. At the time of the mediation, Petitioner provided a
2 value for the Subject Property of \$220,000, which did not include
3 the shop upon the Subject Property. The shop would add
4 additional value of at least \$50,000. Therefore, this is a
5 situation where there is plenty of equity in the Subject Property
6 unlike most mortgages in this situation, which are upside down.
7 Respondent does not dispute there is significant equity in the
8 Subject Property.

9 10. Through the mediation, Wells Fargo Bank certified that
10 it was the true owner of the Deed of Trust. However, Wells Fargo
11 admitted at the mediation, that it was not the true owner of the
12 mortgage. Therefore, it could not negotiate any loan
13 modification. Furthermore, Respondent at the mediation admitted
14 that they did not know who owns the note. Consequently,
15 Petitioners have not received notice as required by 15 U.S.C.
16 sec. 1651(g), as to who really owns this loan. Attached hereto
17 as Exhibit "1" is a true and correct copy of the Mediator's
18 Statement.

19 20 11. In November of 2009, Petitioners qualified for and
21 entered into a loan modification agreement under which they made
22 seven payments. Petitioners' monthly payments were reduced from
23 \$1,708.83 to \$1,127.06. Attached hereto as Exhibit "2" is a copy
24 of the documents concerning the trial period payments under the
25 modification program. After making seven payments pursuant to
26 direction of Respondent, Petitioners were advised that the
27
28

1 investor in their mortgage did not participate in the home loan
2 modification program. When this occurred Respondent then
3 demanded that Petitioners make up the difference on past due
4 payments and charged late fees.

5 12. At the mediation Respondent agreed to eliminate all
6 late fees. However, on October 20, 2010, Respondent through
7 National Default Servicing Corporation, alleged trustee under the
8 Deed of Trust, now demands that Petitioners pay the entire
9 monthly payment under the original loan as well as pay late fees
10 and foreclosure costs for a total delinquency of \$22,450.25.
11 Attached hereto as Exhibit "3" is a copy of the demand letter.
12

13 13. When Respondent withdrew approval of Petitioners in the
14 Home Affordable Modification Program due to lack of participation
15 of the investor in the federal program, no one was able to tell
16 Petitioners the name of the investor under their loan.

17 14. Petitioners needed to reduce their monthly payments as
18 Mr. Renslow's pay has been reduced, their daughter has been
19 diagnosed with juvenile arthritis and Petitioners have
20 significant expenses in maintaining health insurance monthly.
21 Due to the care required for their daughter, Mrs. Renslow is not
22 able to work presently.

23 15. Petitioners really desire that the loan be recast over
24 15 years with a reduced interest rate.

25 16. The Mediator's Statement shows that it was mailed on
26 October 25, 2010, and Petitioners actually received the statement
27
28

1 on October 26, 2010. Therefore, this petition is filed within 15
2 days of actual receipt as required by Rule 6 of the Foreclosure
3 Mediation Rules.

4 Legal Analysis

5 Under Rule 5 of the Foreclosure Mediation Rules, Respondents
6 were required to provide a certification under oath that they
7 hold the original note plus provide copies of the note with a
8 copy of each assignment. Respondents provided such certification
9 to the Mediator stating that they were the holders of the note
10 when in fact they were not. Furthermore, under Rule 5, all
11 holders of the note and beneficiaries under the Deed of Trust
12 must participate in the mediation. Since no one can identify the
13 holder of the note and beneficiary under the Deed of Trust, this
14 did not occur. Therefore, Respondents violated the Rules for
15 Foreclosure Mediation, committed fraud and generally acted in bad
16 faith.
17

18 Under Rule 6 of the Foreclosure Mediation Rules, Petitioners
19 may then file a Petition for Judicial Review of Respondent's
20 actions. The Court is then empowered to determine bad faith as
21 well as impose appropriate sanctions under NRS Chapter 107 as
22 amended. Under NRS 107.086(5), the Court has the following power
23 in view of Respondents' bad faith and fraud: to issue an order
24 imposing sanctions, including, but not limited to, requiring a
25 loan modification in the manner determined proper by the Court.
26

27 This is a situation the real party in interest did not
28

1 participate in the foreclosure mediation as required, and
2 Respondent committed fraud by signing a certificate stating it is
3 the beneficiary under the Deed of Trust. Consequently,
4 Respondent and the actual beneficiary did not participate in good
5 faith in the foreclosure mediation and are subject to sanctions.

6 Furthermore, the Notice of Default and Election to Sell
7 cannot be valid as no one can identify the beneficiary under the
8 Deed of Trust. Consequently, such notice fails to meet the
9 requirements of NRS 107.080(2)(b), which states that the
10 Beneficiary, Successor Beneficiary or Trustee under the Deed of
11 Trust must initiate the filing of a Notice of Default. The
12 Trustee under the original Deed of Trust is listed as United
13 Title of Nevada. The Trustee initiating the foreclosure in this
14 matter is National Default Servicing Corporation (NDSC). For NDSC
15 to have any such power, the Successor Beneficiary, must appoint
16 the new trustee and authorize that Trustee to initiate the
17 foreclosure. Since the Successor Trustee is unknown, a
18 foreclosure cannot possibly be started. Consequently, the Notice
19 of Default and Election to Sell must be rescinded.
20

21 Petitioners, who have substantial equity in the Subject
22 Property, seek a recasting of their loan over 15 years to reduce
23 the payments as well as a reduction in their interest rate.
24 Based upon the bad faith of Respondents, the Court has the power
25 to make such a change as well as impose sanctions upon Respondent
26 for attorney fees and costs incurred with bringing this petition.
27
28

1 WHEREFORE, Petitioners request the following relief:

2 1. For an Order directing that Respondent be required to
3 present the signer of the Certification to appear in Court and
4 testify as to the basis of his signing the certification stating
5 that Respondents hold the note and are beneficiaries under the
6 Deed of Trust.

7 2. For an Order directing Respondent to produce all
8 documents which reference or identify the real party in interest,
9 which may hold an interest in the subject loan as well as
10 identifying the percentage interest held by such parties.

11 3. For an Order directing Respondent to cease all
12 foreclosure activities, including rescission of the Notice of
13 Default, until further direction from this Court.

14 4. For an Order directing Respondent to disclose whether
15 this loan has been paid, in full or in part, from any source.

16 5. For an Order directing that the principal owing in this
17 matter be recast as a new loan over 15 years with an interest
18 rate reduced to the current rates for such a loan, and that all
19 foreclosure fees, late fees, attorney fees and any other fees in
20 connection with the current loan be waived.

21 6. For an Order directing the imposition of sanctions,
22 including an award of fees and costs;

23 7. For such other relief as the Court may deem just.

24 * * *

25 AFFIRMATION

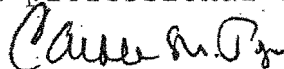
26 Pursuant to NRS 239B.030

CAROLE M. POPE
A PROFESSIONAL CORPORATION
301 FLINT STREET
RENO, NEVADA 89501
(775) 337-0773

1 The undersigned does hereby affirm that the preceding
2
3 document does not contain the social security number of any
4 person.
5

6 DATED this 9th day of November, 2010.

7 The law office of
8 CAROLE M. POPE,
9 a professional corporation



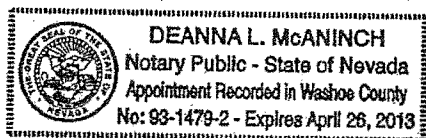
CAROLE M. POPE

Attorney for Petitioners

CAKULE M. LOPE
A PROFESSIONAL CORPORATION
301 FLINT STREET
RENO, NEVADA 89501
(775) 337-0773

Duke Renslow
DUKE RENSLOW

Deanna L. McEninch
Notary Public



INDEX OF EXHIBITS

<u>Exhibit No.</u>	<u>Description</u>	<u>No. of Pages</u>
1	State of Nevada, Foreclosure Mediation Program, Mediator Statement	4
2	Home Affordable Modification Program Loan Trial Period	5
3	Demand letter dated October 20, 2010 to Duke Renslow from National Default Servicing Corporation	3

CV10-03382 DC-9500021312-035
DUKE & TINA RENSLON VS HELL 5 Pages
District Court 11/09/2010 02:58 PM
Washoe County \$3550
FV1

Exhibit 1

Exhibit 1

STATE OF NEVADA
FORECLOSURE MEDIATION PROGRAM
MEDIATOR STATEMENT

HOMEOWNER'S NAME: <u>DUKE RENSLOW</u> CO-OWNER'S NAME: <u>TINA RENSLOW</u> ASSESSOR PARCEL NUMBER (APN): <u>086-225-04</u> PROPERTY ADDRESS: <u>10200 SHENANDOAH DR.</u> <u>RENO, NV 89506</u>	BENEFICIARY: <u>WELLS FARGO BANK</u> TRUSTEE: <u>NAT'L DECAULT SEC</u> TS #: <u>10-42769-WFR-NV</u> Loan #: _____ DoT Doc #: <u>5-6-2003</u> Book #: _____ Page #: _____ Inst #: <u>2853813</u>
--	--

- **If no mediation is held:** Please ensure the Mediation Summary, Mediation Certification and Mailing Certification (Parts 2, 2A & 4) are completed.
- **If no agreement is reached:** please ensure the Attending Parties, Mediation Summary, Mediator Certification and Mailing Certification (Parts 1, 2, 2A & 4) are completed.
- **If an agreement is reached by the parties:** please ensure all applicable parts of this form are attached.

PART 2: MEDIATION SUMMARY (Please check all that apply)

- ☒ A Foreclosure Mediation was held on: 10-19-2010
- ☐ A Foreclosure Mediation was not held (Explain): _____
- ☐ Parties came to an agreement prior to mediation (Explain): _____

The Mediator files the following report of the mediation (please check all that apply):

- ☐ The parties resolved this matter. If this box is marked, please complete PART 3: **MEDIATION AGREEMENT**.
- ☒ The parties participated but were unable to agree to a loan modification or make other arrangements.
- ☐ Lender (Beneficiary or designated representative) failed to attend the mediation.
- ☐ Lender (Beneficiary or designated representative) failed to bring to the mediation each document required. Please specify which document(s) were not provided: _____
- ☒ Lender (Beneficiary or designated representative) did not have the authority to fully negotiate and modify the loan. SEE NOTES
- ☐ Lender (Beneficiary or designated representative) failed to participate in good faith. Please explain: _____
- ☐ Homeowner (grantor or person who holds the title of record) failed to attend the mediation.
- ☐ Homeowner (grantor or person who holds the title of record) failed to bring to the mediation each document required. Please specify which document(s) were not provided: _____
- ☐ Homeowner (grantor or person who holds the title of record) failed to participate in good faith. Please explain: _____
- ☐ Other: _____

STATE OF NEVADA
FORECLOSURE MEDIATION PROGRAM
MEDIATOR STATEMENT

PART 2A: MEDIATOR CERTIFICATION

The Mediator hereby certifies, under the penalty of perjury, that the foregoing is true and accurate of the proceedings as required by NRS Chapter 107.

DATED this 22nd day of OCTOBER, 2010.

Mediator Signature: _____

Print Name: _____

MARK E ROSENBERG

October 19, 2010

Notes on the Renslow Mediation.

The attorney and /or the WFBank's representative did not have the authority to modify the Renslow's (H/O) mortgage.

The Bank was not the owner of the mortgage. I am in possession of a certification that the copies I had were "True and Certified", that WFB was the true owner of the Deed of Trust.

In fact the Bank did not know who owned the note.

The bank had offered the H/O a modification in November Of 2009. The H/O paid on this modification for 7 months before being notified that they, the bank, were withdrawing that offer since they had no authority to make the offer. The H/O never missed a payment, was charged late fees, and they were rescinded today after showing that they had complied with every detail then offered by the bank.

STATE OF NEVADA
FORECLOSURE MEDIATION PROGRAM
MEDIATOR STATEMENT

PART 4: MAILING CERTIFICATION

I hereby certify that I served the foregoing Mediator Statement on the 10/25 day of October, 2010, by placing true and correct copies thereof in the U.S. mail, postage prepaid, addressed to the following:

Homeowner (Grantor):

MIKE + TINA ROSENBERG
10200 STEVENS AVE
ROCKY MOUNTAIN, CO 80501

Homeowner's Attorney/Representative:

Trustee:

NAT'L DEFAMT SERV
7720 N. 116th Street
Phoenix AZ 85020

Trustee's Attorney/ Representative:

Lender (Beneficiary):

WELLS FARGO BANK
3476 STEVENS AVE
PHOENIX AZ 85018

Lender's Attorney/Representative:

Stephen R. Wassner, Esquire
206 South Division Street, Suite 2
Carson City, Nevada 89703-4276

Other:

Other:

Signature:

Print Name:

Title:

Mark E. Rosenberg
MARK E. ROSENBERG
MEDIATOR

CV10-03382 DC-9900021312-036
DUKE & TINA RENSLAW VS. WELL 6 Pages
District Court 11/09/2010 02:58 PM
Washoe County \$3550
MCAI TCC

Exhibit 2

Exhibit 2

Investor Loan # 0000728070

**HOME AFFORDABLE MODIFICATION PROGRAM
LOAN TRIAL PERIOD
(Step One of Two-Step Documentation Process)**

Loan Trial Period Effective Date: 11/01/2009
Borrower ("I")²: Duke Renslow and Tina Renslow
Lender: Wells Fargo Home Mortgage
Date of first lien Security Instrument and Note: 5/13/2003
Loan Number: 708-0023559321
Property Address: 10200 Shenandoah Driv Reno, NV 89506

If I am in compliance with this Loan Trial Period and my representations in Section 1 continue to be true in all material respects, then the Lender will provide me with a Loan Modification Agreement, as set forth in Section 3, that would amend and supplement (1) the Mortgage on the Property, and (2) the Note secured by the Mortgage. The Mortgage and Note together, as they may previously have been amended, are referred to as the "Loan Documents." Capitalized terms used in this Plan and not defined have the meaning given to them in the Loan Documents.

If I have not already done so, I am providing confirmation of the reasons I cannot afford my mortgage payment and documents to permit verification of all of my income (except that I understand that I am not required to disclose any child support or alimony unless I wish to have such income considered) to determine whether I qualify for the offer described in this Plan. I understand that after I sign and return two copies of this Plan to the Lender, the Lender will send me a signed copy of this Plan if I qualify for the Offer or will send me written notice that I do not qualify for the Offer. This Plan will not take effect unless and until both I and the Lender sign it and Lender provides me with a copy of this Plan with the Lender's signature.

1 My Representations. I certify, represent to Lender and agree:

- A I am unable to afford my mortgage payments for the reasons indicated in my Hardship Affidavit and as a result, (i) I am either in default or believe I will be in default under the Loan Documents in the near future, and (ii) I do not have access to sufficient liquid assets to make the monthly mortgage payments now or in the near future;
- B I live in the Property as my principal residence, and the Property has not been condemned;
- C There has been no change in the ownership of the Property since I signed the Loan Documents;
- D I am providing or already have provided documentation for all income that I receive (except that I understand that I am not required to disclose any child support or alimony that I receive, unless I wish to have such income considered to qualify for the Offer);
- E Under penalty of perjury, all documents and information I have provided to Lender pursuant to this Plan, including the documents and information regarding my eligibility for the program, are true and correct; and
- F If Lender requires me to obtain credit counseling, I will do so
- G If I have been discharged in a Chapter 7 bankruptcy proceeding subsequent to the execution of the Loan Documents. Based on this representation, Lender agrees that I will not have personal liability on the debt pursuant to this Plan. I understand and agree that the Lender will not be obligated or bound to make any modification of the Loan Documents or to execute the Modification Agreement if the Lender has not received an acceptable title endorsement and/or subordination agreements from other lien holders, as necessary, to ensure that the modified mortgage Loan retains its first lien position and is fully enforceable.

² If there is more than one Borrower or Mortgagor executing this document, each is referred to as "I". For purposes of this document words signifying the singular (such as "I") shall include the plural (such as "we") and vice versa where appropriate

amount set forth below \$1,127.06, which includes payment for Escrow Items, including real estate taxes, insurance premiums and other fees, if any, of U.S. \$251.75.

Trial Period Payment #	Trial Period Payment	Due Date On or Before
1	\$1,127.06	11/01/2009
2	\$1,127.06	12/01/2009
3	\$1,127.06	01/01/2010

The Trial Period Payment is an estimate of the payment that will be required under the modified loan terms, which will be finalized in accordance with Section 3 below.

During the period 11/1/2009-1/1/2010 commencing on 11/1/2009 and ending on the earlier of: (i) the first day of the month following the month in which the last Trial Period Payment is due 2/1/2010 or (ii) termination of this Plan, I understand and acknowledge that:

- A. TIME IS OF THE ESSENCE under this Plan;
- B. Except as set forth in Section 2.C below, the Lender will suspend any scheduled foreclosure sale, provided I continue to meet the obligations under this Plan, but any pending foreclosure action will not be dismissed and may be immediately resumed from the point at which it was suspended if this Plan terminates, and no new notice of default, notice of intent to accelerate, notice of acceleration, or similar notice will be necessary to continue the foreclosure action, all rights to such notices being hereby waived to the extent permitted by applicable law;
- C. If my property is located in Georgia, Hawaii, Missouri, or Virginia and a foreclosure sale is currently scheduled, the foreclosure sale will not be suspended and the lender may foreclose if I have not made each and every Trial Period Payment that is due before the scheduled foreclosure sale. If a foreclosure sale occurs pursuant to this Section 2.C., this agreement shall be deemed terminated;
- D. The Lender will hold the payments received during the Trial Period in a non-interest bearing account until they total an amount that is enough to pay my oldest delinquent monthly payment on my loan in full. If there is any remaining money after such payment is applied, such remaining funds will be held by the Lender and not posted to my account until they total an amount that is enough to pay the next oldest delinquent monthly payment in full;
- E. When the Lender accepts and posts a payment during the Trial Period it will be without prejudice to, and will not be deemed a waiver of, the acceleration of the loan or foreclosure action and related activities and shall not constitute a cure of my default under the Loan Documents unless such payments are sufficient to completely cure my entire default under the Loan Documents;
- F. If prior to the Modification Effective Date, (i) the Lender does not provide me a fully executed copy of this Plan and the Modification Agreement; (ii) I have not made the Trial Period payments required under Section 2 of this Plan; or (iii) the Lender determines that my representations in Section 1 are no longer true and correct, the Loan Documents will not be modified and this Plan will terminate. In this event, the Lender will have all of the rights and remedies provided by the Loan Documents, and any payment I make under this Plan shall be applied to amounts I owe under the Loan Documents and shall not be refunded to me; and
- G. I understand that the Plan is not a modification of the Loan Documents and that the Loan Documents will not be modified unless and until (i) I meet all of the conditions required for modification, (ii) I receive a fully executed copy of a Modification Agreement, and (iii) the Modification Effective Date has passed. I further understand and agree that the Lender will not be obligated or bound to make any modification of the Loan Documents if I fail to meet any one of the requirements under this Plan. If under the Lender's procedures, title endorsement(s) and/or subordination agreement(s) are required to ensure that the modified Loan Documents retain first lien position and are fully enforceable, I understand and agree that the Lender will not be obligated or bound to make any modification of the Loan Documents or to execute the Modification Agreement if the Lender has not received acceptable title endorsement(s) and/or subordination agreement(s) from other lien holders, as Lender determines necessary.

3. **The Modification.** I understand that once Lender is able to determine the final amounts of unpaid interest and any other delinquent amounts (except late charges) to be added to my loan balance and after deducting from my loan balance any remaining money held at the end of the Trial Period under Section 2.D above, the Lender will determine the new payment amount. If I comply with the

Home Affordable Modification Program Hardship Affidavit

Borrower Name (first, middle, last): Duke Renslow
Borrower Date of Birth: 3/5/1962
Co-Borrower Name (first, middle, last): Tina Renslow
Co-Borrower Date of Birth: 6/18/1961
Property Street Address: 10200 Shenandoah Driv
Property City, ST, Zip: Reno, NV 89506
Servicer: Wells Fargo Home Mortgage
Loan Number: 0023559321

In order to qualify for Wells Fargo Home Mortgage's offer to enter into an agreement to modify my loan under the federal government's Home Affordable Modification Program (the "Agreement"), I/we am/are submitting this form to the Servicer and indicating by my/our checkmarks ("✓") the one or more events that contribute to my/our difficulty making payments on my/our mortgage loan.

Borrower Co-Borrower

Yes No Yes No
☒ ☐ ☒ ☐

My income has been reduced or lost. For example: unemployment, underemployment, reduced job hours, reduced pay, or a decline in self-employed business earnings. I have provided details below under "Explanation."

Yes No Yes No
☒ ☐ ☒ ☐

My household financial circumstances have changed. For example: death in family, serious or chronic illness, permanent or short-term disability, increased family responsibilities (adoption or birth of a child, taking care of elderly relatives or other family members). I have provided details below under "Explanation."

Yes No Yes No
☒ ☐ ☒ ☐

My expenses have increased. For example monthly mortgage payment has increased or will increase, high medical and health-care costs, uninsured losses (such as those due to fires or natural disasters), unexpectedly high utility bills, increased real property taxes. I have provided details below under "Explanation."

Yes No Yes No
☒ ☐ ☒ ☐

My cash reserves are insufficient to maintain the payment on my mortgage loan and cover basic living expenses at the same time. Cash reserves include assets such as cash, savings, money market funds, marketable stocks or bonds (excluding retirement accounts). Cash reserves do not include assets that serve as an emergency fund (generally equal to three times my monthly debt payments). I have provided details below under "Explanation."

Yes No Yes No
☒ ☐ ☒ ☐

My monthly debt payments are excessive, and I am overextended with my creditors. I may have used credit cards, home equity loans or other credit to make my monthly mortgage payments. I have provided details below under "Explanation."

Yes No Yes No
☒ ☐ ☒ ☐

There are other reasons I/we cannot make our mortgage payments. I have provided details below under "Explanation."

Information for Government Monitoring Purposes

The following information is requested by the federal government in order to monitor compliance with federal statutes that prohibit discrimination in housing. **You are not required to furnish this information, but are encouraged to do so. The law provides that a lender or servicer may not discriminate either on the basis of this information, or on whether you choose to furnish it.** If you furnish the information, please provide both ethnicity and race. For race, you may check more than one designation. If you do not furnish ethnicity, race, or sex, the lender or servicer is required to note the information on the basis of visual observation or surname if you have made this request for a loan modification in person. **If you do not wish to furnish the information, please check the box below.**

BORROWER <input type="checkbox"/> I do not wish to furnish this information		CO-BORROWER <input type="checkbox"/> I do not wish to furnish this information	
Ethnicity: <input type="checkbox"/> Hispanic or Latino <input checked="" type="checkbox"/> Not Hispanic or Latino		Ethnicity: <input type="checkbox"/> Hispanic or Latino <input checked="" type="checkbox"/> Not Hispanic or Latino	
Race: <input type="checkbox"/> American Indian or Alaska Native <input type="checkbox"/> Asian <input type="checkbox"/> Black or African American <input type="checkbox"/> Native Hawaiian or Other Pacific Islander <input checked="" type="checkbox"/> White		Race: <input type="checkbox"/> American Indian or Alaska Native <input type="checkbox"/> Asian <input type="checkbox"/> Black or African American <input type="checkbox"/> Native Hawaiian or Other Pacific Islander <input checked="" type="checkbox"/> White	
Sex: <input type="checkbox"/> Female <input checked="" type="checkbox"/> Male		Sex: <input checked="" type="checkbox"/> Female <input type="checkbox"/> Male	
To be Completed by Interviewer		Interviewer's Name (print or type)	
<input type="checkbox"/> Face-to-face interview		Interviewer's Signature	
<input type="checkbox"/> Mail		Date	
<input type="checkbox"/> Telephone		Interviewer's Phone Number (include area code)	
<input type="checkbox"/> Internet		Name/Address of Interviewer's Employer	

Borrower/Co-Borrower Acknowledgement

1. Under penalty of perjury, I/we certify that all of the information in this affidavit is truthful and the event(s) identified above has/have contributed to my/our need to modify the terms of my/our mortgage loan.
2. I/we understand and acknowledge the Servicer may investigate the accuracy of my/our statements, may require me/us to provide supporting documentation, and that knowingly submitting false information may violate Federal law.
3. I/we understand the Servicer will pull a current credit report on all borrowers obligated on the Note.
4. I/we understand that if I/we have intentionally defaulted on my/our existing mortgage, engaged in fraud or misrepresented any fact(s) in connection with this Hardship Affidavit, or if I/we do not provide all of the required documentation, the Servicer may cancel the Agreement and may pursue foreclosure on my/our home.
5. I/we certify that my/our property is owner-occupied and I/we have not received a condemnation notice
6. I/we certify that I/we am/are willing to commit to credit counseling if it is determined that my/our financial hardship is related to excessive debt.
7. I/we certify that I/we am/are willing to provide all requested documents and to respond to all Servicer communication in a timely manner. I/we understand that time is of the essence
8. I/we understand that the Servicer will use this information to evaluate my/our eligibility for a loan modification or other workout, but the Servicer is not obligated to offer me/us assistance based solely on the representations in this affidavit.
9. I/we authorize and consent to Servicer disclosing to the U.S. Department of Treasury or other government agency, Fannie Mae and/or Freddie Mac any information provided by me/us or retained by Servicer in connection with the Home Affordable Modification Program.

Nake Renslow

Borrower Signature

9/29/09
Date

Nake Renslow *9-29-09*
Co-Borrower Signature Date

...representations in Section 1 continue to be true in all material respects, the Lender will send me a Modification Agreement for my signature which will modify my Loan Documents as necessary to reflect this new payment amount and waive any unpaid late charges accrued to date. The Modification Agreement will provide that, as of the Modification Effective Date, a buyer or transferee of the Property will not be permitted, under any circumstance, to assume the loan. Upon execution of a Modification Agreement by the Lender and me, this Plan shall terminate and the Loan Documents, as modified by the Modification Agreement, shall govern the terms between the Lender and me for the remaining term of the loan.

4 **Additional Agreements.** I agree to the following:

- A That, unless a borrower or co-borrower is deceased, all persons who signed the Loan Documents have signed this Plan.
- B To comply, except to the extent that they are modified by this Plan, with all covenants, agreements, and requirements of Loan Documents, including my agreement to make all payments of taxes, insurance premiums, assessments, Escrow Items, impounds, and all other payments, the amount of which may change periodically over the term of my loan.
- C That this Plan constitutes notice that the Lender's waiver as to payment of Escrow Items, if any, has been revoked, and I have been advised of the amount needed to fully fund my Escrow Account.
- D That all terms and provisions of the Loan Documents remain in full force and effect; nothing in this Plan shall be understood or construed to be a satisfaction or release in whole or in part of the obligations contained in the Loan Documents. The Lender and I will be bound by, and will comply with, all of the terms and provisions of the Loan Documents.
- E Notwithstanding anything herein to the contrary, if my final two trial period payments are received by Wells Fargo Home Mortgage after the close of business on the 15th calendar day of the last month of the Trial Period but before the end of the Trial Period, I agree that the Trial Period shall be extended by one calendar month (the "Additional Trial Period"). I agree to abide by all terms and provisions of this Trial Period during the additional Trial Period. In addition, I agree to make a Trial Period Payment in the amount of \$1,127.06 no more than 30 days after the last due date listed in the chart in Section 2 above.

In Witness Whereof, the Lender and I have executed this Plan.

Wells Fargo Home Mortgage
Lender

By: [Signature]
Date: 9/29/09

[Signature]
Borrower

Date: 9/29/09
[Signature]
Borrower
Date: 9-29-09

(Seal) L. BARKER
Notary Public - State of Nevada
Appointment Recorded in Washoe County
No. 07-3559-2 - Expires February 2, 2011

(Seal) L. BARKER
Notary Public - State of Nevada
Appointment Recorded in Washoe County
No. 07-3559-2 - Expires February 2, 2011

CV10-03382 DC-9500021312-037
DUKE & TINA RENSLAW VS. WELLS 4 Pages
District Court 11/09/2010 02:58 PM
Washoe County \$3550
Washoe County
572

Exhibit 3

Exhibit 3



National Default Servicing Corporation

7720 N. 16th Street, Suite 300

Phoenix, Arizona 85020

Phone (602) 264-6101

Fax (602) 264-6209

October 20, 2010

**DUKE RENSLOW
10200 SHENANDOAH DRIVE
RENO NV 89506**

WE ARE A DEBT COLLECTOR. THIS IS AN ATTEMPT TO COLLECT A DEBT.

HOWEVER, IF YOU ARE IN BANKRUPTCY OR HAVE BEEN DISCHARGED IN BANKRUPTCY, THIS LETTER IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT INTENDED AS AN ATTEMPT TO COLLECT A DEBT OR AS AN ACT TO COLLECT, ASSESS, OR RECOVER ALL OR ANY PORTION OF THE DEBT FROM YOU PERSONALLY.

Re: Full Reinstatement

**Wells Fargo Bank, N.A. fka Wells Fargo Home Mortgage Inc., f/k/a/ Norwest Mortgage Inc.
Loan Number: 0023559321
Mortgagor: DUKE RENSLOW, TINA RENSLOW
Property Address: 10200 SHENANDOAH DRIVE, RENO NV 89506
NDSC File Number: 10-42969-WFR-NV
Next Payment Due Date: January 1, 2010**

This letter responds to your request for a reinstatement amount of the above delinquent loan.

As of the date of this letter, the amount required to cure your loan delinquency is referenced on the attached itemized statement. However, if you are not prepared to tender the full reinstatement amount today, then the amount that you owe may increase between the date of this letter and the date you reinstate the loan. The reinstatement amount may increase because of additional interest and late charges as well as legal fees and costs that are incurred as additional steps in the foreclosure proceed.

This reinstatement quote is good through the date shown on the statement, which is the "“Good Through Date”". If you reinstate this loan in full by the "“Good Through Date”", we estimate the reinstatement amount to be as shown on the itemized statement.

The reinstatement figures listed on the itemized statement include items that have been paid by the lender or servicer or incurred by National Default Servicing Corporation that are currently due or will become due by the "“Good Through Date”". In constructing this reinstatement, we have included anticipated additional fees and costs in order to provide you with an estimated reinstatement after the date of this letter. These anticipated fees and costs represent an estimate as to what our actual fees and costs will be if you reinstate your loan no later than the "“Good Through Date”". Please understand that the above figures are subject to final verification upon receipt by the lender or servicer. All fees and costs incurred after the issuance of this reinstatement letter will continue to be assessed until the loan delinquency is cured.

National Default Servicing Corporation
7720 N. 16th Street, Suite 300
Phoenix AZ 85020
TIN No.: 86-0813496
(602) 264-6101 Fax (602) 264-6209

Reinstatement Quote

Printed on: 10/20/2010

Wells Fargo Bank, N.A. fka Wells Fargo Home
Mortgage Inc., f/k/a/ Norwest Mortgage Inc.
3476 Stateview Blvd
MAC # X7801-013
Ft. Mill, SC 29715

RE: DUKE RENSLOW
10200 SHENANDOAH DRIVE
RENO, NV 89506

Delinquent Date: 01/01/2010
Quote good Through: 11/02/2010

File #: 10-42969-WFR-NV
Mortgage Co#: 0023559321

Trustee Fee	\$540.00
Late Charge Balance	\$220.05
Title Fee	\$761.25
Recording Fee	\$180.00
Mailing Fee	\$150.00
Pub Fee	\$800.00
Post Fee	\$205.00
Mediation Fee	\$500.00
Corporate Advances	\$295.00
P&I + Escrow for 01/01/10	\$1,708.83
P&I + Escrow for 02/01/10	\$1,708.83
P&I + Escrow for 03/01/10	\$1,708.83
P&I + Escrow for 04/01/10	\$1,708.83
P&I + Escrow for 05/01/10	\$1,708.83
P&I + Escrow for 06/01/10	\$1,708.83
P&I + Escrow for 07/01/10	\$1,708.83
P&I + Escrow for 08/01/10	\$1,708.83
P&I + Escrow for 09/01/10	\$1,708.83
P&I + Escrow for 10/01/10	\$1,708.83
P&I + Escrow for 11/01/10	\$1,710.65

Quote good Through: 11/02/2010

Total Due: \$22,450.25

* **IMPORTANT:** Some of the fees and costs listed above may not actually be incurred, if you reinstate on the date of this letter or if events we anticipate will happen do not occur. We only require that you pay the fees and costs actually incurred as of the date of your payment. If for whatever reason your payment includes any anticipated fee or cost or other item but the actual amount due on the date of payment is less, any excess amount will be promptly returned to you. If your payment is less than the total reinstatement amount due on the date of your payment, the lender or servicer reserves the right to reject your payment and continue with the legal process.

WE SUGGEST THAT YOU CONTACT NATIONAL DEFAULT SERVICING CORPORATION AT THE ADDRESS OR TELEPHONE NUMBER ON THIS LETTER TO VERIFY THE EXACT AMOUNT NECESSARY TO CURE YOUR DELINQUENCY AND REINSTATE YOUR LOAN NO MORE THAN 24 HOURS BEFORE YOU MAKE ANY PAYMENT.

PAYMENT INSTRUCTIONS. Payment must be submitted in the form of a certified cashier's check(s) and/or money order(s) and must be made payable to **"Wells Fargo Bank, N.A. fka Wells Fargo Home Mortgage Inc., f/k/a/ Norwest Mortgage Inc."**. Funds must be sent to the attorney/trustee office listed on this letter. The reinstatement funds will be returned if any portion of the funds is in the form of a personal check. Please be advised that the foreclosure action will continue until the total reinstatement funds are received in compliance with the terms in this letter. After reinstatement, you may be required to sign appropriate documents and take other requested action to assist in obtaining a withdrawal of the foreclosure.

PLEASE CAREFULLY READ THE FOLLOWING INFORMATION CONCERNING THE FORECLOSURE.

PLEASE NOTE: If there is a foreclosure sale date scheduled for your property, this letter **DOES NOT** extend or change that foreclosure sale date. Therefore, if the "Good Through Date" for the reinstatement stated in this letter continues past the scheduled foreclosure sale date, the foreclosure sale will nonetheless occur unless the loan is reinstated or paid off **PRIOR TO** the foreclosure sale as required by applicable law.

You should verify the loan number, the name(s) of the Mortgagor(s), the property address and the amounts due and owing to ensure that these items are correct. Should you have any questions regarding the above, please do not hesitate to contact the attorney or foreclosure trustee at the telephone number listed in this letter.

Thank You,
Client Services

This transmittal and attachments are a confidential and privileged communication between National Default Servicing Corporation and the above intended recipient(s). If the reader of this communication is not the intended recipient or an employee or agent responsible to give this to the intended recipient, you are hereby notified that the reading, dissemination, distribution, copying or other use of this communication is strictly prohibited. If you have received this communication in error, please immediately notify National Default Servicing Corporation by telephone and destroy this communication. Please be advised that this firm is attempting to collect a debt and any information obtained, may be used for that purpose.

EXHIBIT B

1 MICHAEL LEHNERS, ESQ.
2 429 MARSH AVENUE
3 RENO, NEVADA 89509
4 Bar No.003331
5 (775) 786-1695
6 Attorney for Plaintiffs.

7 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
8
9 IN AND FOR THE COUNTY OF WASHOE

oOo

10 DUKE RENSLOW and TINA
11 RENSLOW,
12
13 Plaintiffs.

CASE NO.: CV10-03382
DEPT. NO.: 7

14 vs.

15 WELLS FARGO BANK, et. al.,
16
17 Defendant.

ORDER RE: PLAINTIFFS' MOTION FOR RELIEF FROM ORDER

18 THIS MATTER having come before this court on Motion by the Plaintiffs
19 for relief from this Court's March 3, 2016 Order. Having reviewed the Motion
20 along with the Opposition and Reply to same and good cause appearing
21 therefore;
22

23 IT IS HEREBY ORDER that Plaintiff's Motion is granted and the Plaintiffs
24 loan with Defendant is to reflect that the loan is contractually current upon the
25 Plaintiffs tending to the Defendant the January through October payments.
26

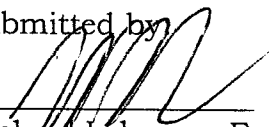
27 IT IS FURTHER ORDERED that the payoff of the loan shall not include
28 any late fees and other fees subject to default and that the loan payoff shall

1 consist of only the principal balance, accrued interest and past due impound
2 charges.

3
4 DATED this 5 day of DECEMBER, 2016

5
6 Patrick Flanagan
7 DISTRICT JUDGE

8 Submitted by

9 
10 Michael Lehnert, Esq.
11 Attorney for Plaintiffs
12
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1 **2540**
2 AMY F. SORENSON
3 Nevada Bar No. 12495
4 KELLY H. DOVE
5 Nevada Bar No. 10569
6 SNELL & WILMER LLP
7 3883 Howard Hughes Parkway, Suite 1100
8 Las Vegas, NV 89169
9 Telephone: (702) 784-5200
10 Facsimile: (702) 784-5252
11 Email: asorensen@swlaw.com
12 kdove@swlaw.com
13 *Attorneys for Respondent Wells Fargo Bank*

14
15 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
16 **IN AND FOR THE COUNTY OF WASHOE**
17

18 DUKE RENSLOW and TINA RENSLOW,
19
20 Petitioners,

21 vs.

22 WELLS FARGO BANK, and DOES 1
23 through 10,

24 Respondents.

CASE NO. CV10-03382
DEPT. NO. 7

NOTICE OF ENTRY OF ORDER

NOTICE OF ENTRY OF ORDER

25 TO: All parties and their counsel of record:

26 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that on February 15,
27 2017, the above-entitled Court entered its Order, to which Order reference is hereby made for
28 further particulars.

A copy of the Order filed February 15, 2017, is attached hereto and marked Exhibit "1."

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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 16th day of February, 2017.

SNELL & WILMER, L.L.P.

/s/ Kelly H. Dove

AMY F. SORENSON

Nevada Bar No. 12495

KELLY H. DOVE

Nevada Bar No. 10569

3883 Howard Hughes Parkway, Suite 1100

Las Vegas, NV 89169

Attorneys for Respondent Wells Fargo Bank

CERTIFICATE OF SERVICE

As an employee of Snell & Wilmer L.L.P., and I certify that I served a copy of the foregoing **NOTICE OF ENTRY OF ORDER** on the 16th day of February, 2017 via electronic service through the Second Judicial District Court's ECF System upon each party in the case who is registered as an electronic case filing user:

Michael Lehnern, Esq.
429 Marsh Avenue
Reno, NV 89509
michaellehners@yahoo.com
Tel: (775) 786-1695
Fax: (775) 786-0799

Attorneys for Petitioners

/s/ Ruby Lengsavath
An Employee of Snell & Wilmer L.L.P.

INDEX TO EXHIBITS

<u>Exhibit No.</u>	<u>Title of Exhibit</u>	<u>No. of Pages</u>
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1	Order dated February 15, 2017	8
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FILED
Electronically
CV10-03382
2017-02-16 01:40:02 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5954833

EXHIBIT 1

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

DUKE RENSLOW and TINA
RENSLOW,

Case No.: CV10-03382

Dept. No.: 7

Petitioners,

vs.

WELLS FARGO BANK, et al.,

Respondents.

ORDER

Currently before the Court is Respondent WELLS FARGO BANK's *Motion for Reconsideration*, filed on December 15, 2016. On December 29, 2016, Petitioners DUKE RENSLOW and TINA RENSLOW filed an *Opposition to Wells Fargo Bank's Motion for Reconsideration*. On January 11, 2017, Wells Fargo filed a *Reply in Support of Wells Fargo Bank's Motion for Reconsideration* and submitted this matter to the Court for decision.

This *Motion for Reconsideration* requests this Court reconsider its December 5, 2016 *Order* granting Petitioner's *Motion for Relief from Order*. Before we address Wells Fargo's *Motion*, it is important to step back and contextualize Respondent's conduct which has initiated this lengthy and expensive litigation.

///

///

1 **Facts**

2 Wells Fargo is the beneficiary of record of a Deed of Trust which is the security
3 instrument to the Promissory Note executed by Duke and Tina Renslow. At some
4 uncertain date, Wells Fargo transferred the Note by some uncertain means to a
5 certain Federal Home Loan Bank ("FHLB") who has *never made an appearance* in
6 this case. The Renslows were never notified that the Deed of Trust had been
7 transferred. Wells Fargo had not recorded an assignment of the Deed of Trust.

8 Wells Fargo did not provide a proper endorsement of the Note at the mediation
9 or at any time throughout the judicial review proceedings. Wells Fargo did not inform
10 Petitioners that their home loan had been sold, neither did FHLB contact Petitioners
11 with such information. Since the date that Wells Fargo transferred the Note to FHLB,
12 Wells Fargo has acted as the master servicer and the Renslows' sole point of contact
13 throughout the entire life of the loan.

14 In July 2009, the Renslows contacted Wells Fargo to request a modification of
15 their loan. It is important to note that as of July 2009, the Renslows were **not in**
16 **default** of their obligation under the Note. At that time, like many Americans, the
17 Renslows were facing pay cuts and mounting medical bills. Wells Fargo informed
18 Petitioners that it would not discuss modification until Petitioners were sixty (60)
19 days late and because the Renslows were current on their mortgage payments, they
20 were ineligible for mortgage assistance. In order to discuss a loan modification with
21 Wells Fargo and be eligible for mortgage assistance, the Renslows withheld two
22 monthly mortgage payment and became sixty (60) days late, a fateful act of
23 detrimental reliance.

24 Upon this delinquency, Wells Fargo then provided Petitioners with a Home
25 Affordable Modification Program ("HAMP") application. Petitioners made their next
26 payment so not to be ninety (90) days late and face foreclosure. The Renslows
27 completed the HAMP application and properly returned it to Wells Fargo.

28 ///

1 On September 17, 2009, the Renslows received a letter from Wells Fargo
2 stating, "You did it!" and accepting them into the HAMP program which was to begin
3 November 1, 2009. Wells Fargo also informed the Renslows that they did not need to
4 make their October payment. When the Renslows, following Wells Fargo's direction,
5 did not make their October payment, they became ninety (90) days in arrears.

6 The HAMP Trial Period packet stated that Wells Fargo was the "Lender" and
7 that the monthly payments during the trial period would be \$1,127.06. The HAMP
8 Trial Period packet stated that upon successful completion of the Trial Period, the
9 Renslows **would** (not 'might') receive a modification on substantially similar terms.¹
10 After being accepted into the HAMP Trial Period, the Renslows timely made all of
11 the stated Trial Period payments required to secure a permanent modification. Wells
12 Fargo accepted all the payments but did not send a Modification Agreement. At Wells
13 Fargo's behest, the Renslows continued making payments to Wells Fargo in the
14 amount of the Trial Period payments.

15 On April 5, 2010, Wells Fargo sent a letter to the Renslows informing them
16 that they "may not be eligible" for HAMP because "[Wells Fargo] services your loan
17 on behalf of an investor or group of investors that has not given us the contractual
18 authority to modify your loan under [HAMP]." This letter instructed the Renslows to
19 continue making their Trial Period payments to Wells Fargo. On April 29, 2010,
20 Wells Fargo sent another letter informing the Renslows that Wells Fargo would not
21 modify their loan because "the investor on your mortgage has declined the request."
22 This letter stated that the Trial Period payments would be retained by Wells Fargo
23 and applied to the loan in accordance with the "current loan documents." Wells Fargo
24 recommended the Renslows consider a short sale or a deed in lieu of foreclosure.
25 Wells Fargo then reported the Renslows' loan as 180+ days delinquent despite the
26 payments made pursuant to the agreement between Wells Fargo and the Renslows.

27 ¹ Nowhere in the HAMP Trial Period packet is there any notice provided that Wells Fargo may not
28 be the lender. Nowhere in the HAMP Trial Period packet is there any notice that acceptance into
HAMP is contingent on a decision by any other entity than Wells Fargo. Nowhere in the HAMP Trial
Period packet is there any notice that the Renslows' eligibility may be in doubt.

1 Duke and Tina Renslow have attempted to refinance the home twice but have
2 been rejected because of the adverse credit report caused by Wells Fargo and FHLB.
3 On August 6, 2010, Wells Fargo's trustee National Default Servicing Corporation
4 recorded a Notice of Default and the Renslows elected to mediate under NRS 107.086.
5 At the mediation, Well Fargo's telephonic representative disclosed that Wells Fargo
6 was not the owner of the loan. After a two (2) hour search, the bank's representative
7 could not identify the owner of the loan.

8 The Mediator found that Wells Fargo's representative lacked the requisite
9 authority under NRS 107.086. Wells Fargo acknowledged that the late fees charged
10 during the Renslows' Trial period were wrongful and Wells Fargo rescinded those
11 charges after the Renslows showed they had complied with every request of the bank.
12 To this date, this court has never been informed how or when FHLB acquired the
13 Renslows' home loan or whether Wells Fargo actually contacted FHLB to request a
14 HAMP modification or a substantially similar private modification. To date, the
15 Renslows have incurred legal fees and continue to suffer the uncertainty of home
16 ownership as a direct result of Wells Fargo's and FHLB's acts and omissions.

17 In its *Order*, this court sanctioned Wells Fargo by ordering that the Renslows'
18 loan be made contractually current upon the Renslows tendering to Wells Fargo the
19 January through October payments. Additionally, the Court ordered that the payoff
20 of the loan not include any late fees and other fees subject to default and that the loan
21 payoff consist of only principal balance, accrued interest and past due impound
22 charges.

23 **Standard of Review**

24 NRCP 59(e) requires that a motion to alter or amend the judgment be filed no
25 later than 10 days after service of written notice of entry of the judgment. A motion
26 to alter or amend is permitted as to any appealable order.² A motion to alter or
27 amend judgment must state grounds with particularity and relief sought.³ A

28 ² *Lytle v. Rosemere Estates Prop. Owners*, 129 Nev. Adv. Op. 98, 314 P.3d 946 (2013).

³ *United Pac. Ins. Co. v. St. Denis*, 81 Nev. 103, 399 P.2d 135 (1965).

1 decision may be reconsidered “if substantially different evidence is subsequently
2 introduced or the decision is clearly erroneous.”⁴ A motion for reconsideration or
3 rehearing should be granted only in very rare instances in which new issues of fact
4 or law are raised supporting a ruling contrary to the ruling already reached.⁵

5 **Discussion**

6
7 Wells Fargo contends that this court lacks jurisdiction to take any action other
8 than to ensure that the sanction was paid and determine how the proceeds from the
9 trust account would be disbursed. Additionally, Wells Fargo argues that this court
10 lacks jurisdiction to reopen the merits of the petition for judicial review because the
11 Supreme Court’s order left nothing else to be determined. Finally, Respondent claims
12 that this court’s decision modifies the Renslows’ loan in violation of the Contract and
13 Takings Clause of the United States and Nevada Constitutions. The court
14 respectfully disagrees.

15 In Nevada, a court has the inherent authority to reconsider its prior orders.⁶
16 Under this authority, a “court may, for sufficient cause show, amend, correct, resettle,
17 modify or vacate, as the case may be, an order previously made and entered on the
18 motion in the progress of the cause or proceeding.”⁷ Therefore, the court finds it is
19 within its authority to modify its Order so as to accurately reflect the mortgage
20 agreement.

21 Secondly, this court’s January 5, 2016 *Order* was meant to ensure that the
22 September 17, 2009 mortgage agreement between Wells Fargo and the Renslows is
23 accurately reflected and carried out by the respective parties. The 2009 HAMP
24 agreement shows a payment of \$1,145 with taxes, insurance and other fees excluded.
25 The Nevada Supreme Court did not condemn the modification of the Renslows’ loan,

26
27 ⁴ *Masonry & Tile Contractors Ass’n of S. Nevada v. Jolley, Urga & Wirth*, 113 Nev. 737, 741, 941
P.2d 486, 489 (1997).

28 ⁵ *Moore v. City of Las Vegas*, 92 Nev. 402, 405, 551 P.2d 244, 246 (1976).

⁶ *Trail v. Faretto*, 91 Nev. 401, 536 P.2d 1026 (1975).

⁷ *Id.* at 403.

1 indeed such a sanction is expressly authorized in NRS 107.086(6).⁸ The Court simply
2 stated that the modification could not act as a sanction against Wells Fargo because
3 “it no longer held the deed of trust or accompanying note to the property.”⁹ The loan
4 was held by FHLB. The Supreme Court stated “there is nothing in the record before
5 this court that would support what is effectively the imposition of sanctions against
6 FHLB[.]” In this respect, the Court is correct: this court did not place in the record
7 the inactions of FHLB which would support the imposition of sanctions against it, an
8 omission this court will now correct.

9 From the outset of this litigation, FHLB has been “a riddle, wrapped in a
10 mystery, inside an enigma.”¹⁰ Because of FHLB, this case has cost all parties no
11 shortage of misery and pain. In this case, FHLB “fail[ed] to attend the mediation, it
12 failed to participate in the mediation in good faith, it failed to bring to the mediation
13 each document required by subsection 5 [of NRS 107.086]” and failed to provide a
14 person with the authority to negotiate a loan modification on its behalf at the
15 Mediation. The damages suffered by the Renslows are a direct result of FHLB’s
16 egregious omissions, more than justifying the imposition of sanctions; sanctions
17 expressly authorized by the Nevada Legislature for conduct just like this.

18 Wells Fargo’s next contention is that the Court’s December 5, 2016, *Order*
19 implicates the Contracts Clause and Takings Clause of the United States
20 Constitution and Nevada State Constitution. “[T]he purpose of a motion to alter or
21 amend judgment is to correct errors in fact or law, not to provide a second chance to
22 a party who failed to search diligently for information (or argument) at the

23
24 ⁸ 6. If the beneficiary of the deed of trust or the representative fails to attend the mediation, fails to
25 participate in the mediation in good faith or does not bring to the mediation each document required
26 by subsection 5 or does not have the authority or access to a person with the authority required by
27 subsection 5, the mediator shall prepare and submit to the Mediation Administrator a petition and
28 recommendation concerning the imposition of sanctions against the beneficiary of the deed of trust or
the representative. The court may issue an order imposing such sanctions against the beneficiary of
the deed of trust or the representative as the court determines appropriate, including, without
limitation, requiring a loan modification in the manner determined proper by the court. (emphasis
added).

⁹ *Order*, 5/21/17, p. 5.

¹⁰ Winston Churchill, October 1939.

1 appropriate time.”¹¹ This argument was not raised in the proceedings before this
2 court and it is improper to bring it up in a motion for reconsideration.

3 Again, the December 5, 2016, *Order* clarifies that the loan amount is not to
4 include any late fees, just the principal, accrued interest and past due impound
5 charges. The mortgage is to be brought contractually current. Wells Fargo is to
6 cease and desist collecting any late fees and penalties.

7
8 **Conclusion**

9 Upon review, this court finds that it need not reconsider its December 5, 2016
10 *Order*. The Renslows are to continue to make payment according to their modified
11 loan agreement directly to WELLS FARGO BANK. Additionally, the loan amount is
12 not to include any late fees. The loan amount will only include the principal balance,
13 accrued interest, and past due impound charges. Lastly, Wells Fargo shall cease and
14 desist collecting any late fees and penalties up to the date of this *Order*.

15 Accordingly, and good cause appearing, Respondents’ *Motion for*
16 *Reconsideration* is **DENIED**.

17 **IT IS SO ORDERED.**

18 **DATED** this 15 day of February, 2017.

19
20 
21 PATRICK FLANAGAN
22 District Judge
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¹¹ *Central Mfg. Co. v. Brett*, No. 04 C3049, 2006 WL 681058, at * 3 (N.D. Ill. March 15, 2006).

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Kelly Dove, Esq., and Gregory Wilde, Esq., for Wells Fargo Bank;
Michael Lehnert, Esq., for Duke and Tina Renslow

8

EXHIBIT A

1 MICHAEL LEHNERS, ESQ.
2 429 MARSH AVENUE
3 RENO, NEVADA 89509
4 Bar No.003331
5 (775) 786-1695
6 Attorney for Plaintiffs.

7 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
8
9 IN AND FOR THE COUNTY OF WASHOE

oOo

10 DUKE RENSLOW and TINA
11 RENSLOW,

CASE NO.: CV10-03382
DEPT. NO.: 7

12 Plaintiffs.

13 vs.

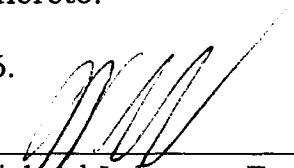
14 WELLS FARGO BANK, et. al.,

15 Defendant.
16 _____/

17 **NOTICE OF ENTRY OF ORDER RE:**
18 **PLAINTIFFS' MOTION FOR RELIEF FROM ORDER**

19
20 NOTICE IS HEREBY GIVEN that on the 5TH day of December, 2016, the
21 above-entitled court entered in an Order granting Plaintiffs' Motion for Relief
22 from Order. A copy of the Order is attached hereto.

23 DATED this 5 day of December, 2016.

24
25 
26 Michael Lehnars, Esq.
27 Attorney for Debtor.
28

1 MICHAEL LEHNERS, ESQ.
2 429 MARSH AVENUE
3 RENO, NEVADA 89509
4 Bar No.003331
5 (775) 786-1695
6 Attorney for Plaintiffs.

7 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
8
9 IN AND FOR THE COUNTY OF WASHOE

oOo

10 DUKE RENSLOW and TINA
11 RENSLOW,

CASE NO.: CV10-03382
DEPT. NO.: 7

12 Plaintiffs.

13 vs.

14 WELLS FARGO BANK, et. al.,

15 Defendant.
16 _____/

17 **ORDER RE: PLAINTIFFS' MOTION FOR RELIEF FROM ORDER**

18 THIS MATTER having come before this court on Motion by the Plaintiffs
19 for relief from this Court's March 3, 2016 Order. Having reviewed the Motion
20 along with the Opposition and Reply to same and good cause appearing
21 therefore;
22

23 IT IS HEREBY ORDER that Plaintiff's Motion is granted and the Plaintiffs
24 loan with Defendant is to reflect that the loan is contractually current upon the
25 Plaintiffs tending to the Defendant the January through October payments.
26

27 IT IS FURTHER ORDERED that the payoff of the loan shall not include
28 any late fees and other fees subject to default and that the loan payoff shall

1 consist of only the principal balance, accrued interest and past due impound
2 charges.

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4 DATED this 5 day of DECEMBER, 2016

5
6 Patrick Flanagan
7 DISTRICT JUDGE

8 Submitted by

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10 Michael Lehnert, Esq.
11 Attorney for Plaintiffs
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Dolores Stigall

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

DUKE RENSLOW and TINA
RENSLOW,

Case No.: CV10-03382

Dept. No.: 7

Petitioners,

vs.

WELLS FARGO BANK, et al.,

Respondents.

ORDER

Currently before the Court is Respondent WELLS FARGO BANK's *Motion for Reconsideration*, filed on December 15, 2016. On December 29, 2016, Petitioners DUKE RENSLOW and TINA RENSLOW filed an *Opposition to Wells Fargo Bank's Motion for Reconsideration*. On January 11, 2017, Wells Fargo filed a *Reply in Support of Wells Fargo Bank's Motion for Reconsideration* and submitted this matter to the Court for decision.

This *Motion for Reconsideration* requests this Court reconsider its December 5, 2016 *Order* granting Petitioner's *Motion for Relief from Order*. Before we address Wells Fargo's *Motion*, it is important to step back and contextualize Respondent's conduct which has initiated this lengthy and expensive litigation.

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1 **Facts**

2 Wells Fargo is the beneficiary of record of a Deed of Trust which is the security
3 instrument to the Promissory Note executed by Duke and Tina Renslow. At some
4 uncertain date, Wells Fargo transferred the Note by some uncertain means to a
5 certain Federal Home Loan Bank ("FHLB") who has *never made an appearance* in
6 this case. The Renslows were never notified that the Deed of Trust had been
7 transferred. Wells Fargo had not recorded an assignment of the Deed of Trust.

8 Wells Fargo did not provide a proper endorsement of the Note at the mediation
9 or at any time throughout the judicial review proceedings. Wells Fargo did not inform
10 Petitioners that their home loan had been sold, neither did FHLB contact Petitioners
11 with such information. Since the date that Wells Fargo transferred the Note to FHLB,
12 Wells Fargo has acted as the master servicer and the Renslows' sole point of contact
13 throughout the entire life of the loan.

14 In July 2009, the Renslows contacted Wells Fargo to request a modification of
15 their loan. It is important to note that as of July 2009, the Renslows were **not in**
16 **default** of their obligation under the Note. At that time, like many Americans, the
17 Renslows were facing pay cuts and mounting medical bills. Wells Fargo informed
18 Petitioners that it would not discuss modification until Petitioners were sixty (60)
19 days late and because the Renslows were current on their mortgage payments, they
20 were ineligible for mortgage assistance. In order to discuss a loan modification with
21 Wells Fargo and be eligible for mortgage assistance, the Renslows withheld two
22 monthly mortgage payment and became sixty (60) days late, a fateful act of
23 detrimental reliance.

24 Upon this delinquency, Wells Fargo then provided Petitioners with a Home
25 Affordable Modification Program ("HAMP") application. Petitioners made their next
26 payment so not to be ninety (90) days late and face foreclosure. The Renslows
27 completed the HAMP application and properly returned it to Wells Fargo.

28 ///

1 On September 17, 2009, the Renslows received a letter from Wells Fargo
2 stating, "You did it!" and accepting them into the HAMP program which was to begin
3 November 1, 2009. Wells Fargo also informed the Renslows that they did not need to
4 make their October payment. When the Renslows, following Wells Fargo's direction,
5 did not make their October payment, they became ninety (90) days in arrears.

6 The HAMP Trial Period packet stated that Wells Fargo was the "Lender" and
7 that the monthly payments during the trial period would be \$1,127.06. The HAMP
8 Trial Period packet stated that upon successful completion of the Trial Period, the
9 Renslows **would** (not 'might') receive a modification on substantially similar terms.¹
10 After being accepted into the HAMP Trial Period, the Renslows timely made all of
11 the stated Trial Period payments required to secure a permanent modification. Wells
12 Fargo accepted all the payments but did not send a Modification Agreement. At Wells
13 Fargo's behest, the Renslows continued making payments to Wells Fargo in the
14 amount of the Trial Period payments.

15 On April 5, 2010, Wells Fargo sent a letter to the Renslows informing them
16 that they "may not be eligible" for HAMP because "[Wells Fargo] services your loan
17 on behalf of an investor or group of investors that has not given us the contractual
18 authority to modify your loan under [HAMP]." This letter instructed the Renslows to
19 continue making their Trial Period payments to Wells Fargo. On April 29, 2010,
20 Wells Fargo sent another letter informing the Renslows that Wells Fargo would not
21 modify their loan because "the investor on your mortgage has declined the request."
22 This letter stated that the Trial Period payments would be retained by Wells Fargo
23 and applied to the loan in accordance with the "current loan documents." Wells Fargo
24 recommended the Renslows consider a short sale or a deed in lieu of foreclosure.
25 Wells Fargo then reported the Renslows' loan as 180+ days delinquent despite the
26 payments made pursuant to the agreement between Wells Fargo and the Renslows.

27 ¹ Nowhere in the HAMP Trial Period packet is there any notice provided that Wells Fargo may not
28 be the lender. Nowhere in the HAMP Trial Period packet is there any notice that acceptance into
HAMP is contingent on a decision by any other entity than Wells Fargo. Nowhere in the HAMP Trial
Period packet is there any notice that the Renslows' eligibility may be in doubt.

1 Duke and Tina Renslow have attempted to refinance the home twice but have
2 been rejected because of the adverse credit report caused by Wells Fargo and FHLB.
3 On August 6, 2010, Wells Fargo's trustee National Default Servicing Corporation
4 recorded a Notice of Default and the Renslows elected to mediate under NRS 107.086.
5 At the mediation, Well Fargo's telephonic representative disclosed that Wells Fargo
6 was not the owner of the loan. After a two (2) hour search, the bank's representative
7 could not identify the owner of the loan.

8 The Mediator found that Wells Fargo's representative lacked the requisite
9 authority under NRS 107.086. Wells Fargo acknowledged that the late fees charged
10 during the Renslows' Trial period were wrongful and Wells Fargo rescinded those
11 charges after the Renslows showed they had complied with every request of the bank.
12 To this date, this court has never been informed how or when FHLB acquired the
13 Renslows' home loan or whether Wells Fargo actually contacted FHLB to request a
14 HAMP modification or a substantially similar private modification. To date, the
15 Renslows have incurred legal fees and continue to suffer the uncertainty of home
16 ownership as a direct result of Wells Fargo's and FHLB's acts and omissions.

17 In its *Order*, this court sanctioned Wells Fargo by ordering that the Renslows'
18 loan be made contractually current upon the Renslows tendering to Wells Fargo the
19 January through October payments. Additionally, the Court ordered that the payoff
20 of the loan not include any late fees and other fees subject to default and that the loan
21 payoff consist of only principal balance, accrued interest and past due impound
22 charges.

23 **Standard of Review**

24 NRCP 59(e) requires that a motion to alter or amend the judgment be filed no
25 later than 10 days after service of written notice of entry of the judgment. A motion
26 to alter or amend is permitted as to any appealable order.² A motion to alter or
27 amend judgment must state grounds with particularity and relief sought.³ A

28 ² *Lytle v. Rosemere Estates Prop. Owners*, 129 Nev. Adv. Op. 98, 314 P.3d 946 (2013).

³ *United Pac. Ins. Co. v. St. Denis*, 81 Nev. 103, 399 P.2d 135 (1965).

1 decision may be reconsidered “if substantially different evidence is subsequently
2 introduced or the decision is clearly erroneous.”⁴ A motion for reconsideration or
3 rehearing should be granted only in very rare instances in which new issues of fact
4 or law are raised supporting a ruling contrary to the ruling already reached.⁵

5 **Discussion**

6
7 Wells Fargo contends that this court lacks jurisdiction to take any action other
8 than to ensure that the sanction was paid and determine how the proceeds from the
9 trust account would be disbursed. Additionally, Wells Fargo argues that this court
10 lacks jurisdiction to reopen the merits of the petition for judicial review because the
11 Supreme Court’s order left nothing else to be determined. Finally, Respondent claims
12 that this court’s decision modifies the Renslows’ loan in violation of the Contract and
13 Takings Clause of the United States and Nevada Constitutions. The court
14 respectfully disagrees.

15 In Nevada, a court has the inherent authority to reconsider its prior orders.⁶
16 Under this authority, a “court may, for sufficient cause show, amend, correct, resettle,
17 modify or vacate, as the case may be, an order previously made and entered on the
18 motion in the progress of the cause or proceeding.”⁷ Therefore, the court finds it is
19 within its authority to modify its Order so as to accurately reflect the mortgage
20 agreement.

21 Secondly, this court’s January 5, 2016 *Order* was meant to ensure that the
22 September 17, 2009 mortgage agreement between Wells Fargo and the Renslows is
23 accurately reflected and carried out by the respective parties. The 2009 HAMP
24 agreement shows a payment of \$1,145 with taxes, insurance and other fees excluded.
25 The Nevada Supreme Court did not condemn the modification of the Renslows’ loan,

26
27 ⁴ *Masonry & Tile Contractors Ass’n of S. Nevada v. Jolley, Urga & Wirth*, 113 Nev. 737, 741, 941
P.2d 486, 489 (1997).

28 ⁵ *Moore v. City of Las Vegas*, 92 Nev. 402, 405, 551 P.2d 244, 246 (1976).

⁶ *Trail v. Faretto*, 91 Nev. 401, 536 P.2d 1026 (1975).

⁷ *Id.* at 403.

1 indeed such a sanction is expressly authorized in NRS 107.086(6).⁸ The Court simply
2 stated that the modification could not act as a sanction against Wells Fargo because
3 “it no longer held the deed of trust or accompanying note to the property.”⁹ The loan
4 was held by FHLB. The Supreme Court stated “there is nothing in the record before
5 this court that would support what is effectively the imposition of sanctions against
6 FHLB[.]” In this respect, the Court is correct: this court did not place in the record
7 the inactions of FHLB which would support the imposition of sanctions against it, an
8 omission this court will now correct.

9 From the outset of this litigation, FHLB has been “a riddle, wrapped in a
10 mystery, inside an enigma.”¹⁰ Because of FHLB, this case has cost all parties no
11 shortage of misery and pain. In this case, FHLB “fail[ed] to attend the mediation, it
12 failed to participate in the mediation in good faith, it failed to bring to the mediation
13 each document required by subsection 5 [of NRS 107.086]” and failed to provide a
14 person with the authority to negotiate a loan modification on its behalf at the
15 Mediation. The damages suffered by the Renslows are a direct result of FHLB’s
16 egregious omissions, more than justifying the imposition of sanctions; sanctions
17 expressly authorized by the Nevada Legislature for conduct just like this.

18 Wells Fargo’s next contention is that the Court’s December 5, 2016, *Order*
19 implicates the Contracts Clause and Takings Clause of the United States
20 Constitution and Nevada State Constitution. “[T]he purpose of a motion to alter or
21 amend judgment is to correct errors in fact or law, not to provide a second chance to
22 a party who failed to search diligently for information (or argument) at the

23
24 ⁸ 6. If the beneficiary of the deed of trust or the representative fails to attend the mediation, fails to
25 participate in the mediation in good faith or does not bring to the mediation each document required
26 by subsection 5 or does not have the authority or access to a person with the authority required by
27 subsection 5, the mediator shall prepare and submit to the Mediation Administrator a petition and
28 recommendation concerning the imposition of sanctions against the beneficiary of the deed of trust or
the representative. The court may issue an order imposing such sanctions against the beneficiary of
the deed of trust or the representative as the court determines appropriate, including, without
limitation, requiring a loan modification in the manner determined proper by the court. (emphasis
added).

⁹ *Order*, 5/21/17, p. 5.

¹⁰ Winston Churchill, October 1939.

1 appropriate time.”¹¹ This argument was not raised in the proceedings before this
2 court and it is improper to bring it up in a motion for reconsideration.

3 Again, the December 5, 2016, *Order* clarifies that the loan amount is not to
4 include any late fees, just the principal, accrued interest and past due impound
5 charges. The mortgage is to be brought contractually current. Wells Fargo is to
6 cease and desist collecting any late fees and penalties.

7
8 **Conclusion**

9 Upon review, this court finds that it need not reconsider its December 5, 2016
10 *Order*. The Renslows are to continue to make payment according to their modified
11 loan agreement directly to WELLS FARGO BANK. Additionally, the loan amount is
12 not to include any late fees. The loan amount will only include the principal balance,
13 accrued interest, and past due impound charges. Lastly, Wells Fargo shall cease and
14 desist collecting any late fees and penalties up to the date of this *Order*.

15 Accordingly, and good cause appearing, Respondents’ *Motion for*
16 *Reconsideration* is **DENIED**.

17 **IT IS SO ORDERED.**

18 **DATED** this 15 day of February, 2017.

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21 PATRICK FLANAGAN
22 District Judge
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¹¹ *Central Mfg. Co. v. Brett*, No. 04 C3049, 2006 WL 681058, at * 3 (N.D. Ill. March 15, 2006).

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Kelly Dove, Esq., and Gregory Wilde, Esq., for Wells Fargo Bank;
Michael Lehnert, Esq., for Duke and Tina Renslow

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IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

WELLS FARGO BANK,
Appellant,

vs.

DUKE RENSLOW; AND TINA RENSLOW,
Respondents.

No. 72632

Electronically Filed
Apr 10 2017 03:28 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

**DOCKETING STATEMENT
CIVIL APPEALS**

GENERAL INFORMATION

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

WARNING

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

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

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

1. Judicial District Second Department 7
County Washoe Judge Patrick Flanagan
District Ct. Case No. CV10-03382

2. Attorney filing this docketing statement:

Attorney Kelly Dove Telephone 702-784-5200
Firm Snell & Wilmer L.L.P.
Address 3883 Howard Hughes Parkway
Suite 1100
Las Vegas, Nevada 89169

Client(s) Wells Fargo Bank

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

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

Attorney Michael Lehnors Telephone 775-786-1695
Firm Michael Lehnors, Esq.
Address 429 Marsh Avenue
Reno, Nevada
89509

Client(s) Duke Renslow and Tina Renslow

Attorney _____ Telephone _____
Firm _____
Address _____

Client(s) _____

(List additional counsel on separate sheet if necessary)

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

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

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

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

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

Wells Fargo Bank v. Renslow, No. 58283

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

N/A

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

In 2010, Wells Fargo and the Renslows participated in a foreclosure mediation. Wells Fargo's representative attended the mediation without full information as to who owned the note. As a result, no certificate issued, Wells Fargo could not proceed with nonjudicial foreclosure, and Wells Fargo was sanctioned in the amount of \$30,000. This court also issued an order modifying the Renslows' loan. On appeal, the Supreme Court upheld the sanction and reversed the loan modification. Specifically, the Supreme Court's order affirmed in part and reversed in part this court's order on the Renslows' petition for judicial review. It did not remand for further proceedings. Despite the lack of any remand, the Renslows moved for a variety of relief in the district court post-appeal. The district court denied the Renslows' initial flurry of motions, but ultimately ordered Wells Fargo to again accept "modified," reduced mortgage payments – directly contrary to the Supreme Court's order in this case; required Wells Fargo to reflect that the Renslows' loan is "contractually current," which it is undisputedly not; and limits the Renslows' mortgage to principal and interest, excluding all late fees.

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

1. Whether the district court lacked jurisdiction to take any action to afford the Renslows additional relief following the previous appeal.
2. Whether the district court erred by requiring Wells Fargo to reflect that the Renslows' loan is "contractually current," which it is undisputedly not.
3. Whether the district court erred by specially enforcing an inchoate 2009 HAMP modification because, inter alia, the Renslows' request was time-barred.
4. Whether the district court erred by judicially modifying the Renslows' mortgage because doing so directly contravened the Supreme Court's order disallowing a judicial loan modification in this case.
5. Whether the district court's rewriting the Renslows' mortgage obligations violates the Contract and Takings Clauses of the United States and Nevada Constitutions by depriving Wells Fargo of the benefit of its contract, and violates Separation of Powers.

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

N/A

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

☐ N/A

☒ Yes

☐ No

If not, explain: Whether the district court's rewriting the Renslows' mortgage obligations, as purportedly permitted under NRS 107, violates the Contract and Takings Clauses of the United States and Nevada Constitutions by depriving Wells Fargo of the benefit of its contract, and additionally violates Separation of Powers.

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

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

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

☒ A substantial issue of first impression

☒ An issue of public policy

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

☐ A ballot question

If so, explain:

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

This appeal should be retained by the Supreme Court because it raises "as a principal issue a question of first impression involving the United States or Nevada Constitutions" under NRAP 17(a)(10) and raises "as a principal issue a question of statewide public importance" under NRAP 17(a)(11).

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

Was it a bench or jury trial? _____

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

N/A

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from Dec 5, 2016

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

[Appealing from orders issued on December 5, 2016 and February 16, 2017.]

17. Date written notice of entry of judgment or order was served Dec 5, 2016

Was service by:

☐ Delivery

☒ Mail/electronic/fax

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

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

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☒ NRCP 59 Date of filing Dec 15, 2016

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

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

(c) Date written notice of entry of order resolving tolling motion was served Feb 16, 2017

Was service by:

☐ Delivery

☒ Mail

19. Date notice of appeal filed Mar 16, 2017

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

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

NRAP 4(a)

SUBSTANTIVE APPEALABILITY

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

(a)

- | | |
|--|---------------------------------------|
| <input type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205 |
| <input type="checkbox"/> NRAP 3A(b)(2) | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3) | <input type="checkbox"/> NRS 703.376 |
| <input checked="" type="checkbox"/> Other (specify) <u>NRAP 3A(b)(8)</u> | |
-

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

As noted above, this matter was the subject of a previous appeal, wherein Wells Fargo challenged the district court's sanction award against Wells Fargo and the judicial loan modification the district court imposed. On appeal, the Supreme Court affirmed in part and reversed in part. It did not remand. Nonetheless, the Renslows moved for various relief in the district court, which the district court initially denied. The Renslows then filed what they identified as a Rule 60 motion, asking the district court to judicially modify their mortgage, which the district court did. Wells Fargo now appeals the December 5, 2016 and February 16, 2017 post-appeal orders.

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

(a) Parties:

Duke Renslow and Tina Renslow
Wells Fargo Bank

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

N/A

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

This appeal arises from a petition for judicial review from the Foreclosure Mediation Program.

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

☒ Yes

☐ No

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

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

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

☐ Yes

☐ No

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

☐ Yes

☐ No

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

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

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

VERIFICATION

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

Wells Fargo Bank
Name of appellant

Kelly Dove
Name of counsel of record

04/10/2017
Date

/s/ Kelly Dove
Signature of counsel of record

Nevada, Washoe County
State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 10 day of April, 2017, I served a copy of this completed docketing statement upon all counsel of record:

☐ By personally serving it upon him/her; or

☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Jill I. Greiner
Dotson Law
One East First Street
City Hall Tower, 16th Floor
Reno, NV 89501

- and -

Michael Lehnars
429 Marsh Avenue
Reno, Nevada 89509

Dated this 10th day of April, 2017

/s/ Ruby Lengsavath
Signature