No. _____

In the

Supreme Court of the United States

RAYMOND DE BOTTON,

Petitioner,

v.

QUALITY LOAN SERVICE CORPORATION OF WASHINGTON, et al.,

Respondents.

On Petition for a Writ of *Certiorari* from
United States Court of Appeals for the Ninth Circuit
Case No. 23-35337

APPENDIX

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TABLE OF APPENDICES

Appendix 1

FILED
AUG 18 2023
MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

RAYMOND DE BOTTON, Plaintiff-Appellant, v. QUALITY LOAN SERVICE CORPORATION OF WASHINGTON; *et al.*, Defendants-Appellees.	No. 23-35337 D.C. No. 2:23-cv-00223-RSL Western District of Washington, Seattle ORDER

Before: SCHROEDER, BERZON, and OWENS, Circuit Judges.

The record and the responses to this court's order to show cause demonstrate that this court lacks jurisdiction over this appeal because the challenged order is not final or appealable. *See* 28 U.S.C. § 1291; *Est. of Bishop v. Bechtel Power Corp.*, 905 F.2d 1272, 1274 (9th Cir. 1990) ("[T]he denial of a motion to remand is not a final order appealable

under 28 U.S.C. § 1291."); *see also United States v. Washington*, 573 F.2d 1121, 1122 (9th Cir. 1978) (noting that the denial of a motion to disqualify the trial judge is neither final nor appealable under the collateral order doctrine). Accordingly, this appeal is dismissed for lack of Jurisdiction.

All other pending motions are denied as moot.

DISMISSED.

Appendix 2

FILED
JUN 2 2023
MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

RAYMOND DE BOTTON, Plaintiff-Appellant, v. QUALITY LOAN SERVICE CORPORATION OF WASHINGTON; *et al.*, Defendants-Appellees.	No. 23-35337 D.C. No. 2:23-cv-00223-RSL Western District of Washington, Seattle ORDER

A review of the record suggests that this court may lack jurisdiction over this appeal because the order challenged in the appeal may not be final or appealable. *See* 28 U.S.C. § 1291; Fed. R. Civ. P. 54(b); *Romoland Sch. Dist. v. Inland Empire Energy Ctr., LLC*, 548 F.3d 738, 747 (9th Cir. 2008) ("A district court order is . . . not appealable [under § 1291] unless it disposes of all claims as to all parties or unless judgment is entered in compliance with Federal Rule of Civil Procedure 54(b)." (citation omitted)); *Est. of Bishop v. Bechtel Power Corp.*, 905

F.2d 1272, 1274 (9th Cir. 1990) ("[T]he denial of a motion to remand is not a final order appealable under 28 U.S.C. § 1291."); *see also Branson v. City of Los Angeles*, 912 F.2d 334, 336 (9th Cir. 1990) (noting that the denial of reconsideration of a non-appealable order is itself not appealable).

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Within 21 days after the date of this order, Appellant shall either move for voluntary dismissal of this appeal or show cause why it should not be dismissed for lack of jurisdiction. If appellant elects to show cause, a response may be filed within 10 days after service of the memorandum.

If appellant does not comply with this order, the Clerk will dismiss this appeal pursuant to Ninth Circuit Rule 42-1.

Briefing is suspended pending further order of the court.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

Appendix 3

FILED IN THE U.S. DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
MAY 9, 2023
Ravi Subramanian, Clerk

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

RAYMOND DE BOTTON, Plaintiff, v. QUALITY LOAN SERVICE CORPORATION OF WASHINGTON; et al., Defendants.	CASE NO. 2:23-cv-00223-RSL ORDER DENYING MOTION FOR RECONSIDERATION

On April 24, 2023, the Court denied plaintiff's motion for remand, finding no unmet requirement for the removal. Plaintiff filed a timely motion for reconsideration. He again fails to show any defect in or unmet requirement for removal, however. The federal courts clearly have subject matter jurisdiction, making remand inappropriate. The motion for reconsideration is DENIED.

Dated this 9th day of May, 2023.

s/ Robert S. Lasnik
Robert S. Lasnik
United States District Judge

Appendix 4

FILED IN THE U.S. DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
APRIL 24, 2023
Ravi Subramanian, Clerk

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

RAYMOND DE BOTTON, Plaintiff, v. QUALITY LOAN SERVICE CORPORATION OF WASHINGTON; et al., Defendants.	CASE NO. 2:23-cv-00223-RSL ORDER DENYING MOTION FOR REMAND

This matter comes before the Court on plaintiff's "Motion to Remand." Dkt. # 18. Plaintiff acknowledges that this case involves claims arising under federal law (*Id.*, at 3) and that the Judicial Act of 1789 originated the procedure and established the criteria by which cases filed in state court could be removed to federal court (*Id.*, at 6). He does not identify any unmet requirement for removal. Instead, plaintiff argues that the removal of this case became improper when the case was assigned

to a senior district judge. *Id.*, at 14-15 ("This motion to remand challenges the contention that Congress – or the entire three branches of the federal government acting in unison – can establish and ordain a judicial system under Article III which imposes upon litigants, without their consent, judges who

-End of page in original

have retired from active duty and have become adjudicators which must be periodically designated and assigned to exercise the federal judicial Power."). Having conceded the existence of federal question jurisdiction and having failed to show any defect in the removal process, plaintiff is not entitled to a remand.[1] The motion is DENIED.

Dated this 24th day of April, 2023.

s/ Robert S. Lasnik
Robert S. Lasnik
United States District Judge

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[1] Even if judicial assignment were somehow relevant to the removal process, plaintiff offers no evidence that the undersigned ceased to "hold [his] office during good behavior," failed to retain his office under 28 U.S.C. § 371(b), or has not received the duty-based certification described in 28 U.S.C. § 371(e).

Appendix 5

CONSTITUTIONAL PROVISIONS

Article III, Sections 1 and 2

Section One.
The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. ***The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour***, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

Section Two.
The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;— between a State and Citizens of another State, —between Citizens of different States,—between Citizens of the same State claiming Lands under Grants of different States, and

between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

Article V

The Congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three fourths of the several states, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the Senate.

Fifth Amendment

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be

twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; ***nor shall private property be taken for public use, without just compensation.***

Ninth Amendment

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Tenth Amendment

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Appendix 6

STATUTORY PROVISIONS

28 U.S.C. §294

(a) Any retired Chief Justice of the United States or Associate Justice of the Supreme Court may be designated and assigned by the Chief Justice of the United States to perform such judicial duties in any circuit, including those of a circuit justice, as he is willing to undertake.

(b) Any judge of the United States who has retired from regular active service under section 371(b) or 372(a) of this title shall be known and designated as a senior judge and may continue to perform such judicial duties as he is willing and able to undertake, when designated and assigned as provided in subsections (c) and (d).

(c) Any retired circuit or district judge may be designated and assigned by the chief judge or judicial council of his circuit to perform such judicial duties within the circuit as he is willing and able to undertake. Any other retired judge of the United States may be designated and assigned by the chief judge of his court to perform such judicial duties in such court as he is willing and able to undertake.

* * *

(e) No retired justice or judge shall perform judicial duties except when designated and assigned.

28 U.S.C. 371

(a) Any justice or judge of the United States appointed to hold office during good behavior may retire from the office after attaining the age and meeting the service requirements, whether continuous or otherwise, of subsection (c) and shall, during the remainder of his lifetime, receive an annuity equal to the salary he was receiving at the time he retired.

(b)

(1) Any justice or judge of the United States appointed to hold office during good behavior may retain the office but retire from regular active service after attaining the age and meeting the service requirements, whether continuous or otherwise, of subsection (c) of this section and shall, during the remainder of his or her lifetime, continue to receive the salary of the office if he or she meets the requirements of subsection (e).

* * *

(e)

(1) ***In order to continue receiving the salary of the office under subsection (b), a justice must be certified in each calendar year by the Chief Justice, and a judge must be certified by the chief judge of the circuit in which the judge sits, as having met the requirements set forth in at least one of the following subparagraphs***:

* * *

(A) The justice or judge must have carried in the preceding calendar year a caseload involving courtroom participation which is equal to or greater than the amount of work involving courtroom participation which an average judge in active service would perform in three months. In the instance of a justice or judge who has sat on both district courts and courts of appeals, the caseload of appellate work and trial work shall be determined separately and the results of those determinations added together for purposes of this paragraph.

(B) The justice or judge performed in the preceding calendar year substantial judicial duties not involving courtroom participation under subparagraph (A), including settlement efforts, motion decisions, writing opinions in cases that have not been orally argued, and administrative duties for the court to which the justice or judge is assigned. Any certification under this subparagraph shall include a statement describing in detail the nature and amount of work and certifying that the work done is equal to or greater than the work described in this subparagraph which an average judge in active service would perform in three months.

(C) The justice or judge has, in the preceding calendar year, performed work described in

subparagraphs (A) and (B) in an amount which, when calculated in accordance with such subparagraphs, in the aggregate equals at least 3 months work.

(D) The justice or judge has, in the preceding calendar year, performed substantial administrative duties directly related to the operation of the courts, or has performed substantial duties for a Federal or State governmental entity. A certification under this subparagraph shall specify that the work done is equal to the full-time work of an employee of the judicial branch. In any year in which a justice or judge performs work described under this subparagraph for less than the full year, one-half of such work may be aggregated with work described under subparagraph (A), (B), or (C) of this paragraph for the purpose of the justice or judge satisfying the requirements of such subparagraph.

(E) The justice or judge was unable in the preceding calendar year to perform judicial or administrative work to the extent required by any of subparagraphs (A) through (D) because of a temporary or permanent disability. A certification under this subparagraph shall be made to a justice who certifies in writing his or her disability to the Chief Justice, and to a judge who certifies in writing his or her disability to the chief judge of the circuit in

which the judge sits. A justice or judge who is certified under this subparagraph as having a permanent disability shall be deemed to have met the requirements of this subsection for each calendar year thereafter.

(2) Determinations of work performed under subparagraphs (A), (B), (C), and (D) of paragraph (1) shall be made pursuant to rules promulgated by the Judicial Conference of the United States. In promulgating such criteria, the Judicial Conference shall take into account existing standards promulgated by the Conference for allocation of space and staff for senior judges.

(3) If in any year a justice or judge who retires under subsection (b) does not receive a certification under this subsection (except as provided in paragraph (1)(E)), he or she may thereafter receive a certification for that year by satisfying the requirements of subparagraph (A), (B), (C), or (D) of paragraph (1) of this subsection in a subsequent year and attributing a sufficient part of the work performed in such subsequent year to the earlier year so that the work so attributed, when added to the work performed during such earlier year, satisfies the requirements for certification for that year. However, a justice or judge may not receive credit for the same work for purposes of certification for more than 1 year.

(4) In the case of any justice or judge who retires under subsection (b) during a calendar year, there shall be included in the determination under this subsection of work performed during that calendar year all work performed by that justice or judge (as described in subparagraphs (A), (B), (C), and (D) of paragraph (1)) during that calendar year before such retirement.

28 U.S.C. 455

(a) Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

(b) He shall also disqualify himself in the following circumstances:

> (1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;
>
> (2) Where in private practice he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;
>
> * * *
>
> (4) He knows that he, individually or as a fiduciary, or his spouse or minor child residing

in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

(5) He or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

* * *

(iii) Is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;

(iv) Is to the judge's knowledge likely to be a material witness in the proceeding.

(d) For the purposes of this section the following words or phrases shall have the meaning indicated:

(1) "proceeding" includes pretrial, trial, appellate review, or other stages of litigation;

(2) the degree of relationship is calculated according to the civil law system;

(3) "fiduciary" includes such relationships as executor, administrator, trustee, and guardian;

(4) "financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director, adviser, or other active participant in the affairs of a party, except that:

(i) Ownership in a mutual or common investment fund that holds securities is not

a "financial interest" in such securities unless the judge participates in the management of the fund;

(ii) An office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization;

(iii) The proprietary interest of a policyholder in a mutual insurance company, of a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest;

(iv) Ownership of government securities is a "financial interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the securities.

(e) No justice, judge, or magistrate judge shall accept from the parties to the proceeding a waiver of any ground for disqualification enumerated in subsection (b). Where the ground for disqualification arises only under subsection (a), waiver may be accepted provided it is preceded by a full disclosure on the record of the basis for disqualification.

(f) Notwithstanding the preceding provisions of this section, if any justice, judge, magistrate judge, or

bankruptcy judge to whom a matter has been assigned would be disqualified, after substantial judicial time has been devoted to the matter, because of the appearance or discovery, after the matter was assigned to him or her, that he or she individually or as a fiduciary, or his or her spouse or minor child residing in his or her household, has a financial interest in a party (other than an interest that could be substantially affected by the outcome), disqualification is not required if the justice, judge, magistrate judge, bankruptcy judge, spouse or minor child, as the case may be, divests himself or herself of the interest that provides the grounds for the disqualification.

28 U.S.C. §1331

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

28 U.S.C. §1441(a)

(a) GENERALLY.—
Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.

28 U.S.C. §1254(1)

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree; …

28 U.S.C. §1291

The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in sections 1292(c) and (d) and 1295 of this title.

28 U.S.C. §1651

(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

(b) An alternative writ or rule nisi may be issued by a justice or judge of a court which has jurisdiction.

Appendix 7

OTHER MATERIALS

FILED IN THE U.S. DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
MARCH 16, 2023
Ravi Subramanian, Clerk

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

RAYMOND DE BOTTON, Plaintiff, v. QUALITY LOAN SERVICE CORPORATION OF WASHINGTON; et al., Defendants.	CASE NO. 2:23-cv-00223-RSL DECLARATION OF SCOTT STAFNE IN SUPPORT OF MOTION TO REMAND NOTE DATE: APRIL 7, 2023

1. My name is Scott E. Stafne. I am the attorney for Raymond de Botton in the above captioned case. I am over the age of majority and competent to make this declaration, which I do on the basis of the personal knowledge described herein as well based on my status as Mr. de Botton's attorney.

2. Mr. de Botton originally filed the complaint initiating this case against several defendants, including a Washington State corporation, in the Superior Court for Snohomish County, Washington on January 31, 2023. of the personal knowledge described herein as well based on my status as Mr. de Botton's attorney.

3. Defendant Quality Loan Servicing Corporation of Washington (hereafter referred to as "Washington Trustee Defendant") filed a Notice of Removal regarding this case with the superior court and the United States District Court for the Western District of Washington on February 20, 2023. See ECF 1. The case number on this Notice of Removal is 23-cv-00223.

4. It is my experience that usually such case numbers in this United States District Court are followed by the initials of the judge who is adjudicating that particular case or controversy.

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5. Two days later, on February 22, 2023, the attorney for the Washington Trustee Defendant and several other related defendants filed a motion for summary judgment to dismiss Mr. de Botton's claims. See ECF 6. As of that date, the case number on the caption of that later filed motion still did not reflect the initials of the judge who had been assigned to adjudicate Mr. de Botton's case in this Court.

6. After I received Defendants' Motion for Summary Judgment through this Court's PACER

system I called this Court's Clerk's office to obtain the complete case number (including the judge's initials) for Mr. de Botton's case. Specifically, I was interested in learning whether a senior judge had been assigned to adjudicate Mr. de Botton's case. The reason I was interested in determining this is because for reasons which are explained in Mr. de Botton's filings with regard to this Motion to Remand I have come to believe that senior judges who volunteer to be assigned to adjudicate specific cases are not judges holding the office of judge on good Behaviour as is required by the language of Article III.

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And I have concluded, based on my years of experience, that my clients appearing before such senior judges generally do not obtain good judicial outcomes.

7. After I connected with the clerk to whom I was directed, I asked which judge had been assigned to adjudicate Mr. de Botton's case. The clerk I spoke to told me that as of that time on February 22, 2023 no judge had been assigned to Mr. de Botton's case. Based on my knowledge about senior judges, I asked the clerk if the reason no judge had been assigned was because as of yet the senior judge to which it would be assigned had not yet agreed (i.e., volunteered) to adjudicate this case.

8. The clerk responded that she could not discuss this Court's judicial assignment process.

9. The Federal Judicial Council states on its government website that senior judges essentially provide volunteer services for those cases which they agree to adjudicate. See Request for Judicial Notice (RJN Ex. 5) I also know from my research of the laws relating to senior status and senior judges that as a condition of

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their retirement status, senior judges need only adjudicate those cases they agree to adjudicate. In this regard, I know that 28 U.S.C. 294, which is titled: "Assignment of retired Justices and judges to active duty" provides:

[The language of the 28 U.S.C. 294 is set forth]

10. This Court's docket reflects that on February 24, 2023 Senior Judge Lasnik was assigned to adjudicate this case originally filed by Mr. de Botton in the Washington State Superior Court. ECF 4 & 5.

11. After much reflection, my client and I have decided to move to remand these proceedings back to state court for the reasons stated in the accompanying motion to remand.

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12. At the outset, I want to acknowledge that I have previously sought to have judicial inquiries

similar to the one being made in Mr. de Botton's Motion to Remand adjudicated by this Court. *See e.g., Bank of NY Mellon v. Scott Stafne*, No. 2:16-cv-77TSZ; Stafne v. Burnside, No. 2-16-cv-753JCC; *Stafne v. Zilly*, No. 2:17-cv-01692HHS; and *Hoang v. Bank of America*, N.A., No. 2:17-cv874JLR. But none of these previous cases have involved a removal situation, *i.e.*, the involuntary removal of a case filed in state court to a United States District Court.

13. I also want to point out to this Court that Senior Judge Coughenouer of this Court appears to have threatened me with sanctions if I make any similar challenges about senior judges or semi-retired judges on senior status adjudicating cases without the consent of litigants, like Mr. De Botton, in any future cases. See Stafne v. Burnside, No. C16-0753-JCC, 2022 U.S. Dist. LEXIS 103433 (W.D. Wash. June 9, 2022) purportedly putting me on notice that judicial inquiries challenging the

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appropriateness of senior judges will no longer be considered by this Court as "nonfrivolous argument." Id., at *3.

14. After carefully considering Senior Judge Coughenour's personal threat against me, I have nonetheless concluded that I have an obligation to Mr. de Botton, my client, under those circumstances which exist here to Move for Remand based on the fact that Senior Judge Lasnik does not hold the

"office of judge during good Behaviour" as that term is defined by Article III. And also, because Mr. de Botton (based on my advice) does not and will not agree to any senior judge, i.e., an adjudicator who does not hold the office of judge during good behavior, adjudicating this case which has been removed from the state court in which it was filed to this United States District Court pursuant to the federalism structure established by the Nation's written constitution.

15. I have advised my client not to consent to a senior judge adjudicating this case for many reasons, but the primary one is because I believe such adjudicators tend to unfairly favor money

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lenders and debt buyers when adjudicating foreclosure related cases. For example, it is my experience with this Court that since the 2008 bailout, the senior judges of this Court have consistently taken the stance that homeowners should not be allowed to demand to see the original notes which they signed. I believe that these rulings were disingenuous because under Washington law if such notes did not exist they could only be enforced pursuant to RCW 62A.3-309. And it was well known at the time the judges of this Court were making these rulings that it was a common business practice for those who sold and created mortgage-backed securities to destroy the notes signed by makers in

favor of keeping an electronic copy of the original. As proof of this assertion, I have attached as RJN Ex. 7 to Mr. deBotton's request for judicial notice a copy of the "Comments by the Florida Bankers Association" submitted in 2009 regarding then proposed "Amendments to Rules of Civil Procedure and Forms for Use with Rules of Civil Procedure." In those comments, the Florida Bankers Association, which at that time

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included this nation's largest banking institutions, readily admitted that the original notes signed by borrowers were frequently destroyed in favor of keeping electronic copies of such documents.

In actual practice, confusion over who owns and holds the note stems less from the fact that the note may have been transferred multiple times than it does from the form in which the note is transferred. It is a reality of commerce that virtually all paper documents related to a note and mortgage are converted to electronic files almost immediately after the loan is closed. Individual loans, as electronic data, are compiled into portfolios which are transferred to the secondary market, frequently as mortgage-backed securities. The records of ownership and payment are maintained by a servicing agent in an electronic database.

The reason "many firms file lost note counts as a standard alternative pleading in the complaint" is because the physical document was deliberately

eliminated to avoid confusion immediately upon its conversion to an electronic file. *See State Street Bank and Trust Company v. Lord*, 851 So. 2d 790 (Fla. 4th DCA 2003). Electronic storage is almost universally acknowledged as safer, more efficient and less expensive than maintaining the originals in hard copy, which bears the concomitant costs of physical indexing, archiving and maintaining security. It is a standard in the industry and becoming the benchmark of modern efficiency across the spectrum of commerce—including the court system.

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Id. at 4.

16. As further evidence of this point, I have also attached as Exhibit 8 to Mr. de Botton's Request for Judicial Notice a copy of an advisory letter from the Office of the Comptroller of the Currency (OCC) dated June 4, 2004 which I downloaded from that organization's government website on March 16, 2023. This advisory letter warns that this practice, i.e., destroying notes, threatens to make mortgages unenforceable under existing law. I have highlighted in yellow various statements by the OCC in this regard.

17. Mr. de Botton's complaint (which is pled under Washington's "possibility" as opposed to this Court's "plausibility" standard[1]) contends that the

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[1] *See McCurry v. Chevy Chase Bank, FSB*, 169 Wn.2d 96, 233 P.3d 861 (2010).

federal government and many of the officials of its three branches were well aware before 2008 that money "lenders[2]" and securities firms' wholesale destruction of mortgage notes during this period threatened grave harm to this

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Nation's economy by making such mortgages (representing hundreds of billions of dollars in debt) unenforceable.

18. Nonetheless, the political branches of the federal government did not take any meaningful steps prior to 2008 to remedy this national economic problem, but in that year enacted the "Emergency Economic Stabilization Act of 2008", which is often called the "Bank Bailout of 2008".

19. Meanwhile, the federal courts, which through their judges were also aware of this problem prior to 2008, began taking extraordinary steps to make it easier to collect on such notes, including those taken by the senior judges of this Court which are described above.

20. Mr. de Botton and his attorney understand that senior judges may not be willing to accept that they are not sufficiently neutral and independent to exercise the federal judicial power any more than the

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[2] The term "money lender" is used in its biblical sense and is not meant to concede that the purported beneficiary owns a loan obligation which de Botton was required to pay.

King's judges in the Colonies accepted our forefathers' complaints they were not.

I declare under penalty of perjury under the laws of Washington that the foregoing is true and correct to the best of my knowledge.

Signed on the 16th day of March, 2023, at Arlington, Washington.

By: *s/ Scott E. Stafne*
Scott E. Stafne, declarant

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

RAYMOND DE BOTTON, Plaintiff, v. QUALITY LOAN SERVICE CORPORATION OF WASHINGTON; et al., Defendants.	CASE NO. 2:23-cv-00223-RSL DECLARATION OF RAYMOND DE BOTTON IN SUPPORT OF MOTION TO REMAND NOTE DATE: APRIL 7, 2023

1. My name is Raymond de Botton. I am the Plaintiff in the above-captioned action, which was originally filed in the Superior Court of Washington for Snohomish County. My understanding is that my case was removed by one of the defendants to this Court, which I understand to be a federal district court.

2. When I was in school, I learned from my teachers and the textbooks that the Constitution of the United States requires that judges exercising Article III judicial power be appointed for life. I was

taught that the reason for this was not to benefit those judges, but to benefit the People, like me, because this helped to make sure that federal judges would be neutral and independent when resolving those cases that were brought before them.

3. I have further discussed my recollections in this regard with my attorney. He has reminded me that the first section of Article III states:

The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as

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the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during Good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

4. When I told my attorney that I recalled that the Constitution stated that judges had life tenure he explained to me that this is what the words "shall hold their offices during good behavior" had been interpreted to mean. His statements in this regard are consistent with my recollections of what I have been taught since an early age.

5. My attorney and I discussed whether I should object to a senior judge adjudicating my case. In doing so, we discussed the fact that by law, these "senior judges" must be periodically designated and assigned by judges actually having life tenure to

adjudicate cases. My counsel asked me if I wanted to object to a judge not having life tenure adjudicating my case.

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6. I told my counsel as clearly as possible that I did object to any adjudicator who did not have life tenure adjudicating my case in this federal court. I do so not only because my attorney believes this is the best way for me to find justice in these courts, but even more so because that is what our written Constitution mandates. I trust those who wrote the Constitution much more than those who appear to me to be abusing its language to promote their own personal interests.

I declare under penalty of perjury under the laws of Washington that the foregoing is true and correct to the best of my knowledge.

Signed on the 16th day of March, 2023, at Arlington, Washington.

By: */s/ Raymond de Botton*
Raymond de Botton, declarant

Appendix 8

FILED IN THE U.S. DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
November 8, 2023
Ravi Subramanian, Clerk

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

RAYMOND DE BOTTON, Plaintiff, v. QUALITY LOAN SERVICE CORPORATION OF WASHINGTON; et al., Defendants.	CASE NO. 2:23-cv-00223-RSL ORDER AWARDING ATTORNEY'S FEES AND REFERRING MATTER TO CHIEF JUDGE ESUTDILLO

This matter comes before the Court on "Defendants' Motion for an Award of Fees," Dkt. # 53, and the Declaration of Scott E. Stafne, Dkt. # 55. Shortly after this lawsuit was filed in the Snohomish County Superior Court, defendants Quality Loan Services Corporation of Washington, McCarthy & Holthus LLP, and Warren Lance notified plaintiff and his counsel that plaintiff's claims violated Federal Rule of Civil Procedure

11(b)(1) and (2) and gave them an opportunity to cure. Dkt. # 53-1 at 5-12. At approximately the same time, defendants filed a motion for summary judgment specifically identifying the defects they believed plagued plaintiff's various claims. The complaint was neither withdrawn nor amended.

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In March 2023, Quality Loan Services, McCarthy & Holthus, and Lance filed an amended motion for summary judgment. Plaintiff responded with a Rule 56(d) request for an opportunity to conduct discovery. The request was granted, and consideration of the motion for summary judgment was continued for three months. Nevertheless, plaintiff did not file an opposition, and all claims against Quality Loan Services, McCarthy & Holthus, and Lance were dismissed with the exception of a takings claim that was not discussed in the motion.

Defendants subsequently filed a dispositive motion directed at the takings claim. Plaintiff again failed to respond, and the motion was granted. Defendants seek sanctions under Rule 11(c)(2), arguing that each and every one of plaintiff's claims were frivolous and that his challenges to the 2021 non-judicial foreclosure sale and subsequent surplus funds proceeding were asserted for improper purposes. The motion was noted for consideration on October 20, 2023. No response was filed before the

note date. Two days after the motion was ripe, plaintiff's counsel submitted a declarant on (1) indicating that plaintiff intends to petition the United States Supreme Court for a determination of whether the undersigned has the power to hear this dispute, (2) suggesting that it was improper for the undersigned to address the merits of plaintiff's claims before the judicial power issue was resolved, (3) requesting that the undersigned produce his 2020, 2021, and 2022 financial disclosure reports, and (4) asserting that the undersigned's state retirement accounts create a conflict of interest and require recusal.

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Counsel's declaration opposing the motion for sanctions is untimely and is denied on that ground. Even if the statements and argument contained in the declaration are considered, they do not show that plaintiff's claims against Quality Loan Services, McCarthy & Holthus, and/or Lance had merit or were warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law as required by Rule 11(b). In fact, counsel's declaration suggests that he pursued this action not to regain the house or equity that his client lost, but as part of a quixotic effort to change Washington policy toward borrowers and, following removal, to disqualify senior district judges from hearing cases in which he is involved.

This case involves an individual homeowner, his promissory notes, the loss of his home through a

non-judicial foreclosure, and the disbursement of surplus funds to lien holders. It was counsel's job to show that something went wrong during the foreclosure and/or disbursement process and that a judicial remedy is available. Instead, counsel summarizes the history of mortgage-backed securities and related record-keeping practices and provides his views regarding the wisdom of policy choices that allowed securitization and protected banks from the consequences of their actions. These high level arguments/assertions are largely untethered to the facts of this case and the claims alleged. Counsel offers no legal analysis in support of his assertion that the identification of MERS as the beneficiary of the deed of trust prohibits a non-judicial foreclosure. Washington case law is clear that the false designation of MERS as the beneficiary (i.e., the holder of the note) does not invalidate the deed of trust. See *Larson v. Snohomish Cnty.*, 20 Wn. App.2d

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243, 276-78 (2021), review denied, 199 Wn.2d 1016 (2022), and cert. denied sub nom. *Larson v. Snohomish Cnty.*, Washington, __ U.S. __, 143 S. Ct. 575 (2023). Nor does plaintiff provide evidence that his "wet ink" promissory notes were destroyed. The undersigned has held that actual physical possession of the original signed promissory note is required for a non-judicial foreclosure under the Deed of Trust Act, and a foreclosure without possession of the note could give rise to a valid claim. *See McDonald v. OneWest Bank, FSB*, 929 F. Supp.2d 1079, 1088 (W.D. Wash. 2013). Defendants, however, submitted

a declaration, signed under penalty of perjury, identifying the holder of the promissory note. Dkt. # 7-3. Plaintiff offers nothing that contradicts that declaration: no evidence that the original note was, in fact, destroyed, no evidence that the note holder has refused or been unable to produce the original note upon request, and nothing that throws doubt on the veracity of the beneficiary declaration. At the summary judgment stage, plaintiff must do more than simply rely on the contested allegations of the complaint.

The Court finds that sanctions against plaintiff's attorney and his law firm under Rule 11(c) are appropriate. Despite his refusal to withdraw the challenged pleading, counsel made no attempt to prove the various claims he asserted on behalf of his client. To the extent counsel has attempted to justify these failures by raising challenges to the tribunal, these challenges are, as discussed below, without merit and precluded by existing law.

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(1) Senior Status Argument

Counsel asserts that the senior district judge assigned to this case cannot validly exercise federal judicial power because he is a retired judge who retains his judicial position not under Article III, but rather through the annual certification process discussed in 28 U.S.C. § 371(b)(1) and (e). The argument is without merit. The Supreme Court has determined that senior judges "are, of course, life-tenured Article III judges who serve during 'good Behaviour' for compensation that may not be diminished while in office." *Nguyen v. United States*,

539 U.S. 69, 72 (2003). While the high court's analysis was brief, the determination is sound. The undersigned (and all federal judges who adopt senior status) went through the constitutionally-mandated nomination and confirmation process and has not relinquished his position through resignation, impeachment, or death. Although senior judges are not subject to the regular duty assignments that otherwise apply in their districts, they nevertheless retain their office as long as they perform the quantum of duties specified in Section 371(e). The fact that the chief judge of the Ninth Circuit must certify that the Section 371(e) requirements have been met – a purely ministerial act – does not change or invalidate a senior judge's retention of his office during good behaviour with the right to undiminished compensation during his continuance in office, exactly as contemplated by Article III.

This is not the first time counsel has raised an Article III objection to the involvement of a senior judge in a case he filed on his own or another's behalf. The argument has been squarely rejected every time, as have similar arguments raised by

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others. *See Booth v. United States*, 291 U.S. 339, 351 (1934); *Bank of New York Mellon v. Stafne*, 824 F. App'x 536, 536 (9th Cir. 2020); *Steckel v. Lurie*, 185 F.2d 921, 924-25 (6th Cir. 1950); *Stafne v. Burnside*, C16-0753-JCC, 2022 WL 2073074 (W.D. Wash. June 9, 2022); *Hoang v. Bank of Am.*, N.A., No. C17-0874JLR, 2021 WL 615299, at *5 (W.D. Wash. Feb. 17, 2021). At this point, counsel's senior status argument cannot be justified by a reasonable hope

that existing law will be extended, modified, reversed, or changed in his favor.

(2) Merits Evaluation

Plaintiff's counsel argues that the Court's consideration of defendants' dispositive motions was improper because it had not made an express finding that it had the power to hear this case. While an objection to the Court's subject matter jurisdiction cannot be waived and jurisdiction must be affirmatively shown, *see Stafne v. Zilly*, 337 F. Supp.3d 1079, 1085 (W.D. Wash. 2018), the Court is not obliged to issue a written order on every imaginable objection: the important thing is whether the Court does, in fact, have jurisdiction over this matter. It does.

Defendants' notice of removal clearly established the Court's federal question and supplemental jurisdiction over this matter. Plaintiff responded to the removal not with a motion to recuse or to otherwise disqualify the undersigned, but with a motion to remand. The senior status argument was entirely unpersuasive in that context because federal jurisdiction plainly existed and remand would have been inappropriate: if plaintiff were correct, the remedy would be a transfer to an active district judge, not remand. A brief

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review of the case law described above revealed that plaintiff was not correct, however. Because federal jurisdiction clearly existed and there was no impediment to the undersigned's continued involvement in the case, the Court declined to

address a frivolous argument that was irrelevant to the outcome of the then-pending motion. Now, having failed to respond to defendants' dispositive motions and facing dismissal of the last of his claims, plaintiff's counsel expressly challenges the undersigned's power to exercise federal jurisdiction and also requests that the undersigned recuse himself on conflict of interest grounds. Those arguments are considered herein, but their belated assertion does not invalidate the Court's earlier decisions.

(3) Financial Disclosure Reports

A federal judge's most recent financial disclosure reports can be obtained through an on-line database maintained by the Administrative Office of the United States Courts, and reports from 2017 to 2020 are available by request from that entity. *See* https://www.uscourts.gov/judges-judgeships/judiciary-financial-disclosurereports#SnippetTab.

(4) Recusal

Plaintiff asserts that the undersigned's retirement accounts from his years as a state prosecutor and judge create a conflict of interest that requires recusal. Due process entitles a person to a fair and impartial tribunal. *See Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 876 (2009). The statutes that govern judicial conduct are even more protective. Section 455 of title 28 states in relevant part: "Any justice, judge, or magistrate judge of

the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." Additionally, 28 U.S.C. § 144, pertaining to judicial bias or prejudice, provides:

> Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding. The affidavit shall state the facts and the reasons for the belief that bias or prejudice exists.

A judge must recuse himself if a reasonable person would believe that he is unable to be impartial. Yagman v. Republic Ins., 987 F.2d 622, 626 (9th Cir. 1993). A litigant cannot, however, use the recusal process to remove a judge based on adverse rulings in the pending case: the alleged bias must result from an extrajudicial source. *U.S. v. Studley*, 783 F.2d 934, 939 (9th Cir. 1986).

The exact nature of the alleged conflict is difficult to discern. In his complaint plaintiff asserts that "the political branches of the State of Washington" sought "to align the pecuniary interests of its judges with enforcing mortgages owned by purported securities certificate holders . . . ." Dkt # 1-1 at ¶ 3.8. Given plaintiff's current argument, it appears that he believes that the state employee and

judicial retirement systems into which the undersigned paid prior to his elevation to the federal bench have invested in mortgage-backed securities, giving rise to a self-interested desire to protect that investment at the expense of homeowner-borrowers. There is no evidence that the state employee and/or judicial retirement systems at issue have invested in mortgage-backed securities, much less

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that they have invested in the specific mortgage security instrument or instruments that are backed by plaintiff's promissory notes. Thus, there is no reason to believe that the presiding judicial officer has "a financial interest in the subject matter in controversy or in a party to the proceeding." 28 U.S.C. § 455(b)(4). The undersigned is subjectively unaware of any such interest. Even if one were to assume that resolution of plaintiff's claims could in some way impact a security in which the undersigned's retirement accounts have invested, both the governing statutory scheme and the Judicial Code of Conduct state that owning shares of a mutual or common investment fund that holds securities does not constitute a financial interest in the security unless the judge participates in the management of the fund. 28 U.S.C. § 455(d)(4)(i); Canon 3C(1)(c)(i). Plaintiff does not contend that the undersigned manages any state retirement accounts.

Plaintiff has not provided any evidence of bias or prejudice and has not shown that the undersigned's impartiality could reasonably be questioned. The motion to recuse is therefore DENIED. Pursuant to Local Civil Rule 3(f), the

Clerk of Court is directed to refer plaintiff's motion (Dkt. # 55) to Chief Judge David G. Estudillo for review.

For all of the foregoing reasons, defendants' motion for Rule 11 sanctions is GRANTED in part. Scott Stafne and the law firm of Stafne Trumbull LLC are jointly and severally liable for $15,355.00 in reasonable attorney's fees incurred in defending against

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the claims asserted and in filing the sanctions motion.[1] Payment shall be made to defendants' counsel within fourteen days of the date of this Order.

Dated this 8th day of November, 2023.

s/ Robert S. Lasnik
Robert S. Lasnik
United States District Judge

[1] Hours related to the filing of an amended motion for summary judgment and the separate motion addressing the takings claim have been deleted from the fee computation.