

No. \_\_\_\_\_

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IN THE  
**Supreme Court of the United States**

\_\_\_\_\_  
ROBERT MENZER,

*Petitioner,*

*v.*

U.S. BANK, N.A., AS TRUSTEE FOR  
RESIDENTIAL FUNDING MORTGAGE  
SECURITIES I, INC.,

*Respondent.*

\_\_\_\_\_  
***On Petition for a Writ of Certiorari to the United  
States Court of Appeals for the Ninth Circuit***

\_\_\_\_\_  
**PETITION FOR WRIT OF CERTIORARI**

\_\_\_\_\_  
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## **QUESTION PRESENTED**

1. Does the full faith and credit clause of the Constitution and 28 U.S.C. § 1738 require a court to conduct an independent analysis of whether a judgment is void where a party asserts his fundamental right to due process has been violated?
2. Does the Ninth Circuit's failure to state the correct rule of law and apply this Court's precedents warrant summary reversal where the undisputed facts confirm Menzer's Fourth Amendment right to due process had been violated?

**PARTIES TO THE PROCEEDINGS BELOW**

The caption of this case contains the names of all the parties.

## **RELATED PROCEEDINGS**

The following proceeding is related to this case:

Robert Menzer v. U.S. Bank, N.A., as Trustee for Residential Funding Mortgage Securities I, Inc., Case No. 23-3075, (9<sup>th</sup> Circuit) (Judgment from panel entered November 7, 2024, Order denying petition for rehearing en banc entered December 17, 2024).

Robert Menzer v. U.S. Bank, N.A., as Trustee for Residential Funding Mortgage Securities I, Inc., Case No. 3:23-cv-00299, United States District Court for the District of Nevada. (order dismissing complaint entered October 20, 2023).

Robert Menzer v. U.S. Bank, N.A., as Trustee for Residential Funding Mortgage Securities I, Inc., Case No. 84038, Supreme Court for the State of Nevada. (order dismissing appeal entered January 12, 2023, order denying petition for rehearing February 13, 2023).

U.S. Bank, N.A., as Trustee for Residential Funding Mortgage Securities I, Inc. v. Robert K. Menzer et. al., Case No. 18-CV-0134, Ninth Judicial District Court for the State of Nevada, County of Douglas. (default judgment entered March 26, 2019; order denying motion to quash service and vacate judgment entered March 4, 2021).

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## **OPINIONS BELOW**

The Ninth Circuit panel's memorandum of opinion is unreported and is reproduced in Appendix A. Menzer v. U.S. Bank (9th Cir., Nov. 7, 2024, No. 23-3075)

The opinion of the district court is also unreported and is reproduced in Appendix B. Menzer v. U.S. Bank (D. Nev., Oct. 20, 2023, 3:23-CV-00299-MMD-CLB)

## **JURISDICTIONAL STATEMENT**

The Ninth Circuit entered Judgment on November 7, 2024. On November 21, 2024, a petition for rehearing en banc was filed. On December 17, 2024, it denied the petition for rehearing en banc. This Court has jurisdiction under 28 U.S.C. § 1254(1).

## **RELEVANT STATUTORY PROVISION**

The relevant provision of the United States Code and U.S. Constitution are set forth in Petitioner's Appendix D. 28 U.S.C. § 1738, Full Faith and Clause, Article IV, Section I, Fourth Amendment, and Fourteenth Amendment.

## **INTRODUCTION**

The concept of due process is enshrined in the US Constitution, specifically within the Fourth, Fifth and Fourteenth Amendments, which means any decision impacting due process carries significant legal weight. Due process ensures that individuals are given notice of accusations against them, the opportunity to be heard, and a fair trial before any

significant legal action is taken. Due process applies to various situations, including criminal proceedings, civil cases, administrative actions, and even certain private sector disciplinary actions depending on the jurisdiction. Courts have the power to review decisions related to due process, allowing them to determine if the procedures followed were fair and just.

The Ninth Circuit decided an important federal question in a way that conflicts with relevant decisions of this Court. Its decision disregarded this Court's precedents and the undisputed fact the state court judgment entered against Menzer on whom no process had been served is not erroneous and voidable, but, upon principles of natural justice, and also under the due process clause of the Fourteenth Amendment, is absolutely void.

This decision denying Menzer his right to due process is exceptionally important because it directly affects every United States citizen's fundamental right to fair legal procedures before the government can deprive them of "life, liberty, or property," essentially safeguarding individuals from arbitrary actions by the state and ensuring basic justice in legal proceedings; making it a crucial aspect of our legal system.

The Ninth Circuit's decision disregarded the undisputed fact that Menzer's complaint sought only to enjoin US Bank from enforcing the void default judgment and did not seek to reverse or modify the state court's judgment.<sup>1</sup> In so doing it disregarded this Court's decisions in *Simon v. Southern Railway*

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<sup>1</sup> The complaint also sought claims for slander of title and fraud which arose after the default judgement was entered.

(1915) 236 U.S. 115, (“United States courts by virtue of their general equity powers have jurisdiction to enjoin the enforcement of a judgment obtained by fraud or without service.”) *Kremer v Chem. Constr. Corp.*, 456 U.S. 461, 481-82 (1982) (“where we are bound by the statutory directive of [28 U.S.C.] § 1738, state proceedings need do no more than satisfy the minimum procedural requirements of the Fourteenth Amendment's Due Process Clause in order to qualify for the full faith and credit guaranteed by federal law.”, and *Exxon Mobil Corp. v Saudi Basic Indus. Corp.*, 544 U.S. 280, 283 (2005) (“The *Rooker-Feldman* doctrine, we hold today, is confined to cases of the kind from which the doctrine acquired its name: cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments.”) Moreover, the decision conflicts with the Ninth Circuit’s prior decisions recognizing *Simon* and *Kremer* (*discussed infra*).

## STATEMENT OF THE CASE

### A. Legal background

United States courts by virtue of their general equity powers have jurisdiction to enjoin the enforcement of a judgment obtained by fraud or without service. *Simon v. Southern Railway* (1915) 236 U.S. 115. In the absence of service of process, a person named as defendant can no more be regarded as a party than any other member of the community. *Id.* A judgment against a person on whom no process has been served is not erroneous and voidable, but,

upon principles of natural justice, and under the due process clause of the Fourteenth Amendment, is absolutely void. *Id.* Jurisdiction of the United States courts cannot be lessened or increased by state statutes regulating venue or establishing rules of procedures and they have not prevented them from depriving a party of the fruits of a fraudulent judgment, nor from enjoining a party from using that which he calls a judgment, but which is, in fact and in law, a mere nullity and absolutely void for lack of service of process. *Id.* citing *Marshall v. Holmes*, 141 U.S. 589.

A judgment entered without notice or service violates the Due Process Clause. *Peralta v. Heights Medical Center, Inc.*, (1988) 485 U.S. 80. Including Nevada's right to Due Process. *Price v. Dunn* (Nev. 1990) 106 Nev. 100, 104; *Epstein v. Epstein* (Nev. 1997) 113 Nev. 1401, 1405. Defective service renders the Court's personal jurisdiction over defendants invalid and the judgment against them void. *Gassett v. Snappy Car Rental*, 111 Nev. 1416, 1419 (1995). Failure to give notice violates "the most rudimentary demands of due process of law." *Armstrong v. Manzo*, 380 U.S. 545, 550 (1965). See also *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291 (1980); *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976); *Zenith Radio Corp. v. Hazeltine Research, Inc.*, 395 U.S. 100, 110 (1969); *Pennoyer v. Neff*, 95 U.S. 714, 733 (1878). Without proper service, the judgment is void. *Thatcher v. Justice Court*, 46 Nev. 133, 207 P. 1105 (1922); *Martin v. Justice Court*, 44 Nev. 140, 190 P. 977 (1920)."

An order that exceeds the jurisdiction of the court, is void, or voidable, and can be attacked in any proceeding in any court where the validity of the

judgment comes into issue. *Pennoyer, supra*; *Windsor v. McVeigh* (1876) 93 US 274; *McDonald v. Mabee* 243 US 90 (1917). A judgment of a court without hearing the party or giving him an opportunity to be heard is not a judicial determination of his rights. *Sabariego v Maverick*, 124 US 261, and is not entitled to respect in any other tribunal.

*Kremer, supra*, states that a state court must satisfy the applicable requirements of the Fourteenth Amendment's Due Process Clause to qualify for the full faith and credit guaranteed by federal law. *Kremer* at 482; 28 U.S.C. § 1738. *Kremer* is aligned with the principles in *Simon, supra*. A State may not grant preclusive effect in its own courts to a constitutionally infirm[ed] judgment, and other state and federal courts are not required to accord full faith and credit to such a judgment. *Id.* *Kremer* does not permit a claim preclusion or res judicata analysis until an analysis of Menzer's collateral attack on the judgment i.e., no service of process occurred. If the collateral attack is supported by evidence, then there can be no claim preclusion analysis.

## **B. Factual and procedural background**

Based upon *Simon*, Menzer's district court complaint sought to enjoin U.S. Bank from enforcing the default judgment U.S. Bank obtained against him without service of process in the Ninth Judicial District Court for the State of Nevada ("state court"), County of Douglas, U.S. Bank, N.A., as Trustee v. Robert K. Menzer et. al., Case No. 18-CV-0134. 3 ER 378-9<sup>2</sup> U.S. Bank obtained an order from the State Court to

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<sup>2</sup> References are to pages in the Excerpts of Record, *Menzer v. U.S. Bank* (9th Cir., Nov. 7, 2024, No. 23-3075).

serve the summons via publication and was directed to publish the summons in Douglas County. 2 ER 23-4. U.S. Bank, admittedly, did not comply with the order for publication and published the summons in Clark County. 2 ER 110.

U.S. Bank applied for a default judgment and misrepresented to the state court that it had published the summons in Douglas County. 2 ER 29. The default judgment was entered. 2 ER 36-7. Months later, Menzer saw a Notice of Sheriff's Sale in The Recorder-Courier newspaper circulated in Douglas County. 2 ER 44. Menzer contacted U.S. Bank regarding the default judgment identified in the legal notice. 2 ER 47. U.S. Bank misrepresented to Menzer it had served him via publication. 2 ER 47-8; 1 ER 3.

When Menzer discovered the falsity of U.S. Bank's representation, he immediately moved for an order to vacate the default judgment and quash service ("motion").<sup>3</sup> 2 ER 50-60. The state court denied Menzer's motion by erroneously concluding Menzer did not diligently apply for an order quashing service and setting aside the judgment and, therefore, waived his right to due process. 2 ER 62-5. On appeal, the Nevada Supreme Court dismissed the appeal based upon lack of jurisdiction. 2 ER 67-9.<sup>4</sup>

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<sup>3</sup> We now hold that the filing of a motion to set aside a void judgment previously entered against the movant shall not constitute a general appearance. Gasset at 1421, *supra*. We will no longer allow a retroactive application such as this to make an otherwise void judgment valid. To the extent that this is contrary to *Doyle*, we now overrule it. *Id.*

<sup>4</sup> Robert Menzer v. U.S. Bank, N.A., as Trustee, Case No. 84038, Supreme Court for the State of Nevada.



Thereafter, Menzer filed his complaint in the district court to enjoin U.S. Bank from enforcing the constitutionally infirmed default judgment. 3 ER 372-85. The district court dismissed all Menzer's claims with prejudice based solely on claim preclusion. 1 ER 4. The district court declined to address any of the other bases for dismissing his complaint because it concluded they would not affect the outcome of the decision. 1 ER 4, 7.

The district court acknowledged he had not been served with the summons and complaint [1 ER 3] and concluded it didn't matter Menzer's right to due process had been violated. The district court concluded that the constitutionally infirmed default judgment was valid and final because it is immaterial whether the state court correctly decided Menzer's challenge to the validity of the default judgment under Nevada law because the state court reached a valid, final judgment on the matter. 1 ER 5. The district court provided no authority to support its conclusion.

Moreover, the district court concluded that Menzer's contentions that the default judgment violated the Due Process Clause of the Fourteenth Amendment and that U.S. Bank fraudulently misrepresented that it had properly served Menzer [2 ER 55; 106-22; 128; 189-204; 306-08; 3 ER 310-16] are insufficient to render the default judgment invalid. 1 ER 5. The district court relied on *In re Lake*, 202 B.R. 751, 758 (B.A.P. 9th Cir. 1996) to make this erroneous conclusion. *Id.* However, *Lake* confirms that Menzer's contentions are more than sufficient to render the default judgment invalid. Specifically, "[a] state court's judgment is subject to collateral attack if the state court lacked jurisdiction over the subject

matter or the parties, emphasis added, or the judgment was procured through extrinsic fraud [Emphasis added]”. *Id.*

The order dismissing was appealed to the Ninth Circuit who affirmed based upon *Kremer*, *supra*, and the Rooker-Feldman Doctrine.

## REASONS FOR GRANTING THE PETITION

### **I. The Ninth Circuit has decided an important federal question in a way that conflicts with relevant decisions of this Court.**

The decision denying Menzer his right to due process rests on *Kremer* for the proposition that 28 USC § 1738 commands a federal court to accept the rules chosen by the state from which the judgment is taken and disregarded *Kremer* where it states that a state must satisfy the applicable requirements of the Fourteenth Amendment’s Due Process Clause to qualify for the full faith and credit guaranteed by federal law. *Kremer* at 482. *Kremer* is aligned with the principles in *Simon*, *supra*. A State may not grant preclusive effect in its own courts to a constitutionally infirm[ed] judgment, and other state and federal courts are not required to accord full faith and credit to such a judgment. *Id.* Contrary to the opinion, *Kremer* demands the district court’s decision be reversed.

This Court has previously recognized that the judicially created doctrine of collateral estoppel does not apply when the party against whom the earlier

decision is asserted did not have a "full and fair opportunity" to litigate the claim or issue. *Kremer* at 480-81 citing *Allen v. McCurry*, 449 U.S., 90, 95; *Montana v. United States*, 440 U.S. 147, 153 (1979); *Blonder-Tongue Laboratories, Inc. v. University of Illinois Foundation*, 402 U.S. 313, 328-329 (1971). "Redetermination of issues is warranted if there is reason to doubt the quality, extensiveness, or fairness of procedures followed in prior litigation." *Montana v. United States*, supra, at 164, n. 11. Cf. *Gibson v. Berryhill*, 411 U.S. 564 (1973).

When bound by the statutory directive of Section 1738, state proceedings need do no more than satisfy the minimum procedural requirements of the Fourteenth Amendment's Due Process Clause in order to qualify for the full faith and credit guaranteed by federal law. *Kremer* at 481. "The State must, however, satisfy the applicable requirements of the Due Process Clause. A State may not grant preclusive effect in its own courts to a constitutionally infirm judgment, and other state and federal courts are not required to accord full faith and credit to such a judgment." *Id.* Section 1738 does not suggest otherwise. *Id.* "The Court's decisions enforcing the Full Faith and Credit Clause of the Constitution, Art. IV, § 1, also suggest that what a full and fair opportunity to litigate entails is the procedural requirements of due process." *Id.* at 483, fn. 24.

Before the district court or the Ninth Circuit can accord the full faith and credit of Section 1738 to a judgment where a party has asserted the judgment is void, they must perform an independent analysis of the facts supporting the assertion the judgment is void. Here, the opinion disregarded the record on appeal confirming Menzer's right to due process had

been violated and that U.S. Bank admitted it did not serve him.

Menzer never had a full and fair opportunity to litigate any claims because the state court never had personal jurisdiction over him. He never made a general appearance in the state court proceedings given he had never been served with the summons. Rather, he challenged the void default judgment by moving to quash service and vacate the default judgment. Challenging a void judgment does not constitute a general appearance. *Gassett, supra*.

Menzer never had an opportunity to litigate the allegations of U.S. Bank's complaint. Nor could he bring any compulsory counterclaims. His rights to introduce evidence and otherwise to conduct his defense were completely impaired by U.S. Bank's admitted failure to serve him. Menzer was denied his day in court with respect to every issue involved in U.S. Bank's complaint.

It is undisputed that the summons was not published in Douglas County. Neither the Ninth Circuit nor the district court considered whether Menzer's due process right had been violated but simply gave full faith and credit to the default judgment. The decision disregarded *Simon* and did not state the correct rule of law in *Kremer*. It ignored the undisputed fact the summons was published in a county 500 miles south of Douglas County. The decision violated Menzer's fundamental right to due process.

**A. The decision conflicts with relevant decisions of the Ninth Circuit.**

The Ninth Circuit's decision in this case conflicts with the Circuit's earlier decisions in *Eggers v. Krueger* (9th Cir. 1916) 236 F. 852, 857-58; *Russell v. Detrick* (9th Cir. 1927) 23 F.2d 175, 178; *American Surety Co. of New York v. Baldwin* (9th Cir. 1932) 55 F.2d 555, 559; and *Lambert v. Central Bank of Oakland* (9th Cir. 1936) 85 F.2d 954, 957 where the Circuit acknowledges the Supreme Court's decision in *Simon*.

“Much more so will equity enjoin parties from enforcing those obtained without service. For in such a case the person named as defendant ‘can no more be regarded as a party than any other member of the community.’ Such judgments are not erroneous and not voidable, but, upon principles of natural justice, and under the due process clause of the 14th Amendment, are absolutely void. They constitute no justification to a plaintiff who, if concerned in executing such judgments is considered in law as a mere trespasser. \* \* \*

“On principle and authority, therefore, a judgment obtained in a suit of which the defendant had no notice was a nullity and the party against whom it was obtained was entitled to relief.”

*American Surety Co. at 559 citing Simon at 122.*

“The appellee contends, and we think correctly, that while due process requires

notice, and hence a state judgment may be attacked in the federal courts for lack of such notice,”

*Lambert* at 957.

“In the more recent case of *Simon v. Southern Railway*, 236 U.S. 115 the Supreme Court, while holding that a plaintiff with a valid state judgment can be enjoined by the United States court from its inequitable use and that the federal court may enjoin a party from using that which purports to be a judgment, but which is in fact an absolute nullity...”

*Eggers* at 857.

A federal court can issue an injunction where there is an entire lack of jurisdiction in the state court.

*Russell* at 178 citing *Simon*.

In, *In re Lake*, 202 B.R. 751 (B.A.P. 9th Cir. 1996), the panel confirmed “A state court’s judgment is subject to collateral attack if the state court lacked jurisdiction over [ ] the parties”.

*Id.* at 758.

This conflict was not acknowledged or discussed by the Ninth Circuit or by the district court below. The decision disregards the fact a void judgment can be collaterally attacked for lack of jurisdiction over the parties. *Lake*, *supra*.

**B. Rooker-Feldman Doctrine - Menzer's did not seek an order from the district court reversing the void default judgment**

The Ninth Circuit disregarded the fact that Menzer federal complaint did not seek to reverse the state court's void judgment but rather sought an order enjoining U.S. Bank from enforcing it.

The basis for jurisdiction in the district court was Menzer's federal question regarding whether his fundamental right to due process had been violated for the purpose of enjoining U.S. Bank from enforcing the judgment. The *Rooker-Feldman* Doctrine is limited to and bars district courts from reviewing final judgments of state courts for the purpose of reversing them. *Exxon at*, 284, *supra*. *Rooker* and *Feldman* exhibit the limited circumstances in which district court's appellate jurisdiction over state-court judgments, 28 U. S. C. § 1257, precludes a United States district court from exercising subject-matter jurisdiction in an action it would otherwise be empowered to adjudicate under a congressional grant of authority, *e. g.*, § 1330 (suits against foreign states), § 1331 (federal question), and § 1332 (diversity). *Id. at* 291. The *Rooker-Feldman* doctrine merely recognizes that 28 U. S. C. § 1331 is a grant of original jurisdiction and does not authorize district courts to exercise appellate jurisdiction over state-court judgments, which Congress has reserved to this Court, see § 1257(a). *Id. at* 292.

Menzer did not seek to reverse the state court's void judgment. Menzer sought to enjoin appellee from enforcing it. *Simon*, and *Kremer*, *supra*. Because Menzer's complaint did not seek to reverse

the void judgment, the Rooker-Feldman Doctrine is not applicable.

**II. It is undisputed Menzer's fundamental right to due process was violated.**

It is undisputed Menzer's fundamental right to due process was violated. The decision disregards the fact Menzer was never a party to the state court action because of U.S. Bank's lack of service of process. *Simon* and *Kremer*, *supra*. Menzer's motion to quash service and vacate the default judgment did not constitute a general appearance in Nevada. *Gassett*, *supra*. Menzer was never a party to the state court action. *Simon*, *supra*.

The Court's precedents must be affirmed and a citizen's fundamental right to due process must be secured from future reckless decisions of district courts violating citizens' right to due process. This Court is the last hope for citizens to protect their fundamental right to due process.

**CONCLUSION**

Given the Court's precedents and the undisputed fact Menzer's fundamental right to due process has been violated, the Court should summarily reverse and remand the case. Alternatively, the Court should grant the petition for certiorari.



Respectfully submitted,

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**APPENDIX A**

No. 23-3075

United States Court of Appeals, Ninth Circuit

Menzer v. U.S. Bank

Decided Nov 7, 2024

23-3075

11-07-2024

ROBERT MENZER, Plaintiff-Appellant, v. U.S. BANK, N.A., et al., Defendants-Appellees.

NOT FOR PUBLICATION

Submitted October 24, 2024[\*\*] San Francisco, California

Appeal from the United States District Court No. 3:23-CV-00299-MMD-CLB for the District of Nevada

Miranda Du, District Judge, Presiding

Before: S.R. THOMAS, WARDLAW, and COLLINS, Circuit Judges.

## MEMORANDUM [\*]

Robert Menzer ("Menzer") appeals the district court's dismissal of his complaint on the basis of claim preclusion. "We review de novo a district court's \*2 dismissal based on res judicata." *Stewart v. U.S. Bancorp.*, 297 F.3d 953, 956 (9th Cir. 2002). We can affirm on any grounds supported by the record. *Franklin v. Terr*, 201 F.3d 1098, 1100 n.2 (9th Cir. 2000). Because the parties are familiar with the history of this case, we need not recount it here. We affirm.

## I

The district court did not err by holding that Menzer's claims were barred based on claim preclusion or res judicata. Res judicata prohibits lawsuits on "any claims that were raised or could have been raised" in a prior action. *Owens v. Kaiser Found. Health Plan, Inc.*, 244 F.3d 708, 713 (9th Cir. 2001) (quoting *W. Radio Servs. Co. v. Glickman*, 123 F.3d 1189, 1192 (9th Cir. 1997)). Nevada's claim preclusion rules apply because U.S. Bank asks the Court to give preclusive effect to a Nevada state court judgment. See 28 U.S.C. § 1738; *Kremer v. Chem. Constr. Corp.*, 456 U.S. 461, 481-82 (1982) ("§ 1738 . . . commands a federal court to accept the rules chosen by the State from which the judgment is taken.").

Under Nevada law, claim preclusion applies when "(1) there has been a valid, final judgment in the previous action; (2) the subsequent action is based on the same claims or any part of them that were or could have been brought in the first action; and (3) the parties or their privies are the same in the instant lawsuit as they were in the previous lawsuit, *or* the defendant can demonstrate that he or she \*3 should have been included as a defendant in the earlier suit and the plaintiff fails to provide a 'good reason' for not having done so." *Weddell v. Sharp*, 350 P.3d 80, 81 (Nev. 2015). Under Nevada Rule of Civil Procedure 13(a), a counterclaim is compulsory "if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim." NRCP 13(a) further instructs that "[a] pleading shall state [any compulsory claim] which at the time of serving the pleading the pleader has against any opposing party [.]" Thus, Menzer's affirmative claims against foreclosure were compulsory counterclaims. *Mendenhall v. Tassinari*, 403 P.3d 364, 370 (Nev. 2017).

As to Menzer's motion to set aside the judgment, the state district court heard Menzer's arguments as to why the default judgment should be deemed void, and held that Menzer waived any procedural defects with

service. Menzer fully litigated his claims through the state court proceedings, and consequently, left nothing further for the state court to consider regarding the validity of the default judgment. *See Sandstrom v. Second Jud. Dist. Ct.*, 119 P.3d 1250, 1252 (Nev. 2005). The default judgment is therefore a valid final judgment.

Second, all three of Menzer's claims-violation of due process, slander of title, and fraud-were or could have been raised in the state court case, either as a defense to the original foreclosure action or in the motion to set

aside the \*4 judgment. "[A]ll claims based on the same facts and alleged wrongful conduct that were or could have been brought in the first proceeding are subject to claim preclusion." *Rock Springs Mesquite II Owners' Ass'n v. Raridan*, 464 P.3d 104, 108 (2020) (internal citation omitted). Menzer alleged that U.S. Bank violated his right to due process by failing to provide him with proper service in his motion to set aside the default judgment. In the motion to set aside the judgment, Menzer also pled the facts to support his slander of title and fraud claims. Menzer raised the due process violation, and could have raised the other two claims during the state court proceeding.



Finally, the parties in the complaint are identical to the parties in the state court action with the exception of the inclusion of Residential Funding, which is in privity with U.S. Bank. The Nevada Supreme Court has adopted the Restatement (Second) of Judgments § 41, which recognizes privity under an "adequate representation" analysis. *Mendenhall*, 403 P.3d at 369. Under this analysis, privity exists if a party represented the interests of a non-party. Restatement (Second) of Judgments § 41(1)(a) (Am. L. Inst. 1982). Here, U.S. Bank holds the relevant property as a trustee for Residential Funding. As a trustee of the property, U.S. Bank acted in a representative capacity for Residential Funding, satisfying the privity 5 requirement. \*5

## II

The district court's dismissal was also proper under the *Rooker-Feldman* doctrine. "*Rooker-Feldman* prohibits a federal district court from exercising subject matter jurisdiction over a suit that is a *de facto* appeal from a state court judgment." *Kougasian v. TMSL, Inc.*, 359 F.3d 1136, 1139 (9th Cir. 2004) (emphasis added). "If a federal plaintiff asserts as a legal wrong an allegedly erroneous decision by a state court, and seeks relief from a state court judgment based on that decision, *Rooker-Feldman* bars subject matter jurisdiction in federal district court." *Noel v. Hall*, 341 F.3d 1148, 1164

(9th Cir. 2003). Menzer's complaint alleges that the Nevada state court's decision to deny his motion to set aside the default judgment against him was erroneous and seeks an order to enjoin Defendants from enforcing the judgment and declare the judgment void. This claim falls within the scope of the *Rooker-Feldman* doctrine, depriving the district court of jurisdiction over the action.

The extrinsic fraud exception to *Rooker-Feldman*, see *Kougasian*, 359 F.3d at 1140, does not apply here. The

"extrinsic fraud" exception is meant to distinguish between claims where the litigant is merely trying to

relitigate his or her previous state court claims and claims that could not be properly adjudicated at the state court level due to "a wrongful act by the adverse party" that interfered \*6 with the court's ability to properly resolve the underlying state court matter. *Id.* at 1141. Here, Menzer's complaint is not that the state court's rulings rejecting his challenges to the underlying judgment were obtained by fraud, but rather that those rulings erroneously rejected his claim that they were obtained by fraud and violated his due process. Therefore, the exception does not apply.

## III

In sum, the district court correctly concluded that all three elements of claim preclusion are satisfied, and that Menzer's claims are barred. Dismissal was also proper under the *Rooker-Feldman* doctrine. Costs are taxed against Appellant.

## AFFIRMED.

COLLINS, Circuit Judge, concurring in part and in the judgment

I concur in Section II of the court's memorandum and on that basis concur in the judgment.

[\*] This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

[\*\*] The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

APPENDIX B

United States Court of Appeals, Ninth Circuit

Menzer v. U.S. Bank

23-3075

12-17-2024

ROBERT MENZER, Plaintiff-Appellant, v. U.S. BANK, N.A., et al., Defendants-Appellees.

ORDER DENYING PETITION FOR REHEARING

Before: S.R. THOMAS, WARDLAW, and COLLINS, Circuit Judges.

The panel has voted to deny the petition for panel rehearing. Judge Wardlaw and Judge Collins have voted to deny the petition for rehearing en banc, and Judge Thomas so recommends. The full court has been advised of the petition for rehearing en banc, and no judge of the court has requested a vote on the petition for rehearing en banc. Fed. R. App. P. 40.

The petition for rehearing and the petition for rehearing en banc is **DENIED**.

APPENDIX C

3:23-CV-00299-MMD-CLB

United States District Court, District of Nevada

**Menzer v. U.S. Bank**

Decided Oct 20, 2023

3:23-CV-00299-MMD-CLB

10-20-2023

ROBERT MENZER, Plaintiff, v. U.S. BANK, N.A., et al., Defendants.

MIRANDA M. DU, UNITED STATES DISTRICT JUDGE

**ORDER**

MIRANDA M. DU, UNITED STATES DISTRICT JUDGE

**I. SUMMARY**

This present action is a continuation of the parties' dispute in state court over the validity of a default judgment. Before the Court are the following motions: Defendant U.S. Bank N.A.'s and Defendant Residential Funding Mortgage Securities I, Inc.,

Mortgage Pass-Through Certificates, Series 2005-SA5's Motion to Dismiss ("Motion to Dismiss") (ECF No. 20), and Plaintiff Robert Menzer's motions for TRO and preliminary injunction (ECF Nos. 7, 36, 37), and related motion for order shortening time (ECF No. 38). The Court has reviewed the parties' respective responses and replies. (ECF Nos. 25, 26, 27.) For the reasons discussed below, Defendants' Motion to Dismiss is granted and thus Plaintiff's motions are denied.

## II. BACKGROUND

The following allegations are taken from the Complaint (ECF No. 1) unless otherwise indicated. *See United States v. Ritchie*, [342 F.3d 903, 907-08](#) (9th Cir. 2003). The Court takes judicial notice of the parties' filings and court orders in the dispute between U.S. Bank and Menzer in Nevada state court. (ECF Nos. 20-1; 20-2; 20-7; 20-8; 20-10; 20-13; 20-14; 26 at 5-6, 21-22, 85-86.) *See also Lee v. Los Angeles*, [250 F.3d 668, 688-89](#) (9th Cir. 2 2001); *U.S. ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc.*, [971 F.2d 244, 248](#) (9th Cir. 1992). \*2

In June 2018, U.S. Bank, as a trustee for Residential Funding, filed a complaint in the Ninth Judicial District in Nevada seeking the judicial foreclosure of Robert Menzer's property in Minden, Nevada ("Property"). (ECF Nos. 1 at 3, 20-1.) After unsuccessfully attempting to personally serve Menzer

four times, U.S. Bank filed an ex parte application for an order extending their time to affect service and directing service by publication. (ECF No. 1 at 4.) The state court extended U.S. Bank's deadline for serving Menzer and directed service by publication in a newspaper of general circulation in Douglas County; however, the newspaper in which the court directed the publication of the service of summons is neither printed nor published in Douglas County. (*Id.* at 5; 26 at 5-6.) U.S. Bank filed an affidavit of publication stating that the newspaper in which service was directed is “printed and published in Las Vegas, Clark County, Nevada.” (ECF No. 1 at 5.)

Less than two weeks later, U.S. Bank applied for, and the state district court clerk entered, default against Menzer personally. (*Id.*) U.S. Bank then filed an application for a default judgment, in which it represented that Menzer had been properly served. (*Id.*) The clerk of court entered a default judgment against the Property (“Default Judgment”) and a writ of execution regarding the Property identifying Menzer as the judgment debtor in the spring of 2019. (ECF Nos. 1 at 6, 20-2.) It was not until eight weeks later that Menzer became aware of the Default Judgment. (ECF No. 1 at 6.) During subsequent correspondence between the parties, U.S. Bank's counsel sent Menzer's attorney the Default Judgment, proof of service by mail, and notice of entry of the Default Judgment- but not the affidavit of publication. (*Id.*) Menzer still took no legal action, as he relied upon U.S. Bank's representations that it had affected proper service by publication. (*Id.*)

The Sherrif foreclosed upon the Property and sold it to Defendants at a Sheriff's sale in July 2019. (*Id.* at 7.) Defendants recorded the Sheriff's deed in Douglas County a little over a year later. (*Id.*) A notice to quit posted on the Property prompted Menzer's counsel to review the sale, and upon this review, counsel discovered that service of the summons via publication had been affected in the wrong county and that the Default Judgment had been directed against Menzer personally. (*Id.*) \*3

Menzer filed a motion to quash service and set aside the Default Judgment ("Motion to Set Aside") in the Ninth Judicial District of Nevada on October 6, 2020. (*Id.*) The district court issued an order denying Menzer's Motion to Set Aside in March 2021, to which Menzer responded with a motion to amend. (ECF Nos. 20-7, 20- 8.) The state district court denied Menzer's motion to amend in late November 2021. (ECF No. 20-9). Menzer appealed the denial of his Motion to Set Aside to the Nevada Supreme Court a month later, but the Supreme Court dismissed his appeal for lack of jurisdiction. (ECF Nos. 2010, 20-13.) Remittitur issued on March 13, 2023. (ECF No. 20-14.)

Menzer then filed his complaint in the instant case, again challenging the validity of the Default Judgment. (ECF No. 1.)



### III. MOTION TO DISMISS

Defendants assert that Menzer's claims are barred by the *Younger* abstention doctrine, the *Rooker-Feldman* doctrine, claim preclusion, [Federal Rule of Civil Procedure 12\(b\)\(6\)](#), and issue preclusion, and that Residential Funding is not a necessary party to this case. The Court finds that claim preclusion applies to bar Menzer's claims and declines to address the other arguments.

The Court applies Nevada's claim preclusion rules because Defendants seek to give preclusive effect to a Nevada state court judgment. *See* [28 U.S.C. § 1738](#); *Kremer v. Chem. Constr. Corp.*, [456 U.S. 461, 482](#) (1982). Under Nevada law, claim preclusion applies when: (1) there has been a valid, final judgment in the previous action; (2) the claims in the present action are identical to, or could have been brought in, the previous action; and (3) the parties or their privies are the same in the instant lawsuit as they were in the previous lawsuit, or the defendant can demonstrate that he should have been included in the earlier suit and the plaintiff fails to provide a reason for not having done so. *See Weddell v. Sharp*, [350 P.3d 80, 81](#) (Nev. 2015). All three factors are present for each of Menzer's claims, and thus his due process, slander of title, and fraud causes of action against U.S. Bank and Residential Funding are precluded. \*4

## A. Valid Final Judgment

Whether the Ninth Judicial District Court correctly decided Menzer's challenge to the validity of the Default Judgment under Nevada law is immaterial because the state court reached a valid, final judgment on the matter. The state district court heard Menzer's arguments as to why the Default Judgment was void, ultimately found Menzer had waived any procedural defects, and issued final, appealable orders denying both his Motion to Set Aside and his Motion to Amend. (ECF Nos. 20-6, 20-7 at 7-8, 20-8, 20-9.) *See also* NEV. R. APP. PROC. 3A(b). Then the Nevada Supreme Court likewise denied his appeal, leaving nothing further for the state court to consider regarding the validity of the Default Judgment. (ECF No. 20-13 at 3-4.) *See also Benchmark Ins. Co. v. Sparks*, 254 P.3d 617, 620 (Nev. 2011). As Menzer has exhausted his state court appeals, the Default Judgment is a final order.

Given the facts of this case, Menzer's contentions that the Default Judgment violates the Due Process Clause of the Fourteenth Amendment and that U.S. Bank fraudulently misrepresented that it had properly served Menzer are insufficient to render the Default Judgment invalid. (ECF No. 1 at 9-14.) While a state court judgment may not have preclusive effect if it was obtained through “extrinsic fraud,” such a finding requires that “there has been no fair adversary trial at law, either because the aggrieved party was kept in ignorance of the action or

proceeding, or in some other way fraudulently prevented from presenting his claim or defense.” *In re Lake*, 202 B.R. 751, 758 (B.A.P. 9th Cir. 1996). Once again, Menzer was not only able to but also actually did request reconsideration of and appeal the Default Judgment in state court via his Motion to Set Aside, Motion to Amend, and appeal to the state supreme court. *See Robinson v. Nev. Sys. of Higher Educ.*, 2016 WL 3869846, at \*5 (D. Nev. July 15, 2016). Menzer was thus afforded a “full and fair opportunity to litigate” both the validity of the Default Judgment and the reasons for his delay in challenging the Default Judgment in state court. *Id.* The Court is satisfied that the Default Judgment is both final and valid. /// \*5

### **B. Identical Claims or Claims that Could Have Been Brought**

Menzer raises three different claims in the present case. (ECF No. 1.) He first alleges that Defendants violated his right to due process and thus the Default Judgment is void. (ECF No. 1 at 9.) This claim is identical to Menzer's allegations in his state court Motion to Set Aside. (ECF No. 20-6 at 6 (“A judgment entered without notice or service violates the Due Process Clause . . . [and] is absolutely void.”).)

Menzer further alleges slander of title and fraud. (ECF No. 1 at 9-14.) These are not claims that Menzer raised in the state court case; however, they relate to the same operative facts as the state court action, and none of Defendants' allegedly unlawful or tortious conduct occurred after October 6, 2020-the day that Menzer filed the Motion to Set Aside. (*Id.* at 3-7.) The slander of title and fraud claims are thus “*based on the same facts and alleged wrongful conduct* [as claims] that were or could have been brought” in the state court proceeding and are subject to claim preclusion. *Rock Springs Mesquite II Owners' Ass'n v. Raridan*, [464 P.3d 104, 108](#) (Nev. 2020) (emphasis in original).

### **C. Identical Parties or Their Privies**

All parties to this case but one are identical to those in the state court action, and the only non-identical party, Residential Funding, is in privity with U.S. Bank. The Nevada Supreme Court recognizes privity under the Restatement (Second) of Judgments' “adequate representation” analysis, as well as in other circumstances “beyond those categories noted in the Restatement.” *Mendenhall v. Tassinari*, [403 P.3d 364, 369](#) (Nev. 2017) (quoting *Rucker v. Schmidt*, [794 N.W.2d 114, 118](#) (Minn. 2011)). Pursuant to the Restatement, a person is adequately represented such that preclusion attaches when a party to a previous action was the “trustee of an estate or interest of which the person is a beneficiary.” RESTATEMENT (SECOND) OF JUDGMENTS § 41(1)(a) (Am. L. Inst. 1982) [hereinafter RESTATEMENT].

U.S. Bank holds the Property as a Trustee for Residential Funding, but Residential Funding is the trust itself, rather than a beneficiary. Regardless, the Court is comfortable predicting that the Nevada Supreme Court would find that the two entities are privies due \*6 to the court's holding that privity attaches when parties share a “substantial identity” or a “sufficient commonality of interest.” *Mendenhall*, [403 P.3d at 369](#); *see also FQ Men's Club, Inc. v. City of Reno*, 2019 WL 2339967, at \*2 (Nev. May 31, 2019) (unreported case holding the same); *Albano v. Shea Homes Ltd. P'ship*, [634 F.3d 524, 530](#) (9th Cir. 2011) (stating that if the state supreme court has not decided an issue, the federal court's role is to “predict how the state high court would resolve it”). Residential Funding's interest in prevailing in the state court action-obtaining a judgment of foreclosure-would have been identical to that of both U.S. Bank and the trust's beneficiaries, leaving little question that the interests of U.S. Bank and Residential Funding were aligned in the state court action. *See* RESTATEMENT § 41(1)(a); *Taylor v. Sturgell*, 553 U.S. 880, 900 (2008). Moreover, the Court has no doubt that U.S. Bank understood itself to be acting in a representative capacity for Residential Funding as its trustee. (ECF No. 20-1 at 1 (naming plaintiff “U.S. Bank National Association as Trustee for Residential Funding Mortgage Securities I, Inc. Mortgage Pass-Through Certificates, Series 2005-SA5”).) *See also Taylor*, 553 U.S. at 900; RESTATEMENT § 41 cmt. b (“A trustee of a trust has authority to represent the estate.”). U.S. Bank was able to adequately represent Residential Funding's interests in the state court action such that they are privies under Nevada law.

Claim preclusion applies and bars all Menzer's present claims. Accordingly, the Court grants Defendants' Motion to Dismiss, and denies Menzer's pending motions relating to preliminary injunction relief as moot.

#### **IV. CONCLUSION**

The Court notes that the parties made several arguments and cited to several cases not discussed above. The Court has reviewed these arguments and cases and determines that they do not warrant discussion as they do not affect the outcome of the parties' motions.

It is therefore ordered that Defendants' Motion to Dismiss (ECF No. 20) is granted.

It is therefore ordered that Plaintiff Robert Menzer's motions for TRO and preliminary injunction (ECF Nos. 7, 7 36, 37) and motion for order shortening time (ECF No. \*7 38) are denied.

It is further ordered that the Clerk of Court enter judgment in accordance with this order and close this case.

## APPENDIX D

## 1. 28 U.S.C. § 1738 provides:

The Acts of the legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory or Possession thereto.

The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.

Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

## 2. U.S. Const. Art. IV, Section I states:

Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

## APPENDIX E

## 1. U.S. Const. Amend. IV provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

## 2. U.S. Const. Amend. XIV, Section 1 provides:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.



APPENDIX F

3:23-CV-00299-MMD-CLB

United States District Court, District of Nevada

**Menzer v. U.S. Bank**

Filed Jun 22, 2023

3:23-CV-00299-MMD-CLB

ROBERT MENZER, Plaintiff, v. U.S. BANK, N.A.,  
et al., Defendants.

MIRANDA M. DU, UNITED STATES DISTRICT  
JUDGE

**COMPLAINT FOR INJUNCTIVE RELIEF**

COMES NOW Plaintiff, ROBERT MENZAER (“Plaintiff” or “Menzer”), by and through his attorney, Tory M. Pankopf, of the Law Offices of Tory M. Pankopf, Ltd., alleges and complains against defendants, U.S. BANK, N.A., as Trustee for Residential Funding Mortgage Securities I, Inc., Mortgage Pass-Through Certificates, Series 2005-SA5 (“US Bank”); and RESIDENTIAL FUNDING MORTGAGE SECURITIES I, INC., MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2005-SA5 (“Trust”), (Collectively “Defendants”) as follows (“Complaint”).

1. Plaintiff resides in Douglas County, Nevada.

2. Plaintiff is the owner and/or, technically, the equitable owner of:

All that real property situated in the County of Douglas, State of Nevada, and herein described as follows:

COUNTY OF DOUGLAS, STATE OF NEVADA: LOT 20, IN BLOCK 4, AS SET FORTH ON THE FINAL SUBDIVISION MAP LDA# 01-069 FOR BRAMWELL HOMESTEAD FILED FOR RECORD IN THE OFFICE OF THE DOUGLAS COUNTY RECORDER, ON AUGUST 12, 2002, IN BOOK 0802, AT PAGE 3324, AS DOCUMENT NO. 549307, OF OFFICIAL RECORDS.

Assessor's Parcel Number: 1420-34-610-047

Commonly described as: 1526 Downs Drive, Minden, Nevada, 89423

("Property")

3. Defendants claim to be the record title owner following a void default judgment and illegal Sheriff's sale where it purchased the Property via a credit bid.

#### **STATEMENT OF THE CASE**

4. U.S. Bank obtained an order from the Ninth Judicial District Court in and for the County of Douglas, State of Nevada ("district court"), to serve the summons via publication and was directed to publish the summon in Douglas County. However, U.S. Bank, admittedly, did not comply with the order for publication and published the summons in Clark County. U.S. Bank applied for a default judgment and misrepresented to the district court that it had published the summons in Douglas County. The default judgment was entered. Months later, Menzer

saw a Notice of Sheriff's Sale in The Recorder-Courier newspaper circulated in Douglas County. Menzer contacted U.S. Bank regarding the default judgment identified in the legal notice. U.S. Bank misrepresented to Menzer it had served him via publication.

5. When Menzer discovered the falsity of U.S. Bank's representation, he immediately moved for an order to vacate the void default judgment and quash service. The district court denied Menzer motion by erroneously concluding Menzer did not diligently apply for an order setting aside the void judgment. Therefore, Menzer waived his right to challenge the void judgment. The district court's decision, among other things, erroneously misconstrued and applied *Doyle v. Jorgenson*, 82 Nev. 196 (Nev. 1966) and *Deal v. Baines*, 110 Nev. 509 (Nev. 1994).

6. The order denying Menzer's Motion to Set Aside violates Menzer's right to due process under the U.S. and Nevada Constitutions. It is a manifest error of law. A judgment entered without notice or service violates the Due Process Clause. *Peralta v. Heights Medical Center, Inc.*, (1988) 485 U.S. 80; *Mullane v. Central Hanover Bank Trust Co.*, 339 U.S. 306; *Armstrong v. Manzo* 398 U.S. 545; *Simmons v. Southern Railway*, 236 U.S. 115, (1915). Including Nevada's right to Due Process. *Price v. Dunn* (Nev. 1990) 106 Nev. 100, 104; *Epstein v. Epstein* (Nev. 1997) 113 Nev. 1401, 1405.

7. Menzer appealed the order to Supreme Court of Nevada who dismissed the appeal based upon its conclusion it did not have jurisdiction to hear it.

8. Now, Menzer seeks an order to permanently enjoin Defendants from enforcing the void judgment and a declaration Menzer's right to due process had been violated, thus, the judgment and foreclosure sale are void.

### **STATEMENT OF FACTS**

9. On June 8, 2018, U.S. Bank filed a complaint for, among other things, judicial foreclosure of the real property commonly described as 1526 Downs Drive, Minden, Nevada ("Property").

10. U.S. Bank had 120-days i.e., October 5, 20218, to personally serve the summons and complaint on defendants. Nevada Rules of Civil Procedure ("NRCP") Rule 4(e)(i) ("Rule 4(e)(i)").

11. On October 3, 2018, U.S. Bank forwarded copies of, among other documents, the summons and complaint to a process server to be personally served on Menzer.

12. That same day at 6:58 p.m., the process server attempted service of the summons and complaint on Menzer at the Property for the first time with no success. That was two days before the last day to serve the summons and complaint expired. Rule 4(e)(i). She also attempted substituted service at a bad address for Menzer's legal counsel who represented him in a previous action filed in the same court regarding the same subject matter where U.S. Bank was defaulted, and which is currently stayed because of a co-defendant having filed bankruptcy.

13. The next day, October 4 at 3:45 p.m., the process server made her second attempt at service at the Property with no success. On October 5 at 8:52 a.m., the third attempt at service at the Property was made

without success. October 5 was the last day to lawfully serve the summons and complaint. Rule 4(e)(i). October 6 at 2:14 p.m. was the last day U.S. Bank attempted to personally serve Menzer and one day after the 120-day period expired. Rule 4(e)(i).

14. Each time the process server attempted service at the Property she noted “[l]ights on inside the residence. Can see inside residence, fully furnished. No movement. No noise. No activity. No Answer. No changes since previous attempt.”

15. Likewise, U.S. Bank’s first attempt at service on co-defendant, Renown Mortgage Corp (“Renown”), was October 3, 2018. U.S. Bank’s second attempt of service on Renown occurred one month later i.e., November 2. Twenty-eight days after the 120-day period to serve had expired. Rule 4(i).

16. U.S. Bank’s first attempt at service on co-defendant, Mortgage Electronic Registration Systems, Inc. (“MERS”), was October 4, 2018.

17. U.S. Bank’s first attempt at service on co-defendant, Park Tree Investments 18, LLC, was on October 9, 2018, four days after the 120-day period to serve had expired. Rule 4(i).

18. On December 10, 2018, U.S. Bank filed an ex parte application for an order extending time to serve Menzer and directing service by publication. The application was filed Sixty-six days after the 120-day period had expired. Rule 4(i).

19. U.S. Bank’s application did not explain why its motion was untimely, why it waited 66-days after period expired to request an extension of time to serve [NRCF Rule 4(i)], or why it did not begin

attempting service on Menzer until two-days before the period expired. Rule 4(i).

20. On December 13, 2018, the district court entered an order prepared by U.S. Bank extending the time to serve 90-days from entry of the order i.e., March 13, 2019, and directing service by publication in a newspaper of general circulation in Douglas County.

21. The publication order specifically directed publication in the Nevada Legal News. The Nevada Legal News does not print or publish in Douglas County.<sup>1</sup>

22. U.S. Bank has admitted the order for publication contained a mistake it and the court missed.<sup>2</sup>

23. U.S. Bank admitted it did not publish the summons in Douglas County.

24. On February 4, 2019, U.S. Bank filed the affidavit of publication which states that:

the “Nevada Legal News” is “a daily newspaper of general circulation printed and published in Las Vegas, Clark County, Nevada.

25. Thus, confirming the summons was published in Clark County rather than Douglas County.

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<sup>1</sup> Any and all legal notices shall be published only in a newspaper of general circulation and printed in whole or in part in the county in which the notice is required to be published. Nevada Revised Statute (“NRS”) § 238.030.

<sup>2</sup> Any and every legal notice published in a newspaper in violation of any of the provisions of NRS 238.010 to 238.080, inclusive, shall be absolutely void.

26. Service of the summons and complaint was not completed before or after the 90-day extension period granted by the district court.

27. On February 15, 2019, a void default was requested and entered against Menzer by the clerk of the district court. The record of service of the summons by publication confirms the summons had not been published in Douglas County.

28. On March 7, 2019, U.S. Bank filed an application for a default judgment against Menzer personally. U.S. Bank misrepresented to the district court that Menzer had been duly served via publication despite, on February 4, 2019, having knowingly filed the affidavit of publication with the averment that the summons was published in Clark County rather than Douglas County.

29. U.S. Bank omitted from its application for default judgment that Menzer had filed a previous action against U.S. Bank regarding the Property wherein a default had been entered against U.S. Bank.

30. On April 4, 2019, U.S. Bank caused a writ of execution regarding real property to be issued by the district court which identified Menzer as the judgment debtor.

31. On May 30, 2019, Menzer saw the Notice of Sheriff's Sale ("Notice") of his Property published in The Recorder-Courier.<sup>3</sup> The Notice mentioned a 'final judgment entered by the [district court] in the above-captioned case on March 26, 2019'. It was the first time Menzer had become aware of the

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<sup>3</sup> A newspaper of general circulation in the County of Douglas.

underlying action and the default judgment having been entered against him. The next day, Menzer consulted legal counsel regarding his options.

32. After meeting with counsel, on May 31, 2019, Menzer's counsel emailed U.S. Bank's counsel to inquire about the default judgment. He advised counsel that Menzer's obligation to repay the default judgment had been discharged in bankruptcy and provided counsel with a copy of the discharge order. Moreover, the default judgment violated the bankruptcy discharge order. And there appeared to be procedural issues with the service of the summons and complaint.

33. U.S. Bank's counsel responded within the hour and advised that the default judgment was entered against the Property and not Menzer. Counsel provided a copy of the default judgment, proof of service by mail, and notice of entry of default judgment. However, she omitted the affidavit of publication despite having previously filed it with the district court, having it in U.S. Bank's file and having attached it as an exhibit to Defendants' request for default judgment. Unbeknownst to Menzer's counsel was the fact the summon had not been published in Douglas County and counsel's failure to provide him with a copy of the affidavit was intentional.

34. Menzer's counsel relied upon U.S. Bank's counsel's misrepresentation that Menzer had been lawfully served by publication and, therefore, took no action.

35. On July 25, 2019, the Sheriff foreclosed on the Property, Defendants purchased the Property at the Sheriff's sale, and, on August 14, 2020, Defendants



caused the Sheriff's Deed to be recorded in Douglas County with a document number of 2020-950762.

36. On or about September 7, 2020, Menzer found a notice to quit posted on his property. Within the next few days, he contacted legal counsel to see if there was anything he could do to defend against an unlawful detainer action. He was advised that all he could do was to review whether the Sheriff followed proper procedure in noticing and conducting the sale.

37. In the process of conducting the review of the Sheriff's Sale, counsel reviewed the district court's file to review the issued writ of execution, notice of execution, declarations of posting, publishing, recordings, and return of the writ of execution. It was during this review that counsel discovered for the first time that Ms. Hintz's representation to him regarding service of the summons via publication was false. That is, the summons had been published in Clark County rather than Douglas County. Counsel also discovered that her representations regarding the judgment were misleading as well. That is, the application for default judgment requested a judgment against Menzer personally and the writ of execution identified him as having had a judgment entered against him.

38. Thereafter, on October 6, 2020, Menzer promptly filed his motion to quash service and set aside/vacate the default judgment. Given Defendant misrepresentations of the facts to Menzer and Menzer's justifiable reliance on them, U.S. Bank was the cause of the delay. That is, U.S. Bank's misrepresentations kept Menzer away from the district court. Price, *supra*.

**PERMANENT INJUNCTION SOUGHT**  
**(FRCP 65)**

39. Plaintiff re-alleges and restates paragraphs 1-38 above of the Complaint as if fully set forth herein.

40. Defendants are and have been at all times pertinent hereto and will in the future engage in conduct in direct violation of Plaintiff's right to due process.

41. That unless enjoined by this Court, Defendants will continue in their illegal practices as enumerated in this Complaint to the detriment of the Plaintiff.

42. That unless enjoined by this Court, Plaintiff is in imminent threat that the illegal actions of the Defendants will result in the loss of his home, and the eviction from his home and will suffer irreparable harm as a direct result of the wrongful conduct of the Defendants.

43. There is no adequate remedy at law for the damages which will be inflicted upon and suffered by Plaintiff if Defendants are not immediately enjoined from continuing with or commencing any eviction or foreclosure activities in the State of Nevada.

44. Plaintiff will likely prevail on the merits of his claims that Defendants have and are violating his right to due process.

45. Established law requires that injunctive relief must be granted in this matter to stop the violations of Plaintiff's right to due process.

46. Plaintiff requests that this Court grant his request for injunctive relief enjoining Defendants from engaging in, continuing with or commencing any eviction or foreclosure during the pendency of this litigation and grant such other relief that the Court may deem just, necessary, equitable or appropriate.

### **DECLARATORY RELIEF SOUGHT**

#### **(28 U.S.C. 2201)**

47. Plaintiff re-alleges and restates paragraphs 1-38 above of the Complaint as if more fully set forth herein.

48. The following issues are ripe and need a speedy determination by this Court:

A. Defendants, admittedly, violated Menzer's right to due process by not serving him with the summons and complaint because they published in Clark County rather than Douglas County;

B. The judgment is void ab initio and everything flowing from it, including, but not limited to, the writ of execution, foreclosure sale, and Sheriff's Deed;

49. Anyone of the foregoing render engaging in, continuing with or commencing any attempts to enforce the void judgment, including, but not limited to, eviction or foreclosure activities by Defendants is void against Plaintiff leaving the holder of the note with an unsecured note claim against Plaintiff.

50. Plaintiff requests that this Court order a speedy hearing on this matter and at such hearing determine and adjudge that Defendants violated Plaintiff's right to due process by not serving him

with the summons and complaint rendering the judgment, writ of execution, foreclosure sale, and Sheriff's Deed void ab initio.

### **FIRST CAUSE OF ACTION**

(Violation of Due Process)

51. Plaintiff re-alleges and restates paragraphs 1-38 above of the Complaint as if fully set forth herein.

52. Defendants have violated Plaintiff's right to due process as described in paragraphs 1-38.

53. Defendants' judgment entered against Plaintiff is void.

54. Defendants damaged Plaintiff by foreclosing on his Property and recording the Sheriff's Deed.

### **SECOND CAUSE OF ACTION**

(Slander of Title)

55. Plaintiff re-alleges and restates paragraphs 1-38 above of the Complaint as if more fully set forth herein.

56. Plaintiff is owner and occupant of the Property which is his home and the real property upon which it stood.

57. The foreclosure sale on Property is void because the judgment upon which Defendants exercised the power of sale is void.

58. Defendants knew the judgment was void and took affirmative steps to conceal it.

59. Defendants did not foreclose in good faith.

60. Because the judgment is void, Defendants had no authority written or otherwise to foreclose upon the Property.

61. For the reasons set forth above, the foreclosure sale is void ab initio and the claim of ownership by the Defendants via the recorded Sheriff's Deed is slander of title.

62. Defendants' alleged ownership of the Property and attempt to enforce an action of eviction on Plaintiff, the actual owner of the Property, is slander of title.

63. Plaintiff has been damaged and is being damaged.

### **THIRD CAUSE OF ACTION**

#### **(Fraud)**

64. Plaintiff re-alleges and restates paragraphs 1-38 above of the Complaint as if more fully set forth herein.

65. Defendants made statements to Plaintiff that they knew were not true or had reason to know were not true, including, without limitation, the following:

A. Defendants filed the void affidavit of publication with the district court stating that the summons had been published in Clark County.<sup>4</sup> By presenting the

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<sup>4</sup> Pursuant to NRS 238.080 the legal notice published in Clark County was void because it violated NRS 238.030(1) in that the

affidavit to the district court for filing and later advocating it, pursuant to NRCP Rule 11(b), counsel for U.S. Bank certified that the affidavit i.e., other paper, to the best of her knowledge/information formed after a reasonable inquiry under the circumstances [emphasis added] is not being presented for an improper purpose and the factual contentions have evidentiary support.

B. Defendants prepared and submitted the order for publication with its motion to enlarge the time to serve Menzer and knew the summons was supposed to have been published in Douglas County. By filing the affidavit, U.S. Bank certified that the affidavit complied with the order for publication after having made “a reasonable inquiry under the circumstances.” That is, the summons had been published in Douglas County. Defendants’ reasonable inquiry would have been for them to review the affidavit prior to filing it. That would entail the review of the affiant’s single statement which was:

“I am Assistant Operations Manager of the Nevada Legal News, a daily newspaper of general circulation, printed and published in Las Vegas, Clark County, Nevada: that the publication, a copy of which is attached hereto, was published in said newspaper on the following dates: Dec 21, 2018; Dec 28, 2018; Jan 4, 2019; Jan 11, 2019; Jan 18, 2019. That said newspaper was regularly issued and circulated on those dates.”

Defendants’ inquiry would have alerted them to the fact the summons had not been published in Douglas

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order for publication directed the summons to be published in Douglas County.

County. The only reason Defendants would file the affidavit would be for the improper purpose of misrepresenting to the district court and Menzer it had timely complied with the order for publication and to obtain a default and default judgment against Menzer.

C. U.S. Bank submitted to the district court a request for a default to be entered against Menzer. By submitting the request for default, Defendants certified that the factual contention Menzer was in default was supported by evidence and the request was not being submitted for an improper purpose. Of course, as discussed above, Defendants knew the summons had not been published in Douglas County and Menzer was not in default. Yet, Defendants submitted the request for the improper purpose of obtaining Menzer's default.

D. Defendants submitted to the district court an application for a default judgment against Menzer. Defendant's application misrepresented Menzer had been duly served via publication and defaulted. Defendants certifiee its application is not being presented for an improper purpose and is supported by evidence. Quite conspicuously, Defendants omitted the fact that the summons was not published in Douglas County. It is conspicuous because Defendants take the time to assert that the publication occurred in the Nevada Legal News but omits that the publication occurred in Clark County. Defendants even attached the affidavit of publication as an exhibit. This is the third time Defendants made a reasonable inquiry into the fact regarding whether the summons had been published in Douglas County.

E. Defendants prepared and submitted to the district court a writ of execution for issuance to the

Sheriff. Again, Defendants certified the writ was not being presented for an improper purpose and was supported by evidence. However, Defendants knew Menzer had not been duly served, the default was not valid, and the default judgment was void.

F. Defendant's failure to publish the summons in Douglas County and, thereafter, continually misrepresenting to the district court and Menzer that Menzer had been duly served via publication is fraud upon Menzer and the district court. The district court's record is undeniable. Defendants' misrepresentations have intentionally kept Menzer away from the district court and is, therefore, fraud.

G. On May 31, 2019, Menzer contacted Defendants and contended Defendants had violated the bankruptcy court's discharge order by obtaining a default judgment against Menzer for a debt that had been discharged. Defendants promptly replied and stated the default judgment was not against Menzer personally but rather was against the Property. To support their statement, she provided Menzer a copy of the default judgment which confirmed their representation. Based upon Defendants' representations, Menzer reasonably and justifiably concluded the default judgment had not been entered against him personally.

H. Unbeknownst to Menzer at that time was the fact that Defendants omitted relevant information regarding the default judgment. Defendants' application for default judgment specifically requested the judgment be entered against Menzer personally. The writ of execution prepared by Defendants and thereafter issued by the district court specifically identified a judgment having been entered on March 26, 2019 in favor of Defendants and



against Menzer as the judgment debtor for \$733,520.16. Defendants did not provide Menzer with a copy of the judgment identified in the writ of execution. The notice of execution Defendants prepared also admonished Menzer that “[a] court has determined that you owe money to [Plaintiff]” and that Plaintiff is looking to satisfy its judgment from Menzer’s personal property, including, but not limited to, his current and future earnings.

I. Defendants also represented to Menzer that he had been properly served via publication and provided a copy of the proof of service. Given Defendants’ counsel’s ethical obligations under Nevada’s Rules of Professional Conduct, Menzer had no reason to suspect Defendants would intentionally mislead or conceal from him the summons had not been published in Douglas County. Also, given the Notice of Sheriff’s Sale had been properly published in The Recorder-Courier, a newspaper circulated in Douglas County, Menzer justifiably and reasonably assumed the summons had also been published in Douglas County in accordance with the publication order. Unbeknownst to Menzer at that time, the summons had been published in Clark County rather than, as ordered, Douglas County.

J. On or about September 7, 2020, Menzer found a notice to quit posted on his property. Within the next few days he contacted his legal counsel to see if there was anything he could do to defend against the unlawful detainer action Defendants had initiated. Menzer was advised that all he could do was to review whether the Sheriff followed proper procedure in noticing and conducting the sale.

K. In the process of conducting his review of the Sheriff’s Sale, Menzer reviewed the district court’s

file to review the issued writ of execution, notice of execution, declarations of posting, publishing, recordings, and return of the writ of execution. It was during this review that Menzer discovered for the first time that Defendants' representations to him and the district court regarding the service of the summons via publication were false. That is, the summons had been published in Clark County rather than Douglas County. Menzer also discovered that Defendants' representation regarding the judgment were false as well. That is, the application for default judgment requested a judgment against Menzer personally and the writ of execution identified him as having had a judgment entered against him.

66. Defendants intentionally and knowingly and with reckless disregard for Menzer represented or made the statements recited above which were false and/or misleading.

67. Defendants knew that such statements were material to the validity of the judgment and that non-disclosure would tend to mislead and had a duty to Plaintiff to disclose such facts, and to ensure that all its statements and representations were complete, truthful and not false or misleading.

68. Given Defendants' misrepresentations of the facts to Menzer and Menzer's justifiable reliance on them, Menzer was damaged.

69. Defendants' conduct was willful, wanton, malicious, and outrageous and with reckless disregard for the rights of Plaintiff and is entitled to exemplary damages.

70. As a direct and proximate result of Defendants fraudulent statements and/or omissions, Menzer has been damaged.

**WHEREFORE**, Plaintiff prays for judgment as follows:

1. Judgment against Defendants
2. Order voiding the foreclosure sale of the Property and voiding/canceling the Sheriff's Deed;
3. An order enjoining Defendants from enforcing the void judgment;
4. An order enjoining Defendants from foreclosing on the Property;
5. An order enjoining Defendants from evicting Plaintiff from the Property;
6. An order canceling the foreclosure sale and Sheriff's Deed;
7. A declaratory judgment the judgment is void, including, but not limited to, the writ of execution, foreclosure sale, and Sheriff's Deed;
8. Exemplary damages;
9. Interest and costs incurred.
10. For reasonable attorney's fees and costs incurred herein; and
11. For such other relief the Court deems proper.

DATED: This 21<sup>st</sup> day of June 2023.

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

By: s/ TORY M. PANKOPF\_\_\_\_\_

TORY M. PANKOPF, ESQ.

#7477

748 S Meadows Pkwy, Suite 244

Reno, Nevada 89521

*Attorney for Plaintiff*

## APPENDIX G

Affidavit of Publication of Summons in Clark County,  
Nevada filed in the Ninth Judicial District Court for  
Douglas County, Nevada (February 4, 2019) Excerpt  
of Record Volume II - ER 26

AFFP

18-CV-0134

Original

RECEIVED

FILED

**Affidavit of Publication**

FEB 04 2019

2019 FEB -4 PM 12:31

STATE OF NEVADA )  
COUNTY OF CLARK )

SS

Douglas County  
District Court ClerkROBBIE R. WILLIAMS  
DEPUTY

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

Case No. 18-CV-0134 Dept. No. II

U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR RESIDENTIAL  
FUNDING MORTGAGE SECURITIES I, INC., MORTGAGE PASS-THROUGH  
CERTIFICATES, SERIES 2005-SAS, Plaintiff,vs. ROBERT K. MENZER; MORTGAGE ELECTRONIC REGISTRATION  
SYSTEMS, INC.; PARK TREE INVESTMENTS 18, LLC; RENOWN MORTGAGE  
CORP; DOES 1-X; and ROES 1-10 inclusive, Defendants.

SUMMONS - CIVIL

ARBITRATION EXCEPTION CLAIMED: TITLE TO REAL ESTATE

NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU  
WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS.

READ THE INFORMATION BELOW. TO THE DEFENDANTS: A Civil Complaint

has been filed by the Plaintiff against you for the relief set forth in this Complaint.

Object of Action: This is a Complaint for Declaratory Relief: Reestablishment of Lost

Note, Expende Wild Assignment, and Judicial Foreclosure. 1. If you intend to defend

this lawsuit, within 20 days after this Summons is served on you, exclusive of the

day of service, you must do the following: (a) File with the Clerk of this Court, whose

address is shown below, a formal written response to the Complaint in accordance

with the Rules of the Court, with the appropriate filing fee. (b) Serve a copy of your

response upon the attorney whose name and address is shown below. 2. Unless

you respond, your default will be entered upon application of the Plaintiff and failure

to so respond will result in a judgment of default against you for the relief demanded

in the Complaint, which could result in the taking of money or property or other relief

requested by the Complaint. 3. If you intend to seek the advice of an attorney in this

matter, you should do so promptly so that your response may be filed on time. 4.

The State of Nevada, its political subdivisions, agencies, officers, employees, board

members, commission members and legislators each have 45 days after service of

this Summons within which to file an Answer or other responsive pleading to the

Complaint. DATE: this 24 day of May, 2018 CLERK OF COURT. By: UNKNOWN,

Deputy Clerk, Date: 6-8-18, Respectfully Submitted, MCCARTHY &amp; HOLTHUS,

LLP, By: Kristin A. Schuler-Hintz, Esq., SBN 7171, Michael J. Lin, Esq., SBN 13711,

9510 W. Sahara Ave., Suite 200, Las Vegas, NV 89117, Phone: 702.685.0329, Fax:

866.339.5691, Email: DCONV@McCarthyHolthus.com, Attorneys for Plaintiff, U.S.

BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR RESIDENTIAL FUNDING

MORTGAGE SECURITIES I, INC., MORTGAGE PASS-THROUGH

CERTIFICATES, SERIES 2005-SAS

Published in Nevada Legal News

December 21, 28, 2018, January 4, 11, 18, 2019

I, Rosalie Qualls state:

That I am Assistant Operations Manager of the Nevada  
Legal News, a daily newspaper of general circulation,  
printed and published in Las Vegas, Clark County,  
Nevada; that the publication, a copy of which is attached  
hereto, was published in the said newspaper on the  
following dates:

Dec 21, 2018

Dec 28, 2018


Jan 04, 2019

Jan 11, 2019

Jan 18, 2019

That said newspaper was regularly issued and circulated  
on those dates. I declare under penalty of perjury that the  
foregoing is true and correct.

DATED: Jan 18, 2019

  
 Rosalie Qualls

01104447 00457420 (866)339-5691

ACCT. DEPT.  
MCCARTHY HOLTHUS  
9510 W. SAHARA AVE., STE. 200  
LAS VEGAS, NV 89117

ER 026



