

No. _____

In the
Supreme Court of the United States

CHURCH OF THE GARDENS, et al.,

Applicants,

v.

QUALITY LOAN SERVICES CORP. OF WASHINGTON, et al.,

Respondents.

**APPENDICES IN SUPPORT OF APPLICATION FOR AN
ADMINISTRATIVE STAY OR INJUNCTION PENDING NINTH
CIRCUIT APPEAL (No. 26-93)**

Scott E. Stafne, *Counsel of Record*
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Arlington, WA 98223
360.403.8700

APPENDICES

App.	Title / Date Filed	Bates-Stamp Page No.
A	Declaration of Scott Erik Stafne in Support of Application for Administrative Stay or Injunction Pending Ninth Circuit Appeal; filed contemporaneously (Jan. 14, 2026)	001–037
B	Ninth Circuit Order re: jurisdiction; filed Jan. 8, 2026.	038–039
C	Emergency Motion for Stay; filed Jan. 8, 2026.	040–055
D	Rule 27-3 Certificate; filed Jan. 8, 2026.	056–063
E	Declaration of Justin Wood in Support of Rule 27-3 Certificate; filed Jan. 8, 2026.	064–067
F	District Court ECF Email Resetting Noting Date for Stay Motion Intended for Ninth Circuit; filed Jan. 6, 2026.	068
G	Ninth Circuit Case Opened Email; filed Jan. 6, 2026.	069–070
H	Ninth Circuit Docketing Notice and Scheduling Order; filed Jan. 6, 2026.	071–074
I	Notice of Appeal; filed Jan. 2, 2026.	075–083
J	Order Granting in Part and Denying in Part Plaintiffs' Motion for Post Judgment Relief; filed Dec. 8, 2025.	084–090
K	Plaintiffs' Motion for Post Judgement Relief Pursuant to CR 59 and 60; filed Sept. 15, 2025.	091–107
L	Order Granting Deutsche Bank's Motion for Summary Judgment; filed Sept. 2, 2025.	108–141

M	Motion to Reconsider Sua Sponte Order Denying Recast Recusal Motion, On Grounds that Neither this Court Nor its Judge has Power or Subject-Matter Jurisdiction; filed Jul. 10, 2025.	142–153
M1	Order Denying Motion for Recusal; filed Jul. 9, 2025.	154–156
N	Objection to Supplemental Briefing; filed Jul. 4, 2025.	157–177
O	Order Requesting Supplemental Briefing; filed Jun. 25, 2025.	178–180
P	Response to Deutsche Bank’s Motion for Summary Judgment and Cross Motion for Summary Judgment Regarding Subject Matter Jurisdiction and Standing; filed May 21, 2025.	181–212
Q	Declaration of Scott E. Stafne in Support of Response Response to Deutsche Bank’s Motion for Summary Judgment and Cross Motion for Summary Judgment Regarding Subject Matter Jurisdiction and Standing; filed May 21, 2025.	213–268
R	Order Granting MTC Financial Inc.’s Nonmonetary Status; filed May 16, 2025.	269–279
S	Motion for Summary Judgment Against Washington State Trustee MTC Financial Inc.; filed Apr. 17, 2025.	280–306
T	MTC Financial Inc.’s Motion to Determine Validity of its Notice of Nonmonetary Status; filed Jan. 23, 2025.	307–314
U	Order Granting State of Washington’s Motion to Dismiss; filed Mar. 18, 2024.	315–324
V	Reply to State of Washington’s Response to Cross Motion for Summary Judgment; filed Feb. 22, 2024.	325–339

W	Order Granting Motion to Restore Pleading; filed Feb. 15, 2024.	340–342
X	Response to State of Washington’s Motion to Dismiss; filed Jan. 29, 2024.	343–375
Y	Cross Motion for Summary Judgment Against Defendants; filed Jan. 29, 2024.	376–397
Z	Request for Judicial Notice; filed Jan. 29, 2024.	398–408
AA	Declaration of Scott E. Stafne in Support of Response to State of Washington’s Motion to Dismiss and Cross Motion for Summary Judgment; filed Jan. 29, 2024.	409–428
BB	Declaration of Scott E. Stafne in Support of Motion to Restore Court Record; filed Jan. 17, 2024.	429–451
CC	Motion to Restore Court Record; filed Jan. 17, 2024.	452–461
DD	State of Washington’s Motion to Dismiss; filed Jan. 11, 2024.	462–475
EE	Objection to Assignment of Magistrate Judge; filed Jan. 4, 2024.	476–478
FF	Notice of Removal; filed Dec. 28, 2023.	479–484
GG	Complaint; filed Dec. 13, 2023.	485–578

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In the
Supreme Court of the United States

CHURCH OF THE GARDENS, et al.,

Applicants,

v.

QUALITY LOAN SERVICES CORP. OF WASHINGTON, et al.,

Respondents.

**DECLARATION OF SCOTT ERIK STAFNE IN SUPPORT OF
APPLICATION FOR AN ADMINISTRATIVE STAY OR INJUNCTION
PENDING NINTH CIRCUIT APPEAL (No. 26-93)**

Scott E. Stafne, *Counsel of Record*
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239 N. Olympic Avenue
Arlington, WA 98223
360.403.8700

I, Scott Erik Stafne, declare as follows:

1. I am counsel for Applicants Church of the Gardens and Alvin White in the above-captioned matter. I submit this declaration in support of their Application to Justice Kagan for an administrative stay or injunction pending appeal.
2. The facts stated in this declaration are based on my personal knowledge, my review of the court records, and my direct involvement in the proceedings described. I certify that the Appendix contains true and correct copies of the legal presentations made to the District Court of Western Washington and the Court of Appeals for the Ninth Circuit.
3. This case was originally filed in Pierce County Superior Court on December 13, 2023, to restrain a Washington State trustee's non-judicial foreclosure sale of real property owned by Alvin White, pursuant to RCW 61.24.130. I wrote the complaint so as to raise only one judicial inquiry, which was whether "any proper legal or equitable ground" existed to restrain Washington State trustees' sales of title to five of White's real estate parcels without his consent. *See Appendix (App.) GG (State Court complaint).*
4. This state-court action was filed in sufficient time to permit adjudication of a motion to restrain the involuntary sale of title to two of White's properties by a Washington State trustee under the color of a state law established by Washington Deeds of Trust Act, Chapter 61.24 Revised Code of Washington. Indeed, I had worked out the timing of this motion before the state court with counsel for the Washington State trustee threatening those sales.

5. On December 28, 2023, Deutsche Bank—the disputed beneficiary of all of the deeds of trust—removed the case my clients had filed with the Pierce County, Washington Superior Court to the United States District Court for the Western District of Washington. App. FF.
6. Upon removal, the case was assigned to a magistrate judge as per the practices of this District Court. App. CC.
7. On January 4, 2024, Plaintiffs filed a written objection to the assignment of the case to a magistrate judge and requested adjudication by an Article III district judge. App. EE. That objection notified the District Court, as an institution, that if White and the Church were damaged by the District Court’s practice of not assigning district judges to cases like this one, they may bring an “action against this Court and its judicial officers for their oft repeated violations of litigants’ personal rights under the Constitution to have cases and controversies adjudicated by Article III judges.” *Id.*
8. While that objection was pending, Deutsche Bank’s “paid for” Washington State trustee sold two of Mr. White’s properties without any judicial adjudication of the claims raised in Plaintiffs’ complaint that proper legal and equitable grounds to restrain the sale of those properties. Deutsche Bank and its trustee asserted that because the case had been removed to federal court the scheduled motion to restrain the sale was no longer pending in the State Court and its hired Washington State Trustee could sell the title to White’s properties as it was being paid to do by its client, Deutsche Bank.

9. Shortly after Deutsche Bank's hired Trustee sold White's property before the case had been assigned to a district judge I received an email which asserted White's objection to the magistrate's assignment was stricken from the District Court docket by "Chambers". App. CC, BB, W. Specifically, I explain my personal knowledge about the facts in regard to "Chambers" ordering my clients' objections removed from the court record in App BB, at pages 429-451. Further Plaintiffs Church and White set forth the legal arguments as to why this conduct by Chambers was inappropriate. See App. CC at pages 431-452.
10. I have been practicing law before the District Court for the Western District of Washington since 1976 and I have never before received an order from "Chambers". Indeed, it is my experience that the term "Chambers" generally means a judge's office, not the judge. The closest historical reference I can think of applicable to the context of this Order would be, as I explained to the District Court, England's infamous Star Chamber. See App. CC at 458, note 1.
11. The motion to restore the record was granted only after an Article III district judge was assigned to the case. App. W
12. Throughout the district court proceedings, Plaintiffs repeatedly raised challenges to Deutsche Bank's standing to remove and to enforce the promissory notes as their "holder" under Washington State law. Plaintiffs were required to make these same arguments over and over again because the District Court simply would not adjudicate any of their many challenges to that District Court's subject matter jurisdiction. With respect it is Applicant's position that there is a presumption

against federal courts' jurisdiction over cases and that the District Court's failure to address this judicial inquiry at the outset has greatly injured both White and the Church as is evidenced by the fact that almost three years later there still has not been any adjudication of the jurisdictional issues explicitly presented to the District Court, including

- A) Legal presentations regarding the District Court's jurisdiction and Deutsche Bank's standing presented in January, 2024 with regard to cross motions between the defendant State of Washington and Applicants, including without limitation: Apps. U, V, X, Y, Z, AA, and BB;
- B) Legal presentations regarding the District Court's jurisdiction and Deutsche Bank's standing presented in May, 2025 with regards to cross motions between disputed beneficiary Deutsche Bank and Applicants, including without limitation: Apps. O, P, and Q.
- C) Legal presentations regarding Applicants' contentions that District Court is not an independent court with regards to this case and that the District Court and reasonable persons appraised of the circumstances would likely believe that the District Court as an institution of government is biased against Applicants because, among other things, Applicants claimed they would seek relief against the District Court and its judicial officers if White's houses were taken from him at a time when that District Court did not have subject matter jurisdiction over this case because it was assigned to a magistrate judge, including without limitation: Apps. M, M1, S, and EE.

- D) Legal Presentations regarding the requirements of judicial neutrality with regards to the taking of private real estate interests by way of state action, including without limitation: App. N, R, S, T.
12. Plaintiffs' challenges to the District Court's subject matter jurisdiction because Deutsche Bank has failed to allege or prove its standing under state law to enforce the promissory note were never adjudicated by the District Court because that Court ruled they were moot, apparently because it held White's co-plaintiff, did not have standing to participate in that case notwithstanding that Church of the Gardens never attempted to invoke the limited subject matter jurisdiction of the District Court.
13. On September 2, 2025, the district court granted summary judgment in favor of Deutsche Bank.
14. Thereafter, on September 15, 2025, Plaintiffs filed a motion for post-judgment relief pursuant to Rules 59 and 60.
15. While the motion for post-judgment relief in this case was pending before the District Court, an attorney from the McCarthy & Holthus law firm, claiming to represent Deutsche Bank, sent written notices to property owner Alvin White and to tenants occupying two of the properties sold, demanding that possession be surrendered by January 26, 2026, and threatening eviction proceedings if they did not comply. I have attached as **Exhibit 1** to this declaration communications among counsel demonstrating that, absent a stay, entities claiming entitlement to possession of White's properties intend to proceed under orders issued by a

federal District Court that declined to adjudicate challenges to its own subject-matter jurisdiction, thereby threatening irreparable loss of property before appellate review can occur.

16. The McCarthy & Holthus attorney, Warren Lance, issuing these eviction demands to White was not the same attorney who appeared on behalf of Deutsche Bank in the removed federal action. That attorney, Midori Sagara, was part of a totally different law firm which appeared on behalf of Deutsche Bank in this action.
17. I am aware, based upon my professional experience in other foreclosure and eviction matters, that McCarthy & Holthus and/or its principals own or control the Washington State trustee that sold White's property by selling those properties during the period of time that the District Court had no subject matter jurisdiction over this case.
18. Based on my professional experience and record evidence in comparable cases, I believe that the real party in interest in this case is not Deutsche Bank at all but Select Portfolio Servicing, which uses Deutsche Bank's name based on a servicing arrangement.
19. Accordingly, while judicial proceedings concerning jurisdiction, standing, and constitutional authority were still pending, attorneys affiliated with the trustee that conducted the challenged sales—and distinct from counsel of record in the federal case—initiated possession demands on Deutsche Bank's behalf, thereby accelerating enforcement actions before any court had entered a final, constitutionally valid adjudication of authority or title.

20. These actions placed immediate and irreparable pressure upon White and his tenants to surrender possession before appellate review could occur, and while the jurisdictional validity of the foreclosure proceedings themselves remained unresolved.
21. The District Court issued an order adjudicating Plaintiffs' motion for post judgment relief on December 8, 2025. In ruling on that motion, the district court concluded that it lacked subject-matter jurisdiction over Church of the Gardens *as a party* and remanded the Church's claims to state court, while retaining and exercising jurisdiction over the remainder of the same removed case.
22. Notwithstanding that ruling, the District Court did not promptly transmit the remand order to the State court until December 23, 2025.
23. Plaintiffs filed their Notice of Appeal with the District Court on January 2, 2026. As the Court can observe, that Notice does not conform to the standard appellate forms of either the District Court or the Court of Appeals. Plaintiffs did so intentionally.
24. Plaintiffs' appeal is not directed primarily to the merits of the judgment, but to the institutional authority of the District Court to exercise Article III jurisdiction in this case at all. Plaintiffs therefore structured their Notice of Appeal to preserve their right to seek further relief concerning the District Court's exercise of judicial power beyond the limits imposed by the Constitution.
25. Plaintiffs further submit that this preservation is necessary because the District Court's assumption and exercise of jurisdiction caused concrete harm to White

through actions taken without constitutional authority, and Plaintiffs intend to maintain their ability to seek appropriate relief against the District Court and any judicial officers who acted outside those constitutional limits.

26. On January 5, 2026, the disability advocate for White who acts as a paralegal for me in this case, contacted the Court of Appeals to obtain a case number for purposes of filing a motion for a stay. He was informed by an unidentified clerk that a case number could not yet be provided because the appeal had not been docketed and that therefore no motion for stay could be filed.

27. Based on my understanding of controlling precedent, including both *Coinbase, Inc. v. Bielski*, 599 U.S. 736, 143 S. Ct. 1915, 1919–20 (2023) and *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982) (per curiam) I believed the clerk’s statement that the District Court still had jurisdiction over this case is inconsistent with governing law. This is because my clients not only filed the notice of appeal, they also paid the required fee on January 2, 2026.

28. Because of the imminent and irreversible loss of property posed by Deutsche Bank’s threat to evict tenants from White’s property on January 26, 2026, Plaintiffs filed their motion for a stay addressed to the Court of Appeals through the district court on January 5, 2026 so that it could be transmitted immediately once docketing occurred.

29. The United States Court of Appeals for the Ninth Circuit thereafter docketed the appeal as Case No. 26-93 and issued a scheduling order on January 6, 2026. I interpreted the language in that document as requiring my clients to file a separate

motion for an emergency stay if we wanted one.

30. Because Plaintiffs believe that the District Court for Western Washington is not an independent court being operated by independent and neutral district judges, my clients prefer this case to be specially assigned judges who do not have an interest in its outcome. If this is not possible, they request that judges who have an interest in its outcome acknowledge this fact like this Court did in *United States v. Will*, 449 U.S. 400 (1980).

31. A few hours later the Clerk of the Court of Appeals issued an order stating that appellate review of the district court's remand ruling was likely barred under 28 U.S.C. § 1447(d).

32. Continued proceedings without a stay threaten to permanently deprive Applicants of real property and to render appellate review of the issues involved in this case ineffective.

33. No monetary remedy can restore possession of real property once it has been lost.

34. This declaration is submitted solely to preserve the status quo and to ensure that appellate and Supreme Court review remains meaningful. Absent immediate interim relief, appellate and Supreme Court review will be reduced to advisory commentary on a completed constitutional injury.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 14th day of January, 2026, at Arlington, Washington.

By: s/ Scott E. Stafne WSBA No. 6964
Scott. E. Stafne, declarant.

EXHIBIT 1

McCarthy ♦ Holthus
A Limited Liability Partnership
A Multijurisdictional Law Firm
108 1st Avenue South, Ste. 400
Seattle, WA 98104
 Telephone (206) 596-4856
 Facsimile (206) 274-4902
www.McCarthyHolthus.com
 Email to all personnel:
 First initial and last name@mccarthyholthus.com

NOTICE TO VACATE

BY FIRST CLASS U.S. MAIL AND CERTIFIED MAIL

TO: Alvin B White, and All Other Occupants and Persons in Possession
 RE: Our File No. WA-25-1027048-UD

NOTICE: The property located at 2460 62ND AVENUE EAST #A FIFE, WA 98424 (the "Property") was purchased at a trustee's sale by Deutsche Bank National Trust Company, as Trustee, in trust for registered Holders of Long Beach Mortgage Loan Trust 2006-4, Asset-Backed Certificates, Series 2006-4 on 1/5/2024. The purchaser seeks to recover possession of the Property in good faith to market and sell the Property.

Notice to Vacate to Previous Owners, Occupants Who Are Not Tenants or Subtenants, and Tenants living with the Previous Owner

If you are the previous owner, an occupant who is not a tenant or subtenant of the Property, or a tenant residing in the Property with the previous owner, pursuant to RCW 61.24.060 and RCW 61.24.146(3), the purchaser at the trustee's sale is entitled to possession of the Property by **1/25/2024**, which is the twentieth day following the sale. The Notice of Trustee's Sale contains a provision informing you of this requirement. Failure to vacate the Property by the foregoing date will result in the commencement of unlawful detainer proceedings against you.

Washington Notice to Tenants and Subtenants

If you are a bona fide tenant or bona fide subtenant in possession of the Property, the purchaser at the trustee's sale has elected to give you a written notice to vacate the Property pursuant to RCW 61.24.146. You are required to quit and deliver up possession of the Property to the undersigned or to Deutsche Bank National Trust Company, as Trustee, in trust for registered Holders of Long Beach Mortgage Loan Trust 2006-4, Asset-Backed Certificates, Series 2006-4 within ninety (90) after service upon you of this Notice or the undersigned will institute legal proceedings against you to recover possession of the Property and for rents or damages as provided by law. Please see the following pages for additional information regarding your rights as a bona fide tenant or bona fide subtenant.

Please notify this office immediately if you are active military duty or have been discharged from active military duty within the last 12 months. Please note that this firm is prohibited from giving you legal advice and cannot direct you on how to proceed.

DATED: October 21, 2025

McCarthy Holthus LLP

Warren Lance, WSBA No. 51586

Arizona Office
 4602 E. Via De Ventura Blvd.,
 Suite 140
 Scottsdale, AZ 85258
 (480) 302-4250
 Facsimile (480) 702-4101

Arkansas Office
 One Union Plaza
 124 West Capitol, Ste. 805
 Little Rock, AR 72201
 (214) 291-1800
 Facsimile (214) 291-1801

California Office
 2763 Camino Del Rio S.,
 Suite 100
 San Diego, CA 92108
 (619) 685-4800
 Facsimile (619) 685-4811

Colorado Office
 7700 E. Arapahoe Road,
 Suite 230
 Centennial, CO 80112
 (877) 369-6122
 Facsimile (866) 894-7369

Idaho Office
 702 W. Idaho St.,
 Suite 1100
 Boise, ID 83702
 (208) 947-7264
 Facsimile (208) 947-5910

Nevada Office
 9510 West Sahara Avenue,
 Suite 200
 Las Vegas, NV 89117
 (702) 685-0329
 Facsimile (866) 339-5691

New Mexico Office
 6501 Eagle Rock NE,
 Suite A-1
 Albuquerque, NM 87113
 (505) 219-4900
 Facsimile (505) 750-9803

Oregon Office
 920 SW 3rd Avenue,
 1st Floor
 Portland, OR 97204
 (971) 201-3200
 Facsimile (971) 201-3202

Texas Office
 1255 West 15th Street,
 Suite 1060
 Plano, TX 75075
 (214) 291-3800
 Facsimile (214) 291-3801

Important Notice to Tenants

If you are a tenant of the prior owner with a bona fide lease or tenancy,
you may be allowed to continue renting the property.

Please contact us immediately to let us know if you are a tenant living at the Property and provide us with proof of the same, such as a copy of your lease. If you do not have a written lease, please provide us with a summary of the terms of your oral lease. In addition, please provide us with rent receipts or proof of rent payment, utilities bills, or other documentation evidencing the fact that you are a tenant living at the Property.

If we do not hear from you, you will not lose any legal rights, but we may take legal action to attempt to remove you from the Property.

This notice describes some of your legal rights.

IN MOST CASES, UNDER THE PROTECTING TENANTS AT FORECLOSURE ACT OF 2009¹, YOU HAVE THE RIGHT TO CONTINUE AS A TENANT AT THE PROPERTY FOR THE REMAINDER OF YOUR LEASE OR AT LEAST NINETY (90) DAYS FROM THE DATE YOU ARE GIVEN NOTICE TO VACATE, WHICHEVER IS LONGER. IN EITHER CASE, THE NEW OWNER CAN ONLY TERMINATE YOUR TENANCY AND EVICT YOU FROM THE PROPERTY IF THE NEW OWNER HAS GIVEN YOU AT LEAST NINETY (90) DAYS NOTICE TO VACATE.

If, at any time, you violate your lease, the new owner may evict you for that lease violation and you may not be protected by the Protecting Tenants at Foreclosure Act.

You are protected by the Protecting Tenants at Foreclosure Act if:

- The new owner became the owner on or after June 23, 2018; and
- You were a tenant before complete title to the Property was transferred to the new owner; and
- You are NOT the former owner, or the child, parent, or spouse of the former owner; and
- Your rent is equal to or is not substantially less than fair market rent, or you pay less rent because you have rental assistance due to federal, state, or local subsidy, such as Section 8.

If the new owner sells the Property to a person who wants to move into the Property as his or her primary residence, the Protecting Tenants at Foreclosure Act allows that buyer to lawfully end your lease and tell you to vacate the Property as long as that buyer gives you at least ninety (90) days advance notice before the date you are being asked to leave.

If you have a Section 8 voucher, you have additional rights and should provide a copy of this notice to your Section 8 worker.

¹ The Protecting Tenants at Foreclosure Act, P.L. 111-22, §§ 701-704 (May 20, 2009), as amended and clarified by the Dodd-Frank Wall Street Reform and Consumer Protection Act, P.L. 111-203, § 1484 (July 21, 2010) and the Economic Growth, Regulatory Relief, and Consumer Protection Act, P.L. 115-174 § 304 (May 24, 2018).

If you would like information regarding the options available, please contact this office immediately:

McCarthy & Holthus, LLP
108 1st Avenue South, Ste. 400
Seattle, WA 98104

It will be necessary for you to provide us with a copy of your lease with the prior owner. Please fax the lease to (619) 785-3253 or email the lease to evictions@mccarthyholthus.com before contacting our office.

CHANGE IN OWNERSHIP OCCUPANT QUESTIONNAIRE - FORECLOSURE

Dear Occupant: Deutsche Bank National Trust Company, as Trustee, in trust for registered Holders of Long Beach Mortgage Loan Trust 2006-4, Asset-Backed Certificates, Series 2006-4 acquired ownership of the below property via a foreclosure sale held on 1/5/2024, and is now the owner of the property.

Please fill out this form as completely as you can and return it within 3 business days, along with a copy of your lease and evidence of rent payments, via fax to (619) 785-3253 or via mail to McCarthy Holthus, LLP, 108 1st Avenue South, Ste. 400, Seattle, WA 98104.

A. Property Address: 2460 62ND AVENUE EAST #A, FIFE, WA 98424 [WA-25-1027048-UD]

B. Names of all occupants _____ Move-in date _____ Home Phone No. _____
 _____ () _____
 _____ () _____

Did you have a lease with the prior owner (please circle): _____ Yes/No

Do you receive a rent subsidy (such as section 8) (please circle): _____ Yes/No

If you receive a subsidy, please list the name and address of the agency or housing authority handling your case/subsidy program: _____

Monthly Rent Payments \$ _____

Date Rent is Due: _____

Date of last Rent Payment Made: _____

Rent Currently Paid Through: _____

List of Utilities you are responsible for paying: _____

List of Utilities your (former) landlord was responsible for paying: _____

Date lease expired or was converted to month-to-month: _____

Are you interested in purchasing the property (please circle): _____ Yes/No

If you are interested in purchasing, please provide a pre-qualification letter to our agent

List any appliances, window coverings, light fixtures, etc. which YOU own: _____

Are there any current problems with your unit (please circle): _____ Yes/No

If so, please explain in detail: _____

Signature of occupant(s): _____

_____ Dated: _____

Please notify this office immediately if you are active military duty or have been discharged from active military duty within the last 12 months.

**IF YOU ARE IN THE ARMED FORCES, PLEASE READ THIS
IMPORTANT MESSAGE ABOUT POSSIBLE RIGHTS UNDER
THE SERVICEMEMBERS CIVIL RELIEF ACT**

IMPORTANT NOTICE TO SERVICEMEMBERS AND THEIR DEPENDENTS:

PROTECTIONS UNDER THE SERVICEMEMBERS CIVIL RELIEF ACT

Notice pursuant to RCW 38.42.050:

“NOTICE: State and federal law provide protections to defendants who are in the military service, and to their dependents. Dependents of a service member are the service member’s spouse, the service member’s minor child, or an individual for whom the service member provided more than one-half of the individual’s support for one hundred eighty days immediately preceding an application for relief.

One protection provided is the protection against the entry of a default judgment in certain circumstances. This notice pertains only to a defendant who is a dependent of a member of the national-guard or a military reserve component under a call to active service, or a national-guard member under a call to service authorized by the governor of the state of Washington, for a period of more than thirty consecutive days. Other defendants in military service also have protections against default judgments not covered by this notice. If you are the dependent of a member of the national guard or a military reserve component under a call to active service, or a national guard member under a call to service authorized by the governor of the state of Washington, for a period of more than thirty consecutive days, you should notify the plaintiff or the plaintiff’s attorneys in writing of your status as such within twenty days of the receipt of this notice. If you fail to do so, then a court or an administrative tribunal may presume that you are not a dependent of an active duty member of the national guard or reserves, or a national guard member under a call to service authorized by the governor of the state of Washington, and proceed with the entry of an order of default and/or a default judgment without further proof of your status. Your response to the plaintiff or plaintiff’s attorneys about your status does not constitute an appearance for jurisdictional purposes in any pending litigation nor a waiver of your rights.”

Military servicemembers on “active duty” or “active service”, or a dependent of such a servicemember may be entitled to certain legal protections, including eviction protection, pursuant to the Servicemembers Civil Relief Act (50 U.S.C. App. §§ 501-596), as amended, (the “SCRA”) and, possibly, certain related state statutes.

Who may be entitled to Legal Protections under the SCRA:

- Active duty members of the Army, Navy, Air Force, Marine Corps, Coast Guard, and active service National Guard;
- Active service members of the commissioned corps of the National Oceanic and Atmospheric Administration;
- Active service members of the commissioned corps of the Public Health Service;
- United States citizens serving with the armed forces of a nation with which the United States is allied in the prosecution of a war or military action;
- Active member of the United States armed forces, a member of a military reserve component, or a member of the national guard who is either stationed in or a resident of Washington state, notwithstanding the above Notice pursuant to RCW 38.42.050; and
- Their spouses and dependents.

What legal protections are servicemembers entitled to under the SCRA?

- The SCRA states that a debt incurred prior to entering military service by a servicemember or servicemember and spouse jointly shall not bear interest at a rate above 6 percent during the period of military service and for one year thereafter.
- The SCRA states that in a legal action to enforce a mortgage debt filed during or within 12 months after the servicemember's military service, a court may take certain actions to protect the consumer.
- The SCRA states that eviction of servicemembers generally must be under a court order, and a court may take certain actions to protect the consumer.
- The SCRA contains many other protections besides those applicable to home loans.

WHAT YOU NEED TO DO**How do I request relief under the SCRA?**

- Please contact us immediately at the following number to inform us of you or your spouse's military status. Call us at: (619) 243-3960.
- To assist in determining whether this loan is eligible for Servicemember benefits, please provide us with a copy of any military orders and/or DD-214 form(s)

issued to you, any co-borrower, or occupant of the property and the Social Security numbers of any non-borrower occupants of the property.

- Some of the benefits provided by the SCRA require that the servicemember provide the lender with a copy of the servicemember's military orders. A servicemember or spouse, or both, may request relief under the SCRA by providing a written request with a copy of the servicemember's military orders:

McCarthy & Holthus, LLP
Evictions Department
2763 Camino Del Rio S, Suite 100
San Diego, CA 92108

How can I get more information about the SCRA?

- Servicemembers and dependents with questions about the SCRA should contact their unit's Judge Advocate, or their installation's Legal Assistance Officer. A military legal assistance office locator for all branches of the Armed Forces is available at the following website:
<http://legalassistance.law.af.mil/content/locator.php>
- "Military OneSource" is the U.S. Department of Defense's information resource. If you are listed as entitled to legal protections under the SCRA, please go to <http://www.militaryonesource.com/scra> or call 1-800-342-9647 (toll free from the United States) to find out more information. Dialing instructions for areas outside the United States are provided on the website.
- If you are such a servicemember, or a dependent of such a servicemember, you should contact McCarthy & Holthus, LLP at (619) 243-3960 to discuss your status under the SCRA.

McCarthy ♦ Holthus
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 Email to all personnel:
 First initial and last name@mccarthyholthus.com

NOTICE TO VACATE

BY FIRST CLASS U.S. MAIL AND CERTIFIED MAIL

TO: Alvin B White, and All Other Occupants and Persons in Possession
 RE: Our File No. WA-25-1027324-UD

NOTICE: The property located at 2410 62ND AVENUE EAST #B FIFE, WA 98424 (the "Property") was purchased at a trustee's sale by DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE, IN TRUST FOR REGISTERED HOLDERS OF LONG BEACH MORTGAGE LOAN TRUST 2006-5, ASSET-BACKED CERTIFICATES, SERIES 2006-5 on 1/5/2024. The purchaser seeks to recover possession of the Property in good faith to market and sell the Property.

Notice to Vacate to Previous Owners, Occupants Who Are Not Tenants or Subtenants, and Tenants living with the Previous Owner

If you are the previous owner, an occupant who is not a tenant or subtenant of the Property, or a tenant residing in the Property with the previous owner, pursuant to RCW 61.24.060 and RCW 61.24.146(3), the purchaser at the trustee's sale is entitled to possession of the Property by **1/25/2024**, which is the twentieth day following the sale. The Notice of Trustee's Sale contains a provision informing you of this requirement. Failure to vacate the Property by the foregoing date will result in the commencement of unlawful detainer proceedings against you.

Washington Notice to Tenants and Subtenants

If you are a bona fide tenant or bona fide subtenant in possession of the Property, the purchaser at the trustee's sale has elected to give you a written notice to vacate the Property pursuant to RCW 61.24.146. You are required to quit and deliver up possession of the Property to the undersigned or to DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE, IN TRUST FOR REGISTERED HOLDERS OF LONG BEACH MORTGAGE LOAN TRUST 2006-5, ASSET-BACKED CERTIFICATES, SERIES 2006-5 within ninety (90) after service upon you of this Notice or the undersigned will institute legal proceedings against you to recover possession of the Property and for rents or damages as provided by law. Please see the following pages for additional information regarding your rights as a bona fide tenant or bona fide subtenant.

Please notify this office immediately if you are active military duty or have been discharged from active military duty within the last 12 months. Please note that this firm is prohibited from giving you legal advice and cannot direct you on how to proceed.

DATED:

McCarthy Holthus LLP

Warren Lance, WSBA # 51586

Arizona Office
 8502 E. Via De Ventura Blvd.,
 Suite 140
 Scottsdale, AZ 85258
 (480) 302-4250
 Facsimile (480) 302-4101

Arkansas Office
 One Union Plaza
 124 West Capitol, Ste. 865
 Little Rock, AR 72201
 (214) 291-3800
 Facsimile (214) 291-3801

California Office
 2763 Camino Del Rio S.,
 Suite 100
 San Diego, CA 92108
 (619) 685-4800
 Facsimile (619) 685-4811

Colorado Office
 7700 E. Arapahoe Road,
 Suite 230
 Centennial, CO 80112
 (877) 369-6172
 Facsimile (877) 369-6172

Idaho Office
 702 W. Idaho St.,
 Suite 1100
 Boise, ID 83725
 (208) 333-1100
 Facsimile (208) 333-1101

Mexico Office
 Eagle Rock NE,
 Suite A-3
 Albuquerque, NM 87113
 (505) 219-4900
 (505) 219-4900
 (505) 750-9803

Oregon Office
 920 SW 3rd Avenue,
 1st Floor
 Portland, OR 97204
 (971) 201-3200
 Facsimile (971) 201-3202

Texas Office
 1255 West 15th Street,
 Suite 1060
 Plano, TX 75075
 (214) 291-3800
 Facsimile (214) 291-3801

Important Notice to Tenants

If you are a tenant of the prior owner with a bona fide lease or tenancy,
you may be allowed to continue renting the property.

Please contact us immediately to let us know if you are a tenant living at the Property and provide us with proof of the same, such as a copy of your lease. If you do not have a written lease, please provide us with a summary of the terms of your oral lease. In addition, please provide us with rent receipts or proof of rent payment, utilities bills, or other documentation evidencing the fact that you are a tenant living at the Property.

If we do not hear from you, you will not lose any legal rights, but we may take legal action to attempt to remove you from the Property.

This notice describes some of your legal rights.

IN MOST CASES, UNDER THE PROTECTING TENANTS AT FORECLOSURE ACT OF 2009¹, YOU HAVE THE RIGHT TO CONTINUE AS A TENANT AT THE PROPERTY FOR THE REMAINDER OF YOUR LEASE OR AT LEAST NINETY (90) DAYS FROM THE DATE YOU ARE GIVEN NOTICE TO VACATE, WHICHEVER IS LONGER. IN EITHER CASE, THE NEW OWNER CAN ONLY TERMINATE YOUR TENANCY AND EVICT YOU FROM THE PROPERTY IF THE NEW OWNER HAS GIVEN YOU AT LEAST NINETY (90) DAYS NOTICE TO VACATE.

If, at any time, you violate your lease, the new owner may evict you for that lease violation and you may not be protected by the Protecting Tenants at Foreclosure Act.

You are protected by the Protecting Tenants at Foreclosure Act if:

- The new owner became the owner on or after June 23, 2018; and
- You were a tenant before complete title to the Property was transferred to the new owner; and
- You are NOT the former owner, or the child, parent, or spouse of the former owner; and
- Your rent is equal to or is not substantially less than fair market rent, or you pay less rent because you have rental assistance due to federal, state, or local subsidy, such as Section 8.

If the new owner sells the Property to a person who wants to move into the Property as his or her primary residence, the Protecting Tenants at Foreclosure Act allows that buyer to lawfully end your lease and tell you to vacate the Property as long as that buyer gives you at least ninety (90) days advance notice before the date you are being asked to leave.

If you have a Section 8 voucher, you have additional rights and should provide a copy of this notice to your Section 8 worker.

¹ The Protecting Tenants at Foreclosure Act, P.L. 111-22, §§ 701-704 (May 20, 2009), as amended and clarified by the Dodd-Frank Wall Street Reform and Consumer Protection Act, P.L. 111-203, § 1484 (July 21, 2010) and the Economic Growth, Regulatory Relief, and Consumer Protection Act, P.L. 115-174 § 304 (May 24, 2018).

If you would like information regarding the options available, please contact this office immediately:

McCarthy & Holthus, LLP
108 1st Avenue South, Ste. 400
Seattle, WA 98104

It will be necessary for you to provide us with a copy of your lease with the prior owner. Please fax the lease to (619) 785-3253 or email the lease to evictions@mccarthyholthus.com before contacting our office.

CHANGE IN OWNERSHIP OCCUPANT QUESTIONNAIRE - FORECLOSURE

Dear Occupant: DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE, IN TRUST FOR REGISTERED HOLDERS OF LONG BEACH MORTGAGE LOAN TRUST 2006-5, ASSET-BACKED CERTIFICATES, SERIES 2006-5 acquired ownership of the below property via a foreclosure sale held on 1/5/2024, and is now the owner of the property.

Please fill out this form as completely as you can and return it within 3 business days, along with a copy of your lease and evidence of rent payments, via fax to (619) 785-3253 or via mail to McCarthy Holthus, LLP, 108 1st Avenue South, Ste. 400, Seattle, WA 98104.

A. Property Address: 2410 62ND AVENUE EAST #B, FIFE, WA 98424 [WA-25-1027324-UD]

B. Names of all occupants _____ Move-in date _____ Home Phone No. _____
 _____ () _____
 _____ () _____

Did you have a lease with the prior owner (please circle): _____ Yes/No

Do you receive a rent subsidy (such as section 8) (please circle): _____ Yes/No

If you receive a subsidy, please list the name and address of the agency or housing authority handling your case/subsidy program: _____

Monthly Rent Payments \$ _____

Date Rent is Due: _____

Date of last Rent Payment Made: _____

Rent Currently Paid Through: _____

List of Utilities you are responsible for paying: _____

List of Utilities your (former) landlord was responsible for paying: _____

Date lease expired or was converted to month-to-month: _____

Are you interested in purchasing the property (please circle): _____ Yes/No

If you are interested in purchasing, please provide a pre-qualification letter to our agent

List any appliances, window coverings, light fixtures, etc. which YOU own: _____

Are there any current problems with your unit (please circle): _____ Yes/No

If so, please explain in detail: _____

Signature of occupant(s): _____

Dated: _____

Please notify this office immediately if you are active military duty or have been discharged from active military duty within the last 12 months.

**IF YOU ARE IN THE ARMED FORCES, PLEASE READ THIS
IMPORTANT MESSAGE ABOUT POSSIBLE RIGHTS UNDER
THE SERVICEMEMBERS CIVIL RELIEF ACT**

**IMPORTANT NOTICE TO SERVICEMEMBERS AND THEIR DEPENDENTS:
PROTECTIONS UNDER THE SERVICEMEMBERS CIVIL RELIEF ACT**

Notice pursuant to RCW 38.42.050:

"NOTICE: State and federal law provide protections to defendants who are in the military service, and to their dependents. Dependents of a service member are the service member's spouse, the service member's minor child, or an individual for whom the service member provided more than one-half of the individual's support for one hundred eighty days immediately preceding an application for relief.

One protection provided is the protection against the entry of a default judgment in certain circumstances. This notice pertains only to a defendant who is a dependent of a member of the national-guard or a military reserve component under a call to active service, or a national-guard member under a call to service authorized by the governor of the state of Washington, for a period of more than thirty consecutive days. Other defendants in military service also have protections against default judgments not covered by this notice. If you are the dependent of a member of the national guard or a military reserve component under a call to active service, or a national guard member under a call to service authorized by the governor of the state of Washington, for a period of more than thirty consecutive days, you should notify the plaintiff or the plaintiff's attorneys in writing of your status as such within twenty days of the receipt of this notice. If you fail to do so, then a court or an administrative tribunal may presume that you are not a dependent of an active duty member of the national guard or reserves, or a national guard member under a call to service authorized by the governor of the state of Washington, and proceed with the entry of an order of default and/or a default judgment without further proof of your status. Your response to the plaintiff or plaintiff's attorneys about your status does not constitute an appearance for jurisdictional purposes in any pending litigation nor a waiver of your rights."

Military servicemembers on "active duty" or "active service", or a dependent of such a servicemember may be entitled to certain legal protections, including eviction protection, pursuant to the Servicemembers Civil Relief Act (50 U.S.C. App. §§ 501-596), as amended, (the "SCRA") and, possibly, certain related state statutes.

Who may be entitled to Legal Protections under the SCRA:

- Active duty members of the Army, Navy, Air Force, Marine Corps, Coast Guard, and active service National Guard;
- Active service members of the commissioned corps of the National Oceanic and Atmospheric Administration;
- Active service members of the commissioned corps of the Public Health Service;
- United States citizens serving with the armed forces of a nation with which the United States is allied in the prosecution of a war or military action;
- Active member of the United States armed forces, a member of a military reserve component, or a member of the national guard who is either stationed in or a resident of Washington state, notwithstanding the above Notice pursuant to RCW 38.42.050; and
- Their spouses and dependents.

What legal protections are servicemembers entitled to under the SCRA?

- The SCRA states that a debt incurred prior to entering military service by a servicemember or servicemember and spouse jointly shall not bear interest at a rate above 6 percent during the period of military service and for one year thereafter.
- The SCRA states that in a legal action to enforce a mortgage debt filed during or within 12 months after the servicemember's military service, a court may take certain actions to protect the consumer.
- The SCRA states that eviction of servicemembers generally must be under a court order, and a court may take certain actions to protect the consumer.
- The SCRA contains many other protections besides those applicable to home loans.

WHAT YOU NEED TO DO**How do I request relief under the SCRA?**

- Please contact us immediately at the following number to inform us of you or your spouse's military status. Call us at: (619) 243-3960.
- To assist in determining whether this loan is eligible for Servicemember benefits, please provide us with a copy of any military orders and/or DD-214 form(s)

issued to you, any co-borrower, or occupant of the property and the Social Security numbers of any non-borrower occupants of the property.

- Some of the benefits provided by the SCRA require that the servicemember provide the lender with a copy of the servicemember's military orders. A servicemember or spouse, or both, may request relief under the SCRA by providing a written request with a copy of the servicemember's military orders:

McCarthy & Holthus, LLP
Evictions Department
2763 Camino Del Rio S, Suite 100
San Diego, CA 92108

How can I get more information about the SCRA?

- Servicemembers and dependents with questions about the SCRA should contact their unit's Judge Advocate, or their installation's Legal Assistance Officer. A military legal assistance office locator for all branches of the Armed Forces is available at the following website:
<http://legalassistance.law.af.mil/content/locator.php>
- "Military OneSource" is the U.S. Department of Defense's information resource. If you are listed as entitled to legal protections under the SCRA, please go to <http://www.militaryonesource.com/scra> or call 1-800-342-9647 (toll free from the United States) to find out more information. Dialing instructions for areas outside the United States are provided on the website.
- If you are such a servicemember, or a dependent of such a servicemember, you should contact McCarthy & Holthus, LLP at (619) 243-3960 to discuss your status under the SCRA.



STAFNE LAW
Advocacy & Consulting

(360) 403-8700

239 N. Olympic Avenue Arlington, WA 98223

FAX (360) 386-4005

www.STAFNELAW.com

November 28, 2025

McCarthy & Holthus LLP

Attn: Warren Lance, WSBA No. 51586
108 1st Avenue South, Suite 400
Seattle, WA 98104

VIA CERTIFIED MAIL — RETURN RECEIPT REQUESTED

Property: 2460 62nd Ave E, Fife, WA, 98424; Former Trustee Sales dated January 5, 2024 (contested)

File No. WA-25-1027048-UD

Re: *Cease and Desist – Unlawful Detainer Threats / Contested Title / Pending Post-Judgment Proceedings*

To Counsel and Trustee:

We write on behalf of Mr. Alvin B. White regarding the recent Notice to Vacate issued to the tenants residing at 2460 62nd Ave E, Fife, Washington. This notice purports to demand possession on the basis of the alleged trustee sale conducted on January 5, 2024.

As you are fully aware, that foreclosure sale occurred while state-court restraining-order proceedings were pending in Pierce County Superior Court—proceedings rendered impossible to be heard only because your client, Deutsche Bank National Trust Company, removed the matter to federal court the day before the scheduled restraining-order hearing. Notwithstanding this maneuver, Quality Loan Service Corp. proceeded to sell multiple properties the very next week, despite being on actual notice that the foreclosure authority, chain of title, and underlying trust documentation—including, but not limited to, the unauthorized use of the Almanza note indorsement signature stamp—were under active judicial challenge.

Further, the foreclosure process, the authority to act as beneficiary and trustee, and the claimed transfer of title arising from the January 5, 2024 sale are all directly challenged in the federal litigation pending in *Church of the Gardens et al. v. Quality Loan Service Corp. et al.*, No. 3:23-cv-06193-TMC (W.D. Wash.). Although your clients prevailed at summary judgment, Mr. White has filed a post-judgment Motion for Relief under FRCP 59 and 60, fully briefed as of October 5, 2025, and currently pending before the Court. Mr. White has further informed our office that he intends to appeal to the Ninth Circuit if necessary.

1. Title is Actively Contested; No Final, Non-Appealable Judgment Exists

Given the ongoing post-judgment proceedings and impending appellate challenges, title to the property remains in dispute. No final, non-appealable judgment exists. Under Washington law and federal practice, where title is the subject of pending litigation, it is improper to take action that presupposes ownership as final.

Issuing a Notice to Vacate during this period of legal uncertainty is inappropriate, misleading, and risks harming innocent tenants who are not parties to the litigation.

2. Cease and Desist from Further Tenant Harassment or Eviction Threats

Accordingly, Mr. White demands that McCarthy & Holthus immediately cease and desist from:

- a. issuing vacate notices,
- b. contacting tenants in a manner suggesting that ownership is uncontested or final,
- c. threatening eviction or unlawful detainer proceedings, or
- d. taking any further steps to dispossess Mr. White or his tenants,

until the pending federal post-judgment proceedings are resolved and any appeal concluded.

Any continued efforts to remove tenants while the underlying title remains the subject of active litigation will be treated as actions taken in bad faith and may be raised before the federal court or the appellate court as further evidence of improper foreclosure conduct.

3. Legal Disputes Must Be Resolved Before Any Unlawful Detainer Action Is Initiated

If your office intends to pursue unlawful detainer actions, be advised that:

- a. such actions will be vigorously defended;
- b. the pendency of contested title litigation precludes summary eviction; and
- c. initiating unlawful detainer proceedings may be deemed improper given the outstanding jurisdictional and title defects raised in Mr. White's FRCP 59/60 motion.

The tenants should not be pressured, threatened, or misled regarding possession or their rights under the Protecting Tenants at Foreclosure Act or Washington's Deed of Trust Act.

4. Request for Confirmation

Please provide written confirmation within ten (10) calendar days that:

1. the Notice to Vacate issued for 2460 62nd Ave E is withdrawn;
2. no further eviction-related actions will be taken unless and until the pending federal motion and any appeal are resolved; and
3. all future communications concerning possession will be directed to this office.

Failure to confirm will result in appropriate motions and notices being filed with the court(s) having jurisdiction, including but not limited to requests for sanctions, contempt findings, and further injunctive relief. This may include, without limitation, seeking federal equitable relief under Article III, section 2 of the United States Constitution; asserting due-process violations under

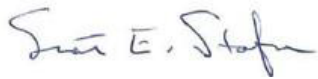
both the United States and Washington Constitutions; and pursuing statutory relief under 42 U.S.C. § 1983 as necessary to prevent interference with the ongoing federal proceedings before a final judgment has been rendered.

5. Reservation of Rights

This letter is issued without waiver of any of Mr. White's rights, claims, or remedies, all of which are expressly reserved.

Thank you for your prompt attention to this matter.

Respectfully,

A handwritten signature in blue ink, appearing to read "Scott E. Stafne".

Scott E. Stafne, WSBA No. 6964

Scott@StafneLaw.com

Attorney for Alvin B. White

SES/jw



STAFNE LAW
Advocacy & Consulting

(360) 403-8700

239 N. Olympic Avenue Arlington, WA 98223

FAX (360) 386-4005

www.STAFNELAW.com

December 3, 2025

McCarthy & Holthus LLP

Attn: Warren Lance, WSBA No. 51586
108 1st Avenue South, Suite 400
Seattle, WA 98104

VIA CERTIFIED MAIL — RETURN RECEIPT REQUESTED

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File No. WA-25-1027324-UD

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Further, the foreclosure process, the authority to act as beneficiary and trustee, and the claimed transfer of title arising from the January 5, 2024 sale are all directly challenged in the federal litigation pending in *Church of the Gardens et al. v. Quality Loan Service Corp. et al.*, No. 3:23-cv-06193-TMC (W.D. Wash.). Although your clients prevailed at summary judgment, Mr. White has filed a post-judgment Motion for Relief under FRCP 59 and 60, fully briefed as of October 5, 2025, and currently pending before the Court. Mr. White has further informed our office that he intends to appeal to the Ninth Circuit if necessary.

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Issuing a Notice to Vacate during this period of legal uncertainty is inappropriate, misleading, and risks harming innocent tenants who are not parties to the litigation.

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Accordingly, Mr. White demands that McCarthy & Holthus immediately cease and desist from:

- a. issuing vacate notices,
- b. contacting tenants in a manner suggesting that ownership is uncontested or final,
- c. threatening eviction or unlawful detainer proceedings, or
- d. taking any further steps to dispossess Mr. White or his tenants,

until the pending federal post-judgment proceedings are resolved and any appeal concluded.

Any continued efforts to remove tenants while the underlying title remains the subject of active litigation will be treated as actions taken in bad faith and may be raised before the federal court or the appellate court as further evidence of improper foreclosure conduct.

3. Legal Disputes Must Be Resolved Before Any Unlawful Detainer Action Is Initiated

If your office intends to pursue unlawful detainer actions, be advised that:

- a. such actions will be vigorously defended;
- b. the pendency of contested title litigation precludes summary eviction; and
- c. initiating unlawful detainer proceedings may be deemed improper given the outstanding jurisdictional and title defects raised in Mr. White's FRCP 59/60 motion.

The tenants should not be pressured, threatened, or misled regarding possession or their rights under the Protecting Tenants at Foreclosure Act or Washington's Deed of Trust Act.

4. Request for Confirmation

Please provide written confirmation within ten (10) calendar days that:

1. the Notice to Vacate issued for 2410 62nd Ave E is withdrawn;
2. no further eviction-related actions will be taken unless and until the pending federal motion and any appeal are resolved; and
3. all future communications concerning possession will be directed to this office.

Failure to confirm will result in appropriate motions and notices being filed with the court(s) having jurisdiction, including but not limited to requests for sanctions, contempt findings, and further injunctive relief. This may include, without limitation, seeking federal equitable relief under Article III, section 2 of the United States Constitution; asserting due-process violations under both the United States and Washington Constitutions; and pursuing

statutory relief under 42 U.S.C. § 1983 as necessary to prevent interference with the ongoing federal proceedings before a final judgment has been rendered.

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This letter is issued without waiver of any of Mr. White's rights, claims, or remedies, all of which are expressly reserved.

Thank you for your prompt attention to this matter.

Respectfully,

A handwritten signature in blue ink, appearing to read "Scott E. Stafne".

Scott E. Stafne, WSBA No. 6964

Scott@StafneLaw.com

Attorney for Alvin B. White

SES/jw



Scott Stafne <scott@stafnelaw.com>

Cease and Desist for Alvin White WA-25-1027048-UD

1 message

Warren Lance <WLance@mccarthyholthus.com>

Fri, Dec 5, 2025 at 11:23 AM

To: "scott@stafnelaw.com" <scott@stafnelaw.com>

Cc: IDSMH <IDSMH@mccarthyholthus.com>, Sarah Rogato <srogato@mccarthyholthus.com>

Good Morning Scott,

I have received your Cease and Desist letter and will respectfully deny the requests made therein. There is no legal basis preventing these unlawful detainer actions from proceeding. I believe you know that as you would have referred to them had they existed. Your personal belief that proceeding is "improper" or "inappropriate" does not create a stay of action. I am well acquainted with your federal lawsuit, as well as the dismissal of my client. If you want a stay, request one from the court. Finally, your threats of requests for sanctions and contempt findings are inappropriate as they are baseless and their only purpose is to attempt to chill my client from seeking their legal remedies. If you proceed in this matter, I will ensure that the court is aware of your conduct.

Unless you have something of value or substance to add, I expect to this is the final word on this issue.

Warren Lance | Attorney | Member State Bar of WA



McCarthy ♦ Holthus, LLP

108 1st Avenue South, Ste. 400, Seattle, WA 98104

206-596-4845

wlance@mccarthyholthus.com

"Service Second to None"

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CA Debt Collection License Number 11039-99

Federal law requires us to advise you that communication with our office could be interpreted as an attempt to collect a debt and that any information obtained will be used for that purpose. NOTICE REGARDING ELECTRONIC COMMUNICATION: If you wish to opt out of electronic communication, please forward this email to OptOut@McCarthyHolthus.com, with the word "STOP" in the subject line of the email. Please be advised that we may still be required to send you statutory and court-mandated notices pursuant to applicable law.

The information contained herein may be privileged and protected by the attorney/client and/or other privilege. It is confidential in nature and intended for use by the intended addressee only. If you are not the intended recipient, you are hereby expressly prohibited from dissemination distribution, copy or any use whatsoever of this transmission and its contents. If you receive this transmission in error, please reply or call the sender and arrangements will be made to retrieve the originals from you at no charge.

If you have received excellent customer service please let us know: ServiceSecondToNone@McCarthyHolthus.com.

Should escalation be required, please contact: WA: lolsen@mccarthyholthus.com



image001.jpg
9K

Re: Meet and Confer re: Emergency Stay | Church of the Gardens, et al. v. Quality Loan Service Corp., et al. | 9th Circuit No. 26-93

1 message

Scott Stafne <scott@stafnelaw.com>

Thu, Jan 8, 2026 at 8:47 AM

To: "Sagara, Midori" <msagara@buchalter.com>

Cc: "Simpson, R. July (ATG)" <RJJulyS@atg.wa.gov>, "Robert W. McDonald" <rmcdonald@qualityloan.com>, Mike DeLeo <mdeleo@prklaw.com>, "Daniel, Cynthia" <cdaniel@buchalter.com>, Justin Wood <justin@stafnelaw.com>

Hi again, Midori.

I won't be striking the motion for stay before the district. I will, however, be filing a notice and copy of the pertinent stay filings with the Ninth Circuit Court of Appeals.

My understanding based on the law I have cited to you below is that the district court is required to recognize its lack of subject matter jurisdiction under these circumstances.

Thanks for your response.

Scott Erik Stafne

----- Forwarded message -----

From: **Sagara, Midori** <msagara@buchalter.com>

Date: Wed, Jan 7, 2026 at 6:47 PM

Subject: RE: Meet and Confer re: Emergency Stay | Church of the Gardens, et al. v. Quality Loan Service Corp., et al. | 9th Circuit No. 26-93

To: Scott Stafne <scott@stafnelaw.com>

Cc: Simpson, R. July (ATG) <RJJulyS@atg.wa.gov>, Robert W. McDonald <rmcdonald@qualityloan.com>, Mike DeLeo <mdeleo@prklaw.com>, Daniel, Cynthia <cdaniel@buchalter.com>

Scott,

We disagree with any motion to stay and will respond accordingly. Once you file in the 9th Circuit, will you strike your motion to stay in the District Court?

Buchalter

Midori Sagara she/her/hers

Special Counsel

T (206) 319-7035

C (206) 854-9202

msagara@buchalter.com

1420 Fifth Avenue, Suite 3100

Seattle, WA 98101

www.buchalter.com

From: Scott Stafne <scott@stafnelaw.com>

Sent: Wednesday, January 7, 2026 4:17 PM

To: Sagara, Midori <msagara@buchalter.com>

Cc: Simpson, R. July (ATG) <RJJulyS@atg.wa.gov>; Robert W. McDonald <rmcdonald@qualityloan.com>; Mike DeLeo <mdeleo@prklaw.com>; Scott Stafne <scott@stafnelaw.com>

Subject: Meet and Confer re: Emergency Stay | Church of the Gardens, et al. v. Quality Loan Service Corp., et al. | 9th Circuit No. 26-93

This message has originated from an **External Email**. Scott Stafne <scott@stafnelaw.com>:

Midori, I am filing the emergency motion for a stay with the Ninth Circuit in the morning which as you know we were forced to file in the District Court because the Ninth Circuit or the district court of both of those courts refused to timely process the appeal in violation of applicable controlling case law, see *Coinbase, Inc. v. Bielski*, 143 S. Ct. 1915 (2023), *Griggs v Provident Consumer Discount Co*, 459 U.S. 56 (1982).

Please state your position regarding this emergency motion so that I can provide it to the Circuit Court.

Please do so by 10 am tomorrow.

Respectfully,

--

Scott Stafne, Attorney

Notice To Recipient: This e-mail is meant for only the intended recipient of the transmission, and may be a communication privileged by law. If you received this e-mail in error, any review, use, dissemination, distribution, or copying of this e-mail is strictly prohibited. Please notify us immediately of the error by return e-mail and please delete this message and any and all duplicates of this message from your system. Thank you in advance for your cooperation. For additional policies governing this e-mail, please see <http://www.buchalter.com/about/firm-policies/>.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

JAN 8 2026

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

CHURCH OF THE GARDENS and
ALVIN WHITE,

Plaintiffs - Appellants,

v.

QUALITY LOAN SERVICE
CORPORATION OF WASHINGTON; et
al.,

Defendants - Appellees,

and

LONG BEACH MORTGAGE LOAN
TRUST 2006-4 and LONG BEACH
MORTGAGE LOAN TRUST 2006-5,

Defendants.

No. 26-93

D.C. No.

3:23-cv-06193-TMC

Western District of Washington,
Tacoma

ORDER

Although “a dismissal that precedes [a] remand [for lack of subject matter jurisdiction] may be reviewed” on appeal, “a district court’s final determination that it lacks subject matter jurisdiction is unreviewable” under 28 U.S.C.

§ 1447(d). *See Gallea v. United States*, 779 F.2d 1403, 1404 (9th Cir. 1986); *see also Powerex Corp. v. Reliant Energy Servs., Inc.*, 551 U.S. 224, 236 (2007)

(Supreme Court precedent “does not permit an appeal when there is no order separate from the unreviewable remand order”). Because the district court

remanded appellant Church of the Gardens' claims based on a conclusion that it lacked subject matter jurisdiction over them, the parties must address whether this court has jurisdiction over this appeal as to Church of the Gardens. *See* 28 U.S.C. § 1447(d).

The existing briefing schedule remains in effect.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CHURCH OF THE GARDENS; ALVIN
WHITE

Plaintiffs-Appellants,

v.

QUALITY LOAN SERVICES
CORPORATION OF WASHINGTON, et
al.

Defendants-Appellees.

No. 26-93

D.C. No. 3:23-cv-06193-TMC
Western District of Washington,
Tacoma

APPELLANT'S EMERGENCY
MOTION FOR STAY OF
EVICION PROCEEDINGS
PENDING APPEAL

Appellants Church of the Gardens and Alvin White respectfully move this Court for a stay pending appeal of all further actions enforcing or giving effect to the foreclosure sale and any related efforts to obtain possession of the subject properties.

This motion is brought not to relitigate the merits of the underlying claims, but to preserve the Court's ability to adjudicate threshold questions of constitutional authority and judicial neutrality that are currently on appeal and that would otherwise be rendered effectively unreviewable by irreversible action.

I. INTRODUCTION AND NATURE OF THE RELIEF REQUESTED

This appeal presents an unusual but fundamental question: whether a federal district court may engage in merits fact-finding and authorize or permit irreversible property dispositions without first possessing constitutional authority to adjudicate the judicial inquiries presented.

Appellant Church of the Gardens has consistently maintained—before the district court which assumed removal jurisdiction over this case, the court of appeals for the Ninth Circuit, and the Supreme Court—that the district court’s actions were undertaken in the absence of such authority, or alternatively, by judicial officers structurally disqualified from adjudicating the legality of their own conduct in permitting the alienation of property asserted to be a res of the court.

The requested stay does not presume the answer to those questions. It seeks only to prevent further irreversible consequences while this Court determines whether the judicial power invoked by the District Court below was constitutionally available at all.

II. PROCEDURAL POSTURE AND IMMINENCE OF HARM

Although no eviction proceeding has yet been filed, the relevant facts are undisputed:

- The foreclosure sale has already occurred;

- Notices to vacate have been served on Mr. White's tenants;
- Counsel for Deutsche Bank has formally rejected Appellants' cease-and-desist demands;
- MTC Financial Inc. (d/b/a Trustee Corps.) has scheduled a non-judicial foreclosure sale currently set for February 20, 2026; and
- Any remaining enforcement steps are ministerial and imminent.

Absent a stay, possession will be transferred and tenants displaced before this Court can review whether the actions enabling that result were constitutionally authorized. Once possession is lost, the injury cannot be meaningfully undone, even if Appellants ultimately prevail.

III. STANDARD FOR STAY PENDING APPEAL

A stay pending appeal is warranted where:

1. The movant raises serious questions going to the merits, *see*, [*Nken v. Holder*](#), 556 U.S. 418, 434 (2008); [*Leiva-Perez v. Holder*](#), 640 F.3d 962, 966–68 (9th Cir. 2011) (“Serious questions” are those that are ‘substantial, difficult, and doubtful,’ meaning they are fair grounds for litigation and need not show a probability of success.”);
2. Irreparable harm is likely absent a stay, *see Nken v. Holder, supra.*, at 434–35; [*Johnson v. Couturier*](#), 572 F.3d 1067, 1081 (9th Cir. 2009) (Irreparable harm exists when the injury cannot be remedied by later judicial relief.)

3. The balance of hardships tips sharply in the movant's favor, *see Leiva-Perez v. Holder, supra*, at 970 (Where serious legal questions are raised, the balance of hardships tipping toward the movant can justify a stay.); [*Golden Gate Restaurant Assn. v. City & County of San Francisco*](#), 512 F.3d 1112, 1115–19 (9th Cir. 2008); and
4. The public interest favors preserving the status quo. *See Nken v. Holder, supra.*, at 435-436.

Where constitutional structure and jurisdiction are at issue, courts have repeatedly recognized that preservation of reviewability is itself a compelling interest.

IV. SERIOUS QUESTIONS PRESENTED

A. Authority Precedes Legitimacy

This appeal does not turn on factual disagreement or policy preference. It turns on whether the district court possessed constitutional authority to adjudicate the judicial inquiries presented.

As the Supreme Court reiterated in [*Prentis v. Atlantic Coast Line Co.*](#), 211 U.S. 210 (1908), a “judicial inquiry” is defined by its function: the adjudication of present facts so that applicable existing law may be applied. Where authority to conduct such an inquiry is absent, the resulting action is not judicial in the constitutional sense, regardless of how it is labeled.

Appellants Church of the Gardens and property owner Alvin White contend that the district court proceeded to adjudicate the merits of the case notwithstanding the absence of any subject matter jurisdiction to do so, and that this defect is structural and antecedent to the merits. See [*Steel Co. v. Citizens for a Better Environment*](#), 523 U.S. 83 (1998).

Shortly after this case was removed from the Washington superior court, Appellants challenged the district court’s subject-matter jurisdiction. See Stafne Declaration in support of this motion. The district court declined to adjudicate that challenge, asserting that it was “too early” to do so. Nonetheless, months later—after having engaged in merits-based rulings—the district court acknowledged that it lacked jurisdiction (apparently on other grounds) and remanded the case to state court.

Because the district court never adjudicated Appellants’ challenges to subject-matter jurisdiction, it lacked constitutional authority to resolve the merits of Plaintiffs’ claims. Article III does not permit a federal court to assume jurisdiction in order to reach the merits, and the failure to establish jurisdiction deprives the court of power to proceed further. *Steel Co.*, 523 U.S. at 94–95. Where jurisdiction is contested and left unresolved, any subsequent merits determination exceeds the court’s Article III authority and is void.

This principle applies with particular force in removal cases, where federal jurisdiction must exist and be confirmed before a district court may exercise Article III judicial power. See [*Grupo Dataflux v. Atlas Global Group, L.P.*](#), 541 U.S. 567 (2004); [*Toumajian v. Frailey*](#), 135 F.3d 648 (9th Cir 1997). Where jurisdiction is contested and left unresolved, any subsequent merits determination exceeds the court's Article III authority and is void. [*Prize Frize, Inc. v. Matrix \(U.S.\) Inc.*](#), 167 F.3d 1261 (9th Cir. 1999).

Because Appellee Defendants never established their authority to remove this case from Washington superior court, and because Appellants promptly and repeatedly challenged subject-matter jurisdiction, the district court acted contrary to the Constitution when it decided merits issues without first adjudicating its own authority to do so.

This case presents an additional and unusual feature that bears directly on the need for a stay. Prior to removal, Plaintiffs had filed a motion in Washington superior court under RCW 61.24.130 seeking to restrain the sale of two of Mr. White's properties, with argument scheduled for a date certain. Before that motion could be heard, Deutsche Bank—asserting itself as beneficiary—removed the case to federal court, where it was assigned to a magistrate judge pursuant to the district court's standard operating procedures.

It is the position of the Church and White that magistrate judges are not a part of those district judges which make up the composition of the district court for Western Washington. *See* [28 U.S.C. §132\(b\)](#) (“Each district court shall consist of the judge or district judges in regular active service.”); *See also* [28 U.S.C. 134 \(a\)](#) (“The district judges shall hold office during good behavior”); *See also* [28 U.S.C. § 133\(b\)\(1\)](#), which requires district judges to be full time active duty judges of their court). Accordingly, White intends to respectfully argue, among other things, that his case was never properly removed to the district court because that court is by statute composed of only district judges serving as full time judges during their good behavior. *See e.g.* [Gomez v United States](#), 490 U.S. 858 (1989) (A magistrate judge may not conduct voir dire in a felony trial without the defendant’s consent); [Peretz v. United States](#), 501 U.S. 923 (1991) (A magistrate judge may conduct voir dire only when the defendant affirmatively consents).

When the Church and White objected to the appointment of a magistrate judge to adjudicate this case an unidentified clerk of the district court removed that objection from the docket, requiring Plaintiffs to file a motion to have those presentations restored to the Court record. The Church and White respectfully urge that the district court operating as an Article III court through a magistrate judge and unidentified clerks during this period of time betrayed that district court's institutional constitutional duties by taking these actions constituting the exercise

of judicial power. *Commodity Futures Trading Comm’n v. Schor*, 478 U.S. 833 (1986) (Non-Article III adjudication may occur only where parties knowingly and voluntarily waive Article III adjudication); *Nguyen v. United States*, 539 U.S. 69(2003) (A panel decision was void because a territorial judge who was not a circuit judge within the meaning of the Judiciary Act sat on a Panel of the Ninth Circuit Court of Appeals without any statutory authorization for doing so.

As a result of that removal, the Washington State Trustee—an entity Plaintiffs contend acts under color of state law—was permitted to sell two of White’s properties without his consent and without any adjudication of his statutory and equitable claims to restrain the sale. Washington law expressly cautions against such outcomes. In *Klem v. Washington Mutual Bank*, 176 Wash.2d 771 (2013) the Washington Supreme Court observed:

“While the legislature has established a mechanism for nonjudicial sales, neither due process nor equity will countenance a system that permits the theft of a person’s property by a lender or its beneficiary under the guise of a statutory nonjudicial foreclosure.”

Id. at 790.

Appellants contend that this is precisely what occurred here. By removing the case the day before the scheduled state-court hearing—during the Christmas period—appellees effectively prevented any adjudication of White’s statutory restraint motion and enabled irreversible property transfers without judicial inquiry.

It is this sequence—removal without established jurisdiction, refusal to adjudicate jurisdictional challenges, merits rulings without authority, and irreversible alienation of property—that renders Appellants’ request for a stay both necessary and constitutionally compelled. Absent a stay, the very jurisdictional questions that must be resolved first will become effectively unreviewable, and the harm to Appellants will be complete.

B. Structural Disqualification and Judicial Neutrality

In the alternative, Appellants contend that judicial officers charged with preserving the asserted res were structurally disqualified from adjudicating the legality of their own conduct in permitting the Washington state actor from selling White’s properties under color of law.

This raises a classic neutrality question: whether an independent court may adjudicate challenges to its own authority or conduct via a judicial officer which has or appears to have a personal interest in the outcome of the case. For case precedent, *see e.g.* [*Tumey v. Ohio*](#), 237 U.S. 510 (1927); [*In re Murchison*](#), 349 U.S. 133 (1955); [*Caperton v. A.T. Massey Co.*](#), 556 U.S. 868 (2009); [*Williams v. Pennsylvania*](#), 579 U.S. 1 (2016).

For historical evidence that the maxim *no person may be a judge in his own case* (“*nemo iudex in causa sua*”) was understood as a structural limitation on legitimate adjudication at the time of the Constitution’s ratification, *see The*

Federalist No. 10 (Madison) (“No man is allowed to be a judge in his own cause ...”), oll-resources.s3.us-east-2.amazonaws.com; accord 1 William Blackstone, *Commentaries on the Laws of England*, *91 (1765–69); Montesquieu, *The Spirit of Laws* bk. XI, ch. 6 (1748) (liberty requires separation of the power of judging); and the inherited English supervisory writ practice (including prohibition, certiorari, mandamus, habeas corpus, and quo warranto) reflecting the settled premise that judicial power is bounded and subject to external constraint; *Fletcher v. Peck*, 10 U.S. (6 Cranch) 87, 133 (1810) (Observing that this principle of justice applicable to courts and judges was universally acknowledged at that time.) See also Scott Douglas Gerber, *A Distinct Judicial Power: The Origins of an Independent Judiciary, 1606–1787* (Oxford Univ. Press 2011) (Part One of Gerber’s Book, at pp 3–41, demonstrates the ancient origins of that judicial neutrality which is incorporated in Article III. Part Two of Gerbers’ book, at pages 42–321, chronicles the history relating to each of the thirteen states during this time period.); See also Gelinas, Fabien, The Dual Rationale of Judicial Independence at 9–10 (March 23, 2011). *Constitutional Mythologies: New Perspectives on Controlling the State*, Alain Marciano, ed., New York: Springer, 2011 (discussing ancient roots of the concept of adjudicatory justice, which trace back to Egypt’s First Intermediate Period and also appear in Babylonian inscriptions about this same period of time.)

See also Clifford S. Fishman, [*Old Testament Justice*](#), 51 Cath. U. L. Rev. 405 (2002)(Explaining the ancient basis for modern day law and procedure.)

V. IRREPARABLE HARM AND THE NEED FOR A STAY

The harm here is not speculative. It is structural and irreversible. This is because once possession of White's homes have been taken from him and his tenants this transfer will have been without any court having jurisdiction over his case deciding those judicial inquiries he presented to that district court. *See e.g. Klem v. Washington Mutual Bank, supra. See also* Declaration of Alvin White in support of this motion.

If enforcement proceeds and possession is transferred, the Court's ability to adjudicate the authority and neutrality questions on appeal will be nullified as a practical matter. Property will have been irreversibly alienated, tenants displaced, and constitutional review reduced to abstraction.

This is precisely the circumstance in which appellate courts intervene to preserve meaningful review.

VI. CAUSATION AND INSTITUTIONAL RESPONSIBILITY (WITHOUT ACCUSATION)

Appellants do not allege bad faith, motive, or personal wrongdoing by any judicial officer. The issue regarding this stay is institutional and constitutional. Indeed, the judicial inquiries the Church and White present here raise historical

factual issues and legal issues which go to this nation's most basic Separation of Powers and Federalism structures of government.

Where judicial action based on falsehoods—or the refusal to adjudicate challenges to judicial authority—materially enables irreversible consequences, the resulting harm cannot be characterized as purely private or downstream. *Cohens v. Virginia*, *supra*; [*Dred Scott v. Sandford*](#), 60 U.S. 393 (1856); [*Korematsu v. United States*](#), 584 F. Supp. 1406 (N.D. Cal. 1984) *aff'd* [828 F.2d 591 \(9th Cir. 1987\)](#); [*Hirabayashi v. United States*](#), 627 F.Supp 1445 (W.D. Wash.1986) *aff'd* [828 F.2d 594\(1987\)](#); [*U.S. v Edwin P. Wilson*](#), 289 F. Supp. 2d 801 (USDC-SD,TX, 2003). Thus, if the district court's exercise of authority is ultimately determined to have been ultra vires, then continued enforcement risks entrenching a deprivation traceable to an unconstitutional exercise of judicial power. *Id.* See also [*Baird v. Bonita*](#), ___ F.3d. ___ (January 2, 2026) (When constitutional adjudication depends on historical or institutional facts, a court may treat reliance on incorrect institutional history as a legally sufficient cause of constitutional violation, even absent intent or bad faith.)

The stay is therefore necessary not to assign fault, but to prevent compounding constitutional injury while this Court determines whether the authority invoked below lawfully existed.

VII. BALANCE OF HARDSHIPS AND PUBLIC INTEREST

Plaintiff Church and Property Owners assert the balance of hardships overwhelmingly favors a stay:

- Appellants face permanent loss of property interests and displacement of residents;
- Appellees face only a temporary delay in enforcement;
- The public interest is served by ensuring that courts act within constitutional bounds and that appellate review remains meaningful.

Preserving the status quo while jurisdictional questions are adjudicated is not disruptive—it is foundational.

And the factual circumstances of this case illustrate the lessons of history which should be applied in balancing the hardships and public interest. If the Church and property owner are correct in asserting that White had a constitutional and internationally recognized human right which was not acknowledged by the district court, then they and many others may have had their properties taken from them for the benefit of money changers, much in the same way that Dred Scott and persons of Japanese ancestry had their rights taken from them without the United States compensating them for their losses. Indeed, the same things happened to many American Indians. We, as a country, now acknowledge our crimes against

these Peoples' politically but our courts refuse to provide these People justice based on the truth of those facts we now know occurred.

VIII. CONCLUSION

This motion is brought reluctantly, but necessarily. Appellants have sought adjudication of these authority and neutrality questions through ordinary judicial channels. Those efforts have not yet yielded a merits determination.

A stay is therefore essential to preserve this Court's ability to decide whether the judicial power exercised below was constitutionally available, and to prevent irreversible consequences from foreclosing that inquiry.

For these reasons, Appellants respectfully request that this Court enter a stay pending appeal.

Respectfully submitted this 5th day of January 2026, at Arlington, Washington.

By: s/ Scott E. Stafne

Scott E. Stafne

Scott E. Stafne, WSBA No. 6964
Stafne Law *Advocacy & Consulting*
239 N. Olympic Ave.
Arlington, WA 98223
360.403.8700
Scott@Stafnelaw.com
Attorney for Appellants'

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rules of Appellate Procedure 27(d)(2) and 32(g)(1), I certify that this motion contains 2,717 words, excluding the portions exempted by Federal Rule of Appellate Procedure 32(f). This motion complies with the 4,200-word limitation set forth in Federal Rule of Appellate Procedure 27(d)(2).

By: s/ Scott E. Stafne
Scott E. Stafne, attorney.

DECLARATION OF SERVICE

I declare under penalty of perjury under the laws of the United States of America, that I caused the foregoing document to be served on all counsel of record by electronically filing it with the Court's CM/ECF system, which automatically generates and transmits a Notice of Electronic Filing to all registered participants.

Dated this 8th day of January, 2026.

By: s/ Scott E. Stafne
Scott E. Stafne, attorney.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CHURCH OF THE GARDENS; ALVIN
WHITE

Plaintiffs-Appellants,

v.

QUALITY LOAN SERVICES
CORPORATION OF WASHINGTON, et
al.

Defendants-Appellees.

No. 26-93

D.C. No. 3:23-cv-06193-TMC
Western District of Washington,
Tacoma

APPELLANTS' RULE 27-3
CERTIFICATE REGARDING
APPELLANTS' EMERGENCY
MOTION FOR STAY OF
EVICTION PROCEEDINGS
PENDING APPEAL

I, Scott Erik Stafne, counsel for Appellants Church of the Gardens and Alivin White, hereby certify pursuant to Ninth Circuit Rule 27-3 that the accompanying Appellants' Emergency Motion for Stay of Eviction Proceedings Pending Appeal requires expedited consideration by this Court.

1. Nature of the Emergency

This motion seeks temporary relief to preserve the status quo pending appellate review. Absent immediate intervention, enforcement actions flowing from a non-judicial foreclosure without the opportunity to present contentions pursuant to RCW 61.24.130 that proper legal and equitable grounds existed so as to require adjudication by a court having subject matter jurisdiction will result in

the imminent transfer of possession of residential properties and displacement of tenants, thereby causing irreparable harm before this Court can determine whether the district court possessed constitutional authority to permit the actions complained of.

Once possession of the subject properties are transferred and tenants are removed, the injury will be irreversible, and meaningful appellate review of the jurisdictional and structural issues presented will be effectively foreclosed.

2. Jurisdictional Posture.

Appellants filed a Notice of Appeal and paid the required appellate filing fee on January 2, 2026. Under settled Supreme Court authority, including *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56 (1982) and *Coinbase, Inc. v. Bielski*, 143 S. Ct. 1915 (2023), appellate jurisdiction attached upon filing of the Notice of Appeal.

The emergency relief requested is therefore properly directed to this Court to preserve its jurisdiction and ability to adjudicate the threshold structural questions presented on appeal.

3. Efforts to Obtain Relief Below.

Appellants filed the accompanying motion in the district court on January 5, 2025, solely because an unidentified clerk of this Court advised Justin Wood, the disability advocate assisting with appellate filings, that the motion could not be

docketed in the Court of Appeals until transmitted by the district court. A declaration by Mr. Wood is submitted in support of this certificate.

Appellants do not seek adjudication of the emergency stay motion by the district court and respectfully maintain that the requested relief lies within this Court's authority following the filing of the Notice of Appeal.

4. Time Sensitivity.

Notices to vacate have been served, and additional enforcement actions are imminent. Delay in appellate consideration risks rendering the appeal moot as a practical matter by permitting irreversible consequences to occur before appellate review of the district court's removal jurisdiction was ever demonstrated.

5. Relief Requested.

Appellants seek only a temporary stay preserving the status quo pending this Court's consideration of their appeal. No party will be prejudiced by such relief, while denial or delay will cause permanent harm to Appellants and third-party tenants.

6. Meet and Confer.

On January 5, 2026, Appellants provided the emergency stay motion to counsel for Deutsche Bank. Counsel asserted that the motion must comply with the district court's noting requirements. Appellants responded that the motion was

intended for filing in the Court of Appeals following the Notice of Appeal. Thereafter, the district court entered a briefing schedule under its local rules.

On January 7, 2026 Appellants, through me, again emailed the attorney for Deutsche Bank with regard to the Ninth Circuit's meet and confer requirement. A copy of Deutsche Bank's response (and the entire email chain related to it) is attached hereto as **Exhibit A**.

7. Clarification of Filing Timeline.

The Notice of Appeal was filed, and the appellate filing fee paid, on January 2, 2026. Any subsequent administrative docketing actions do not alter the effective date of appellate jurisdiction.

8. Counsel Contact Information.

Counsel for Appellants and Appellees can be reached at the contact information listed on the CM/ECF docket.

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

DATED this 8th day of January 2026 at Arlington, Washington.

By: s/ Scott Erik Stafne, WSBA No. 6964

Scott Erik Stafne, declarant.
Stafne Law *Advocacy & Consulting*
239 N. Olympic Ave.
Arlington, WA 98223
360.403.8700
Scott@Stafnelaw.com

DECLARATION OF SERVICE

I declare under penalty of perjury under the laws of the United States of America, that I caused the foregoing document to be served on all counsel of record by electronically filing it with the Court's CM/ECF system, which automatically generates and transmits a Notice of Electronic Filing to all registered participants.

Dated this 8th day of January, 2026.

By: s/ Scott E. Stafne
Scott E. Stafne, attorney.

EXHIBIT A



Scott Stafne <scott@stafnelaw.com>

Re: Meet and Confer re: Emergency Stay | Church of the Gardens, et al. v. Quality Loan Service Corp., et al. | 9th Circuit No. 26-93

Scott Stafne <scott@stafnelaw.com>

Thu, Jan 8, 2026 at 8:47 AM

To: "Sagara, Midori" <msagara@buchalter.com>

Cc: "Simpson, R. July (ATG)" <RJJulyS@atg.wa.gov>, "Robert W. McDonald" <rmcdonald@qualityloan.com>, Mike DeLeo <mdeleo@prklaw.com>, "Daniel, Cynthia" <cdaniel@buchalter.com>, Justin Wood <justin@stafnelaw.com>

Hi again, Midori.

I won't be striking the motion for stay before the district. I will, however, be filing a notice and copy of the pertinent stay filings with the Ninth Circuit Court of Appeals.

My understanding based on the law I have cited to you below is that the district court is required to recognize its lack of subject matter jurisdiction under these circumstances.

Thanks for your response.

Scott Erik Stafne

----- Forwarded message -----

From: **Sagara, Midori** <msagara@buchalter.com>

Date: Wed, Jan 7, 2026 at 6:47 PM

Subject: RE: Meet and Confer re: Emergency Stay | Church of the Gardens, et al. v. Quality Loan Service Corp., et al. | 9th Circuit No. 26-93

To: Scott Stafne <scott@stafnelaw.com>

Cc: Simpson, R. July (ATG) <RJJulyS@atg.wa.gov>, Robert W. McDonald <rmcdonald@qualityloan.com>, Mike DeLeo <mdeleo@prklaw.com>, Daniel, Cynthia <cdaniel@buchalter.com>

Scott,

We disagree with any motion to stay and will respond accordingly. Once you file in the 9th Circuit, will you strike your motion to stay in the District Court?

Buchalter

Midori Sagara she/her/hers

Special Counsel

T (206) 319-7035

C (206) 854-9202

msagara@buchalter.com

1420 Fifth Avenue, Suite 3100

Seattle, WA 98101

www.buchalter.com

From: Scott Stafne <scott@stafnelaw.com>

Sent: Wednesday, January 7, 2026 4:17 PM

To: Sagara, Midori <msagara@buchalter.com>

Cc: Simpson, R. July (ATG) <RJJulyS@atg.wa.gov>; Robert W. McDonald <rmcdonald@qualityloan.com>; Mike DeLeo <mdeleo@prklaw.com>; Scott Stafne <scott@stafnelaw.com>

Subject: Meet and Confer re: Emergency Stay | Church of the Gardens, et al. v. Quality Loan Service Corp., et al. | 9th Circuit No. 26-93

This message has originated from an **External Email**. Scott Stafne <scott@stafnelaw.com>:

Midori, I am filing the emergency motion for a stay with the Ninth Circuit in the morning which as you know we were forced to file in the District Court because the Ninth Circuit or the district court of both of those courts refused to timely process the appeal in violation of applicable controlling case law, see *Coinbase, Inc. v. Bielski*, 143 S. Ct. 1915 (2023), *Griggs v Provident Consumer Discount Co*, 459 U.S. 56 (1982).

Please state your position regarding this emergency motion so that I can provide it to the Circuit Court.

Please do so by 10 am tomorrow.

Respectfully,

--

Scott Stafne, Attorney

Notice To Recipient: This e-mail is meant for only the intended recipient of the transmission, and may be a communication privileged by law. If you received this e-mail in error, any review, use, dissemination, distribution, or copying of this e-mail is strictly prohibited. Please notify us immediately of the error by return e-mail and please delete this message and any and all duplicates of this message from your system. Thank you in advance for your cooperation. For additional policies governing this e-mail, please see <http://www.buchalter.com/about/firm-policies/>.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CHURCH OF THE GARDENS; ALVIN
WHITE

Plaintiffs-Appellants,

v.

QUALITY LOAN SERVICES
CORPORATION OF WASHINGTON, et
al.

Defendants-Appellees.

No. 26-93

D.C. No. 3:23-cv-06193-TMC
Western District of Washington,
Tacoma

DECLARATION OF JUSTIN
WOOD IN SUPPORT OF
APPELLANTS' RULE 27-3
CERTIFICATE REGARDING
APPELLANTS' EMERGENCY
MOTION FOR STAY OF
EVICTION PROCEEDINGS
PENDING APPEAL

1. My name is Justin Wood. I am over the age of eighteen and competent to testify. I am a United States citizen. I make this declaration in support of Appellants' Rule 27-3 Certificate regarding Appellants' Motion for Stay of Eviction Proceedings Pending Appeal. I submit this testimony based on my personal knowledge.
2. On January 5, 2026, I was directed by Appellants' counsel, Scott E. Stafne, to contact the Clerk's Office of the United States Court of Appeals for the Ninth Circuit for the purpose of obtaining the appellate case number

associated with Appellants' Notice of Appeal, which had been filed in the United States District Court for the Western District of Washington on January 2, 2026.

3. During the afternoon of January 5, 2026, I telephoned the Ninth Circuit Clerk's Office. An unidentified court clerk answered the call identifying the office as the "Ninth Circuit."
4. I explained that a Notice of Appeal had been filed in the Western District of Washington and that I was calling to determine whether a Ninth Circuit case number had been assigned, as such information was needed to file Appellants' motion for stay.
5. The call lasted approximately fourteen (14) minutes while the clerk searched for the case. During the call, I confirmed the district court case number and the names of the parties at the clerk's request.
6. The clerk was able to locate the underlying district court case but advised that no Ninth Circuit case number had yet been assigned. The clerk further informed me that the Notice of Appeal had not yet been transmitted by the district court to the Ninth Circuit.

I declare under the penalty of perjury that the foregoing is true and correct to my best of information and belief.

Dated: January 7, 2026, at Yelm, Washington.

By: 
Justin Wood, declarant.

DECLARATION OF SERVICE

I declare under penalty of perjury under the laws of the United States of America, that I caused the foregoing document to be served on all counsel of record by electronically filing it with the Court's CM/ECF system, which automatically generates and transmits a Notice of Electronic Filing to all registered participants.

Dated this 8th day of January, 2026.

By: s/ Scott E. Stafne
Scott E. Stafne, attorney.



Scott Stafne <scott@stafnelaw.com>

Activity in Case 3:23-cv-06193-TMC Church of the Gardens et al v. Quality Loan Services Corporation et al Set/Reset Motion Noting Date

1 message

ECF@wawd.uscourts.gov <ECF@wawd.uscourts.gov>
To: ECF@wawd.uscourts.gov

Tue, Jan 6, 2026 at 12:19 PM

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.

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U.S. District Court**United States District Court for the Western District of Washington****Notice of Electronic Filing**

The following transaction was entered on 1/6/2026 at 12:19 PM PST and filed on 1/6/2026

Case Name: Church of the Gardens et al v. Quality Loan Services Corporation et al**Case Number:** 3:23-cv-06193-TMC**Filer:****WARNING: CASE CLOSED on 09/02/2025****Document Number:** No document attached**Docket Text:****Noting Date 1/26/2026 for [114] Motion to Stay. (JDM)****3:23-cv-06193-TMC Notice has been electronically mailed to:**Scott E Stafne scott@stafnelaw.com, leeann@stafnelaw.com, wwactfilings@aol.comMichael Steven DeLeo mdeleo@prklaw.com, vcoleman@prklaw.comMidori R Sagara msagara@buchalter.com, cdaniel@buchalter.com, midori.sagara@gmail.comRobert William McDonald rmcdonald@qualityloan.com, cvnotice@mccarthyholthus.com, rockymcdonald@gmail.com**3:23-cv-06193-TMC Notice will not be electronically mailed to:**

Church of the Gardens, et al. v. Quality Loan Service Corporation of Washington, et al. 26-93 - 001 - Appeal Opened

1 message

ACMS@ca9.fedcourts.us <ACMS@ca9.fedcourts.us>
To: scott@stafnelaw.com

Tue, Jan 6, 2026 at 2:07 PM

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United States Court of Appeals for the Ninth Circuit

Notice of Docket Activity

The following transaction was entered on 01/06/2026 2:05:58 PM PST and filed on 01/06/2026

Case Name: Church of the Gardens, et al. v. Quality Loan Service Corporation of Washington, et al.

Case Number: 26-93

Docket Text:

CASE OPENED. A copy of your notice of appeal / petition filed in 3:23-cv-06193-TMC has been received in the Clerk's office of the United States Court of Appeals for the Ninth Circuit.

The U.S. Court of Appeals docket number **26-93** has been assigned to this case. All communications with the court must indicate this Court of Appeals docket number. Please carefully review the docket to ensure the name(s) and contact information are correct. It is your responsibility to alert the court if your contact information changes.

Resources Available

For more information about case processing and to assist you in preparing your brief, please review the Case Opening Information (for [attorneys](#) and [pro se litigants](#)) and review the [Appellate Practice Guide](#). Attorneys should consider contacting the court's [Appellate Mentoring Program](#) for help with the brief and argument. [Entered: 01/06/2026 02:06 PM]

Notice will be electronically mailed to:

Mr. Scott Erik Stafne Esquire; scott@stafnelaw.com, docketservice@stafnelaw.com, leeann@stafnelaw.com

Mr. Robert William McDonald Esquire; rmcdonald@qualityloan.com

Mr. Michael Steven DeLeo Esquire; mdeleo@prklaw.com, vcoleman@prklaw.com

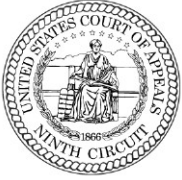
Midori Sagara ; cdaniel@buchalter.com, msagara@buchalter.com

R. July Simpson Esquire; jeanine.lantz@atg.wa.gov, diane.hoosier@atg.wa.gov, july.simpson@atg.wa.gov, amy.hand@atg.wa.gov, christine.truong@atg.wa.gov, comcec@atg.wa.gov

Sarah Elizabeth Smith-Levy ; mark.oneal@atg.wa.gov, comcec@atg.wa.gov, sarah.e.smith@atg.wa.gov, comcec@atg.wa.gov, tally.locke@atg.wa.gov, tally.locke@atg.wa.gov

Clerk USDC Tacoma ; appealsorders@wawd.uscourts.gov

Case participants listed below will not receive this electronic notice:



Molly C. Dwyer
Clerk of Court

Office of the Clerk
United States Court of Appeals for the Ninth Circuit
Post Office Box 193939
San Francisco, California 94119-3939
415-355-8000

FILED

JAN 6 2026

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

DOCKETING NOTICE

Docket Number: 26-93
Originating Case Number: 3:23-cv-06193-TMC

Short Title: Church of the Gardens, et al. v. Quality Loan Service
Corporation of Washington, et al.

Dear Appellant/Counsel

A copy of your notice of appeal/petition has been received in the Clerk's office of the United States Court of Appeals for the Ninth Circuit. The U.S. Court of Appeals docket number shown above has been assigned to this case. You must indicate this Court of Appeals docket number whenever you communicate with this court regarding this case.

Motions filed along with the notice of appeal in the district court are not automatically transferred to this court for filing. Any motions seeking relief from this court must be separately filed in this court's docket.

Please furnish this docket number immediately to the court reporter if you place an order, or have placed an order, for portions of the trial transcripts. The court reporter will need this docket number when communicating with this court.

You must file a Disclosure Statement (Form 34) within 14 days of this notice if your case: (1) involves a non-governmental corporation, association, joint venture, partnership, limited liability company, or similar entity; (2) is a bankruptcy case; (3) is a criminal case involving an organizational victim; or (4) involves review of state court proceedings. See Ninth Circuit Rule 26-1.1.

Failure of the appellant to comply with the time schedule order may result in dismissal of the appeal.

Please read the enclosed materials carefully.



Office of the Clerk
United States Court of Appeals for the Ninth Circuit
 Post Office Box 193939
 San Francisco, California 94119-3939
 415-355-8000

Molly C. Dwyer
 Clerk of Court

TIME SCHEDULE ORDER

Docket Number:	26-93
Originating Case Number:	3:23-cv-06193-TMC
Case Title:	Church of the Gardens, et al. v. Quality Loan Service Corporation of Washington, et al.

1/12/2026

Alvin White	Mediation Questionnaire due
Church of the Gardens	Mediation Questionnaire due

2/17/2026

Alvin White	Appeal Opening Brief (No Transcript Due)
Church of the Gardens	Appeal Opening Brief (No Transcript Due)

3/19/2026

State of Washington	Appeal Answering Brief (No Transcript Due)
Deutsche Bank National Trust Company	Appeal Answering Brief (No Transcript Due)
MTC Financial, Inc.	Appeal Answering Brief (No Transcript Due)
Quality Loan Service Corporation of Washington	Appeal Answering Brief (No Transcript Due)

If there were reported hearings, the parties shall designate and, if necessary, cross-designate the transcripts pursuant to 9th Cir. R. 10-3. If there were no reported hearings, the transcript deadlines do not apply.

The optional reply may be filed within 21 days of service of the answering brief. See Fed. R. App. P. 31 and 9th Cir. R. 31-2.1.

Failure of the appellant to comply with the time schedule order may result in automatic dismissal of the appeal. See 9th Cir. R. 42-1.

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8 **UNITED STATES DISTRICT COURT**
9 **WESTERN DISTRICT OF WASHINGTON AT TACOMA**

10 CHURCH OF THE GARDENS, a
11 Washington Not-for-Profit Corporation
12 operating as a faith-based religious
13 organization; ALVIN WHITE, in his
14 individual capacity,

15 Plaintiffs,

16 v.

17 QUALITY LOAN SERVICES
18 CORPORATION OF WASHINGTON;
19 MTC FINANCIAL INC. DBA TRUSTEE
20 CORPS.; DEUTSCHE BANK
21 NATIONAL TRUST COMPANY; LONG
22 BEACH MORTGAGE LOAN TRUST
23 2006-4; LONG BEACH MORTGAGE
24 LOAN TRUST 2006-5; and STATE OF
WASHINGTON, a State of the United
States.

Defendants.

NOTICE OF CIVIL APPEAL

Case No.: 3:23-cv-06193-TMC

District Court Judge:

Tiffany M. Cartwright

1 Notice is hereby given that Appellants (plaintiffs below in this removed action
2 from the Washington State Superior Court) CHURCH OF THE GARDENS and
3 ALVIN WHITE, appeal to the United States Court of Appeals for the Ninth Circuit
4 from the district court's orders and actions assuming and exercising jurisdiction in
5 this matter, including but not limited to orders and omissions that permitted the
6 sale of Appellant's real property while it was asserted to be a res of the court.
7

8 This appeal is taken on the following institutional and constitutional
9 grounds:
10

11 **1. Lack of Authority to Act.**

12 Appellant contends that the district court assumed and exercised jurisdiction
13 during the removal process which that Court as an institution of government
14 did not possess, thereby acting without constitutional authority to adjudicate
15 the judicial inquiries presented. The appeal challenges the court's authority
16 to proceed at all, independent of the merits of any underlying claims.
17

18 **2. Structural Disqualification and Lack of Judicial Neutrality.**

19 In the alternative, and only to the extent the district court is deemed to have
20 had authority to consider Appellant's supplemental complaint concerning the
21 sale of property asserted to be a res of the court, Appellant contends that the
22 same judicial officers charged with preserving that res were structurally
23
24

1 disqualified from adjudicating whether the court's own conduct in permitting
2 the sale was constitutionally or legally proper. A judge responsible for
3 preserving a res may not serve as the neutral adjudicator of challenges to that
4 court's own handling of the res.
5

6 If necessary because the District Court or the Court of Appeals asserts that
7 no appeal is available because the District Court's adjudications do not amount to a
8 final order Appellants assert that these jurisdictional issues are **collateral to the**
9 **merits**, conclusively determine important questions of constitutional structure and
10 judicial neutrality, and would be effectively unreviewable after final judgment,
11 including because the property at issue has been or will be irreversibly alienated.
12

13 The last order by the District Court from which these appeals can be taken
14 was docketed with the United States District Court on **December 8, 2025**.
15

16 This Notice of Appeal is filed to preserve Appellant's right to appellate
17 review of these institutional defects and does not concede the district court's
18 authority to adjudicate the matters challenged herein. Indeed, a purpose of this
19 Notice of Appeal is to assert that the District Court's conduct constitutes "treason
20 to the Constitution." *See Cohens v. Virginia*, 19 U.S. 264, 404 (1821).
21

22 ///
23 ///
24 ///

1 DATED this 2nd day of January 2026, at Arlington, Washington.

2 By: s/ Scott E. Stafne WSBA No. 6964

3 Scott E. Stafne

4 Stafne Law *Advocacy & Consulting*

5 239 North Olympic Avenue

6 Arlington, WA 98223

7 360.403.8700

8 Scott@Stafnelaw.com

9 *Attorney for Plaintiffs*

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF Western Washington at Seattle

**Form 1. Notice of Appeal from a Judgment or Order of a
United States District Court**

U.S. District Court case number: 3:23-cv-06193-TMC

Notice is hereby given that the appellant(s) listed below hereby appeal(s) to the United States Court of Appeals for the Ninth Circuit.

Date case was first filed in U.S. District Court: 12/28/2023

Date of judgment or order you are appealing: 12/08/2025

Docket entry number of judgment or order you are appealing: 111

Fee paid for appeal? (*appeal fees are paid at the U.S. District Court*)

☒ Yes ☐ No ☐ IFP was granted by U.S. District Court

List all Appellants (*List each party filing the appeal. Do not use "et al." or other abbreviations.*)

CHURCH OF THE GARDENS, a Washington Not-for-Profit Corporation operating as a faith-based religious organization; ALVIN WHITE, in his individual capacity

Is this a cross-appeal? ☐ Yes ☒ No

If yes, what is the first appeal case number?

Was there a previous appeal in this case? ☐ Yes ☒ No

If yes, what is the prior appeal case number?

Your mailing address (if pro se):

City: State: Zip Code:

Prisoner Inmate or A Number (if applicable):

Signature /s/ Scott Erik Stafne

Date 1/2/2026

Complete and file with the attached representation statement in the U.S. District Court

Feedback or questions about this form? Email us at forms@ca9.uscourts.gov

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

Form 6. Representation Statement

Instructions for this form: <http://www.ca9.uscourts.gov/forms/form06instructions.pdf>

Appellant(s) *(List each party filing the appeal, do not use “et al.” or other abbreviations.)*

Name(s) of party/parties:

CHURCH OF THE GARDENS, a Washington Not-for-Profit Corporation
operating as a faith-based religious organization; ALVIN WHITE, in his
individual capacity,

Name(s) of counsel (if any):

Scott Erik Stafne, WSBA No. 6964

Address: 239 N. Olympic Ave, Arlington, WA 98223

Telephone number(s): (360) 403-8700

Email(s): scott@stafnelaw.com

Is counsel registered for Electronic Filing in the 9th Circuit? ☒ Yes ☐ No

Appellee(s) *(List only the names of parties and counsel who will oppose you on appeal. List separately represented parties separately.)*

Name(s) of party/parties:

QUALITY LOAN SERVICES CORPORATION OF WASHINGTON

Name(s) of counsel (if any):

Robert W. McDonald, WSBA #43842

Address: 108 1st Ave S, Ste 450 Seattle, WA 98104-2557

Telephone number(s): (206) 596-4862

Email(s): rmcdonald@qualityloan.com

To list additional parties and/or counsel, use next page.

Feedback or questions about this form? Email us at forms@ca9.uscourts.gov

Continued list of parties and counsel: *(attach additional pages as necessary)*

Appellants

Name(s) of party/parties:

Name(s) of counsel (if any):

Address:

Telephone number(s):

Email(s):

Is counsel registered for Electronic Filing in the 9th Circuit? ☐ Yes ☐ No

Appellees

Name(s) of party/parties:

DEUTSCHE BANK NATIONAL TRUST COMPANY

Name(s) of counsel (if any):

Midori R. Sagara, WSBA #39626

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1420 Fifth Avenue, Suite 3100 Seattle, WA 98101-1337

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MTC FINANCIAL INC. (d/b/a) TRUSTEE CORPS.

Name(s) of counsel (if any):

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Email(s):

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Feedback or questions about this form? Email us at forms@ca9.uscourts.gov

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

Form 6. Representation Statement

Instructions for this form: <http://www.ca9.uscourts.gov/forms/form06instructions.pdf>

Appellant(s) *(List each party filing the appeal, do not use “et al.” or other abbreviations.)*

Name(s) of party/parties:

Name(s) of counsel (if any):

Address:

Telephone number(s):

Email(s):

Is counsel registered for Electronic Filing in the 9th Circuit? ☐ Yes ☐ No

Appellee(s) *(List only the names of parties and counsel who will oppose you on appeal. List separately represented parties separately.)*

Name(s) of party/parties:

STATE OF WASHINGTON

Name(s) of counsel (if any):

R July Simpson WSBA #45869

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Telephone number(s): 360-586-3151

Email(s): July.Simpson@atg.wa.gov

To list additional parties and/or counsel, use next page.

Feedback or questions about this form? Email us at forms@ca9.uscourts.gov

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury under the laws of the State of Washington that a true and correct copy of the foregoing has been furnished electronically via the Court's CM/ECF system to all persons registered to receive electronic notice.

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July.Simpson@atg.wa.gov

Dated this 2nd day of January 2026.

By s/ Scott E. Stafne
Scott E. Stafne, Attorney.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

CHURCH OF THE GARDENS et al.,

Plaintiffs,

v.

QUALITY LOAN SERVICES

CORPORATION et al.,

Defendants.

Case No. 3:23-cv-06193-TMC

ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFFS'
MOTION FOR POST JUDGMENT RELIEF

I. INTRODUCTION

Before the Court is plaintiffs Church of the Gardens (“COTG”) and Alvin White’s (“White”) (collectively “Plaintiffs”) motion for post judgment relief under Fed. R. Civ. P. 59(e) and 60(b)(4) and (6). Dkt. 107. For the following reasons, Plaintiffs’ motion is GRANTED in part. The Court VACATES its summary judgment order (Dkt. 105) and judgment (Dkt. 106) with respect to the dismissal of COTG’s claims without prejudice for lack of subject matter jurisdiction. Instead, COTG’s claims are REMANDED to Pierce County Superior Court. The remainder of Plaintiffs’ motion to vacate is DENIED.

II. BACKGROUND

The Court assumes familiarity with the facts and procedural history of this case, *see* Dkt. 105 at 2–10, and will recite only facts necessary to resolve this motion. On December 13, 2023, Plaintiffs filed their initial complaint in Pierce County Superior Court against defendants QLS, Trustee Corps, Deutsche Bank National Trust Company (“Deutsche Bank”), 2006-4 Trust, 2006-5 Trust, and the State of Washington. Dkt. 1–2. Deutsche Bank removed the case to this Court on December 28, 2023. Dkt. 1. Plaintiffs filed an amended complaint soon after on January 8, 2024. Dkt. 8.

Deutsche Bank moved for summary judgment on April 30, 2025. Dkt. 67. QLS joined the motion. Dkt. 73. Plaintiffs cross-moved for summary judgment. Dkt. 76. The Court ordered supplemental briefing, which was completed on July 16, 2025. *See* Dkts. 91–99. On September 2, 2025, the Court granted Deutsche Bank’s motion for summary judgment and dismissed COTG’s claims without prejudice and White’s claims with prejudice. Dkt. 105.

Plaintiffs filed the instant motion on September 15, 2025. Dkt. 107. Deutsche Bank responded on September 30, 2025. Dkt. 109. Plaintiffs filed their reply on October 5, 2025. Dkt. 110.

III. LEGAL STANDARDS

A. Fed. R. Civ. P. 59(e)

Under Rule 59(e), a party may move the court to amend its judgment within twenty-eight days after entry of judgment. Fed. R. Civ. P. 59(e). Rule 59(e) provides an “extraordinary remedy, to be used sparingly in the interests of finality and conservation of judicial resources.” *Carroll v. Nakatani*, 342 F.3d 934, 945 (9th Cir. 2003) (citation modified). In general, there are four grounds upon which a Rule 59(e) motion may be granted:

(1) if such motion is necessary to correct manifest errors of law or fact upon which the judgment rests; (2) if such motion is necessary to present newly discovered or previously unavailable evidence; (3) if such motion is necessary to prevent manifest injustice; or (4) if the amendment is justified by an intervening change in controlling law.

Allstate Ins. Co. v. Herron, 634 F.3d 1101, 1111 (9th Cir. 2011) (citing *McDowell v. Calderon*, 197 F.3d 1253, 1255 n.1 (9th Cir. 1999)); *see also Carroll*, 342 F.3d at 945 (a Rule 59(e) motion “should not be granted, absent highly unusual circumstances, unless the district court is presented with newly discovered evidence, committed clear error, or if there is an intervening change in the controlling law.” (citation omitted)). Finally, a “Rule 59(e) motion may not be used to raise arguments or present evidence for the first time when they could reasonably have been raised earlier in the litigation.” *Carroll*, 342 F.3d at 945.

B. Fed. R. Civ. P. 60(b)(4)

Under Rule 60(b)(4), a final judgment is void “only if the court that considered it lacked jurisdiction . . . or acted in a manner inconsistent with due process.” *United States v. Berke*, 170 F.3d 882, 883 (9th Cir. 1999).

C. Fed. R. Civ. P. 60(b)(6)

Rule 60(b)(6) allows the district court to relieve a party from final judgment for any justifiable reason. Fed. R. Civ. P. 60(b)(6). But the party seeking relief under Rule 60(b)(6) must show “extraordinary circumstances” that “justify the reopening of a final judgment.” *Gonzalez v. Crosby*, 545 U.S. 524, 535 (2005).

IV. DISCUSSION

On September 2, 2025, the Court issued an order granting Deutsche Bank’s motion for summary judgment. Dkt. 105. White’s claims were dismissed with prejudice and COTG’s claims were dismissed without prejudice for lack of subject matter jurisdiction. *Id.* at 34. Plaintiffs seek

1 the vacatur of the summary judgment order pursuant to Rules 59(e), 60(b)(4) and (6).
2 Dkt. 107 at 2–3. In support of their request, they make several arguments.

3 First, Plaintiffs argue that the Court committed “[t]reason against the Constitution” and
4 “violat[ed the] natural law” it is derived from because it “has purposely not engaged in faithfully
5 pursuing its jurisdiction duties.” *Id.* at 7–8, 11–12. In response, Deutsche Bank contends that this
6 is “nothing more than an attempt to re-litigate their summary judgment motion.” Dkt. 109 at 5.

7 Second, Plaintiffs claim the summary judgment order “purposely dodg[es] Plaintiffs[’]”
8 arguments about “the meaning of RCW 61.24.130.” Dkt. 107 at 8–9. In response, Deutsche Bank
9 argues that Plaintiffs have “presented no newly discovered authority or evidence to support their
10 position,” “[t]hey simply disagree with the Court’s interpretation of RCW 61.24.130.”
11 Dkt. 109 at 5.

12 Third, Plaintiffs contend the summary judgment order “dodg[es] Plaintiffs[’]”
13 jurisdictional arguments by” placing the burden “to allege and prove removal jurisdiction” on
14 Plaintiffs. Dkt. 107 at 10–15. In response, Deutsche Bank claims Plaintiffs’ jurisdictional
15 arguments are “disingenuous and without merit” because, rather than move to remand the case to
16 state court, Plaintiffs filed an amended complaint and further cemented federal question
17 jurisdiction. Dkt. 109 at 3–5.

18 After reviewing the parties’ submissions and its summary judgment order, the Court
19 GRANTS Plaintiffs’ motion to vacate the summary judgment order in part and DENIES it in
20 part.

21 **A. The Court must remand COTG’s claims to Pierce County Superior Court.**

22 A Rule 59(e) motion may be granted “to correct manifest errors of law.” *Allstate Ins. Co.*,
23 634 F.3d at 1111. When considering Deutsche Bank’s motion for summary judgment against
24 COTG’s claims, the Court found COTG did not have standing, and dismissed all of COTG’s

1 claims without prejudice for lack of jurisdiction. Dkt. 105 at 17–21. In cases that were removed
2 from state court, however, the district court is required to remand the case to state court if it
3 determines at any time before final judgment that it lacks subject matter jurisdiction to hear the
4 case. *Polo v. Innoventions Int’l, LLC*, 833 F.3d 1193, 1196 (9th Cir. 2016) (citing 8 U.S.C.
5 § 1447(c)). Here, the Court determined that it lacked jurisdiction over all the claims brought by
6 COTG for lack of Article III standing. Dkt. 105 at 17–21. The Court was therefore required to
7 remand COTG’s claims to state court. *Polo*, 833 F.3d at 1196 (“Remand is the correct remedy
8 because a failure of federal subject-matter jurisdiction means only that the *federal* courts have no
9 power to adjudicate the matter. State courts are not bound by the constraints of Article III.”).
10 Accordingly, “[t]o correct [a] manifest error[] of law,” the Court GRANTS Plaintiffs’ motion in
11 part and VACATES the portion of its order and judgment dismissing COTG’s claims without
12 prejudice. Dkt. 105 at 21, 34. Instead, all claims brought by COTG are REMANDED to Pierce
13 County Superior Court.

14 **B. The remainder of Plaintiffs’ motion is denied.**

15 Plaintiffs’ remaining arguments do not meet the requirements for relief under Rules
16 59(e), 60(b)(4), or 60(b)(6).

17 Plaintiffs’ jurisdictional arguments are unpersuasive. Although the Court did not have
18 subject matter jurisdiction over COTG’s claims because of a lack of standing, the same cannot be
19 said for White’s claims. It is clear from Plaintiffs’ initial and amended complaints that the Court
20 had subject matter jurisdiction over White’s case. Plaintiffs’ initial complaint contained
21 allegations that Defendants violated the Takings Clause, the Contracts Clause, the Due Process
22 Clause, and the Equal Protection Clause of the United States Constitution, giving this Court
23 jurisdiction under 28 U.S.C. § 1441. Dkt. 1-2 at 80, 81, 92; 28 U.S.C. §1441 (“If a civil action
24 includes . . . a claim arising under the Constitution . . . of the United States . . . the entire action

1 may be removed . . .”). Plaintiffs’ amended complaint maintained the same alleged violations of
2 the United States Constitution. Dkt. No. 8 at 23, 35, 89, 90, 104. Plaintiffs now take issue with
3 Defendants’ removal of this case. Dkt. 1 at 2. “Removal is a powerful tool: It operates largely
4 automatically in that once a defendant has filed the appropriate notice of removal in the federal
5 district court removal is a *fait accompli*.” *Polo*, 833 F.3d at 1196. “If the removal suffers from
6 procedural defects, the *plaintiff is responsible* for bringing those defects to the attention of the
7 district court in a timely motion to remand.” *Id.* (emphasis added). Plaintiffs did not move to
8 remand—instead, they filed an amended complaint maintaining the same federal constitutional
9 claims that provided this Court with jurisdiction.

10 Plaintiffs’ arguments about RCW 61.24.130, Dkt. 107 at 8–9, simply retread the same
11 ground that was covered in the Court’s summary judgment order, Dkt. 105 at 21–26. Rule 59(e)
12 permits a court to alter or amend a judgment, but it “may not be used to relitigate old matters, or
13 to raise arguments or present evidence that could have been raised prior to the entry of
14 judgment.” *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 486 n.5 (2008) (quoting 11 C. Wright &
15 A. Miller, *FEDERAL PRACTICE AND PROCEDURE* § 2810.1, pp. 127–128 (2d ed. 1995)).

16 Lastly, Plaintiffs’ argument about his opportunity “to be heard by this District Court” on
17 his motion for a temporary restraining order (“TRO”) before the state court is also unpersuasive.
18 Dkt. 107 at 4–5. The Court’s procedures did not prevent Plaintiffs from obtaining a prompt
19 hearing on their TRO motion. Instead, it was Plaintiffs’ failure to follow the local rules of the
20 Western District of Washington. The TRO motion was pending before the state court when
21 Deutsche Bank removed the case to federal court. Dkt. 107 at 4–5. Under the local rules, “[i]f a
22 motion is pending and undecided in the state court at the time of removal, it will not be
23 considered unless and until the moving party files and notes the motion on this court’s calendar
24 in accordance with [Local Rule] 7(d).” W.D. Wash. Local Civil Rule 101(d). Plaintiffs could

1 have immediately re-filed their TRO motion before this Court under Local Rule 65, and it would
2 have been promptly considered and decided by an Article III judge. They did not do so.
3 Plaintiffs' mistakes in litigation do not merit relief under Rules 59(e), 60(b)(4), or 60(b)(6).

4 V. CONCLUSION

5 For the reasons explained above, Plaintiffs' motion to vacate (Dkt. 107) is GRANTED in
6 part and DENIED in part. The Court ORDERS as follows:

- 7 1. The portion of the Court's summary judgment order (Dkt. 105) and judgment (Dkt. 106)
8 dismissing claims brought by Church of the Gardens is VACATED.
- 9 2. Instead, pursuant to 28 U.S.C. § 1447(c), all claims brought by Church of the Gardens are
10 REMANDED to the Superior Court of Pierce County, Washington;
- 11 3. Pursuant to 28 U.S.C. § 1447(c), the Clerk shall mail a certified copy of this Order to the
12 Clerk for the Superior Court of Pierce County, Washington;
- 13 4. The Clerk shall transmit the record herein to the Clerk for the Superior Court of Pierce
14 County, Washington;
- 15 5. Plaintiff Church of the Gardens shall file nothing further in this matter, and instead is
16 instructed to seek any further relief to which it believes it is entitled from the courts of the
17 State of Washington.

18 The remainder of the Court's judgment on Alvin White's claims remains in place, and
19 this case remains closed.

20
21 Dated this 8th day of December, 2025.

22 
23 Tiffany M. Cartwright
24 United States District Judge

HONORABLE TIFFANY M. CARTWRIGHT

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA**

CHURCH OF THE GARDENS, a
Washington Not-for-Profit Corporation
operating as a faith-based religious
organization; ALVIN WHITE, in his
individual capacity,

Plaintiffs,

v.

QUALITY LOAN SERVICES
CORPORATION OF WASHINGTON;
MTC FINANCIAL INC. DBA TRUSTEE
CORPS.; DEUTSCHE BANK
NATIONAL TRUST COMPANY; LONG
BEACH MORTGAGE LOAN TRUST
2006-4; LONG BEACH MORTGAGE
LOAN TRUST 2006-5; and STATE OF
WASHINGTON, a State of the United
States.

Defendants.

No. 3:23-cv-06193-TMC

**PLAINTIFFS' MOTION FOR
POST JUDGMENT RELIEF
PURSUANT TO FRCP 59 AND 60**

**NOTE ON MOTION CALENDAR:
OCTOBER 6, 2025**

I. RELIEF REQUESTED:

Pursuant to Fed. R. Civ. P. 59 and 60 Plaintiff Alvin B. White (“White”) and the Church of the Gardens (hereafter “Church” and collectively with White referred to as “Plaintiffs”) respectfully request this District Court as it is established pursuant to the Judiciary Act¹ and the first sentence of Article III, section 1² to vacate its September 2, 2025 Order granting Defendants’ summary judgment (Dkt. 105) based on:

- 1) FRCP 59’s “Manifest Error of Law” standard because a) Deutsche Bank (DB) never alleged or proved it had standing to remove this case to this District Court; and b) the failure of this District Court to identify this error under the circumstances of this case constitutes treason to the constitution.
- 2) FRCP 60’s “Void Judgment” standard because this District Court’s failure to adjudicate DB’s standing to have removed Plaintiffs’ state

¹ 28 U.S.C. § 128 (establishing Washington’s 7 district judge Western District Court); 28 U.S.C. § 132 (b)(provides: “[e]ach district court shall consist of the district judges or judges for the district in regular active service.”); 28 U.S.C. §133(a) (provides that the Western District of Washington court is composed of seven “district judges”.) White and the Church concede that Tiffany Cartwright is a District Judge. White and the Church dispute that magistrate judges are district judges within the meaning of these statutes and the United States Constitution.

² This sentence states “[t]he 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. ...” It is Plaintiffs position that only the 7 active duty District Judges of this Court constitute this District Court as a matter of law.

1 case leaves this District Court without having adjudicated the basis for
2 its subject matter jurisdiction over this removed case.

3 3) FRCP's 60(b)'s "Any other reason that justifies relief" standard
4 because this District Court's "treason to the constitution" constitutes
5 extraordinary circumstances requiring relief.
6

7 **II. ISSUES:**

- 8 1. Did this District Court err by assigning to White and the Church the burden
9 of alleging and proving DB's standing to remove this action to this District
10 Court?
11
- 12 2. Did this District Court err by refusing to adjudicate White's various
13 presentations seeking summary judgments regarding his rights under RCW
14 61.24.130, thereby depriving him of the statutory protection the Washington
15 State conferred upon property owners against the wrongful taking of their
16 property?
17
- 18 3. Did this District Court err by shifting DB's burden to establish federal
19 jurisdiction onto Plaintiffs, and by using that error to avoid adjudicating
20 Plaintiffs' cross-motions for summary judgment under RCW 61.24.130,
21 including White's challenges to DB's standing?
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1 4. Did this District Court err by adjudicating merits claims based on the
2 District Judge's perception of Plaintiffs' "core" claims and not those judicial
3 inquiries Plaintiffs actually presented to this District Court?
4

5 **III. STATEMENT OF FACTS:**

6 Plaintiffs have not attempted to sue this Court and its judicial officials (*i.e.*
7 the magistrate, the unknown "chambers", District Judge Cartwright, or the district
8 judges which make up this District Court) to obtain relief for what they contend is
9 this District Court's inappropriate conduct in not providing litigants with a
10 constitutionally sufficient court, *i.e.* one composed of qualified judges, at the time
11 of removal. Plaintiffs sought relief only against those parties they sued who used
12 this Court's inappropriate procedures in such a way as to "steal" the titles to two of
13 White's properties.
14
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16 The undisputed facts giving rise to the actual takings of the titles to two of
17 White's real properties without White's consent demonstrate that (1) White had
18 filed a complaint with the Pierce County Superior Court (hereafter "state court")
19 pursuant to RCW 61.24.130 to restrain various trustees' threats to sell the titles to
20 five real properties White owned; (2) White timely filed a motion to restrain the
21 sales of his properties, which motion was scheduled to be argued to the state court
22 before two of the sales were scheduled to take place; (3) Instead of arguing against
23
24

1 White's motion to restrain the sale pursuant to RCW 61.24.130 before the state
2 court, DB (claiming to be the beneficiary of the deed of trust, *see* RCW
3 61.24.005(b)) removed this state case to this District Court on December 28, 2025;
4
5 (4) Instead of arranging a time for White's restraint of sale motion pursuant to
6 RCW 61.24.130 to be heard by this District Court, DB instructed the Washington
7 State trustee (its agent) to sell White's property, which that trustee did; (5) At the
8 time of removal, *i.e.* December 28, 2024, this District Court had in place
9 procedures restricting litigants' access to actual "district judges". *See* note 1; (6)
10 These procedures caused this removed case to be assigned to a magistrate judge,
11 who was not a District Judge of the United States District Court for Western
12 Washington, and who could not adjudicate the instant motion to restrain the sales
13 of White's two titles without the consent all the litigants (which DB, its Trustee,
14 and Plaintiffs never gave.); (7) DB's paid Washington State trustee sold White's
15 property without White's consent during the time period no Article III judge had
16 been assigned to this case; (8) Once White learned of this procedure White
17 promptly objected to it, but "Chambers" (whatever that is? Perhaps unidentified
18 employees of this District Court's Clerk's Office?) responded that under the
19 Court's procedure this objection would be stricken from the record; (9) As this
20 Court knows, White objected to this procedure and this District Court, through
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22
23
24

1 District Judge Cartwright, restored these pleadings as records of the presentations
2 filed in this case, as was required by the factual circumstances of this case; (10)
3 White filed his first motion for summary judgement against all defendants seeking
4 a declaratory judgment regarding some aspects of the meaning of RCW 61.24.130
5 on January 29, 2024 (Dkt 19); (11) White filed a second motion for summary
6 judgment, against the trustee who did not sell any of his properties, on April 17,
7 2025 (Dkt. 63); and (12) White filed a third motion for summary judgment
8 challenging DB's standing to enforce the note instrument by way of a foreclosure
9 pursuant to the Deed of Trust Act on May 21, 2025 (Dkt. 76). That third motion
10 (together with its supporting declarations and evidence, Dkt. 77–82) proved that
11 DB had not alleged in its removal presentations that it had contractual standing or
12 Washington State statutory standing or Article III standing to enforce the purported
13 note instruments tied to the title of White's two properties. That same motion and
14 supporting documents also proved that numerous questions of fact existed with
15 regards to whether the note in question could be enforced, including among others,
16 the fact that the person who was purported to have endorsed the Note for the
17 original Lender signed a declaration that he never signed any such endorsements.
18
19
20
21
22 See Dkt. 76 at 23; Dkt. 77 at 28–29; Dkt. 81 at 4.
23
24

1 **IV. EVIDENCE RELIED UPON:**

2 As evidence in support of this motion for post judgment relief White and the
3 Church rely on the declaration of Scott Erik Stafne in support thereof as well as the
4 entire record of this case.
5

6 **V. ARGUMENT:**

7 *A. Treason Against the Constitution*

8 In *Cohens v. Virginia*, 19 U.S. 264, 404 (1821), the Supreme Court observed:
9

10 It is most true that this Court will not take jurisdiction if it should not;
11 but it is equally true that it must take jurisdiction if it should. ... We
12 have no more right to decline the exercise of jurisdiction which is
13 given than to usurp that which is not given. *The one or the other*
14 *would be treason to the Constitution.*

15 (Emphasis Supplied)

16 *Cohen's* statement that Article III courts and judges commit treason to the
17 constitution when they purposely usurp their jurisdiction reflects this Nation's
18 founders understanding that liberty has "every thing to fear" from the power of
19 courts not being tethered to their jurisdiction over specific cases and controversies.
20 Thus, it has long been the rule that Article III courts have a sua sponte duty to
21 determine the existence of their jurisdiction to adjudicate cases in good faith.

22 Here, Plaintiffs respectfully assert that the facts of this case indicate that this
23 District Court has purposely not engaged in faithfully pursuing its jurisdiction
24 duties and as a result is engaging in "treason to the constitution" and also violating

1 that natural law which led to various ratifications of the Constitution and several of
2 its amendments.

3 *B. This District Court is purposely dodging Plaintiffs judicial inquiries about*
4 *the meaning of RCW 61.24.130.*

5 As this District Court knows, it is White's position (and this Court has not
6 ruled otherwise) that RCW 61.24.130 confers on White an enforceable substantive
7 state law right to restrain a trustee's sale "on any proper legal or equitable ground,"
8 provided the trustee is given five (5) days notice of "the time when, place where,
9 and **the judge before whom** the application...is to be made." It is undisputed that
10 these procedural steps were taken by White in the state case before the appropriate
11 state court.
12

13
14 It is Plaintiffs' position that this substantive right to restrain the sale of
15 White's title to these two properties was not simply a gift to property owners from
16 Washington State's political branches of government, but is necessary to preserve
17 property owners' rights not to have their titles to properties arbitrarily taken from
18 them without their consent. *See Calder v. Bull*, 3 U.S. (3 Dall.) 386, 388 (1798)
19 ("A law [or judicial judgment] that takes property from A. and gives it to B. ... is
20 against all reason and justice for a government is instituted to protect property of
21 every sort.") *See also Murr v. Wisconsin*, 137 S. Ct. 1933, 1950 (2017), quoting
22 *Armstrong v. United States*, 364 U.S. 40, 49 (1960) ("The Fifth Amendment's
23
24

1 guarantee...was designed to bar Government from forcing some people alone to
2 bear public burdens which, in all fairness and justice, should be borne by the public
3 as a whole.”); Rappaport, “Originalism and Regulatory Takings: Why the Fifth
4 Amendment May Not Protect Against Regulatory Takings.”

5
6 *After title to two of White’s properties were taken from him by DB and its*
7 *Washington State trustee agent by using this District Court’s magistrate judge*
8 *policies to prevent White from obtaining timely judicial review of White’s state*
9 *court claims based on RCW 61.24.130, Plaintiffs filed an amended complaint in*
10 *this District Court which alleged defendants DB and the trustee that sold these two*
11 *without having afforded White the opportunity to obtain “restraint of sale” relief*
12 *pursuant to RCW 61.24.130 were liable to White for this wrongful taking, i.e.*
13 *conversion, of White’s property. Plaintiffs also asserted that DB and its Washington*
14 *State trustee agent had duties pursuant to RCW 61.24.130 to restrain the sale of*
15 *White’s properties under the circumstances alleged in this case.*

16
17
18 Plaintiffs assert that this District Court purposefully dodged their challenge
19 to DB’s standing to remove, using that avoidance as the means by which DB was
20 allowed to sell White’s properties without any adjudication of White’s rights to
21 restrain the sale of those properties.
22
23
24

1 *C. This District Court is dodging Plaintiffs jurisdictional arguments by falsely*
2 *claiming as fact and holding as a matter of law that it is Plaintiffs' burden to*
3 *allege and prove removal jurisdiction.*

4 As the District Court clearly knows the party invoking its jurisdiction to
5 adjudicate a case or controversy has the burden of establishing standing through 1)
6 the allegations in its initial presentations and 2) by way of proof at the appropriate
7 time for doing so. *See Dart Cherokee Basin Operating Co., LLC v. Owens*, 574
8 U.S. 81, 89 (2014); *Cf. Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992).

9 So why does this District Court falsely hold that it is Plaintiffs' burden to
10 demonstrate DB's jurisdiction to remove this case? *See* Dkt. 105 at 11:6–14.

11 Plaintiffs assert that the most likely reason for this inaccurate factual finding
12 and unsupportable legal holding is that this Court wants to avoid performing its sua
13 sponte duties to 1) adjudicate in the first instance whether the removal
14 presentations filed by DB adequately allege its standing to enforce the payment
15 provisions of White's two notes; and 2) adjudicate Plaintiffs motion for summary
16 judgment asserting that DB does not have standing under Washington's applicable
17 Deeds of Trust Act, Chapter 61.24 RCW, and Uniform Commercial Code, Chapter
18 62A RCW.
19
20
21

22 In any event, as everybody who looks at the presentations in this case can
23 discern, Plaintiffs' presentations regarding removal do not plead or prove that DB
24

1 had standing to remove this case to this District Court. More importantly,
2 defendants' removal presentations, *see* Dkt. 1, do not allege facts demonstrating
3 that DB or any defendant had standing to remove this case to this District Court,
4 notwithstanding that Defendants should have been aware from the state complaint
5 that their standing to enforce the Notes by way of non judicial foreclosures was
6 being challenged on several grounds, including (among other things) the fact the
7 purported endorser of the Notes had testified under oath that he never signed these
8 endorsements. *See* Dkt. 2-1 at 19–20, 228–258.
9

10
11 So why does this District Court go out of its way to ignore Plaintiffs
12 summary judgment evidence and legal argument establishing this Court does not
13 have jurisdiction over this removed action?
14

15 *D. The District Court's holding that Plaintiffs had the burden of proving*
16 *standing is a contrivance designed to avoid performing this Court's*
17 *jurisdictional duties and constitutes treason to the constitution.*

18 By falsely holding that Plaintiffs had the burden of proving DB's removal
19 jurisdiction, this District Court inappropriately sought to avoid the jurisdictional
20 issue which was squarely before it based on the constitution; which was whether
21 DB had appropriately alleged facts supporting its standing and whether DB had
22 produced evidence supporting its standing sufficient to withstand Plaintiffs motion
23 for summary judgment.
24

1 This District Court, through District Judge Cartwright, was able to commit
 2 this treason to the constitution by 1) pretending without actually adjudicating that
 3 DB had alleged and proved its standing; 2) then inappropriately moving on to
 4 adjudicate what that Court asserted was Plaintiffs “core” merits argument, *i.e.* the
 5 promissory notes were not signed by White; and 3) then claiming that because it
 6 has adjudicated the merits, Plaintiffs’ standing challenge to DB are moot.
 7

8 The District Court’s assertion based on its adjudication of a “core” merits
 9 claim that Plaintiffs claim challenging DBs standing to have removed this case are
 10 moot is not legally supportable because this District Court has a duty to determine
 11 in the first instance that it has subject matter jurisdiction over this case which has
 12 been removed from state court.
 13
 14

15 Plaintiffs assert that the District Court’s attempt to avoid adjudicating
 16 whether DB had proved its standing to have removed this case is further evidence
 17 of this District Court’s treason against the constitution.
 18

19 *E. The District Court’s holding that its adjudication of a “core” merits*
 20 *argument supported its refusal to adjudicate Plaintiffs’ standing*
 21 *challenges is bizarre and supports the assertion that this Court*
 22 *is engaged in treason against the constitution.*

23 1.) This District Court’s adjudication of the merits before it ruled on Plaintiffs
 24 standing challenges reveals judicial bias.

In its merits adjudication the District Court admits that Plaintiffs filed a 109

1 page complaint³ against DB and its various trustees containing numerous theories
 2 of relief. Then by purportedly reducing this 109 page complaint to its “core”
 3 argument, which is described as not possessing White’s original signed note, this
 4 District Court grants a summary judgment on this core claim because it holds that
 5 White’s experts do not meet the *Daubert* standard. But even if this conclusion
 6 about Plaintiffs’ experts is true, these experts’ historical testimony (not tied to their
 7 expertise) and that other historical evidence presented by way of Requests for
 8 Judicial Notice established that it was a prevalent business practice in 2006 for
 9 money changers like White’s purported “lender” Long Beach Mortgage Company’
 10 to destroy notes in favor of keeping electronic copies of them. Thus, there was
 11 evidence before this District Court tending to prove Plaintiff’s factual theory of the
 12 case that the original Note was destroyed.
 13
 14
 15

16 And it is Plaintiffs’ position that a neutral and independent forum would
 17 have allowed a jury to adjudicate whether based on that historical and other
 18 evidence the Note had been destroyed, even if this Court’s *Daubert* analysis was
 19 correct. *See infra*.
 20

21 2.) This Court’s purported merits adjudication of Plaintiffs’ purportedly “core”
 22 issue as a way of adjudicating Plaintiffs’ standing challenge constitutes
 23 judicial subterfuge

24 ³ The District Court does not state whether it is referencing the original complaint filed in state court or the amended complaint filed in this District Court.

1 This Court knows perfectly well -- or should know perfectly well -- that
2 Plaintiffs' challenges to DB's standing to enforce the provisions of the promissory
3 notes through the nonjudicial takings of the two titles to White's properties were
4 numerous. And that not all of Plaintiff's standing theories involved the contention
5 that the original signed notes had been destroyed. *See e.g.* Dkt. 76, (summary
6 judgment motion); Dkt. 77 (Stafne declaration in support), Dkt. 78 (White
7 declaration in support), Dkt. 79 (Dr. Kelley declaration in support), Dkt. 80 (Wood
8 declaration in support), Dkt. 81 (Paatalo declaration in support), Dkt. 82 (Third
9 Request for Judicial Notice).

12 Among those many judicial inquiries asserting DB's lack of standing was
13 that the Notes had not been endorsed by Jess Almanza as is indicated on the Notes
14 (*See* Dkt. 76 at 23; Dkt. 77 at 28–29; Dkt. 81 at 4). Indeed, Plaintiffs presented a
15 declaration by Almanza which testifies that he never signed any such notes. *See*
16 Dkt. 2-1, at 19–20, 228–258; Dkt. 8, at 23–24; Dkt. 8-1 at 132–162; Dkt. 19 at 10;
17 Dkt. 21 at 7–8; Dkt. 21-1 at 70–101; Dkt. 76 at 23; Dkt. 77 at 28–29. But this
18 District Court inappropriately avoids considering this judicial inquiry by
19 inappropriately claiming all it must look at is the “core” of numerous judicial
20 inquiries presented by Plaintiffs.

23 It is Plaintiffs' position that if a jury believes Almanza, *i.e.* that he did not
24

1 sign these five notes notwithstanding the money changers claim he did, a
2 reasonable jury could also find that these Notes had been fabricated based on the
3 historical evidence which was properly before this District Court.
4

5
6 John Marshall, this Nation's fourth Chief Justice, observed in a speech to his
7 countrymen that "I have always thought, from my earliest youth till now, that the
8 greatest scourge an angry Heaven ever inflicted upon an ungrateful and a sinning
9 people was an ignorant, a corrupt, or a dependent judiciary."
10

11 With respect to this District Court, as an institution of government, White
12 and his co-plaintiff in this case, *i.e.* Church of the Gardens, assert this District
13 Court and District Judge do this Nation and its judicial branch of government a
14 grave disservice by **dodging** any fair consideration of White's claim that he has
15 been injured by these entities' sale of the titles to his properties without his
16 consent.
17

18 Pretending that a District Court can erase a removing defendant's standing
19 obligations by foisting them onto Plaintiffs is conduct unworthy of a court created
20 to establish justice. Indeed, Plaintiffs respectfully assert that this conduct by the
21 District Court composed of its 7 District Judges constitutes treason to the
22 Constitution. *See supra*.
23
24

1 **CONCLUSION.**

2 This Court should vacate its ruling that White and the Church do not have
3 standing to insist that this District Court consider in the first instance their
4 challenges to DB's standing to remove this action to this Court.
5

6
7 I certify that this memorandum contains 3,263 words, in compliance with the
8 Local Civil Rules.

9 DATED this 15th day of September 2025, at Arlington, Washington.
10

11 By: s/ Scott E. Stafne WSBA No. 6964
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19
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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury under the laws of the State of Washington that a true and correct copy of the foregoing has been furnished electronically via the Court's CM/ECF system to all persons registered to receive electronic notice.

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Dated this 15th day of September 2025.

By s/ Scott E. Stafne
Scott E. Stafne, Attorney.

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6 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 CHURCH OF THE GARDENS et al.,

9 Plaintiff,

10 v.

11 QUALITY LOAN SERVICES

12 CORPORATION et al.,

13 Defendant.

Case No. 3:23-cv-06193-TMC

ORDER GRANTING DEUTSCHE BANK'S
MOTION FOR SUMMARY JUDGMENT
AND DENYING PLAINTIFFS' MOTION
FOR SUMMARY JUDGMENT

14
15 **I. INTRODUCTION**

16 This case arises from Plaintiff Alvin White's default on five mortgage loans, secured by
17 five separate properties in Fife, Washington. On January 5, 2024, Defendant Deutsche Bank
18 National Trust Company, as Trustee for Holders of Long Beach Mortgage Loan Trust 2006-4,
19 Asset-Backed Certificates, Series 2006-4 ("2006-4 Trust") and Long Beach Mortgage Loan
20 Trust 2006-5 ("2006-5 Trust") (collectively "the Trusts"), sold two of the five properties through
21 a nonjudicial foreclosure proceeding.

22 Plaintiffs White and Church of the Gardens filed suit, alleging that Deutsche Bank did
23 not possess the original promissory notes required to proceed with the nonjudicial foreclosure.
24 Plaintiffs seek to restrain the future sale of the remaining three properties and request damages

1 for the prior two sales. Plaintiffs allege that selling the properties violated the Washington Deed
2 of Trust Act (“DTA”) and Washington Consumer Protection Act (“CPA”), as well as breached
3 the loan contract. Plaintiffs also raise federal and state constitutional challenges to the DTA.
4 Finally, Plaintiffs seek a declaration on the meaning and governing version of RCW 61.24.130,
5 the provision in the DTA allowing the borrower to restrain a trustee’s sale.

6 On April 30, 2025, Deutsche Bank moved for summary judgment, arguing that Plaintiffs
7 had failed to put forth evidence from which a jury could find that the Trusts did not hold the
8 original notes. Dkt. 67. Plaintiffs also cross-moved for summary judgment, contending that
9 “there is irrefutable evidence that promissory notes—including those signed by White in 2006—
10 were routinely destroyed by the financial industry shortly after execution.” Dkt. 76 at 8–9.

11 Upon reviewing the motions and briefing, the Court ordered supplemental briefing
12 because both parties did not address all the claims raised in Plaintiffs’ amended complaint, the
13 relevant standard for challenging expert testimony, and whether Church of the Gardens has
14 standing to pursue its claims. Dkt. 91. On July 16, 2025, the parties filed supplemental briefs.
15 Dkts. 96, 97, 98, 99.

16 Having considered the briefing, governing law, and the balance of the record, the Court
17 GRANTS Deutsche Bank’s motion for summary judgment (Dkt. 67). Plaintiffs’ cross-motion for
18 summary judgment (Dkt. 76) is DENIED as moot.

19 II. BACKGROUND

20 A. Factual Background

21 The following background facts are either not genuinely disputed or viewed in the light
22 most favorable to Plaintiffs, the non-moving party. Additional material facts for each claim
23 brought by Plaintiffs are discussed in the sections corresponding to those claims.
24

1 1. *White executed five promissory notes and deeds of trust to secure loans borrowed*
 2 *from Long Beach Mortgage Company.*

3 In February 2006, White purchased five properties—Lot 11, Lot 16, Lot 7, Lot 10, and
 4 Lot 12—using funds borrowed from Long Beach Mortgage Company. White executed five
 5 promissory notes and deeds of trust to secure the loans. *See* Dkts. 70-1, 70-8, 70-14, 70-19, 70-
 6 24 (promissory notes); Dkts. 70-2, 70-9, 70-15, 70-20, 70-25 (deeds of trust). Defendant Quality
 7 Loan Services Corporation of Washington (“QLS”) is acting as the successor trustee for Lots 16
 8 and 11, *see* Dkt. 72 at 2, and Defendant MTC Financial Inc. (doing business as “Trustee Corps”) is acting as the successor trustee for Lots 7, 10, and 12, *see id.* at 7–8, 10, 13–14. QLS sold Lots
 9 11 and 16 to the Trusts on January 5, 2024 at a public auction. *See* Dkt. 70-7, 70-13. Trustee
 10 Corps recorded a Notice of Trustee’s Sale in Pierce County, Washington for Lots 7, 10, and 12,
 11 *see* Dkt. 72 at 16–20, 41–48, 53–54, but it later cancelled the sale by recording a Discontinuance
 12 of Sale, *see id.* at 22–23, 50–51, 53–54. Since this case has been pending, Trustee Corps has not
 13 served or recorded any new Notice of Trustee’s Sales for the remaining Lots. *Id.* at 4.

14 *a. Loan 3221*

15 White executed a promissory note for the principal sum of \$333,000, which was secured
 16 by a Deed of Trust encumbering real property Lot 11. Dkt. 70-1; Dkt. 70-2. The Deed of Trust
 17 was recorded as Instrument No. 200603030818 on March 3, 2006 in Pierce County, Washington.
 18 Dkt. 70-2 at 2. Loan 3221 went into default after White missed the January 1, 2009 payment.
 19 Dkt. 70 ¶ 12.

20 On February 28, 2009, the Deed of Trust was transferred to Deutsche Bank as Trustee for
 21 the 2006-4 Trust, which was assigned as the beneficiary. Dkt. 70-3. The mortgage was also
 22 transferred to Deutsche Bank on January 27, 2023, assigning 2006-4 Trust as the beneficiary.
 23 Dkt. 70-4. Both assignments were recorded in Pierce County, Washington. Dkt. 70-3 at 2;
 24

1 Dkt. 70-4 at 2. The document control notes by the mortgage servicer, Select Portfolio Servicing,
2 Inc. (“SPS”), state that the promissory note for Loan 3221 was sent by Deutsche Bank to SPS to
3 be placed in SPS’s vault in Salt Lake City, Utah on May 3, 2019. Dkt. 70 ¶ 11; Dkt. 70-5 at 2, 4.
4 On October 14, 2024, the note was sent to the Trusts’ counsel’s office in Seattle, Washington.
5 Dkt. 70 ¶ 15; Dkt. 70-5 at 5.

6 Due to the default, Loan 3221 was referred for a nonjudicial foreclosure and successor
7 trustee QLS recorded a Notice of Trustee Sale on May 10, 2023 in Pierce County, Washington.
8 Dkt. 70-6. The Notice of Trustee Sale indicated that the amount in arrears was \$562,990.56 and
9 that the default “must be cured by 9/4/2023 (11 days before the sale date), or by other date as
10 permitted in the Note or Deed of Trust, to cause a discontinuance of the sale.” *Id.* at 3. It also
11 noted that Lot 11 was being sold “to secure an obligation in favor of LONG BEACH
12 MORTGAGE COMPANY, as original beneficiary, the beneficial interest in which was
13 subsequently assigned to Deutsche Bank National Trust Company, as Trustee, in trust for
14 registered Holders of Long Beach Mortgage Loan Trust 2006-4, Asset-Backed Certificates,
15 Series 2006-4, the Beneficiary[.]” *Id.* at 2.

16 After the sale was postponed twice, it was completed on January 5, 2024 at a public
17 auction and Lot 11 was sold to the 2006-4 Trust for the amount of \$650,250. Dkt. 70-7 at 3. The
18 Trustee’s Deed Upon Sale was recorded in Pierce County, Washington under Instrument No.
19 202101160348 on January 16, 2024. *Id.* at 1.

20 *b. Loan 1002*

21 White executed a second promissory note for the principal sum of \$382,500, which was
22 secured by a Deed of Trust encumbering real property Lot 16. Dkt. 70-8; Dkt. 70-9. The Deed of
23 Trust was recorded as Instrument No. 200603030826 on March 3, 2006 in Pierce County,
24

1 Washington. Dkt. 70-9 at 2. After White missed the January 1, 2009 payment, Loan 1002 went
2 into default. Dkt. 70 ¶ 21.

3 SPS's document control notes show that the promissory note for Loan 1002 was sent to
4 SPS from Deutsche Bank on July 2, 2015 and held in SPS's vault in Salt Lake City, Utah.
5 Dkt. 70-11 at 4. On December 2, 2024, the note was sent to the Trusts' counsel's office in
6 Seattle, Washington. Dkt. 70 ¶ 24; Dkt. 70-11 at 7.

7 Loan 1002 was referred for a nonjudicial foreclosure following White's default in
8 payments. Dkt. 70 ¶ 21. Successor trustee QLS recorded a Notice of Trustee Sale on May 17,
9 2023 in Pierce County, Washington. Dkt. 70-10. The total sum in arrears was \$617,254.33 and
10 the Notice of Trustee Sale stated that Lot 16 was being sold "to secure an obligation in favor of
11 LONG BEACH MORTGAGE COMPANY, as original beneficiary, the beneficial interest in
12 which was subsequently assigned to Deutsche Bank National Trust Company, as Trustee, in trust
13 for registered Holders of Long Beach Mortgage Loan Trust 2006-5, Asset-Backed Certificates,
14 Series 2006-5, the Beneficiary[.]" *Id.* at 2–3.

15 The sale was completed at a public auction on January 5, 2024, and Lot 16 was sold to
16 the 2006-5 Trust for \$722,500. Dkt. 70-13 at 3. The Trustee's Deed Upon Sale was recorded in
17 Pierce County, Washington under Instrument No. 202401160353 on January 16, 2024. *Id.* at 1.

18 *c. Loan 3205*

19 White executed a third promissory note for the principal sum of \$333,000, which was
20 secured by a Deed of Trust encumbering real property Lot 7. Dkt. 70-14; Dkt. 70-15. The Deed
21 of Trust was recorded as Instrument No. 200603030820 on March 3, 2006 in Pierce County,
22 Washington. Dkt. 70-15 at 2.

23 On February 28, 2009, the Deed of Trust was transferred to Deutsche Bank as Trustee,
24 naming the 2006-5 Trust as the beneficiary. Dkt. 70-16. The assignment was recorded in Pierce

County, Washington on April 15, 2009. *Id.* at 2. A Corporate Assignment of Deed of Trust was also later recorded on February 7, 2023, which again named 2006-5 Trust as the beneficiary. Dkt. 70-17 at 2.

SPS's document control notes show that on October 16, 2024, Deutsche Bank sent the promissory note for Loan 3205 to SPS to be held in its vault in Salt Lake City, Utah. Dkt. 70 ¶ 29; Dkt. 70-18 at 3. On October 21, 2024 the note was then sent to the Trusts' counsel's office in Seattle, Washington, where it is currently held. Dkt. 70-18 at 3.

d. Loan 3213

White executed a fourth promissory note for the principal sum of \$382,500, which was secured by a Deed of Trust encumbering real property Lot 10. Dkt. 70-19; Dkt. 70-20. The Deed of Trust was recorded as Instrument No. 200603030822 on March 3, 2006 in Pierce County, Washington. Dkt. 70-20 at 2. After White failed to make the May 1, 2018 payment, Loan 3213 went into default. Dkt. 70 ¶ 36.

The Deed of Trust was transferred to Deutsche Bank on February 28, 2009, naming Trust 2006-5 as the beneficiary. Dkt. 70-21. This assignment was recorded in Pierce County, Washington on April 9, 2009 under Instrument No. 200904030273. *Id.* at 2. On May 25, 2016, a Corporate Assignment of Deed of Trust was recorded under Instrument No. 201605250006, again naming 2006-5 Trust as the beneficiary. Dkt. 70-22.

SPS's document control notes state that SPS's vendor, Richmond Monroe Group, held the promissory note for Loan 3213 until it sent the note to Trusts' counsel's office in Seattle, Washington on October 8, 2024, where it is currently stored. Dkt. 70 ¶ 35; Dkt. 70-23 at 3.

e. Loan 3239

White executed a fifth promissory note for the principal sum of \$333,000, which was secured by a Deed of Trust encumbering real property Lot 12. Dkt. 70-24; Dkt. 70-25. The Deed

1 of Trust was recorded as Instrument No. 200603030824 on March 3, 2006 in Pierce County,
2 Washington. Dkt. 70-25 at 2. Loan 3239 went into default after White missed his March 1, 2018
3 payment. Dkt. 70 ¶ 42.

4 On February 28, 2009, the Deed of Trust was transferred to Deutsche Bank as Trustee for
5 the 2006-5 Trust, which was the assigned beneficiary. Dkt. 70-26 at 2. This assignment was
6 recorded in Pierce County, Washington on April 9, 2009 under Instrument No. 200904090276.
7 *Id.* On June 29, 2016, a Corporate Assignment of Deed of Trust was recorded under Instrument
8 No. 201606290260, listing 2006-5 Trust as the beneficiary. Dkt. 70 ¶ 39; Dkt. 70-27 at 3.

9 SPS's document control notes reflect that SPS received the note for Loan 3239 from
10 Deutsche Bank on October 16, 2024. Dkt. 70-28 at 3. Two days later, SPS sent the note to
11 Trusts' counsel's office, where it is currently held. *Id.*; Dkt. 70 ¶ 41.

12 2. *Church of the Gardens*

13 Church of the Gardens ("COTG") is a nonprofit organization with a mission to "minister
14 to and protect those in need such as the hungry, the sick, the poor, and the homeless, the
15 indebted, the enslaved, the vulnerable, and all others who are unfairly prevented from exercising
16 their inalienable God-given natural rights." Dkt. 102-1 at 3; Dkt. 102-3 at 2. Part of COTG's
17 mission is "to engage in activities necessary for the accomplishment of the mission" and "to
18 oppose all, which by design or through corruption, are inimical to the church's mission[.]"
19 Dkt. 102-1 at 3; Dkt. 102-3 at 2. COTG "was born out of the government corruption which is
20 claimed to exist in this case with regards to governments', government institutions' and their
21 officials' (including 'judges') unlawful removal of people from their homes for the benefit of
22
23
24

1 money changers,¹ often causing death and injury to persons and always taking their real
2 property.” Dkt. 102 ¶ 21.

3 COTG is overseen by the Governing Board, which is the “church’s final interpretive
4 authority on the Bible’s meaning and application as it applies to the mission and faith of this
5 Church.” Dkt. 102-1 at 3. The Governing Board is composed of seven directors—three founding
6 directors and four ministry directors. *Id.* at 5. The ministry directors represent the Economic and
7 Social Justice Ministry, the Opposition to Governmental Injustice Ministry, the Affiliated
8 Church, Faith Based Organizations, and Chapel Ministry, and the Education, Workshop, and
9 Outreach Ministry. *Id.* at 5–6.

10 COTG has been a party to other cases challenging the nonjudicial sale of properties.
11 Dkt. 102 ¶ 14; *see* Dkt. 102-6. Scott E. Stafne is a “Church Advocate” representing COTG in
12 these cases. Dkt. 102 ¶¶ 14, 20. Stafne has “help[ed] [] write the Church’s mission statement,
13 statement of faith, and bylaws” and works to prevent the “unlawful exercise of state authority on
14 behalf of money changers to take real properties from their owners in Washington State.” *Id.*
15 ¶¶ 20, 35.

16 **B. Procedural Background**

17 Plaintiffs White and COTG filed suit in Pierce County Superior Court on December 13,
18 2023 against Defendants QLS, Trustee Corps, Deutsche Bank National Trust Company, 2006-4
19 Trust, 2006-5 Trust, and the State of Washington. Dkt. 1-2. Deutsche Bank removed the case to
20

21 ¹ In their cross-motion for summary judgment, *see* Dkt. 76 at 9, Plaintiffs adopt the term “money
22 changers” to refer to the financial industry. Plaintiffs assert that the “term is used deliberately
23 and with respectful awareness of its biblical weight” given that “[i]n the Scripture, the money
24 changers were those who exploited sacred obligations by manipulating the means of exchange
within the Temple. . . . [and similarly,] today’s financial institutions manipulate legal forms and
credit instruments—converting the borrower’s own promise into a source of profit for the money
changer who risks nothing.” *Id.*

1 this Court on December 28, 2023. Dkt. 1. On January 8, 2024, Plaintiffs amended their
2 complaint. Dkt. 8.

3 The 109-page complaint contained numerous allegations and legal theories for why the
4 past or potential future nonjudicial sale of White's properties violates "the organic law of this
5 Nation and the State of Washington." *Id.* ¶¶ 1.3, 4.18. Plaintiffs' core allegation is that the five
6 promissory notes at issue were lost or destroyed within a year of when the notes were signed by
7 White, thus cancelling the debt related to the mortgage loans. *Id.* ¶¶ 3.24, 3.28. Since the notes
8 were lost or destroyed, Plaintiffs assert that they "were never transferred into either of the
9 Defendant Trusts or any other trust." *Id.* ¶ 3.27. As a result, Plaintiffs allege that Defendants
10 cannot enforce the notes against White and any attempts to do so are unlawful. *Id.* ¶¶ 4.11–4.18.

11 Plaintiffs assert the following causes of action: (1) QLS's sale of Lot 11 and Lot 16 under
12 the DTA violates the due process clause, equal protection clause, and takings clause of the U.S.
13 Constitution; (2) the sale violates Article 1, section 10, Article IV, section 6, and Article V,
14 section 6 of the Washington Constitution; (3) the sale violates the DTA and CPA, and constitutes
15 a breach of contract. *Id.* ¶¶ 4.7, 3.99(H), 3.99(I), 3.98, 4.6, 4.8, 4.11–4.18.

16 Plaintiffs further assert that they are entitled to a declaration that the 2006 version of
17 RCW 61.24.130 is the governing law and a declaration as to the meaning of the current version
18 of RCW 61.24.130. *Id.* ¶¶ 4.1, 4.2. Plaintiffs also seek an injunction restraining Trustee Corps
19 from proceeding with the nonjudicial sale of the remaining Lots 7, 10, and 12, *id.* ¶¶ 4.9–4.10,
20 and request damages from QLS and Deutsche Bank for the prior sale of Lots 11 and 16, *id.*
21 ¶¶ 4.11–4.18.

22 On January 11, 2024, the State of Washington moved to dismiss for failure to state a
23 claim, Dkt. 12, which the Court granted, Dkt. 39. The Court also granted Trustee Corps' motion
24 to determine validity of nonmonetary status. Dkts. 51, 74. Trustee Corps was excused from

1 participating in the litigation, though it remains bound by this Court’s ruling on Plaintiffs’
2 claims. Dkt. 74 at 7.

3 On April 30, 2025, Deutsche Bank moved for summary judgment, Dkt. 67, and Plaintiffs
4 cross-moved for summary judgment, Dkt. 76. QLS joined Deutsche Bank’s motion for summary
5 judgment. Dkt. 73. After reviewing the motions and briefing, the Court ordered parties to submit
6 two supplemental briefs. First, the parties were asked to file a brief addressing the Federal Rule
7 of Evidence 702/*Daubert* standard for the expert witnesses whose testimony they argued was
8 unreliable. Dkt. 91; *see also* Dkt. 104 at 3–4. Second, the parties were asked to file a brief
9 addressing (1) Plaintiffs’ federal and state constitutional claims challenging the Deed of Trust
10 Act; (2) Plaintiffs’ declaratory judgment claims with respect to RCW 61.24.130; (3) Plaintiffs’
11 claims for equitable relief; and (4) whether Plaintiff Church of the Gardens (as opposed to
12 White) has Article III standing to pursue its claims. *Id.*

13 Plaintiffs objected to the Court’s order for supplemental briefing and moved to recuse the
14 undersigned district judge. Dkt 92. In their objections, Plaintiffs argued that the Court was
15 improperly providing Defendants “an opportunity to make additional arguments pursuant to
16 [FRE] 702 to exclude the Plaintiffs’ engineering expert, who had not been timely challenged on
17 such grounds.” *Id.* at 2–3. Plaintiffs also disavowed the notion that they “have attempted to
18 exclude the money changers’ experts” and asserted that the “record shows (and this Court should
19 know this) that Plaintiffs have not moved to exclude Defendants’ expert; rather Plaintiffs rely on
20 Defendants’ expert witness graphology-trained handwriting expert, McFarland, to support their
21 theory of the case.” *Id.* at 3. In denying Plaintiffs’ motion for recusal, the Court rejected as
22 unsupported and conclusory their claim that the Court’s order for supplemental briefing was
23 based on bias and animus towards Plaintiffs. Dkt. 93.

On July 16, 2025, Deutsche Bank filed its supplemental briefs, and moved to exclude Plaintiffs' proffered experts, James M. Kelley, Ph.D., and William Paatalo. Dkt. 96; Dkt. 97. The Court ruled on the challenge to that testimony in a separate order. Dkt. 104. Plaintiffs also filed supplemental briefs. Dkt. 98; Dkt. 99. The motions are ripe for the Court's consideration.

III. LEGAL STANDARD

A. Standing

Article III of the U.S. Constitution limits the Court's jurisdiction to "cases" and "controversies." U.S. Const. art. III, § 2. For a case or controversy to exist, the party bringing the case must have standing. *Perry v. Newsom*, 18 F.4th 622, 630 (9th Cir. 2021). The "irreducible constitutional minimum" of Article III standing requires the plaintiff to show the following three elements: "(1) [The plaintiff] suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Spokeo v. Robins*, 578 U.S. 330, 338 (2016). As the party invoking the Court's jurisdiction, the plaintiff "bears the burden of establishing these elements." *Id.*

Injury in fact is the "[f]irst and foremost" of the three elements. *Id.* "To establish injury in fact, a plaintiff must show that he or she suffered 'an invasion of a legally protected interest' that is 'concrete and particularized' and 'actual or imminent, not conjectural or hypothetical.'" *Id.* at 339 (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992)). A concrete injury is one that is "real, and not abstract." *Spokeo*, 578 U.S. at 340 (internal quotation marks omitted). "An injury in fact can be a physical injury, a monetary injury, an injury to one's property, or an injury to one's constitutional rights, to take just a few common examples." *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 381 (2024). "A 'particularized injury' is one that 'affect[s] the plaintiff in a personal and individual way.'" *Safer Chems., Healthy Fams. v. U.S. Env't Prot. Agency*, 943 F.3d 397, 411 (9th Cir. 2019) (quoting *Spokeo*, 578 U.S. at 339).

B. Summary Judgment Standard

“The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). A dispute as to a material fact is genuine “if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Villiarimo v. Aloha Island Air, Inc.*, 281 F.3d 1054, 1061 (9th Cir. 2002) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). The moving party has the initial burden of “‘showing’—that is, pointing out to the district court—that there is an absence of evidence to support the nonmoving party’s case.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). If the moving party meets its initial burden, the nonmoving party must go beyond the pleadings and “set forth specific facts showing that there is a genuine issue for trial.” *Anderson*, 477 U.S. at 248. The moving party is entitled to judgment as a matter of law when the nonmoving party fails to make a sufficient showing on an essential element of a claim on which the nonmoving party has the burden of proof. *Celotex*, 477 U.S. at 323.

Generally, “[t]he evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in his favor.” *Tolan v. Cotton*, 572 U.S. 650, 651 (2014) (per curiam) (quoting *Anderson*, 477 U.S. at 255). “Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge.” *Anderson*, 477 U.S. at 255. Thus, at summary judgment, the court must resolve “factual issues of controversy in favor of the non-moving party[.]” *Lujan v. Nat’l Wildlife Fed’n*, 497 U.S. 871, 889 (1990) (internal quotations omitted). But conclusory, nonspecific statements in affidavits are not sufficient, and “missing facts” will not be presumed. *See Lujan*, 497 U.S. at 889.

IV. DISCUSSION

A. Church of the Gardens lacks standing to bring its claims.

The Court asked the parties to brief standing because “it is well established that the court has an independent obligation to assure that standing exists, regardless of whether it is challenged by any of the parties.” *Summers v. Earth Island Inst.*, 555 U.S. 488, 499 (2009) (citation omitted); *see also Bowen v. Energizer Holdings, Inc.*, 118 F.4th 1134, 1149 (9th Cir. 2024) (“[W]e have an independent obligation to consider standing sua sponte.”) (citation modified). “The party invoking federal jurisdiction bears the burden of establishing” Article III standing “with the manner and degree of evidence required at the successive stages of the litigation.” *Lujan*, 504 U.S. at 561 (citation modified). “Thus, at the summary judgment stage, a plaintiff must offer evidence and specific facts demonstrating each element.” *Ctr. for Biological Diversity v. Exp.-Imp. Bank of the United States*, 894 F.3d 1005, 1012 (9th Cir. 2018) (citing *Lujan*, 504 U.S. at 561).

1. Direct Standing

When a plaintiff is an organization, “the standing requirements of Article III can be satisfied in two ways.” *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 199 (2023). “Either the organization can claim that it suffered an injury in its own right, or alternatively, it can assert ‘standing solely as the representatives of its members.’” *Id.* (quoting *Warth v. Seldin*, 422 U.S. 490, 511 (1975)).

The “in its own right” line of organizational standing cases come from the Supreme Court’s decision in *Havens v. Realty Corp. v. Coleman*, 455 U.S. 363 (1982), where the court held that a concrete and demonstrable injury to the organization’s activities demonstrated through a drain on the organization’s resources could establish standing. *Rodriguez v. City of San Jose*, 930 F.3d 1123, 1134 (9th Cir. 2019). The Ninth Circuit has interpreted *Havens* to require

1 that an organization show: “(1) frustration of its organizational mission; and (2) diversion of its
2 resources to combat the particular [injurious behavior] in question.” *Id.* (quoting *Smith v. Pac.*
3 *Props. & Dev. Corp.*, 358 F.3d 1097, 1105 (9th Cir 2004)). The organization, however, cannot
4 “manufacture the injury by incurring litigation costs or simply choosing to spend money fixing a
5 problem that otherwise would not affect the organization at all.” *Id.* (quoting *La Asociacion de*
6 *Trabajadores de Lake Forest v. City of Lake Forest*, 624 F.3d 1083, 1088 (9th Cir. 2010)).
7 Importantly, “organizations must satisfy the usual standards for injury in fact, causation, and
8 redressability that apply to individuals.” *Food & Drug Admin. v. All. for Hippocratic Med.*, 602
9 U.S. 367, 393–94 (2024) (citing *Havens*, 455 U.S. at 378–79).

10 Deutsche Bank argues that Church of the Gardens (“COTG”) lacks standing to bring this
11 case because it “does not have a ‘personal stake in the outcome of the controversy’ that would
12 entitle it to any relief from this Court.” Dkt. 97 at 9 (citation omitted). Specifically, Deutsche
13 Bank points out that the only allegation in Plaintiffs’ complaint referencing COTG is that it “is a
14 Washington not for profit corporation [] operating as a Christian religious organization for the
15 purpose of achieving its spiritual and religious purposes as per its mission statement as that
16 statement has been interpreted through COTG’s Board of Directors.” *Id.* (quoting Dkt. 8 ¶ 1.2).
17 Deutsche Bank further argues that Plaintiffs have presented no evidence to establish a
18 relationship between COTG and any part of this case given that the “public records indicate that
19 COTG is not a record owner of any of the five subject properties, and the loan records show that
20 COTG is not a party to any of the five subject notes and deeds of trust.” *Id.* (citing Dkts. 70-1,
21 70-2, 70-8, 70-9, 70-14, 70-15, 70-19, 70-20, 70-24, 70-25).

22 Plaintiffs contend that courts “allow standing where an organization itself suffers a
23 cognizable injury to its mission or resources[.]” Dkt. 99 at 7 (first citing *Havens*, 455 U.S. at
24 378–79; and then citing *E. Bay Sanctuary Covenant v. Biden*, 993 F.3d 640, 662 (9th Cir. 2021)).

1 Plaintiffs assert that COTG’s mission is “to minister to and protect those in need such as the
2 hungry, the sick, the poor, the homeless, the indebted, the enslaved, the vulnerable, and all others
3 who are unfairly prevented from exercising their inalienable God-given natural rights.” Dkt. 99
4 at 6–7 (citing Dkt. 102-1 at 3). Since COTG’s mission statement also includes “engag[ing] in
5 activities necessary for the accomplishment of the mission” and “oppos[ing] all, which by design
6 or through corruption, are inimical to the church’s mission,” Plaintiffs argue that “defending a
7 member, like Alvin White, from an allegedly fraudulent and unjust foreclosure directly aligns
8 with and is essential to the Church’s institutional purpose.” *Id.* Plaintiffs contend that the
9 “Church’s time, energy, and resources expended to defend White and other members, resist
10 unlawful displacement, and oppose systemic injustice reflect exactly the kind of mission-related
11 institutional injury recognized by the courts.” *Id.* at 6.

12 Plaintiffs’ arguments are unpersuasive. The Court first addresses Plaintiffs’ contention
13 that COTG has asserted standing in its own right. For this argument, *Rodriguez v. City of San*
14 *Jose* is instructive. 930 F.3d at 1127. There, the Second Amendment Foundation, Inc., (“SAF”) and the
15 Calguns Foundations, Inc. (“CGF”) joined Lori Rodriguez as co-plaintiffs in a suit
16 against the City of San Jose alleging that the city unlawfully seized her firearms in violation of
17 her Second, Fourth, Fifth, and Fourteenth Amendment rights. *Id.* at 1127–29. The City of San
18 Jose had filed a petition in state court, “seeking an order of forfeiture based on a determination
19 that the guns’ return would likely endanger” Rodriguez’s husband, who had previously suffered
20 several mental health crises requiring the assistance of law enforcement. *Id.* at 1127–28.

21 The Ninth Circuit held that the organizational plaintiffs, SAF and CGF, lacked standing
22 in their own right, because even though “the organizational plaintiffs state in the Complaint that
23 they are seeking prospective injunctive relief ‘to prevent future violations of their members’
24 constitutional right[s],’ the *Havens* theory of standing they relied on exclusively at summary

1 judgment is not based on injury to their members.” *Id.* at 1135. The Ninth Circuit pointed out
2 that Plaintiffs had not shown that Rodriguez was a member of either SAF or CGF, and that they
3 had “not explained how the City’s retention of Lori’s guns either impedes their ability to carry
4 out their mission or requires them to divert substantial resources away from the organizations’
5 preferred uses—let alone both.” *Id.*

6 The court noted that SAF and CGF each had unsuccessfully produced “a single affidavit
7 from a high-ranking official to attempt to establish Article III standing.” *Id.* In his affidavit,
8 “SAF’s executive vice president asserted only that the organization’s purpose, ‘include[s]
9 education, research, publishing and legal action focusing on the Constitutional right to privately
10 own and possess firearms [as well as] the consequences of gun control and legislation that
11 impacts the ‘right to keep and bear arms.’” *Id.* at 1135–36. “CGF’s executive director similarly
12 framed CG’s mission as ‘promoting education for all stakeholders about California and federal
13 firearms laws . . . and defending and protecting the civil rights of California gun owners.’” *Id.* at
14 1136. Though both organizations asserted “that they expend resources advising and assisting
15 members and non-members in navigating California’s gun laws and attempting to recover
16 confiscated firearms[,] . . . neither organization present[ed] any evidence of expending resources
17 to assist Lori apart from incurring litigation costs as co-plaintiffs in her federal litigation.” *Id.*

18 The Ninth Circuit then explained that the “mere fact that these organizations represent
19 California gun owners and provide legal advice in navigating California’s gun laws does not
20 automatically lead to the conclusion that the confiscation and retention of Lori’s guns frustrates
21 their missions or requires them to divert resources.” *Id.* Since SAF and CGF offered no other
22 theory explaining their organizational harm, “let alone evidence supporting such a theory as
23 required at the summary judgment stage,” the Ninth Circuit concluded that they had not
24 demonstrated Article III standing. *Id.*

1 Here, Plaintiffs assert that they are seeking relief on behalf of White, a COTG member.
2 *See, e.g.*, Dkt. 99 at 6 (“These statements show that defending a member, like Alvin White, from
3 an allegedly fraudulent and unjust foreclosure directly aligns with and is essential to the
4 Church’s institutional purpose.”). But like in *Rodriguez*, Plaintiffs offer no evidence to establish
5 that White, the individual plaintiff, is a member of COTG. *See generally* Dkts. 101, 102, 102-1,
6 102-2, 102-3, 102-4, 102-5, 102-6, 102-7, 102-8, 102-9, 102-10, 102-11. Other than White’s
7 relationship with COTG as co-plaintiff in a different lawsuit, *see* Dkt. 102-6, none of White’s
8 declarations to this Court show he was a member of COTG. *See* Dkts. 20, 45, 78. For sure,
9 Stafne has declared that “[i]n addition to being the Church’s Advocate I am one of the Church’s
10 members and know that this part of the Church’s mission requires the Church and myself (as the
11 Church Advocate and a Church member) to bring those judicial inquiries which I have been
12 asserting on behalf of Church of the Gardens since its founding and which I am asserting here
13 until it is no longer legally tenable for me to do so.” Dkt. 102 ¶ 23. Though Plaintiffs’ counsel is
14 a member of COTG, the organization cannot rely at summary judgment on a theory of harm that
15 “is not based on injury to [its] members.” *Rodriguez*, 930 F.3d at 1135.

16 But even if the Court assumed Plaintiffs had established that White was a member of
17 COTG, they have not presented evidence that COTG diverted resources away from its preferred
18 uses. *See id.* at 1136; *cf. E. Bay Sanctuary Covenant*, 993 F.3d at 663 (organizations established
19 standing by showing that the government’s rule stripping asylum eligibility from every migrant
20 that crossed the border caused “a near complete diversion of [AOL’s] resources” because
21 “[c]aring for the often nonlegal needs of these unaccompanied children is not part of AOL’s core
22 mission[.]”). Rather, it appears that resources are being expended for COTG’s preferred use—
23 filing actions in state and federal courts.
24

1 For example, COTG’s mission is “to engage in activities necessary for the
2 accomplishment of the mission” and “to oppose all, which by design or through corruption, are
3 inimical to the church’s mission.” Dkt. 102-1 at 3; Dkt. 102-3 at 2. Plaintiffs have submitted
4 filings from several other mortgage foreclosure cases COTG has been party to, which show that
5 the purported injuries are based on costs COTG incurred by bringing lawsuits. *See, e.g.*,
6 Dkt. 102-6; *see also* Dkt. 99 at 7 (“The Church’s time, energy, and resources expended to defend
7 White and other members, resist unlawful displacement, and oppose systemic injustice reflect
8 exactly that kind of mission-related institutional injury recognized by the courts.”).

9 But the Supreme Court’s recent opinion in *Food and Drug Administration v. Alliance for*
10 *Hippocratic Medicine* forecloses Plaintiffs’ standing argument. 602 U.S. at 394. There, the
11 organizational plaintiff argued that the FDA’s rules “‘forced’ the associations to ‘expend
12 considerable time, energy, and resources’ drafting citizen petitions to FDA, as well as engaging
13 in public advocacy and public education. . . . And all of that has caused the associations to spend
14 ‘considerable resources’ to the detriment of other spending priorities.” *Id.* The Supreme Court
15 rejected this argument, explaining that “an organization that has not suffered a concrete injury
16 caused by a defendant’s action cannot spend its way into standing simply by expending money to
17 gather information and advocate against the defendant’s action.” *Id.*

18 Here, COTG’s injuries of “time, energy, and resources expended” are analogous to those
19 claimed by the plaintiffs in *Alliance for Hippocratic Medicine*. Dkt. 99 at 7. Plaintiffs have
20 presented no evidence to show that Defendants’ actions caused COTG to divert substantial
21 resources away from carrying out its organizational mission, let alone from its preferred use. *See*
22 *Rodriguez*, 930 F.3d at 1135. Because “[a]n organization cannot manufacture its own standing”
23 by spending money to advocate against the defendant’s position, Church of the Gardens lacks
24 standing in its own right. *Id.*

2. *Representational Standing*

COTG similarly lacks representational standing to bring these claims on behalf of its members. To invoke “representational . . . standing[.]” the organization must show (1) “its members would otherwise have standing to sue in their own right;” (2) “the interests it seeks to protect are germane to the organization’s purpose;” and (3) “neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.” *Students for Fair Admissions, Inc.*, 600 U.S. at 199 (quoting *Hunt v. Washington State Apple Advert. Comm’n*, 432 U.S. 333, 343 (1977)).

Plaintiffs argue that the “evidence presented by the Church through its advocate satisfies all prongs of the Hunt test.” Dkt. 99 at 8. But the “first requirement sinks [COTG’s] effort to establish standing.” *Satanic Temple v. Labrador*, No. 24-1243, --- F.4th ----, 2025 WL 2302188, at *3 (9th Cir. Aug. 11, 2025). Plaintiffs allude to “congregants” who are affected by “nonjudicial sales and related evictions,” Dkt. 99 at 8, but they fail to satisfy the general requirement to name affected members. *Id.*; see *Associated Gen. Contractors of Am., San Diego Chapter, Inc. v. California Dep’t of Transp.*, 713 F.3d 1187, 1194 (9th Cir. 2013) (plaintiff failed to satisfy the first prong because it did “not identify any affected members by name nor has it submitted declarations by any of its members attesting to harm they have suffered or will suffer[.]”). Apart from their conclusory arguments that “all prongs of the Hunt test” have been satisfied, Plaintiffs have not proffered a single declaration from a COTG congregant asserting an injury caused by Defendants’ actions. See Dkt. 99 at 8.

Instead, Plaintiffs submitted a declaration from Justin Wood, a member of COTG, who in 2018 “began volunteering at Stafne Law Advocacy & Consulting.” Dkt. 101 ¶ 3. Wood’s declaration states that the “Church regularly receives requests from individuals, particularly homeowners facing foreclosure, seeking advocacy or assistance” and “many of these individuals

1 report consistent and disturbing concerns about unfair practices within Washington’s foreclosure
 2 process and the judicial system more broadly.” *Id.* ¶ 6. The declaration goes on to describe how
 3 he has “come to believe that these judicial failures . . . reflect a broader institutional bias that
 4 favors purported lenders, servicers, securitized trusts and trustees over homeowners[.]” *Id.* ¶ 11.
 5 But nowhere in the declaration does Wood claim that he has been affected by Defendants’
 6 conduct. *See generally* Dkt. 101. Because Plaintiffs have not “shown that one of [COTG’s]
 7 members has suffered or will imminently suffer an injury, [they] [have] not met the burden to
 8 establish” representational standing. *Satanic Temple*, 2025 WL 2302188, at *5.

9 3. Plaintiffs’ Remaining Standing Theories

10 Plaintiffs argue that “when the nonjudicial sales and related evictions of congregants,
 11 such as those which are occurring in Washington State disrupt religious missions and interferes
 12 with the church member’s ability to practice their faith, then the Church can assert its own First
 13 Amendment rights.” Dkt. 99 at 8. Plaintiffs raise this claim for the first time in their summary
 14 judgment motion. *See id.* This claim is untimely, and the Court will not consider a claim that is
 15 not properly raised. *Wasco Prods., Inc. v. Southwall Techs., Inc.*, 435 F.3d 989, 992 (9th Cir.
 16 2006) (“Simply put, summary judgment is not a procedural second chance to flesh out
 17 inadequate pleadings.”) (citation omitted).

18 Finally, Plaintiffs make a passing reference that COTG may “possibly tak[e] an interest
 19 in the properties that got sold.” Dkt. 99 at 6; Dkt. 102 ¶ 35. But COTG’s hypothetical interest in
 20 the sold properties is insufficient to establish that it suffered any concrete injury that is more than
 21 an “abstract, generalized grievance.” *Meland v. WEBER*, 2 F.4th 838, 844 (9th Cir. 2021)
 22 (citation omitted). Plaintiffs have not presented any evidence to show that COTG has an interest
 23 in the lots that were sold or in the lots that are potentially subject to foreclosure proceedings. *See*
 24 Dkts. 70-1, 70-2, 70-8, 70-9, 70-14, 70-15, 70-19, 70-20, 70-24, 70-25. While a party “may

suffer a concrete, personalized injury stemming from noneconomic harm,” the injury must be greater than “the psychological consequence presumably produced by observation of conduct with which one disagrees[.]” *Id.* (citations omitted); *see Valley Forge Christian Coll. v. Americans United for Separation of Church & State, Inc.*, 454 U.S. 464, 485–86 (1982) (“even though the disagreement is phrased in constitutional terms . . . standing is not measured by the intensity of the litigant’s interest or the fervor of his advocacy”).

Plaintiffs have not met their burden to show COTG has direct or representational standing. Accordingly, COTG’s claims are DISMISSED without prejudice for lack of jurisdiction. *Hampton v. Pac. Inv. Mgmt. Co. LLC*, 869 F.3d 844, 846 (9th Cir. 2017) (“Dismissals for lack of subject-matter jurisdiction . . . must be without prejudice, because a lack of jurisdiction deprives the dismissing court of any power to adjudicate the merits of the case.”) (citation omitted). The Court’s remaining discussion of the merits is based solely on White’s claims.

B. Plaintiff’s constitutional claims fail for lack of state action.

1. Federal Constitutional Claims

Deutsche Bank argues that Plaintiff White’s claims that the DTA violates due process, equal protection, and the takings clause of the U.S. Constitution fail for lack of state action. Dkt. 97 at 2. Plaintiff does not directly address the issue of state action for the federal constitutional claims in his briefs. *See* Dkt. 75, 76, 87, 88, 98, 99. But he does assert that Plaintiffs “raise a substantial constitutional inquiry into whether statutory trustees, paid by DB, can lawfully exercise judicial power delegated by the State of Washington to them as Washington State judicial officers without violating [] this Nation’s organic law, those principles of Natural Justice upon which that organic law is based, international law, and long established equitable principles.” Dkt. 76 at 27. A plain reading of this constitutional challenge shows that

1 Plaintiff presumes that Deutsche Bank is “exercis[ing] judicial power delegated by the State of
2 Washington to them” when it conducts a nonjudicial sale of properties. *See id.*

3 This presumption of state action has been expressly rejected by the Supreme Court in
4 *Flagg Brothers, Inc. v. Brooks*, 436 U.S. 149, 161–64 (1978) and the Ninth Circuit in *Apao v.*
5 *Bank of New York*, 324 F.3d 1091, 1092 (9th Cir. 2003). In *Flagg Brothers*, the Supreme Court
6 held that when a creditor enforced a lien through a private, non-judicial sale, there was no state
7 action even when this procedure was authorized by the state’s Uniform Commercial Code. 436
8 U.S. at 151–53. The Supreme Court rejected the plaintiff’s arguments that the state’s grant of a
9 private power of sale was a delegation of a traditional government function or that it constituted
10 state encouragement of nonjudicial remedies. *Id.* at 161, 164. Because the statute neither
11 encourages nor compels the sale of the debtor’s property, but merely recognizes its legal effect,
12 the Supreme Court held that the sale did not implicate Fourteenth Amendment due process and
13 equal protection protections. *Id.* at 153, 160, 166.

14 Several circuit courts, including the Ninth Circuit, have since explained that “self-help
15 foreclosure remedies have existed since early in the common law, and thus one cannot say that
16 the power of foreclosure is one traditionally belonging only to the government.” *Apao*, 324 F.3d
17 at 1094 (citing cases). And when nonjudicial foreclosure statutes were challenged on Fourteenth
18 Amendment grounds, the Ninth Circuit (along with six other circuits) held “there was no state
19 action in either the availability of such private remedies or their enforcement.” *Id.* (citing cases).

20 For example, in *Apao*, the Ninth Circuit addressed whether Hawaii’s nonjudicial
21 foreclosure statute violated the due process clause of the Fourteenth Amendment. *Id.* at 1092.
22 There, the plaintiff had obtained a mortgage on her residence but stopped making payments after
23 three years. *Id.* at 1093. When the default was not cured within thirty days as required by the
24

1 mortgage contract, the lender instituted a nonjudicial foreclosure under Haw. Rev. Stat. § 667–5,
2 which the borrower challenged as unconstitutional. *Id.*

3 The Ninth Circuit affirmed the district court’s dismissal of the case because “the sale was
4 a purely private remedy and involved no state action.” *Id.* It also noted that “there has been no
5 legal or historical development in the intervening years that would require . . . us to reconsider
6 the round of decisions by this circuit and others a generation ago that upheld the constitutionality
7 of similar statutorily authorized sale procedures.” *Id.*; see *Charmicor, Inc. v. Deaner*, 572 F.2d
8 694, 696 (9th Cir. 1978) (finding no state action in an equal protection challenge to Nevada’s
9 nonjudicial foreclosure statute). The Ninth Circuit began its discussion with the text of the
10 Fourteenth Amendment, noting that it “shields citizens from unlawful governmental actions, but
11 does not affect conduct by private entities.” *Apao*, 324 F.3d at 1093. Citing *Flagg Bros., Inc. v.*
12 *Brooks*, the Ninth Circuit reiterated the Supreme Court’s holding that when a lien is enforced
13 “through a purely private, non-judicial sale,” there is no state action “even though the lien was
14 authorized by the state’s legislative enactment of the Uniform Commercial Code.” *Id.* at 1094.

15 The Ninth Circuit further rejected the plaintiff’s argument that because the residential
16 mortgage business is regulated by state and federal laws, any action by the mortgage lender is
17 converted into state action. *Id.* at 1095. It explained that “the development of the extensively
18 regulated secondary mortgage market does not convert the private foreclosure procedures at
19 issue here into state action” and while “the bar for state action is low . . . non-judicial foreclosure
20 procedures like Hawaii’s nevertheless slip under it for want of direct state involvement.” *Id.*

21 Like Hawaii’s nonjudicial foreclosure statute, Washington’s DTA neither “encourages”
22 nor “compels” the use of nonjudicial foreclosure procedures, but “merely recognizes its legal
23 effect.” See *Apao*, 324 F.3d at 1094; see also RCW 61.24.030 (prerequisites that must be
24 complied with prior to a nonjudicial foreclosure); *Owen v. Atkins*, No. C15-5375 BHS, 2015 WL

5826313, at *2 (W.D. Wash. Oct. 6, 2015) (“[T]he contracted right to conduct a nonjudicial foreclosure does not convert [the trustee’s] conduct into action under color of law.”); *De Botton v. Quality Loan Servs. Corp. of Washington*, No. 2:23-CV-00223-RSL, 2023 WL 6126769, at *1 (W.D. Wash. Sept. 19, 2023) (challenge to the DTA “cannot support a takings claim under either the federal or state constitution because there was no governmental action”).

Under Supreme Court and Ninth Circuit precedent, Defendants’ use of the DTA cannot be considered state action. *See Flagg Bros., Inc.*, 436 U.S. at 161–64; *Charmicor, Inc.*, 572 F.2d at 696; *Apao*, 324 F.3d at 1094. The “United States Constitution protects individual rights only from *government* action, not from *private* action.” *Single Moms, Inc. v. Montana Power Co.*, 331 F.3d 743, 746 (9th Cir. 2003). Thus, Deutsche Bank’s motion for summary judgment on the federal constitutional claims is GRANTED.

2. State Constitutional Claims

Plaintiff’s claim that the DTA violates Article IV, section 6 of the Washington Constitution has also been repeatedly rejected by state courts. *See Kennebec, Inc. v. Bank of the W.*, 88 Wn.2d 718, 725, 565 P.2d 812 (1977); *Jackson v. Quality Loan Serv. Corp.*, 186 Wn. App. 838, 846, 347 P.3d 487 (2015); *Larson v. Snohomish Cnty.*, 20 Wn. App. 2d 243, 281, 499 P.3d 957 (2021).

For example, in *Kennebec*, the Washington Supreme Court held that the DTA, RCW 61.24, is “passive state involvement and does not constitute significant ‘state action’ and, therefore, it is neither violative of the due process clause of the Fourteenth Amendment nor of article 1, section 3 of the Washington State Constitution.” 88 Wn.2d at 726. The court explained that parties have the power to choose to use the DTA or not. *Id.* at 725. “If the parties elect to contract and use the deed of trust device, the statute regulates its manner of operation almost solely for the protection of the debtor.” *Id.* at 725. “The creditor may, if he chooses, elect to

1 involve the state by utilizing judicial foreclosure and thereby preserving any deficiency that may
 2 exist. . . . [but] if he opts to foreclose nonjudicially, he does not involve the state, . . . [and] is
 3 restricted to the value of his security.” *Id.* Since RCW 61.24 “neither commands nor forbids
 4 nonjudicial foreclosure[,]” the Washington Supreme Court found no state action and upheld the
 5 constitutionality of the statute. *Id.*

6 The Washington Court of Appeals in *Jackson* again addressed state constitutional
 7 challenges to the DTA. 186 Wn. App. at 846–49. There, the plaintiff argued that Article IV,
 8 section 6 of the Washington State Constitution provides that “[t]he superior court shall have
 9 original jurisdiction in all cases at law which involve the title or possession of real property.” *Id.*
 10 at 847 (citing Wash. Const. art. IV, § 6). But because the DTA vests power in the trustee to sell
 11 property through a nonjudicial foreclosure proceeding, the plaintiff contended that the DTA
 12 impermissibly divested the superior court of jurisdiction. *Id.*

13 Noting that several federal courts² had previously rejected this argument, the court
 14 explained that the DTA does not take away jurisdiction from superior courts because “a
 15 nonjudicial foreclosure is not made pursuant to a judgment but rather is one conducted under a
 16 power contained in a mortgage or a decree of foreclosure.” *Id.* at 847, 848 n.9. Since the option
 17 of a nonjudicial foreclosure is created “through an agreement between the grantor and the
 18 beneficiary of the deed of trust[,]” the “DTA does not divest the superior court of jurisdiction.”
 19 *Id.* at 847. In fact, the court noted that the DTA preserves the superior court’s constitutional grant

20
 21 ² See *Knecht v. Fid. Nat’l Title Ins. Co.*, No. C12–1575RAJ, 2014 WL 4057148 * 11 (W.D.
 22 Wash. Aug. 14, 2014) (rejecting the plaintiff’s argument that DTA’s “decision to vest
 23 discretionary authority in a trustee” violates Washington Constitution Art. IV, § 6 because the
 24 plaintiff “advances no ‘interpretation’ of the words of any portion of the Act that would prohibit
 nonjudicial foreclosures, and the court cannot conceive of one”); *Galyean v. Nw. Tr. Servs., Inc.*,
 No. C13–1359 MJP, 2014 WL 3360241 *6 (W.D. Wash. July 9, 2014) (“The Deed of Trust Act
 has already been found by the Washington State Supreme Court to satisfy constitutional due
 process requirements.”).

1 of jurisdiction in specific provisions of the statute. *Id.*; *see id.* at n.8 (“RCW 61.24.130(1) (buyer
 2 has right to file action in superior court to restrain a trustee’s sale); RCW 61.24.130(8)(j)
 3 (granting borrower power to initiate court action); RCW 61.24.040(2); RCW 61.24.090(2)
 4 (granting borrower right to request any court to determine reasonableness of fees”). For these
 5 reasons, the court concluded that the “legislature had authority to enact the DTA, and its
 6 enactment did not encroach upon the jurisdiction of the superior court.” *Id.* at 849.

7 Plaintiff’s challenges under Article I, section 10, and Article V, section 6 of the
 8 Washington Constitution also lack merit. *See* Dkt. 8 ¶¶ 3.99(I), 4.6. Article I, section 10 provides
 9 that “[j]ustice in all cases shall be administered openly, and without unnecessary delay.” Plaintiff
 10 does not provide any argument in support of this claim in his briefs. *See* Dkt. 76, 87, 98, 99; *see*
 11 *Indep. Towers of Wash. v. Washington*, 350 F.3d 925, 929 (9th Cir. 2003) (“[W]e will not
 12 consider any claims that were not actually argued in [the party’s] opening brief.”) (citation
 13 omitted). Finally, Plaintiff asserts a claim under Article V, section 6, *see* Dkt. 8 ¶ 4.6, but Article
 14 V contains only three sections, *see* Wash. Const. art. V. Again, the Court declines to consider
 15 this claim as it will “review only issues which are argued specifically and distinctly in a
 16 party’s . . . brief.” *Greenwood v. Fed. Aviation Admin.*, 28 F.3d 971, 977 (9th Cir. 1994) (citation
 17 omitted).

18 Accordingly, Deutsche Bank’s motion for summary judgment on the state constitutional
 19 claims is GRANTED.

20 **C. Plaintiff’s DTA, CPA, and breach of contract claims fail because he cannot show**
 21 **that the Trusts do not possess the original promissory notes.**

22 Deutsche Bank argues that the Plaintiffs’ “only factual allegations relate to their lost note
 23 theory,” which is “the basis for Plaintiffs’ bare assertions that Defendants violated the DTA
 24 and . . . CPA.” Dkt. 97 at 8, n.1. Deutsche Bank argues that it has produced evidence showing

1 that “the Trust held the original notes entitling them to complete the January 5, 2024 Trustee
2 Sales, and that the 2006-5 Trust holds the original notes for the remaining three loans and is
3 entitled to proceed with non-judicial foreclosures.” Dkt. 67 at 8 (citing Dkt. 69; Dkt. 70).

4 Specifically, Deutsche Bank asserts that SPS’s business records show how each original
5 promissory note came into their possession and is currently held at their counsel’s office. *Id.*; see
6 Dkts. 70-5, 70-11, 70-18, 70-23, 70-28. Additionally, Deutsche Bank provided the testimony of
7 Hannah McFarland³, an expert in document examination and handwriting analysis. Dkt. 69, 69-
8 1, 69-3. McFarland has been certified by the National Association of Document Examiners
9 (“NADE”) since 2002 and currently serves as Secretary for the Executive Board of Directors of
10 NADE. Dkt. 69-1 at 2.

11 McFarland examined the five promissory notes held at the Trusts’ counsel’s office in
12 Seattle, Washington. Dkt 69 ¶ 4. She was provided with “28 exemplar initials of Alvin B. White
13 on copy documents dated 9-10-2005 to 3-29-2006” and “10 original initials of Alvin B [that
14 were] produced for the purpose of handwriting comparison.” Dkt. 69-3 ¶ 4. Based on her
15 comparison of the questioned and exemplar initials of White produced by his counsel,
16 McFarland identified several similarities. *Id.* ¶ 7. For example, she noted “[q]uestioned and
17 exemplar initials are roughly one quarter inch tall;” “[p]lacement of the questioned and exemplar
18 initials are roughly one quarter inch tall;” “[m]any ending strokes are average in length in the
19 questioned and exemplar initials;” and “[t]here is very little variation in pressure in that the
20 upstrokes and downstrokes have the same pressure[.]” *Id.* Having “found no significant

21
22 ³ Plaintiff did not seek to exclude the expert testimony of Hannah McFarland. Rather, after the
23 Court gave Plaintiff the opportunity to submit supplemental briefing explaining his contention
24 that McFarland was unreliable, Plaintiff disavowed ever attempting to exclude McFarland. *See*
Dkt. 92 at 3 (“The record shows (and this Court should know this) that Plaintiffs have not moved
to exclude Defendants’ expert; rather Plaintiffs rely on Defendants’ expert witness graphology-
trained handwriting expert, McFarland, to support their theory of the case.”).

1 differences between the questioned and exemplar initials of Alvin B. White[.]" McFarland
2 opined that the "combination of all similarities between the questioned and exemplar initials
3 provides convincing evidence that the questioned initials are genuine initials of Alvin B. White."
4 *Id.* ¶¶ 8–9.

5 Deutsche Bank contends that it is entitled to judgment as a matter of law for the DTA and
6 CPA claims because Plaintiff fails to make a sufficient showing on an essential element of his
7 claim—that the Trusts do not hold the original promissory notes. Dkt. 97 at 8. Deutsche Bank
8 also argues that it has met its initial burden to come forward with evidence, through SPS's
9 document records and its handwriting expert, showing that it possesses the original notes, but
10 Plaintiff has "submitted no admissible or corroborating evidence." *Id.* Since Plaintiff has failed
11 to satisfy an essential element of his claims against Defendants, Deutsche Bank argues that
12 summary judgment should be granted in its favor. Dkt. 67 at 9.

13 Plaintiff contends that his "theory of the case is that Deutsche Bank and its agents are
14 attempting to enforce facially invalid and fraudulent documents—specifically, a promissory note
15 and deed of trust that are not original, wet-ink signed instruments, but digital reproductions that
16 cannot confer lawful enforcement rights under Washington law, the Constitution, or long-
17 standing equitable doctrines." Dkt. 98 at 9. Plaintiff alleges that Defendants' "attempt[] to
18 foreclose on a void note" violates the borrower's right to restrain a trustee's sale under the DTA,
19 RCW 60.24.130(1). Dkt. 8 ¶ 4.11. Plaintiff also asserts that Defendants' "attempt[] to collect a
20 loan that does not exist" or "attempt to collect monies which are not owed to them" constitutes
21 unfair, deceptive, or illegal practices under the CPA. *Id.* ¶ 4.14. Finally, Plaintiff alleges that
22 enforcement of a void note violated the terms of his loan contract. *Id.* ¶ 4.11.

23 As evidence that Defendants do not possess the original notes, Plaintiff first presents
24 Dr. Kelley's "forensic findings establish[ing] that the five promissory notes at issue, which were

1 purportedly executed in 2006, were not signed by Alvin White but mechanically reproduced, i.e.
2 forged using inkjet printing technology.” Dkt. 98 at 9. Plaintiff next provides William Paatalo’s
3 testimony that “the endorsements DB relies upon to prove it is a ‘holder’ of the note were most
4 likely fabricated after the fact and are not the result of a lawful negotiation.” Dkt. 76 at 23.
5 Plaintiff also offers historical evidence, *see* Dkt. 77 ¶ 36, showing that “promissory notes were
6 routinely destroyed as part of the money changers’ business practices during the lead up to the
7 subprime mortgage crisis.” Dkt. 76 at 12.

8 For example, Plaintiff asserts that in 2016, Deutsche Bank, acting as trustee for
9 mortgage-backed securities trusts, entered into a \$3 billion settlement agreement with the Federal
10 Deposit Insurance Corporation (“FDIC”) and JPMorgan Chase. *Id.* Plaintiff contends that in this
11 settlement, Deutsche Bank “released all claims relating to defective, incomplete, or non-existent
12 documentation,” which “included those in the relevant 2006 defendant trusts in this case[.]” *Id.*
13 at 12–13 (citing Dkt. 81-12 at 7). Plaintiff also offers a memorandum from Deutsche Bank dated
14 July 28, 2008, where Deutsche Bank acknowledged “that the number of contested foreclosure
15 proceedings” has “substantially increased” nationwide and that “some courts are demanding that
16 the party seeking to foreclose prove ‘ownership[.]’” Dkt. 77-6 at 3–4.

17 Plaintiff points to another memorandum from Deutsche Bank that was sent to
18 securitization loan servicers stating that “[r]ecent media reports suggest the Alleged Foreclosure
19 Deficiencies may include the execution and filing by certain Servicers and/or their agents of
20 potentially defective documents . . . in connection with certain foreclosure proceedings.”
21 Dkt. 77-7 at 3. Plaintiff argues that these “internal documents make one thing abundantly clear:
22 ***DB knew that document fabrication, loss, and improper filings were endemic in the***
23 ***securitization and foreclosure process.***” Dkt. 76 at 15 (emphasis in original). Plaintiff references
24 several other public documents that he argues should be judicially noticed under Federal Rule

201 to show that “promissory notes were routinely destroyed.” *See id.* at 14–19. Based on this historical evidence, Plaintiff contends that “the industry had institutionalized note destruction as part of its standard procedures” and “DB and the trusts have no equitable or legal basis to now claim authority to enforce instruments it has already deemed defective or unenforceable.” *Id.* at 18, 13.

The Court agrees that Defendants’ authority to foreclose on White’s properties depends on their status as “holders” of the promissory notes. *Bain v. Metro. Mortg. Grp., Inc.*, 175 Wn.2d 83, 89 285 P.3d 34 (2012) (“[O]nly the actual holder of the promissory note or other instrument evidencing the obligation may be a beneficiary with the power to appoint a trustee to proceed with a nonjudicial foreclosure on real property” under the DTA.); *see also id.* at 104 (“[A] beneficiary must either actually possess the promissory note or be the payee.”). But Plaintiff has not carried his burden to show evidence from which a reasonable factfinder could conclude that the Trusts do not possess the promissory notes. *See Fed. R. Civ. P.* 56(c). He thus has failed to raise a triable issue on his DTA, CPA, and breach of contract claims. *See In re Brazier Forest Prods., Inc.*, 921 F.2d 221, 223 (9th Cir. 1990) (“[I]f the nonmoving party bears the burden of proof on an issue at trial, the moving party need not produce affirmative evidence of an absence of fact to satisfy its burden. The moving party may simply point to the absence of evidence to support the nonmoving party’s case. The nonmoving party must then make a sufficient showing to establish the existence of all elements essential to their case on which they will bear the burden of proof at trial.”).

First, the Court has excluded Dr. Kelley’s opinions that the promissory notes were fabricated because Plaintiff has not established by a preponderance of evidence that Dr. Kelley is a qualified expert in forensic science or that his testimony is reliable. Dkt. 104 at 10–16. Second, the Court similarly found William Paatalo unqualified to opine on the authenticity of the

promissory notes because he lacked the “knowledge, skill, experience, training, or education” in a relevant discipline. *Id.* at 16–20; Fed. R. Evid. 702. Thus, the remaining evidence Plaintiff has provided are public records that he requests be judicially noticed, the entire 2006 Revised Code of Washington, court filings from other cases, and documents supporting Plaintiff’s counsel’s defense to a disciplinary investigation by the Washington State Bar. *See* Dkt. 76 at 14–19; Dkt. 77-2; Dkt. 80-9; Dkt. 77-15; Dkt. 77-16.

Viewing this evidence in the light most favorable to Plaintiff, a reasonable jury could not find that the Trusts do not possess the promissory notes. At best, some of the records relate to systemic problems in the mortgage system. *See, e.g.*, Dkt. 77-5 (Deutsche Bank memorandum informing servicers of best practices in foreclose and eviction proceedings); Dkt. 77-6 (Deutsche Bank memorandum asking servicers to be mindful of issues including proving ownership of loans); Dkt. 77-7 (Deutsche Bank memorandum expressing concern to servicers about the execution and filing of “potentially defective documents”). But none offer evidence that the five promissory notes at issue *in this case* was fabricated. *See Bavand v. OneWest Bank, FSB*, 587 F. App’x 392, 394 (9th Cir. 2014) (“Bavand argues that OneWest’s possession of the note is a fact in dispute, but she fails to produce any evidence to support her claim or to contest OneWest’s representative Charles Boyle’s affidavit, declaring that OneWest currently possesses the original note and deed of trust.”).

Because Plaintiff does not point to any evidence from which a reasonable factfinder could conclude that the Trusts do not possess the promissory notes, Deutsche Bank’s motion for summary judgment on the DTA, CPA, and breach of contract claims is GRANTED.

D. Plaintiff is not entitled to equitable relief or a declaratory judgment.

Plaintiff White seeks to restrain Defendants from proceeding with a nonjudicial sale of his remaining properties. Dkt. 8 ¶¶ 3.29, 3.30. A plaintiff seeking a permanent injunction must

1 show: “(1) actual success on the merits; (2) that it has suffered an irreparable injury; (3) that
2 remedies available at law are inadequate; (4) that the balance of hardships justify a remedy in
3 equity; and (5) that the public interest would not be disserved by a permanent injunction.”
4 *Confederated Tribes & Bands of Yakama Nation v. Yakima Cnty.*, 963 F.3d 982, 989 (9th Cir.
5 2020) (citation omitted). Here, Plaintiff has not succeeded on the merits. Accordingly, he is not
6 entitled to an order restraining Defendants from conducting a nonjudicial sale of property under
7 the DTA, RCW 61.24.130.

8 Plaintiff also requests a declaration as to the meaning of the current version of
9 RCW 34.24.130 and whether the 2006 version of RCW 61.24.130 is the governing law. Dkt. 8
10 ¶¶ 4.1, 4.2. Plaintiff argues that “[n]either of the statutes DB and its paid-for trustees rely on as
11 the basis for their MSJ was in existence in 2006. . . . [and] [t]o the extent those changes in these
12 statutes affect the outcome of this case, Plaintiffs object they violate the Contracts Clause.”
13 Dkt. 76 at 29. Plaintiff also contends that even if the Court applies the most recent version of
14 RCW 61.24.130, it does not establish Deutsche Bank’s standing to foreclose. *Id.* at 29–30. In any
15 case, Plaintiff argues that RCW 61.24.130 is preempted by the Fourteen Amendment’s
16 protections against taking of property. *Id.* at 30.

17 Deutsche Bank argues that the claims for declaratory judgment should be denied because
18 “Plaintiffs argue that the amendments to RCW 61.24.130 unconstitutionally altered Mr. White’s
19 contracts but fail to identify how the present matter would be different under the 2006 version[.]”
20 Dkt. 97 at 6. Deutsche Bank further asserts that the law was amended twice since 2006—once in
21 2008 and once in 2018. *Id.* at 7. Since Plaintiff provides no basis for why the amended version is
22 unconstitutional, Deutsche Bank maintains that the request should be denied. *Id.* Deutsche Bank
23 also argues that Plaintiff’s request for a declaration regarding the constitutionality of
24 RCW 61.24.130 is moot because there is no substantial controversy between parties “of

1 sufficient immediacy and reality to warrant the issuance of a declaratory judgment.” *Id.* Finally,
 2 Deutsche Bank argues that Plaintiff’s request for a declaration that the Trustee’s sale violated the
 3 Deed of Trust Act is not an appropriate exercise of federal jurisdiction because the sale occurred
 4 over 1.5 years ago and there is no alleged “continuing or future violations.” *Id.*⁴

5 “The Declaratory Judgment Act creates only a remedy, not a cause of action.” *Bisson v.*
 6 *Bank of Am., N.A.*, 919 F. Supp. 2d 1130, 1139 (W.D. Wash. 2013). Thus, a “court cannot grant
 7 declaratory relief in the absence of a substantive cause of action.” *Id.* (citation omitted); *see*
 8 *United States v. State of Wash.*, 759 F.2d 1353, 1357 (9th Cir. 1985) (“Declaratory relief should
 9 be denied when it will neither serve a useful purpose in clarifying and settling the legal relations
 10 in issue nor terminate the proceedings and afford relief from the uncertainty and controversy
 11 faced by the parties.”) (citing cases). Plaintiff has not raised a genuine factual dispute about the
 12 authenticity of the promissory notes, nor have any other claims survived the summary judgment
 13 stage. *See, supra* Sec. IV.A–C; *Umouyo v. Bank of Am., NA*, No. 2:22-CV-00704-JHC, 2023 WL
 14 1433804, at *3 (W.D. Wash. Feb. 1, 2023) (denying the request for declaratory relief because the
 15 plaintiffs did not demonstrate a substantive legal basis for the Court to void the promissory note,
 16 deed of trust, or any other legal claim the defendant had in the property).

19 ⁴ While “a declaratory judgment merely adjudicating past violations of federal law—as opposed
 20 to continuing or future violations of federal law—is not an appropriate exercise of federal
 21 jurisdiction[.]” the “cessation of conduct does not necessarily render a declaratory judgment
 22 moot.” *Bayer v. Neiman Marcus Grp., Inc.*, 861 F.3d 853, 868 (9th Cir. 2017); *Biodiversity*
 23 *Legal Found. v. Badgley*, 309 F.3d 1166, 1175 (9th Cir. 2002); *see also Skysign Int’l, Inc. v. City*
 24 *& Cnty. of Honolulu*, 276 F.3d 1109, 1115 (9th Cir. 2002) (“Although the district court correctly
 noted that the assessed fines are for [the plaintiff’s] ‘past conduct,’ that distinction does not in
 and of itself deprive a federal court of jurisdiction to hear a declaratory judgment action
 challenging the enforceability of the law under which the penalty is assessed.”). Regardless, the
 Court does not reach this issue because Plaintiff has not established a substantive cause of action
 that would entitle him to declaratory relief.

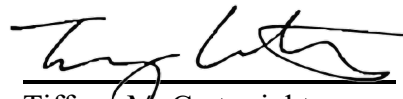
1 Because Plaintiff cannot maintain a substantive cause of action that would warrant
2 declaratory relief, Deutsche Bank's motion for summary judgment on these claims is
3 GRANTED.

4 V. CONCLUSION

5 Therefore, it is hereby ORDERED that:

- 6 • Deutsche Bank's motion for summary judgment (Dkt. 67) is GRANTED.
- 7 • Plaintiff White's claims are DISMISSED with prejudice and Plaintiff Church of
8 the Gardens' claims are DISMISSED without prejudice for lack of subject matter
9 jurisdiction.
- 10 • Plaintiffs' motion for summary judgment is DENIED (Dkt. 76) as moot.

11
12
13 Dated this 2nd day of September, 2025.

14 
15 Tiffany M. Cartwright
16 United States District Judge
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HONORABLE TIFFANY M. CARTWRIGHT

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA**

CHURCH OF THE GARDENS, a
Washington Not-for-Profit Corporation
operating as a faith-based religious
organization; ALVIN WHITE, in his
individual capacity,

Plaintiffs,

v.

QUALITY LOAN SERVICES
CORPORATION OF WASHINGTON;
MTC FINANCIAL INC. DBA
TRUSTEE CORPS.; DEUTSCHE
BANK NATIONAL TRUST
COMPANY; LONG BEACH
MORTGAGE LOAN TRUST 2006-4;
LONG BEACH MORTGAGE LOAN
TRUST 2006-5; and STATE OF
WASHINGTON, a State of the United
States.

Defendants.

No. 3:23-cv-06193-TMC

**MOTION TO RECONSIDER SUA
SPONTE ORDER DENYING
RECAST RECUSAL MOTION, ON
GROUNDS THAT NEITHER THIS
COURT NOR ITS JUDGE HAS
POWER OR SUBJECT-MATTER
JURISDICTION TO ISSUE IT**

NOTING DATE: JULY 10, 2025

1 **I. RELIEF REQUESTED:**

2 Plaintiffs Church of the Gardens (“Church”) and Property Owner White
3 (“Property Owner”) respectfully request that this Court reconsider and vacate its
4 sua sponte order denying a motion to recuse that Plaintiffs never filed. Instead of
5 construing Plaintiffs’ jurisdictional objections as a statutory recusal motion under
6 28 U.S.C. §§ 144 or 455, the Court should directly address the constitutional and
7 structural challenges properly raised.
8

9 Specifically, Plaintiffs request that this Court:

- 10
- 11 1. Acknowledge and adjudicate the jurisdictional inquiries presented by
12 Plaintiffs, which implicate A) the institutional legitimacy of this Court to
13 exercise Article III judicial power in this case; and B) the appropriateness of
14 Judge Cartwright as part of the 7 active-duty district judges which compose
15 this Court adjudicating the challenges to this Court’s conduct;
16
 - 17 2. Decline to reframe those inquiries as a statutory recusal motion and instead
18 determine whether this Court, as an institution, is constitutionally permitted
19 to preside over claims alleging its own entanglement in a broader
20 governmental and financial scheme that deprives Property Owner and
21 Church of due process;
22
- 23
24

1 3. Certify, if appropriate, the question of this Court's institutional authority to
2 an independent and structurally neutral tribunal or judge not implicated by
3 Plaintiffs' jurisdictional allegations;

4
5 4. Grant such other and further relief as may be just and appropriate in light of
6 the constitutional and jurisdictional issues raised.

7 This relief is necessary to preserve the integrity of the judicial process, to
8 ensure that Plaintiffs' constitutional objections are not evaded or reframed, and to
9 uphold the structural safeguards of due process, neutrality, and separation of
10 powers embedded in our Nation's organic law.

11
12 **II. FACTS:**

13 As this Court's order reflects, the Church of the Gardens and Property
14 Owner White did not file a motion to recuse under 28 U.S.C. §§ 144 or 455.
15 Accordingly, this Court, through its district judge, does not purport to be
16 adjudicating a judicial inquiry which was raised by the adverse parties to this case.

17
18 Under the party presentation principle, inferior federal courts generally don't
19 have the authority to adjudicate judicial inquiries that only judges raise, unless
20 such inquiries relate to the jurisdiction of such inferior courts.

21
22 Additionally, the facts indicate that this Court had in place rules which
23 prevented the Church and Property Owner from accessing an active-duty judge to
24

1 adjudicate whether the sale of White's property should be restrained pursuant to
2 RCW 61.24.130 in a timely manner because the purported (but disputed)
3 beneficiary removed this case to this Court the day before the hearing to restrain
4 the sale was scheduled to be heard in state court on December 29, 2023. (The
5 hearing was scheduled on December 29, 2023 because that was the last date it
6 could be scheduled pursuant to RCW 61.24.130(1)).
7

8 DB, the purported beneficiary, then told the Washington State trustee to sell
9 White's property at the scheduled sale without ever telling White that DB and the
10 Washington State trustee were going to do so.
11

12 Plaintiffs assert that a reasonable jury (and reasonable persons generally)
13 having knowledge of these facts and circumstances would conclude on a more
14 likely than not basis that this Court was complicit with the money changers in such
15 a way so as to have allowed the Washington State Trustee to steal White's two
16 properties.
17

18 **III. AUTHORITY AND ARGUMENT:**

19 LCR 7(h)(1) provides that motions for reconsideration are disfavored and
20 will be allowed only upon a showing of manifest error.
21

22 It is well known that neither an Article III court nor any judge who is a part
23 of an Article III court, nor any judicial officer assigned to an Article III court, can
24

1 exercise jurisdiction for the Court which the Court itself does not have. Further, it
2 is well known that provisions of statutory law do not establish the meaning of
3 Article III. This Court's rewriting Plaintiff's objections to achieve its own purposes
4 constitutes manifest and obvious error of the type LCR 7(h) is intended to correct.
5

6 The Church and Property Owner also assert that this Court's challenged
7 order, issued by active duty Judge the Honorable Tiffany Cartwright, is also not
8 appropriate because the Church and the Property Owner raised a jurisdictional
9 objection to Judge Cartwright's ability to sit in judgment over the case because,
10 among other things, she is part of an Article III court that: 1) has directly
11 participated in denying due process through systemic enforcement of facially
12 fraudulent property instruments; and 2) is institutionally entangled in the economic
13 scheme that has permitted entities like Quality Loan Service Corp. to operate as
14 private "trustees" under color of state law to take homes without valid judicial
15 inquiry.
16
17

18 Because the Church and Property Owner challenge the institutional
19 legitimacy of this District Court to exercise Article III judicial power—under the
20 first sentence of Article III, Section 1—they assert that no judge of this Court can
21 redefine this structural objection as a mere statutory recusal motion based on 28
22 U.S.C. §§ 144 or 455. Indeed, this Court's claim that these unmentioned statutes
23
24

1 control here appears intended to improperly evade the serious jurisdictional
2 inquiries that Plaintiffs have properly raised against this Court, as an institution of
3 government.
4

5 The critical point that this Court, as an institution of justice, is not
6 synonymous with its individual judicial officers is well established and lies at the
7 heart of the present objection—an objection that the Court improperly reframes as
8 a personal motion to recuse Judge Cartwright. But such reframing ignores the plain
9 reality: White and the Church are challenging the structural legitimacy and
10 jurisdiction of this Court as a governmental institution, given its alleged complicity
11 in a broader fraudulent scheme to dispossess property owners of their homes
12 without due process.
13
14

15 In *United States v. Will*, 449 U.S. 200 (1980), the Supreme Court addressed a
16 similar situation where the entire Court was structurally implicated due to the
17 nature of the case—raising a constitutional challenge to Congress’s failure to adjust
18 judicial compensation. The Court emphasized that in such circumstances, the issue
19 is not governed by statutory recusal provisions (like 28 U.S.C. §§ 144 or 455), but
20 by the “rule of necessity,” which permits a structurally implicated court to hear a
21 matter when no alternative forum exists. Here, by contrast, White and the Church
22 argue not that this Court must act out of necessity, but that it lacks constitutional
23
24

1 authority to adjudicate altogether because of its entrenchment in the very
2 wrongdoing being challenged. Accordingly, the attempt to treat their objection as a
3 mere statutory recusal motion sidesteps and suppresses the substantive
4 constitutional inquiry that has been properly raised in violation of those purposes
5 for which this Nation's judicial branch of government was established.
6

7 The Church and Property Owner acknowledge that an independent and
8 neutral Article III judge could legitimately hold after a truthful and proper judicial
9 inquiry that rule of necessity requires it to adjudicate the issue presented. But their
10 position is that this Court must do at least that. And once that threshold is crossed
11 this Court must address the judicial inquiries going to the integrity of this Court
12 which have been properly presented. The reason this is the most appropriate course
13 for judicial relief under the circumstances presented is because of the strong
14 evidence the Church and White have produced that this Court has purposely
15 worked to undermine the constitutional rights of property owners and church
16 members.
17
18
19

20 It is also the position of the Church and Property Owner that this Court errs
21 when it adjudicates the constitutional authority of its judges—whose exercise of
22 judicial power is governed by the second sentence of Article III, Section 1—by an
23 apparently biased judge of this Court substituting statutory recusal analysis for the
24

1 constitutional standards of independence, good behavior, and structural neutrality
2 imposed by this Nation's organic law, which is now also guaranteed to the
3 governed by international law.
4

5 As this Court knows from Plaintiffs' objection the basis for their challenges
6 1) to this Court; and 2) to Judge Cartwright as an active-duty district judge of that
7 Court in this case, includes those organic law structural devices known as
8 Separation of Powers and Federalism¹, as well as the Contracts Clause, Article III,
9 Article VI (Supremacy Clause), the First Amendment (applicable to the Church
10 and its members, which include property owners), The Fifth Amendment
11 (preventing the taking of property without compensation), and the Fourteenth
12 Amendment (imposing due process requirements on state governments).
13
14

15 **Conclusion.**

16 This Court should reconsider its sua sponte order denying Plaintiffs'
17 purported recusal motion—an objection Plaintiffs never filed. Rather than recasting
18 Plaintiffs' jurisdictional challenge as a statutory recusal request, this Court should
19 adjudicate the judicial inquiries that have been properly raised regarding its
20 institutional authority and constitutional legitimacy.
21
22

23 ¹ Those structural devices include the Separation of Powers applicable to the three branches of
24 the federal government and federal division of powers between the National and state
governments.

1 I certify that this memorandum contains 1,463 words, in compliance with the
2 Local Civil Rules.

3 DATED this 10th day of July 2025, at Arlington, Washington.

4 By: s/ Scott E. Stafne WSBA No. 6964
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11 *Attorney for Plaintiffs*
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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury under the laws of the State of Washington that a true and correct copy of the foregoing has been furnished electronically via the Court's CM/ECF system to all persons registered to receive electronic notice.

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Dated this 10th day of July 2025.

By s/ Scott E. Stafne
Scott E. Stafne, Attorney.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

CHURCH OF THE GARDENS et al.,

Plaintiff,

v.

QUALITY LOAN SERVICES

CORPORATION et al.,

Defendant.

Case No. 3:23-cv-06193-TMC

ORDER DENYING MOTION FOR
RECUSAL

I. ORDER

This matter comes before the Court on Plaintiffs Church of the Gardens and Alvin White's Objection to the Court's Order Requesting Supplemental Briefing. Dkt. 92; *see* Dkt. 91. Though styled as an objection to the Court's order requiring the parties to file supplemental briefing addressing several issues—including the Federal Rule of Evidence 702/*Daubert* standard for expert witnesses—it also argues that the undersigned district judge, and all other district judges in the Western District of Washington, should be disqualified from adjudicating the case. Dkt. 92 at 14–19. Accordingly, the Court interprets Plaintiffs' request as a motion for recusal. For the reasons explained below, Plaintiffs' motion is DENIED, and pursuant to Local

1 Civil Rule 3(f), the undersigned judge directs the clerk to refer the motion to U.S. Chief District
2 Judge David G. Estudillo.

3 Motions for recusal are governed by 28 U.S.C. § 144 and 28 U.S.C. § 455. Recusal is
4 required if a judge's impartiality might reasonably be questioned or if the judge has a personal
5 bias or prejudice concerning a party. 28 U.S.C. § 455(a), (b)(1). In addition, recusal is required
6 pursuant to Section 144 when a party "files a timely and sufficient affidavit that the judge before
7 whom the matter is pending has a personal bias or prejudice either against him or in favor of any
8 adverse party." 28 U.S.C. § 144. Critically, bias or prejudice sufficient to warrant recusal must
9 derive from an extrajudicial source. *United States v. Hernandez*, 109 F.3d 1450, 1453–54 (9th
10 Cir. 1997). "[J]udicial rulings alone almost never constitute a valid basis for a bias or partiality
11 motion." *Liteky v. United States*, 510 U.S. 540, 555 (1994).

12 Plaintiffs contend that the Court falsely asserted that "Plaintiffs moved to exclude the
13 defendants' expert" and argue that "Plaintiffs have incorporated this obviously unbelievable
14 expert testimony as well as her untenable training and background as a part of their theory of the
15 case[.]" Dkt. 92 at 3, 17. Plaintiffs claim that the Court's reading of their motion for summary
16 judgment as seeking to exclude Defendants' expert witness "evidences bias and/or appearance of
17 bias on part of this Court's present judge sufficient to support her disqualification under this
18 nation's organic law, natural justice, and international law." *Id.* at 17. Plaintiffs also argue that
19 the Court "allowed its removal proceedings to be utilized by the purported beneficiary and its
20 agents . . . to sell title to two of White's real properties in violation of RCW 61.24.130 as well as
21 this nation's organic laws and controlling international law." *Id.* at 4–5. Finally, Plaintiffs assert
22 that "this Court's attempts to remove legal presentations from this case's docket filings, are
23 evidence of its corruption[.]" *Id.* at 5.

1 The Court is unpersuaded that recusal is appropriate. First, Plaintiffs do not point to any
2 “extrajudicial” conduct that warrants recusal. *See Taylor v. Regents of Univ. of California*, 993
3 F.2d 710, 712 (9th Cir. 1993) (“To warrant recusal, judicial bias must stem from an extrajudicial
4 source.”) (citing cases). Plaintiffs may disagree whether their motion for summary judgment
5 sought to exclude Defendants’ expert witness, despite language to the contrary. *See* Dkt. 76 at 20
6 (“It is Plaintiff’s position that forensic document examination, particularly as practiced by
7 handwriting experts trained by graphologists like McFarland, is a field plagued by subjectivity,
8 inconsistency, and methodological unreliability.”). But disagreement with judicial decisions is
9 not grounds for recusal since making those decisions is within the undersigned’s judicial
10 capacity. *United States v. Studley*, 783 F.2d 934, 939 (9th Cir. 1986) (“The alleged prejudice
11 must result from an extrajudicial source; a judge’s prior adverse ruling is not sufficient cause for
12 recusal.”).

13 Second, to the extent that Plaintiffs argue that the Court’s decision to request
14 supplemental briefing was the result of bias or animus, *see* Dkt. 92 at 17, these allegations are
15 conclusory and unsupported. *See United States v. \$292,888.04 in U.S. Currency*, 54 F.3d 564,
16 566 (9th Cir. 1995), *as amended* (May 24, 1995) (“mere conclusory allegations . . . are
17 insufficient to support a claim of bias or prejudice such that recusal is required”) (citation
18 omitted). Plaintiffs’ rehashing of prior grievances that have been addressed by the Court is
19 similarly without merit. *See generally* Dkt. 92.

20 For example, Plaintiffs allege that the Court allowed the case to be improperly removed
21 to federal court, which they argue show that “this Court has been or appear to have been
22 corrupted by an alliance with the money changers.” Dkt. 92 at 4. The case had initially been filed
23 in Pierce County Superior Court on December 13, 2023, where Plaintiffs had also filed a motion
24 seeking to restrain the nonjudicial sale of two properties. *See* Dkt. 1 at 5; Dkt. 1-2 at 88. But due

1 to the case's removal to federal court, Plaintiffs argue that they were unable to timely raise their
2 claims to prevent the sale which took place on January 5, 2024. Dkt. 8 ¶ 4.12.

3 It is the party's responsibility to comply with the Local Civil Rules for civil proceedings
4 before the Court. Local Civil Rule 101(d) provides that "[i]f a motion is pending and undecided
5 in the state court at the time of removal, it will not be considered unless and until the moving
6 party files and notes the motion on this court's calendar in accordance with LCR 7(d)." LCR
7 101(d). Here, Defendants properly removed the case to federal court on December 28, 2023.
8 Dkt. 1. Plaintiffs, however, did not refile their motion in this Court, as required by LCR 101(d),
9 but instead filed an amended complaint on January 8, 2024. *See* Dkt. 8. Plaintiffs cannot attribute
10 their failure to properly refile their motion to any perceived bias or animus by this Court.

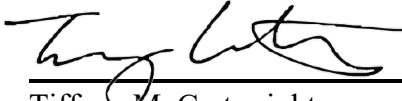
11 Plaintiffs also allege that the Court wrongfully attempted to remove legal filings from this
12 case's docket. Dkt. 92 at 5. This is incorrect. Early in this case, Plaintiffs filed a motion
13 challenging the authority of the Court's staff to strike their Notice and Objection to Assignment
14 of Magistrate Judge from the docket because it failed to comply with the Court's rules and
15 procedures. Dkt. 28 at 3; *see* Dkt. 16. The Court found Plaintiffs' argument unpersuasive as they
16 did not substantiate their claim with any relevant authority. Dkt. 28 at 3. Still, the Court
17 concluded that because nothing in this District's Second Amended General Order 11-22 prohibits
18 a party from filing a public objection to assignment to a Magistrate Judge, Plaintiffs' objection
19 was stricken in error and should be restored. *Id.* Plaintiffs' motion was fully considered, and the
20 relief sought was granted. *See id.* Plaintiffs thus fail to allege any actions by this Court to support
21 a claim of bias or prejudice that would warrant recusal. *See* \$292,888.04 in U.S. Currency, 54
22 F.3d at 566.

23 Because the Court concludes that there is no basis for the undersigned to recuse herself
24 from this case, there is no reason to recuse any other judge in this District. The Court also

1 cautions Plaintiff's counsel against raising similar frivolous claims of bias or disqualification, as
2 they have been repeatedly rejected in prior proceedings by judges in this District as well as the
3 Ninth Circuit. *See, e.g., Stafne v. Zilly*, 820 F. App'x 594, 595 (9th Cir. 2020) (affirming the
4 district court's dismissal of Plaintiff's counsel's claim that federal judges who elect senior status
5 are no longer Article III judges); *Bank of New York Mellon v. Stafne*, 824 F. App'x 536 (9th Cir.
6 2020) (Plaintiff's counsel's "argument that the senior district judge who heard his case was a
7 'retired judge' merely 'acting as an Article III judge in this case,' is without merit."); *Stafne v.*
8 *Burnside*, No. 22-35547, 2024 WL 2318169, at *1 (9th Cir. May 22, 2024) (noting that "[t]his is
9 not the first time Stafne has made his senior-judge argument in this Court" and holding that
10 "Stafne's argument that Judge Coughenour improperly denied his recusal motion because of his
11 'bias regarding the senior judge issue' is equally without merit").

12 Ultimately, "a judge has as strong a duty to sit when there is no legitimate reason to
13 recuse as he does to recuse when the law and facts require." *Clemens v. U.S. Dist. Ct. for the*
14 *Cent. Dist. Of Cal.*, 428 F.3d 1175, 1179 (9th Cir. 2005) (citation modified). Plaintiffs have not
15 provided a legitimate reason for the undersigned judge to recuse. The Court therefore DENIES
16 Plaintiffs' motion for recusal (Dkt. 92) and directs the Clerk to refer the motion to U.S. Chief
17 District Judge David G. Estudillo.

18
19 Dated this 9th day of July, 2025.

20 
21 Tiffany M. Cartwright
22 United States District Judge
23
24

HONORABLE TIFFANY M. CARTWRIGHT

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA**

CHURCH OF THE GARDENS, a
Washington Not-for-Profit Corporation
operating as a faith-based religious
organization; ALVIN WHITE, in his
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Plaintiffs,

v.

QUALITY LOAN SERVICES
CORPORATION OF WASHINGTON;
MTC FINANCIAL INC. DBA TRUSTEE
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NATIONAL TRUST COMPANY; LONG
BEACH MORTGAGE LOAN TRUST
2006-4; LONG BEACH MORTGAGE
LOAN TRUST 2006-5; and STATE OF
WASHINGTON, a State of the United
States.

Defendants.

No. 3:23-cv-06193-TMC

**PLAINTIFFS' OBJECTION TO
ORDER OF THIS COURT
ALLOWING DEFENDANTS TO
FILE SUPPLEMENTAL BRIEFING
SUPPORTING DEFENDANTS'
MOTION TO EXCLUDE
PLAINTIFFS' EXPERTS**

ORAL ARGUMENT REQUESTED

**NOTE ON MOTION CALENDAR:
JULY 16, 2025**

**PLAINTIFFS' OBJECTION TO SUA SPONTE
DAUBERT/ER 702 BRIEFING ORDER**

I. Introduction:

This Court, acting through its active-duty judge having good behavior tenure¹, the Honorable Tiffany M. Cartwright, has issued an order directing supplemental briefing. *See* Dkt. 91.

Plaintiff Church of the Gardens ("Church") and Property Owner Alvin White ("Property Owner") respectfully object to this order as it relates to expert witnesses. *See* Dkt. 91 at 1–2.

For purposes of this Objection Plaintiffs will sometimes refer to the Defendants collectively as "money changers" for the reasons asserted in Stafne's Declaration, Dkt 77, at p. 8, ¶19, note 3.

II. Grounds for Objection:

Judge Cartwright's sua sponte order rests on two premises:

(1) that both Plaintiffs and Defendants have moved to exclude their adversaries' expert witnesses; and

(2) that this Court's inherent authority under *Dietz v. Bouldin* justifies its directive giving the money changers an opportunity to make additional arguments

¹ *See* 28 U.S.C. 132(b) ("Each district court shall consist of the district judge or judges for the district in regular active service. ...")

1 pursuant to ER 702 to exclude Plaintiffs' engineering expert, who had not been
2 timely challenged on such grounds.

3 Plaintiffs Church and Property Owner dispute the first premise, i.e. that
4 Plaintiffs have attempted to exclude the money changers' experts, as being
5 factually inaccurate.² The record shows (and this Court should know this) that
6 Plaintiffs have not moved to exclude Defendants' expert; rather Plaintiffs rely on
7 Defendants' expert witness graphology-trained handwriting expert, McFarland, to
8 support their theory of the case. *See. e.g.* Dkt. 63 and 64, at pps. 5, 12-13. *Cf.* pp.
9 16-26.
10
11

12 Indeed, Plaintiffs intend to present to the jury a theory of the case grounded
13 in the proposition that the State of Washington—along with this federal court and
14 the money changers who use it as a collection agency for their benefit—have all
15 become complicit in a broader scheme to deprive homeowners of their property
16 without constitutional due process and in violation of this Nation's structures of
17 constitutional government. Specifically, Plaintiffs contend that governmental
18 institutions in Washington State have failed to provide independent and neutral
19
20
21

22 ² *See* Order, Dkt 91, at pp. 1-2, falsely asserting that Plaintiffs have challenged the opinion
23 testimony offered on behalf of the defendants. This is categorically not true. Indeed, Plaintiffs
24 have incorporated this obviously unbelievable expert testimony as well as her untenable training
and background as a part of their theory of the case, which includes the premise that Washington
State's government and this Court itself are all part of a fraud intended to take People's homes
from them in violation of several organic laws.

1 judicial forums for the adjudication of title disputes, thereby participating in, or
2 enabling, the unlawful taking of property. This systemic failure, Plaintiffs argue,
3 contravenes the very purpose of government as declared in the Preamble to the
4 United States Constitution: “*to establish Justice.*”
5

6 Plaintiffs object to this Court’s order allowing defendant money changers to
7 make additional arguments to exclude Plaintiffs’ experts because that Court order
8 is intended to, and appears intended to, give the money changers a second chance
9 to make arguments most courts would have held to be waived as a result of the
10 money changers failure to timely make them.
11

12 As Plaintiffs never made this same mistake, this Court’s suggestion that they
13 did, implies bias as Plaintiffs assert a competent, unbiased court would not
14 normally make such a misrepresentation or such a mistake about the legal
15 presentations in any other type of case.
16

17 This Court’s mistaken assertion, i.e. stating that Plaintiffs moved to exclude
18 Defendants’ expert, is not the only evidence in the record indicating that this Court
19 has been or appears to have been corrupted by an alliance with the money
20 changers. Plaintiffs have asserted in their amended complaint facts demonstrating
21 that this Court allowed its removal proceedings to be utilized by the purported
22 beneficiary and its agents (including the Washington State Trustee) to sell title to
23
24

1 two of White's real properties in violation of RCW 61.24.130 as well as this
2 nation's organic laws and controlling international law, both of which require
3 independent and neutral adjudication.
4

5 Plaintiffs' amended complaint is premised on: Dkt 2 (this Court assigns a
6 magistrate judge as the judicial officer adjudicating this case); Dkt. 4 (Plaintiffs'
7 objection to magistrate judge); Dkt. 8 (Amended Complaint alleging, among other
8 things, that district courts procedures were utilized by money changers and this
9 Court in such a way so as to allow money changers acting as state actors to sell the
10 title to two of White's properties without White's consent); Dkt. 13 (Notice of
11 assignment to a U.S. magistrate Judge and declination of consent form); Dkt. 14
12 (Minute Order Reassigning Case to active-duty judge); Dkt. 16 (Plaintiffs' Motion
13 to Restore Plaintiffs pleading denominated as Notice and Objection to Assignment
14 of Magistrate Judge); Dkt 28 (Order granting motion to restore filing).
15
16

17 The Church and Property Owner will argue that these filings, which
18 demonstrate this Court's attempts to remove legal presentations from this case's
19 docket filings, are evidence of its corruption for purposes of tending to prove
20 governmental complicity in the unlawful taking of property now still going on in
21 Washington State.
22
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III. Judicial Independence:

In *Todd v. United States*, 158 U.S. 278 (1895), the Supreme Court granted review of an inferior court's order. But when considering that district court's order the Justices became concerned about the fact that the judicial officer who issued the order in the name of the district court did not have the statutory authority to do so.

In ruling that federal district courts cannot exercise the Article III judicial power through judicial officials who have no statutory basis for exercising it, the Supreme Court relied upon the circuit precedent Justice Story established in *United States v. Clark*, 1 Gallison 497 (1813).³

In *Todd*, the Supreme Court specifically quoted Justice Story as holding:

The statute does not punish every perjury, but only a perjury done in *a court of the United States*. Plainly, therefore, it is of the very essence of the offense that it should be charged as committed in such court. Now under the authority of the United States, there are but three courts known in law, the district, circuit, and supreme courts, and as Congress alone can by the Constitution ordain and establish courts, none can exist but such as they create and name. . . . A court is not a judge, nor a judge a court. A judge is a public officer who, by virtue of his office, is clothed with judicial authorities. A court is defined to be a place in which justice is judicially administered. It is the exercise of judicial power by the proper officer or officers at a time and place appointed by law.

These same principles apply here; but likely more so.

³ Accessible at: <https://www.courtlistener.com/opinion/8658594/united-states-v-clark/>

1 This is because in this case—unlike in Todd and Clark—there is evidence
2 here that this Court and its judicial and clerical officials are purposely and
3 knowingly exercising judicial power not authorized by statute and in violation of
4 Article III, section one of the Constitution.
5

6 This case was purposely and specifically assigned by this Court to a
7 *magistrate* judge; notwithstanding the district court and its money changer allies
8 knew this court's unconstitutional rules and procedures would prevent the Church
9 and Property Owner from having timely access to this Court to restrain the state
10 officer pursuant to RCW 61.24.130 and this Nation's organic law and equitable
11 principles. This constituted an usurpation of statutory and constitutional authority
12 by this Court and its officials because the district court for Western Washington is
13 by statute composed only of its 7 active-duty judges. And also because only its 7
14 active-duty judges have good behavior tenure.
15
16

17 28 U.S.C. §128 provides in pertinent part:

18 Washington is divided into two judicial districts to be known as the
19 Eastern and Western Districts of Washington. ... ***Court for the***
20 ***Western District*** shall be held at Bellingham, Seattle, Tacoma, Mount
21 Vernon, and Vancouver. (Emphasis Supplied)

22 28 U.S.C. §132 provides in pertinent part:

23 (a) There shall be in each judicial district a district court which shall
24 be a court of record known as the United States District Court for the
district.

1 **(b) *Each district court shall consist of the district judge or judges for***
2 ***the district in regular active service.*** Justices or judges designated or
3 assigned shall be competent to sit as judges of the court. (Emphasis
4 Supplied)

5 28 U.S.C. provides in pertinent part:

6 **(a)** The President shall appoint, by and with the advice and consent of
7 the Senate, district judges for the several judicial districts, as follows:
8 ... Washington Western 7

9 28 U.S.C. §134 provides in pertinent part:

10 **(a) *The district judges shall hold office during good behavior.***
11 (Emphasis Supplied)

12 It is Plaintiffs' position that their constitutional right to have the United
13 States District Court for Western Washington decide this removed case through an
14 active-duty *district* judge serving during good good behavior stems from the first
15 sentence of Article III, section one, which states:

16 The judicial Power of the United States, shall be vested in one
17 supreme Court, and in such inferior Courts as the Congress may from
18 time to time ordain and establish.

19 *See United States v. Todd*, supra.; *United States v. Clark*, supra. Cf. *Trump v.*
20 *Casa, Inc.*, 606 U.S. __ (2025)⁴.

21 It is Plaintiffs' position that their constitutional right to have an active-duty
22 judge of the United States District Court for Western Washington adjudicate this
23

24

⁴ Accessible at: https://www.supremecourt.gov/opinions/24pdf/24a884_new2_0pl1.pdf

1 removed case is established by the second sentence of Article One, section two,
2 which states:

3 The Judges, both of the supreme and inferior Courts, shall hold their
4 Offices during good Behaviour, and shall, at stated Times, receive for
5 their Services, a Compensation, which shall not be diminished during
6 their Continuance in Office.

7 It cannot be seriously contended that this district court or its officials can
8 impose on litigants like the Church and Property Owner court rules and procedures
9 intended to subvert the parties' constitutional rights to 1) a district court operating
10 pursuant to the present version of the Judiciary of 1879; and 2) judges who have
11 good behavior tenure.

12 In this case, the pertinent statutes (previously cited and explained) make
13 clear that only the seven active-duty district judges having good behavior tenure
14 make up this district court; but that a magistrate judge was nonetheless assigned to
15 this case in a manner that caused Property Owner damages.

16 And after these damages became apparent a clerk of this Court, referring to
17 itself as the "Chamber" of this Court purported to exercise the authority of this to
18 summarily reject the presentations of Plaintiffs regarding this usurpation of power
19 prepared by Plaintiffs' counsel.

20 It is Plaintiffs' position based on the facts demonstrated by the record
21 referenced above that the clerk and/or undefined "chambers" of this district court
22

1 which purported to and did summarily purport to strike Plaintiffs' presentations
2 had no authority to do so. But to the extent this Court purports that some
3 interpretation of these statutes allowed this, then it is Plaintiffs' position that such
4 an interpretation of the Judiciary Act violates Article III. *See United States v.*
5 *CASA*, supra.

7 Out of an abundance of caution based on their counsel's almost 50 years
8 worth of experience practicing before district court, the Plaintiffs are citing to
9 extensive authority which indisputably establishes their constitutional right to insist
10 on having this removed case be adjudicated by a judge having good behavior
11 tenure: *Murray's Lessee v. Hoboken Land & Improvement Co.*, 59 U.S. (18 How.)
12 272 (1856) (The Court distinguished between public rights and private rights,
13 holding that cases involving private rights must be adjudicated by Article III judges
14 to ensure impartiality and adherence to constitutional protections); *Ex parte*
15 *Milligan*, 71 U.S. (4 Wall.) 2 (1866) (The Court reaffirmed the principle that
16 civilian rights must be adjudicated by constitutionally established courts,
17 particularly during peacetime, underscoring the necessity of Article III protections
18 in safeguarding individual liberties.); *Toth v. Quarles*, 350 U.S. 11 (1955) (The
19 Court held that civilians accused of crimes cannot be tried in military courts,
20 underscoring that only Article III courts can adjudicate such matters. This decision
21
22
23
24

1 highlights the necessity of judicial officers with life tenure and impartiality in
2 private rights disputes, as mandated by the Constitution.); *Reid v. Covert*, 354 U.S.
3 1 (1957) (The Court ruled that civilians subject to military tribunals are entitled to
4 Article III court protections when private rights are at stake, reinforcing the
5 Constitution's guarantees of judicial independence.); *Glidden Co. v. Zdanok*, 370
6 U.S. 530 (1962) (The Court examined whether judges from Article I courts could
7 exercise Article III powers, ultimately reaffirming that judicial independence under
8 Article III—including good behavior tenure—is a structural safeguard essential for
9 constitutional adjudication.); *United States v. Will*, 449 U.S. 200 (1980) (The Court
10 reinforced the critical role of Article III in ensuring judicial independence, focusing
11 specifically on the Compensation Clause as a means of safeguarding judicial
12 impartiality.); *Commodity Futures Trading Commission v. Schor*, 478 U.S. 833
13 (1986) (This case explored the boundaries of Congress's authority to assign
14 adjudication of private rights to non-Article III tribunals. The Court upheld the
15 principle that litigants retain a personal constitutional right to object to non-Article
16 III judicial officers unless that right is knowingly and voluntarily waived.);
17 *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33 (1989) (The Court held that cases
18 involving private rights are entitled to the constitutional protections of Article III
19 adjudication, including trial by jury.); *Northern Pipeline Construction Co. v.*
20
21
22
23
24

1 *Marathon Pipe Line Co.*, 458 U.S. 50 (1982) (held that cases involving private
2 rights in bankruptcy must be adjudicated by Article III judges. It confirmed that the
3 use of non-Article III judges in such disputes violates the Constitution's guarantees
4 of judicial independence.); *Commodity Futures Trading Comm'n v. Schor*, 478 U.
5 S. 833 (1986) (Finding that Schor waived his personal right to insist on Article III
6 judge by not timely asserting that right.); *Gomez v. United States*, 490 U.S. 858
7 (1989) (Holding: A magistrate judge cannot conduct jury selection in a felony trial
8 without the defendant's consent.); *Peretz v. United States*, 501 U.S. 923 (1991)
9 (Holding: A magistrate judge may supervise jury selection in a felony trial if the
10 defendant consents.); *Weiss v. United States*, 510 U.S. 163 (1994) (While
11 recognizing that Article I judges do not require life tenure, the Court emphasized
12 that Article III judges are constitutionally mandated to hold life tenure to preserve
13 judicial independence.); *Stern v. Marshall*, 564 U.S. 462 (2011) (The Court
14 reinforced that Article III protections, including judicial independence through life
15 tenure, apply to cases involving private rights. This decision made clear that
16 Congress cannot circumvent these constitutional safeguards by delegating such
17 disputes to non-Article III tribunals); *Wellness International Network, Ltd. v.*
18 *Sharif*, 575 U.S. 665 (2015) (While this case acknowledged that parties may
19 consent to adjudication by non-Article III judges in bankruptcy, it explicitly upheld
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1 the principle that such consent must be voluntary. The Court reaffirmed that
 2 individuals retain a personal constitutional right to demand adjudication by Article
 3 III judges.); *Cf. SEC v. Jarkesy*, 144 S. Ct. 2117 (2024) (In this recent decision, the
 4 Court applied the principles of *Granfinanciera*, reiterating that private rights cases
 5 require adjudication in a constitutionally competent tribunal, further reinforcing the
 6 necessity of Article III safeguards.)
 7

8 Plaintiffs Church and Property Owner further assert that the circumstances
 9 of this case, involving allegations of intentional wrongdoing by this Court and its
 10 judicial officers, raises judicial inquiries regarding structural issues, which are not
 11 subject to waiver under *Commodity Futures Trading Comm’n v. Schor*, *supra.*,
 12 which did not involve any allegations of improper conduct by the CFTC.
 13
 14

15 **IV. The Duty of Neutrality and its relationship with the Party**
 16 **Presentation principle applicable to cases and controversies:**

17 “In our adversarial system of adjudication, we follow the principle of party
 18 presentation... [and] rely on the parties to frame the issues for decision and assign
 19 to courts the role of neutral arbiter of matters the parties present.” *United States v.*
 20 *Sineneng-Smith*, 590 U.S. 371, 373 (2020). A court’s sua sponte decision to invite a
 21 new round of briefing on issues not raised by the parties—particularly where those
 22 issues may benefit one side—raises serious concerns about neutrality and the
 23 appearance of bias. *Cf. Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009),
 24

1 which affirms the importance of avoiding even the *appearance* of judicial bias
2 where due process is concerned.

3 The federal Constitution requires not only actual impartiality, but the
4 appearance of impartiality. Where the Court's actions raise a reasonable concern
5 that it is stepping outside the role of neutral adjudicator—particularly to benefit
6 one side (or worse, the Court itself) in an adversarial dispute—this threatens due
7 process. See *Tumey v. Ohio*, 273 U.S. 510 (1927).
8

9 Further, federalism and separation of powers principles prohibit judicial
10 officers from expanding their role in a manner that encroaches on the constitutional
11 limits of judicial power. See e.g. *Trump v. Casa, Inc.*, 606 U.S. __ (2025) holding
12 that universal injunctions were in excess of the judicial power unless necessary to
13 provide such complete relief as equity demands. See also, *Bond v. United States*,
14 564 U.S. 211 (2011); *United States v. McIntosh*, 833 F.3d 1163 (9th Cir. 2016)
15 (holding parties to actions have standing to challenge courts exercise of judicial
16 power.)
17
18

19
20 **V. Plaintiffs assertions regarding those steps which this Court**
21 **through an active-duty judge serving during good behavior should take in to**
22 **adjudicate this Objection:**

23 Plaintiffs Church and Property Owner appreciate that in recent times federal
24 courts have preferred to consider “bias” and “appearance of bias” challenges by

1 litigants as applying only to “judges” as opposed to “courts as institutions of
2 government”. Regardless of this self serving precedent it is Plaintiffs position with
3 regard to the circumstances existing here, including this Court’s promulgation of
4 court rules and procedures which appear to be used to prevent litigants
5 constitutional right to insist on active-duty judges, merit special review procedures.
6

7 The Church and Property Owner assert that the proper procedure for
8 adjudicating their objection to this Court’s supplemental order based on Daubert as
9 well as Plaintiffs more general objections going to the independence and bias of
10 this Court and its judges in creating procedures which allowed the Washington
11 State money changers to sell the title to White’s properties without his consent,
12 should approximate those engaged in by the United States Supreme Court in
13 *United States v Will*, 449 U.S. 200 (1980), where United States judges urged tax
14 laws should not apply to them because the compensation clause of Article III
15 prohibited their income from being diminished while holding the office of judge
16 during good behavior.
17
18
19

20 In *Will* the Supreme Court acknowledged at the outset of its decision the
21 delicacy of the Supreme Court having to adjudicate the outcome of that case
22 because doing so required the Justices to decide matters in which they too were
23 interested as Article III judges. The Justices of the Supreme Court then claimed
24

1 that they were required to adjudicate those issues raised by the Plaintiff judges in
2 that appeal pursuant to the ancient principle of the Rule of Necessity because no
3 one else has the authority to do so.

4
5 This Court should determine at the outset whether either this Court itself
6 and/or the currently assigned active-duty judge are compelled under the rule of
7 necessity to adjudicate this objection.

8 Plaintiffs further assert consideration of their objection should also include:

9
10 1) an examination of the record to determine whether Plaintiffs' factual
11 challenges to the Court's assertion that Plaintiffs objected to Defendants experts are
12 true;

13
14 2) an examination of the record to determine whether it is probable that this
15 Court's local rules and procedures operated to delay or deny the assignment of this
16 removed case to an active-duty Article III judge in a manner that infringed upon
17 White's constitutional rights to have access to both an independent judge and a
18 neutral judicial forum to restrain the allegedly illegal transfer of title to his real
19 property in violation of RCW 61.24.180 and his right to have this case adjudicated
20 judicially;

21
22 3) a reasoned decision adjudicating pursuant to the "average judge" standard
23 set forth in *Williams v. Pennsylvania*, 579 U.S. 1, 4 (2016) whether this Court's
24

1 misstatement of fact through its active-duty judge, i.e. that Plaintiffs moved to
 2 exclude the defendants' expert, evidences bias and/or an appearance of bias on part
 3 of this Court's present judge sufficient to support her disqualification under this
 4 nation's organic law, natural justice, and international law;
 5

6 4) a reasoned decision adjudicating pursuant to the "average judge" standard
 7 whether this Court's creation of diversity procedures which allowed the title of
 8 White's real properties to be taken from him against his will by an official
 9 Washington State trustee and other money changers in violation of law constitutes
 10 a jurisdictional grounds for the disqualification of this Court, *i.e.* the United States
 11 district court, as it is defined to exist pursuant to 28 U.S.C. 132(b) as an institution
 12 of government.
 13
 14

15 Plaintiffs Church and Property Owner assert that the United States' District
 16 Court for Western Washington should adjudicate whether it as an institution of
 17 government should be disqualified from adjudicating this case given those
 18 jurisdictional prerequisites for this Court's exercise of judicial power. *See e.g.*
 19 *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2203 (2021) ("As Madison explained
 20 . . . federal courts . . . decide only matters 'of a Judiciary Nature.' 2 Records of the
 21 Federal Convention of 1787, p. 430 (M. Farrand ed. 1966)"). *Sprint Communs.*
 22 *Co., L.P. v. APCC Servs.*, 554 U.S. 269, 274 (2008) ("[H]istory and tradition offer a
 23
 24

1 meaningful guide to the types of cases that Article III empowers federal courts to
 2 consider.”); *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 102 (1998)
 3 (“Article III, § 2 of the Constitution extends the judicial Power of the United States
 4 . . . [to] cases and controversies of the sort traditionally amenable to and resolved
 5 by the judicial process” citing *Muskrat v. United States*, *supra*, 219 U.S. 346 at
 6 356-357.” (cleaned up)); *Gte Sylvania v. Consumers Union of United States*, 445
 7 U.S. 375, 382 (1980) (“The purpose of the case-or-controversy requirement is to
 8 limit the business of federal courts to questions presented in an adversary context
 9 and in a form historically viewed as capable of resolution through the judicial
 10 process.”)(cleaned up)).
 11
 12

13 Plaintiffs assert that this Court as an instrument of government can only
 14 exercise that judicial power which it has been given by way of a nation’s organic
 15 laws and that international law and treaties which obligate nations to follow such
 16 organic laws as require judicial independence and neutrality. Thus, the question of
 17 whether this Court, as a court, is neutral with regard to the promulgation and
 18 enforcement of its rules and procedures in this case is different from the question
 19 as to whether an individual judge is biased. This is because this Court has
 20 committed openly to that course which the Church and White asserts represents
 21 bias or appears to represent bias to a degree that is more than constitutionally
 22
 23
 24

1 tolerable.

2 Because this Court acting through its 7 district court judges has adopted rules
3 which are designed to (and appear designed to) prevent litigants like the Church
4 and White from timely accessing their constitutional rights to have removed cases
5 adjudicated by this Court as it has been defined by statute, i.e. as the seven active-
6 duty district judges holding office during good behavior, it is the Plaintiff's
7 position that the judicial inquiries focusing on adjudicating this Court's bias should
8 be adjudicated by an active-duty district judge specially assigned to this Court
9 pursuant to the same type of procedure as occurred when judges of this Court were
10 sued in *Stafne v. Zilly*, Case No. 2:17-cv-01692 MHS.

13 And, of course, if this Court needs further fact finding regarding this Court's
14 subject matter jurisdiction over this case, and this court's various judicial and
15 clerical officer's independence and neutralities, it should establish an evidentiary
16 process to obtain this factual information.

18 **Conclusion.**

19 Plaintiffs object to responding to this Court's order requiring supplemental
20 briefing for the reasons stated herein. Nonetheless, it is Plaintiffs' intent to provide
21 supplemental briefing clearly demonstrating that Plaintiffs' expert's testimony is
22 admissible; intending that this objection should be considered further evidence that
23
24

1 this particular district court appears to be exhibiting conduct which implies that
2 neither this Court nor its judicial officers appear to be neutral in these types of
3 cases involving property owners.
4

5 I certify that this objection going to this Court's subject matter jurisdiction
6 and this court's judicial officers' authority contains 4,051 words. It is Plaintiffs'
7 position that this Court's June 25, 2025 Order does not establish a word limit for
8 this presentation; and that if it does this Court should advise Plaintiffs of this.
9

10 DATED this 4th of July 2025, at Arlington, Washington.

11 By: s/ Scott E. Stafne WSBA No. 6964
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19
20
21
22
23
24

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury under the laws of the State of Washington that a true and correct copy of the foregoing has been furnished electronically via the Court's CM/ECF system to all persons registered to receive electronic notice.

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Dated this 4th day of July 2025.

By s/ Scott E. Stafne
Scott E. Stafne, Attorney.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

CHURCH OF THE GARDENS et al.,

Plaintiff,

v.

QUALITY LOAN SERVICES

CORPORATION et al.,

Defendant.

Case No. 3:23-cv-06193-TMC

ORDER REQUESTING SUPPLEMENTAL
BRIEFING

I. ORDER

Before the Court is Defendants Deutsche Bank and Quality Loan Services Corporation's ("QLS") motion for summary judgment, Dkt. 67, and Plaintiffs Church of the Gardens and Alvin White's cross motion for summary judgment, Dkt. 76. Having reviewed the briefs and the relevant record, the Court concludes that the parties have not adequately briefed all the issues in their summary judgment motions. For that reason, as explained further below, the Court defers ruling on the motions and ORDERS supplemental briefing from both parties.

The parties' briefs are deficient in two ways. First, while both Plaintiffs and Defendants challenge the admissibility of the opposing parties' experts, *see* Dkt. 67 at 8–9; Dkt. 76 at 19–21, they fail to address the standard for excluding expert testimony under Federal Rule of Evidence

1 702/*Daubert*. See *Primiano v. Cook*, 598 F.3d 558, 564 (9th Cir. 2010), as amended (Apr. 27,
2 2010) (“[T]he trial court must assure that the expert testimony ‘both rests on a reliable
3 foundation and is relevant to the task at hand.’”) (quoting *Daubert v. Merrell Dow Pharms., Inc.*,
4 509 U.S. 579, 597 (1993)). Second, even though both parties seek summary judgment on all
5 claims, neither side addresses Plaintiffs’ claims (1) challenging the constitutionality of various
6 provisions of the Deed of Trust Act, see, e.g., Dkt. 8 ¶¶ 3.5, 3.98, 3.99(D), 3.99(H), 4.7, 4.8;
7 (2) seeking declaratory judgment as to the meaning of RCW 61.24.130, see *id.* ¶¶ 4.1–4.2; and
8 (3) requesting equitable relief, see *id.* ¶¶ 3.103(A)–(E). See *Intellicheck Mobilisa, Inc. v. Wizz*
9 *Sys., LLC*, 173 F. Supp. 3d 1085, 1108 (W.D. Wash. 2016) (arguments that are inadequately
10 briefed are not properly before the court).

11 The Supreme Court “has long recognized that a district court possesses inherent powers
12 that are governed not by rule or statute but by the control necessarily vested in courts to manage
13 their own affairs so as to achieve the orderly and expeditious disposition of cases.” *Dietz v.*
14 *Bouldin*, 579 U.S. 40, 45 (2016) (citation modified). These powers include the “inherent
15 authority to manage their dockets and courtrooms with a view toward the efficient and expedient
16 resolution of cases.” *Id.* at 47 (collecting cases).

17 As the Court noted above, this case is not adequately briefed for summary judgment. Nor
18 is it ready to proceed to trial, as many of these issues are legal questions that must be decided by
19 the Court. See *Rodriguez v. City of Simi Valley*, 83 F.3d 428 (9th Cir. 1996) (unpublished)
20 (“essentially legal question[s]” should “be decided by the court”) (citation omitted).

21 The Court thus STRIKES the trial date and ORDERS as follows:

- 22 • Each party must file two supplemental briefs no later than July 16, 2025.
- 23
24

- First, a supplemental brief of no more than 4,200 words addressing Federal Rule of Evidence 702/the *Daubert* standard for the expert witnesses whom each party seeks to exclude.
- Second, a supplemental brief of no more than 8,400 words addressing (1) Plaintiffs' federal and state constitutional claims challenging the Deed of Trust Act; (2) Plaintiffs' declaratory judgment claims with respect to RCW 61.24.130; (3) Plaintiff's claims for equitable relief; and (4) whether Plaintiff Church of the Gardens (as opposed to Mr. White) has Article III standing to pursue its claims.
- The Clerk is directed to re-note Defendants' motion for summary judgment, Dkt. 67, and Plaintiffs' motion for summary judgment, Dkt. 76, to July 16, 2025.

The Court will issue a new scheduling order, if necessary, following its ruling on the summary judgment motions.

Dated this 25th day of June, 2025.


Tiffany M. Cartwright
United States District Judge

HONORABLE TIFFANY M. CARTWRIGHT

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA**

CHURCH OF THE GARDENS, a
Washington Not-for-Profit Corporation
operating as a faith-based religious
organization; ALVIN WHITE, in his
individual capacity,

Plaintiffs,

v.

QUALITY LOAN SERVICES
CORPORATION OF WASHINGTON;
MTC FINANCIAL INC. DBA TRUSTEE
CORPS.; DEUTSCHE BANK
NATIONAL TRUST COMPANY; LONG
BEACH MORTGAGE LOAN TRUST
2006-4; LONG BEACH MORTGAGE
LOAN TRUST 2006-5; and STATE OF
WASHINGTON, a State of the United
States.

Defendants.

No. 3:23-cv-06193-TMC

**PLAINTIFFS' RESPONSE TO
DEUTSCHE BANK'S MOTION
FOR SUMMARY JUDGMENT
AND CROSS MOTION FOR
SUMMARY JUDGMENT
REGARDING SUBJECT MATTER
JURISDICTION AND STANDING**

ORAL ARGUMENT REQUESTED

**NOTE ON MOTION CALENDAR:
MAY 28, 2025**

I. RELIEF REQUESTED:

Church of the Gardens (hereafter “Church” or “COTG”) and Alvin B. White (hereafter “White” or “Property Owner”) request this Court to 1) deny Deutsche Bank National Trust Company’s (hereafter “DB”) motion for summary judgment because DB a) lacks Article III, contractual, and statutory standing to enforce the purported promissory Note instruments; b) DB’s latest motion for summary judgment does not comply with Fed. R. Civ. Pro. 56; c) grant Plaintiffs’ other pending cross motions for summary judgment against DB and DB’s paid Washington State Trustees, including without limitation: ECF 63 supported by ECFs 64, 65, 67; and Plaintiffs’ first cross motion for summary judgment which was filed against DB and its hired Washington State Trustee on January 29, 2024 but continued by this Court. *See* ECF 19¹ supported by ECFs 20, 21, 22, 26, 37, and 37.

II. COUNTERSTATEMENT OF ISSUES:

- 1) Whether Plaintiffs are entitled to a summary judgment that DB has not offered sufficient proof to create a material factual issue demonstrating that it has standing to enforce the pertinent promissory notes under Article III, the language of the promissory note, and applicable Washington State statutes that were in effect when White executed the pertinent Note instrument contracts in 2006.
- 2) Whether DB has produced sufficient evidence to preclude a finding of historical fact that the financial industry, including DB, routinely destroyed

¹ This motion was continued by the Court at the request of DB. *See* ECF 39.

1 promissory notes like the ones White signed in favor of keeping electronic
2 copies of those Notes?

- 3 3) Whether the testimony by DB and its purported document examiner witness
4 that there is no evidence that the financial industry destroyed notes in favor
5 of keeping electronic copies of the signed notes is credible enough that a
6 reasonable juror could believe it?
- 7 4) Whether the Property Owner and Church established “proper grounds” to
8 restrain the sale of Property Owner’s properties by DB and its hired
9 Washington State pursuant to the language of RCW 61.24.130 as it existed
10 in 2006?
- 11 5) Whether this Court has subject matter jurisdiction over DB’s and the other
12 defendants’ claims that DB, the trusts, and the Washington State trustees (or
13 any of them individually or collectively) can enforce the notes promissory
14 Notes in this case by way of a judicial foreclosure in this Court?

14 ***III. COUNTERSTATEMENT OF FACTS:***

15 ***A. This case was originally filed in state court to restrain the threatened*** 16 ***trustee sale of Property Owner’s real properties*** 17 ***pursuant to RCW 61.24.130.***

18 It is undisputed that the unilateral boilerplate contracts giving rise to this
19 lawsuit were executed in 2006 by White pursuant to Washington State’s Uniform
20 Commercial Code, Ch. 62A. RCW, and Deed of Trust Statute, Ch. 61.24 RCW.
21 Those laws as they existed in 2006 when the contracts were signed are attached as
22 Exhibits 2 and 3 to Stafne’s Declaration.

23 It should also be undisputed that the Church and White filed a lawsuit in the
24 appropriate Washington State Court to restrain the sale of White’s properties and

1 filed a motion to achieve this result. *See* Declarations of Alvin White; Justin Wood
2 (“Wood Declaration”), and Scott Erik Stafne (“Stafne declaration”). *See also*, ECF
3 2-1. But the day before the motion was scheduled to be heard in state Court DB
4 removed this case to this Court and instructed one of its paid Washington State
5 trustees to sell two of White’s properties; which that paid for Washington State
6 corporate official, i.e. the purported Washington State trustee, did.
7

8 Plaintiffs’ complaint filed with the state court sought to restrain the
9 Washington State sanctioned sale of White’s property without his consent and, if
10 necessary, sought a declaratory judgment regarding the meaning of this statutory
11 provision as it existed in 2006 when the contracts were signed. *See* ECF 2-1, pp.
12 9-12, ¶¶ 3.1-3.6.
13

14 The state court complaint alleged among other things that proper judicial
15 inquiries existed with regards to whether DB, through paid trustees exercising the
16 authority of the State of Washington, was entitled to enforce the note instrument by
17 selling White’s properties without his consent. In this regard the Church and White
18 alleged that paragraph one of the 2006 promissory note agreements provided:
19

20 Lender may transfer this Note. Lender or anyone who takes this Note
21 by transfer and who is entitled to receive payments under this Note is
22 called the ‘Note Holder.’

23 Plaintiffs’ complaint further alleged: “that the term ‘transfer’ as it is used in
24 the above referenced promissory notes is a term of art referencing the ‘transfer’ of
promissory note instruments pursuant to Washington’s 2006 version of the

1 Uniform Commercial Code (hereafter UCC). ECF 2-1, pp.12-14, ¶¶3.7-3.10.

2 Plaintiffs also alleged, among other things in their state court complaint that
3 RCW 61.24.127 was not in effect in 2006 when the Property Owner executed the
4 pertinent promissory note contracts and purported security agreements in this case.
5 ECF 2-1, p.15-16, ¶3.14. And Plaintiffs assert here as a factual matter that DB and
6 its Trustees' latest motions for summary judgment that RCW 61.27.127 should be
7 applied to this case amounts to a factual concession that this legal issue constitutes
8 a proper ground to restrain the sale of White's properties because both DB and its
9 paid for trustees knew when the complaint was filed that their reliance on that
10 statute would need to be decided by a judicial officer acting as a judge pursuant to
11 the Fourteenth Amendment and RCW 2.28.030. *Cf* ECF 19 (Plaintiff's first
12 motion for summary judgment against DB and its paid Washington State trustees
13 for the three properties which have not yet been sold); ECF 16 (Plaintiff's second
14 motion for summary judgment)

17 Similarly, there can be no doubt that ¶¶3.15-3.17 of Plaintiffs' complaint
18 pose unresolved judicial inquiries about the constitutional and statutory
19 appropriateness of DB's paid for corporate trustees selling White's properties
20 without his consent under the circumstances of this case.

22 The state court complaint also alleged that at the time the pertinent contracts
23 were executed that: "nothing in RCW 61.24.030 or in any of the Deeds of Trust
24 Act's other provisions purported to authorize a statutory trustee to rely on a

1 declaration of perjury by a beneficiary that it was the holder of the promissory note
2 as a basis for selling Property Owner's property." *Id.*, at ¶3.19.

3 But in its motion for summary judgment DB argues that "[a] declaration by
4 the beneficiary made under the penalty of perjury stating that the beneficiary is the
5 holder of any promissory note or other obligation secured by the deed of trust shall
6 be sufficient proof as required under this subsection." citing RCW 61.24.030(7)(a).
7 This quotation, of course, reflects a different version of RCW 61.24.030(7)(a)—*not*
8 *the law as it existed in 2006, when the agreements at issue were executed*. At that
9 time, no provision of the Deeds of Trust Act (DTA) authorized a statutory trustee
10 to rely on a declaration under penalty of perjury by the beneficiary as "sufficient
11 proof" of holder and/or owner status² to justify selling someone's real property. The
12 law was that in order for a Washington State trustee to sell real property to enforce
13 a note by way of the foreclosure of a security agreement the trustee must prove its
14 authority to do so under both Washington's UCC and DTA.
15

16
17 ***B. Plaintiffs' complaint was removed by DB to this Court.***

18 DB and Trustees maintain in their MSJ that because Plaintiffs failed to
19 restrain the sales of two of White's properties before this Court after it was
20

21
22 ² According to the revised code of Washington RCW 61.24.030 has been amended numerous
23 times: "2024 c 321 s 410; 2023 c 206 s 2; 2021 c 151 s 3; 2018 c 306 s 1; 2012 c 185 s 9; 2011 c
24 58 s 4; 2009 c 292 s 8. Prior: 2008 c 153 s 2; 2008 c 108 s 22; 1998 c 295 s 4; 1990 c 111 s 1;
1987 c 352 s 2; 1985 c 193 s 3; 1975 1st ex.s. c 129 s 3". Sometimes this provision said "Note
owners" could enforce notes. And then it said "holders" could enforce Notes. But in 2006 this
provision said nothing like this and the enforcement of notes turned on the applicable language
of the Note instrument contract and Washington's Uniform Commercial code.

1 removed “they are limited to monetary damages.” The Church and Property Owner
2 disagree.

3 Plaintiffs maintain that they timely moved the state court to restrain DB’s
4 paid-for trustee’s sale of White’s property scheduled for January 5, 2024. Briefing
5 on the motion to restrain the sale had been filed and would have been adjudicated
6 on December 29, 2023, if not for DB’s removal of the case to this Court. After thus
7 depriving Plaintiffs of access to the state forum to seek restraint, DB improperly
8 instructed its paid-for corporate trustee to proceed with the sales—without White’s
9 consent.
10

11 This left Plaintiffs in a position where it was legally and practically
12 impossible to file a motion to restrain the January 5, 2024 sale because there was
13 insufficient time to prepare and file such a motion with this Court; and also
14 because RCW 61.24.130 requires that motions to restrain be filed at least five days
15 before the scheduled sale. Under these circumstances, Plaintiffs contend that if the
16 Court does not reject DB’s factual assertion outright—that Plaintiffs failed to
17 properly move to restrain the sale—a jury should adjudicate this factual issue given
18 the equities and circumstances of this case.
19
20

21 Plaintiffs further assert that removal of this case to this Court during
22 December 2023 and January 2024 was itself improper, as DB and the Trustees
23 knew that this Court was routinely assigning such cases to judicial officers not
24 holding office of judge “during good behavior” as is required by Article III of the

1 United States Constitution. *See* Amended Complaint, ECF 8, ¶¶1.3, 2.6–2.16.
 2 Plaintiffs contend that this inappropriate removal also constitutes a “proper
 3 ground” under RCW 61.24.130 for restraining the sale of White’s property.

4 Because Plaintiffs assert that multiple judicial inquiries provided proper
 5 grounds under RCW 61.24.130 to require DB to proceed by judicial foreclosure
 6 based on the 2006 contracts (*see* Stafne Declaration), they seek to clarify the
 7 narrow issue before this Court in this removed action. The question is whether the
 8 trustee sales should have been restrained due to the existence of proper grounds to
 9 require a judicial foreclosure—not whether DB is entitled to enforce the note.
 10 Plaintiffs maintain that adjudicating the merits of DB’s enforcement
 11 claim—including its standing to enforce the note—*is a judicial inquiry that*
 12 *belongs solely in a judicial foreclosure proceeding.* Additionally, Plaintiffs assert
 13 that DB has not established that it possesses the necessary standing to enforce the
 14 Note instrument or to foreclose on White’s properties.
 15

16
 17 ***C. The Evidence before this Court pursuant to the various pending***
 18 ***Cross motion for summary judgment***

19 **1) Introduction.**

20 Plaintiffs’ theory of this case is that there are numerous “proper grounds”
 21 under RCW 61.24.130 as it existed in 2006 to require defendants to bring a judicial
 22 foreclosure in lieu of simply selling White’s property out from under him without
 23 his consent. For example, the Church and the Property Owner contend that there is
 24

1 irrefutable evidence that promissory notes—including those signed by White in
2 2006—were routinely destroyed by the financial industry shortly after execution.
3 The Plaintiffs assert that if this is true, it constitutes a “proper grounds” to restrain
4 a trustee sale. *See e.g.* RCW 62A.3-309.

5
6 The Church and Property Owner also assert that there are many other
7 prerequisites besides RCW 62A.3-309 for demonstrating standing to enforce the
8 Notes and the Article 9 security instruments which these defendants cannot meet.
9 *See* Stafne dec, ¶¶18-78 and **Exhibit 13** to that declaration, which sets forth
10 additional reasons why DB the discovery provided proves on a more likely than
11 not basis that DB has not met the prerequisites for statutory standing under
12 Washington’s 2006 UCC.

13
14 From this point forward, the Church and White will refer to the financial
15 industry as “money changers.” This term is used deliberately and with respectful
16 awareness of its biblical weight. In Scripture, the money changers were those who
17 exploited sacred obligations by manipulating the means of exchange within the
18 Temple. Likewise, today’s financial institutions manipulate legal forms and credit
19 instruments—converting the borrower’s own promise into a source of profit for the
20 money changer who risks nothing.

21
22 The comparison advanced herein is not rhetorical, it is truthful. Plaintiff
23 Church asserts that the so-called money changer entities purporting to extend loans
24

1 to borrowers did not, in reality, provide any actual funds. Instead, they secured
2 credit from the Federal Reserve based solely on White's promise to pay. *See* Stafne
3 Declaration ¶¶ 77–78. Thus, to the extent these notes possess value, such value
4 originates from the borrower's obligation—not from any legitimate disbursement
5 of capital by the purported lender. Accordingly, any credit extended by the Federal
6 Reserve in connection with these notes should have inured to the benefit of the
7 note's maker, not to private intermediaries who contributed nothing of substance.
8

9
10 Moreover, any claim that these entities added value by evaluating credit risk
11 is demonstrably false; no meaningful underwriting occurred. These were not
12 genuine loans involving an exchange of actual currency. These were financial
13 transactions engineered by money changers (including the Federal Reserve) to
14 simulate the mechanics of lending, while in truth functioning as instruments of
15 control and profit extraction. It is the firm position of the Church and White that
16 the Federal Reserve—which they assert is a component of the federal
17 government—should never have participated in, nor enabled, such a deceptive and
18 injurious arrangement intended to benefit the money changers at the expense of the
19 People.
20
21

22 Indeed, the very nature of the Federal Reserve underscores the systemic
23 failure at issue. It operates with the dual character of a governmental body and a
24

1 private banking institution—wielding sovereign power when convenient, yet
 2 functioning as a profit-driven enterprise in practice. In this respect, the Federal
 3 Reserve itself becomes indistinguishable from the money changers it empowers:
 4 facilitating the illusion of lending while enabling private entities to extract value
 5 from borrowers without ever risking or supplying actual capital. This dual-role
 6 structure not only blurs legal accountability but also calls into question the
 7 legitimacy of a financial system built on such foundational misrepresentation.
 8

9
 10 Just as Christ drove out the money changers for corrupting the Temple with
 11 deception and greed, so too must we question the legitimacy of a foreclosure
 12 system that claims to enforce debts based on value extended by financial
 13 institutions—when in fact those institutions often extended nothing of substance
 14 and offloaded the risk to the public. This system enslaves individuals through a
 15 misrepresentation of debt to money changers, like DB, and deprives them of their
 16 property without meaningful judicial review. It is Plaintiffs’ position as is stated in
 17 other briefing before this Court that such a process is not lawful under this Nation’s
 18 organic law, that Natural law upon which this Nation’s organic law is based,
 19 currently existing international human rights law, and longstanding principles of
 20 equity.
 21
 22

23 ***2) Evidence regarding the destruction of promissory notes by DB***
 24 ***during the sub-prime mortgage crisis.***

1 **a) DB's Testimony.**

2 DB testified at its deposition that no credible evidence exists supporting the
3 contention that promissory notes were routinely destroyed as part of the money
4 changers' business practices during the lead up to the subprime mortgage crisis.

5 The Church and White assert that money changer DB's testimony that no
6 historical evidence exists that promissory notes were routinely destroyed in 2006
7 constitutes perjury which an unbiased judge would refer to an appropriate law
8 enforcement agency.

9 **i) DB's previous claims against these trusts.**

10 In 2016, DB, acting as trustee for mortgage-backed securities
11 trusts—including the trust defendants in this case—entered into a \$3 billion
12 settlement agreement with the FDIC and JPMorgan Chase. In that settlement, DB
13 released all claims relating to defective, incomplete, or **non-existent**
14 **documentation**, including documentation necessary to establish the legal
15 enforceability of mortgage loans and notes. *See* Paatalo declaration ¶¶27-32, *see*
16 *also* Stafne Declaration ¶¶21, 60, and *see* Plaintiffs' First, Second, and Third
17 Requests for Judicial Notice.

18 Specifically, Section 3.03 of the agreement states:

19 "The Trusts... each irrevocably and unconditionally grants a full,
20 final, and complete Release... of all claims... based upon...
21 defective, incomplete, or non-existent documentation... including...
22 recordation, title, assignment, or any other matter relating to legal
23 enforceability..."
24

1 In other words, money changer DB admitted that many loans, including
2 those in the relevant 2006 defendant trusts in this case, lacked enforceable
3 promissory notes or supporting documentation. Rather than cure these defects or
4 attempt to verify the enforceability of the underlying instruments, DB accepted
5 billions of dollars in compensation to walk away from those claims. In doing so,
6 DB confirmed that it had no intention of correcting the record or producing the
7 original instruments as required by law.
8

9 The same trusts that now seek to sell White's properties against his
10 will—did not merely acknowledge the existence of defective or missing
11 documents—they and DB relinquished all legal rights to fix them. Having received
12 payment in lieu of documentation, DB and the trusts have no equitable or legal
13 basis to now claim authority to enforce instruments it has already deemed defective
14 or unenforceable.
15

16 To now suggest that there is “no credible evidence” of the routine
17 destruction or loss of promissory notes in 2006 is not merely misleading—it is a
18 deliberate attempt to deceive the court and constitutes testimonial perjury. Such
19 falsehoods, when exposed to a jury, will destroy DB's credibility and likely cause
20 them to award punitive damages pursuant to 42 USC 1983 as part of the relief for
21 the unconstitutional taking of two of White's properties..
22

23 **ii) DB's memos to its servicers after the widespread destruction of Note**
24 **instruments by money changers was exposed.**

1 DB's own memoranda—issued between 2007 and 2010 to securitization
2 loan servicers—reveal that DB knew full well that foreclosure documentation
3 practices across the industry were defective, potentially unlawful, and exposed the
4 trusts to legal and reputational risks.

5
6 In the July 28, 2008, memorandum attached as Exhibit 6 to Stafne's
7 declaration, DB expressly acknowledged the “substantially increased” number of
8 contested foreclosure proceedings and the fact that courts were beginning to
9 require proof of ownership and “more exacting standards of proof” early in the
10 foreclosure process. DB directed servicers to ensure that their personnel and legal
11 professionals fully understand and comply with securitization mechanics and
12 custodial practices, acknowledging that confusion existed regarding when and how
13 securitization trusts acquired enforceable rights to mortgage loans. These
14 admissions are fundamentally incompatible with DB's present claim that the chain
15 of title and documentation for notes like White's was never in question.

16
17 Further, DB's October 8, 2010 “Urgent and Time-Sensitive” Memorandum
18 (attached as Exhibit 7 to Stafne's declaration) confirms that DB was acutely aware
19 of what it called "Alleged Foreclosure Deficiencies." These included:

- 20
21 • Defective documents filed in foreclosure proceedings,
22 • Untrue assertions of fact made under power of attorney, and
23 • The execution of false documents that misrepresented agents as DB officers.
24

1 These deficiencies, DB admitted, may have affected foreclosure actions
 2 across the country, including actions taken under DB's own name as Trustee. In
 3 response, DB demanded that servicers immediately cease and desist from any
 4 conduct involving misleading or false filings and explicitly stated that it would not
 5 be liable for the acts or omissions of servicers, even when done in DB's name.
 6

7 These internal documents make one thing abundantly clear: ***DB knew that***
 8 ***document fabrication, loss, and improper filings were endemic in the***
 9 ***securitization and foreclosure process.*** DB's attempt now to deny the existence of
 10 any credible evidence regarding missing or destroyed notes is belied by its own
 11 written communications during the crisis—communications that recognized both
 12 the legal fragility of their foreclosure authority and the need to contain reputational
 13 damage.
 14

15 This history of internal acknowledgment and external denial further supports
 16 the Church and White's contention that DB's current testimony is not only
 17 incredible and demonstrably false, but also perjurious.
 18

19 **iii) Government documents which are judicially noticeable**
 20 **pursuant to FRE 201 for purposes of proving historical facts.**

21 The Church and White have previously requested this Court take judicial
 22 notice of government documents offered as evidence tending to prove money
 23 changers' historical practice of routinely destroying promissory notes in favor of
 24 keeping electronic copies of them. *See* ECF 22 and 46. They rely on that historical

1 evidence here as well.

2 DB's claim there is "no credible evidence" that promissory notes were
3 routinely destroyed during the subprime mortgage is demonstrably false and
4 perjurious because DB knew it was false. *See supra*.

5
6 In 2004, the Office of the Comptroller of the Currency (OCC) issued
7 Advisory Letter 2004-4, warning national banks that securitization practices were
8 causing breakdowns in document custody and loan enforceability. The OCC wrote:

9 "Some national banks have failed to take steps to ensure that the
10 servicing or document custodian function provides proper custody and
11 recordkeeping for mortgage notes and assignments... failure to
12 maintain a clear chain of title may result in an inability to enforce the
note."

13 *Id.*, at 2.

14 Despite these warnings, the money changer industry failed to change course.

15 By March 2008, as the subprime crisis escalated, the U.S. Treasury
16 Department released its Blueprint for a Modernized Financial Regulatory
17 Structure. This report, issued under then Treasury Secretary Henry Paulson (a
18 former Goldman Sachs executive), admitted that in the rush to automate and
19 securitize, the physical loan documents were being cast aside:
20

21 "Electronic records often replaced original documents, and in many
22 cases, the underlying mortgage documents were either lost or
23 destroyed. This has caused significant problems in foreclosure cases,
where proving ownership of the note is essential."

24 *Id.*³, at p. 17.

³ Available at: <https://home.treasury.gov/system/files/136/archive-documents/Blueprint.pdf>

1 Rather than halting the practice, the Treasury Blueprint proposed federal
 2 preemption of state mortgage origination and title laws through the creation of a
 3 federal Mortgage Origination Commission. In effect, the money changers sought
 4 through one of their own who had been appointed to head the United States
 5 Treasury to legitimize their violations of controlling state laws under the
 6 supposition that this was necessary to avert the economic disaster illegal conduct
 7 caused.

8
 9 In 2009, the Florida Bankers Association—representing, among others,
 10 banks acting as money changers pursuant to securitization practices—submitted a
 11 public comment to the Florida Supreme Court candidly admitting:

12
 13 It is a reality of commerce that virtually all paper documents related to
 14 a note and mortgage are converted to electronic files almost
 15 immediately after the loan is closed. Individual loans, as electronic
 16 data, are compiled into portfolios which are transferred to the
 17 secondary market, frequently as mortgage-backed securities. The
 records of ownership and payment are maintained by a servicing agent
 in an electronic database.

18 The reason "many firms file lost note counts as a standard
 19 alternative pleading in the complaint" is because the physical
 20 document was deliberately eliminated to avoid confusion immediately
 upon its conversion to an electronic file.

21 Florida Bankers Association, *Comments on Proposed Amendments to the Florida*
 22 *Rules of Civil Procedure*, In re: Amendments to the Florida Rules of Civil
 23 Procedure – Form 1.996 (Final Judgment of Foreclosure), Case No. SC09-1460, at
 24

2 (Sept. 9, 2009)⁴. See ECF 22-1, pp. 179-187.

This statement, made three years after the notes in White's case were allegedly executed, confirms that the industry had institutionalized note destruction as part of its standard procedures. Far from a historical anomaly, the acknowledged note destruction was still ongoing September, 2009.

The pattern of document disregard was so pervasive that in November 2010, the Congressional Oversight Panel, formed by Congress to monitor TARP and investigate foreclosure fraud, issued a report titled "*Examining the Consequences of Mortgage Irregularities for Financial Stability and Foreclosure Mitigation.*" The Panel's findings were unambiguous:

"The mortgage securitization process created incentives for speed and profit over accuracy. Many original documents, including promissory notes, were destroyed... leading to widespread uncertainty over who owns what loan, and whether proper foreclosure procedures were followed."

Id., at 3-4⁵

The 2012 Complaints brought by the United States and all fifty states in, *United States, et al. v. Bank of America, et al.*, Case No. 1:12-cv-00361-RMC resulted in multiple Consent Judgments. One of those judgments was against JPMorgan Chase Bank, from whom DB claims to have derived its interests in

⁴ Available at: https://supremecourt.flcourts.gov/content/download/328731/file/09-1460_093009_Comments%20%28FBA%29.pdf

⁵ Available at: <https://www.govinfo.gov/content/pkg/CPRT-111JPRT61843/pdf/CPRT-111JPRT61843.pdf>

White's properties. This executed Consent Judgment, agreed to by JPMorgan Chase, specifically addresses the industry's known practice of destroying promissory notes. *See* Paatalo declaration, Exhibit K. The Settlement Term Sheet states, in pertinent part (at p. 100 and/or p. A-8):

C. Documentation of Note, Holder Status and Chain of Assignment

*

*

*

5. Servicer shall not intentionally destroy or dispose of original notes that are still in force.

(Emphasis in bold added).

DB has not submitted any similar records or evidence demonstrating that Note instruments were not destroyed during this time period or specifically in 2006. DB only produced an obviously uneducated designee who falsely testified for DB and its servicer that there is no credible evidence that Note instruments were destroyed in 2006 in favor of creating electronic copies.

b) Expert Ms. Hannah McFarland's Testimony.

DB offers the testimony of Hannah McFarland, a graphologist-trained document examiner, to support its assertion that the five 2006 Notes and the five inappropriately titled 2006 "Deeds of Trust" are not forgeries. These are the same documents that Dr. James Kelley, an engineer, examined and concluded based on the clear and convincing standard of evidence—were inauthentic.

As this Court must adjudicate whether this divergent testimony constitutes a question of fact or whether one side's testimony is sufficiently incredible that no

1 reasonable juror could believe it, the Church and White assert here that no
2 reasonable juror could believe McFarland under the circumstances of this case.

3 It is Plaintiff's position that forensic document examination, particularly as
4 practiced by handwriting experts trained by graphologists like McFarland, is a field
5 plagued by subjectivity, inconsistency, and methodological unreliability. Courts
6 and scientific reviews alike have long recognized that graphology and handwriting
7 comparison, absent rigorous controls and corroborating evidence such as chain of
8 custody, ink dating, paper dating or document history, offer little more than a
9 veneer of expertise.
10

11 Indeed, Ms. McFarland's own testimony confirms that:

- 12 • She was not asked to examine the full set of documents or endorsements.
- 13 • She did not evaluate the chain of custody of the documents she analyzed.
- 14 • She was aware of industry-wide document destruction following the
15 financial crisis but did not incorporate that context into her analysis.
- 16 • She performed no ink dating, no document reconstruction, and made no
17 assessment of metadata or digital alteration.
- 18

19 Instead, McFarland's analysis was narrowly confined to comparing signature
20 characteristics (which obviously would be similar on a document reproduced from
21 the scanned image of the signed Note instruments) with no consideration of
22 whether the documents were part of an authentic and continuous documentary
23 history. Such a limited and context-blind methodology cannot resolve the core
24 issue in this case: whether these instruments are genuine expressions of obligation

1 or reconstructed artifacts manufactured by money changers to steal peoples'
2 homes.

3 The Church and White contend that the use of handwriting analysis under
4 these circumstances is not science—it is strategy. It allows the money changers to
5 shift the inquiry away from the legal and historical integrity of the documents and
6 into the speculative domain of ink strokes and loops, where bias and ambiguity can
7 be easily hidden behind the language of expertise. The 2009 National Academy of
8 Sciences report, *Strengthening Forensic Science in the United States*, cautioned
9 that handwriting comparison suffers from a lack of statistical foundation, absence
10 of standardized methods, and a high risk of examiner bias—*especially when the*
11 *expert knows the desired outcome. Id.*⁶. at pp. 7, 42-43.

12
13
14 Thus, far from resolving the issue of forgery, the testimony of DB's expert
15 merely confirms the unreliability of the tools it relies on. It is Plaintiffs' position
16 that a jury is entitled to weigh this testimony only to the extent that it is credible
17 enough for a reasonable juror to believe it.

18 The Church and White assert McFarland's testimony is not credible for
19 purposes of refuting the historical documentary evidence in this case and the expert
20 testimony of William Paatalo and Dr. James M. Kelley's expert based on, among
21 other things, historical facts.
22

23
24 ⁶ Available at:

<https://www.nap.edu/catalog/12589/strengthening-forensic-science-in-the-united-states-a-path-forward>

1 **c) Expert Dr. James M. Kelley Testimony.**

2 Plaintiffs offer the testimony of Dr. Kelley in support of their theory of the
3 case, which includes among its premises that Note instruments were routinely
4 destroyed by money changes like DB in 2006. Plaintiffs selected Dr. Kelley as an
5 expert because unlike McFarland, he is not a technician analyzing signatures in
6 isolation. He is an engineer trained in computer and digital engineering who
7 situates document analysis within the broader context of chain of custody, digital
8 manipulation, missing metadata, and historically documented industry misconduct.
9

10 Dr. Kelley's opinion does not rely on signature stroke angles or forensic
11 guesswork. It rests on structural inconsistencies in the documents' origin,
12 reproduction, and transmission. He identifies red flags in the digital composition of
13 the instruments—such as anomalies in spacing, file metadata, and reproduction
14 layering—that strongly suggest these are reconstructed or fabricated instruments,
15 not originals. Thus, Kelley is able to conclude and has concluded that these
16 documents are copies of Note instruments that were likely destroyed pursuant to
17 the predominant business practices of that time. *See* Kelley decl. 7.
18

19 It is Plaintiffs' position that the restrictions DB placed on McFarland's
20 document analysis make her testimony not credible at all.
21

22 **d) Expert Witness William Paatalo.**

23 The Declaration of William J. Paatalo, a licensed private investigator and
24 expert in mortgage securitization and document analysis, establishes a host of

1 material factual disputes that go directly to DB's standing and its claimed authority
 2 to enforce the deed of trust and underlying note. These factual issues preclude
 3 summary judgment in favor of DB and support Plaintiffs' cross-motion for
 4 summary judgment that DB has not presented evidence of its standing to enforce
 5 the Notes in question.
 6

7 Mr. Paatalo testifies that the endorsements DB relies upon to prove it is a
 8 "holder" of the note were most likely fabricated after the fact and are not the result
 9 of a lawful negotiation. In particular:

- 10 • Jess Almanza, the person whose signature appears on the notes, has testified
 11 under oath that he never endorsed such notes and that endorsement was not
 12 part of his responsibilities. (*Paatalo Decl.* 5; *Exhibit C*).
- 13 • The endorsements occurred after the PSA cutoff date and violate the PSA's
 14 requirement of a complete chain of endorsements. (*Paatalo Decl.* 6).
- 15 • These endorsements are consistent with systemic industry practices of
 16 fabricating endorsements using stamp software, as shown in cases like *Kemp*
v. Countrywide and *Tirelli*. (*Paatalo Decl.* ¶¶ 8–10).

17 These factual disputes go to the core of whether DB is the "holder" of the
 18 instrument under RCW 62A.3-201 and thus whether it qualifies as a "beneficiary"
 19 under RCW 61.24.005(2). If the note was not properly endorsed and delivered,
 20 Deutsche Bank cannot enforce it.

21 Paatalo identifies that the recorded assignments relied upon by Deutsche
 22 Bank were executed by known robo-signers, who were involved in a mass
 23 document fraud operation exposed by the U.S. Department of Justice. (*Paatalo*
 24

1 *Decl. ¶¶11–12; Exhibit E*) These individuals signed documents on behalf of
 2 multiple unrelated entities, often without any authority. Such facts create a clear
 3 dispute regarding the legal effectiveness of the assignments Deutsche Bank relies
 4 upon to claim its status as a beneficiary.

5
 6 The declaration confirms that DB has failed to produce custodial records,
 7 vault receipts, or any documentary evidence establishing a continuous chain of
 8 possession or lawful delivery of the note into the trust. (*Paatalo Decl. ¶¶14–15;*
 9 *Exhibit D*) This again raises a genuine factual question as to whether DB is the
 10 “holder” of the instrument, and whether it can meet its burden of demonstrating a
 11 perfected security interest under Washington law.

12
 13 Paatalo testifies that the Pooling and Servicing Agreement relied upon by
 14 DB is unsigned, unexecuted, and not supported by any of the governing
 15 documentation required to establish the trust’s existence or rights. (*Paatalo Decl.*
 16 *¶¶16–17*). No loan schedules, trustee certifications, or power of attorney
 17 documentation has been produced, despite their central importance to proving trust
 18 ownership and standing.

19
 20 The declaration also shows that the agents who executed the assignments as
 21 “attorneys-in-fact” for the trust did so without any valid power of attorney. In prior
 22 litigation, JPMorgan Chase admitted it had no such documents, which is consistent
 23 with the conduct here. (*Paatalo Decl. ¶¶18–19; Exhibit F*) Assignments executed
 24 without valid authority are void or at minimum legally questionable, again creating

1 issues of material fact.

2 Paatalo's declaration also demonstrates that the WAMU Bankruptcy
3 Examiner's Final Report confirms that Washington Mutual Bank failed to properly
4 transfer large volumes of loans into securitized trusts, including failures to create or
5 maintain loan files or asset schedules. (*Paatalo Decl.* ¶20; *Exhibit G*) This
6 third-party government analysis corroborates the Plaintiffs' contention that the
7 White loans were likely never transferred into the trust at all.
8

9 Paatalo concludes, based on his review of the record and his expertise, that
10 no party to this lawsuit—including DB—has demonstrated lawful authority to
11 enforce the 2006 Note instrument agreements White executed in this case. (*Paatalo*
12 *Decl.* ¶¶21–22) This conclusion is based on evidence of fabricated endorsements,
13 void assignments, missing custodial records, and non-existent trust formation.
14

15 **e) Attorney Midori Sagara.**

16 DB's attorney, Midori Sagara, has filed a declaration in support of DB's
17 motion for summary judgment which attaches as exhibits a motion in limine and
18 the superior court's order granting limine in, *Church of the Gardens and Alvin White*
19 *v. Clear Recon Corp. v Deutsche Bank*, Whatcom County Superior Court No.
20 23-2--00351-37. The Church and Property Owner assert this declaration and its
21 evidentiary material support their position that there is proper grounds to require a
22 judicial foreclosure in this case. This is because the superior court in that case
23 found that a judicial inquiry regarding the authenticity of the Note instrument in
24

1 that case constituted a proper grounds to restrain the sale. *See* Wood declaration, ¶¶
 2 17-18, Exhibits G, H; *See* Stafne declaration 69.

3 ***IV. EVIDENCE RELIED UPON:***

4 Plaintiffs rely upon the declarations of Alvin White, William Paatalo, James
 5 M. Kelley, Justin Wood, and Scott Erik Stafne in support of this Response and
 6 Cross Motion for Summary Judgment. Plaintiffs also rely on their First, Second,
 7 and Third Requests for Judicial Notice. Plaintiffs also rely on the pleadings and
 8 records filed in this case.
 9

10 ***V. ARGUMENT:***

11 ***A. Summary Judgment Standards.***

12 The Church and White agree this Court must grant summary judgment
 13 pursuant to FRCP 56 to one of the parties if there is no genuine dispute as to any
 14 material fact and one of the parties is entitled to judgment as a matter of law. *See*
 15 DB MSJ, 7:3-8. The Church and White also agree that the party having the burden
 16 of proof with regard to a claim or defense must make a sufficient showing that a
 17 material question of fact exists in order to avoid a summary judgment. *Id.*, citing
 18 *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).
 19

20 It is Plaintiff's contention that the only burden of proof the Church and
 21 White have for purposes of restraining the Washington State actors, i.e.
 22 Washington State corporate trustees in this case, from selling White's real property
 23 *against White's will*, is to bring a lawsuit pursuant to the 2006 version of RCW
 24

1 61.24.130 to establish on a more likely than not basis that there are “proper
2 grounds” to restrain the sale. And Plaintiffs allege they did this.

3 Plaintiffs assert they met their burden of proof for restraining these trustees’
4 sales of White’s property, *without White’s consent*, by establishing “proper
5 grounds” in four different ways:

6
7 *First*, Plaintiffs raise a substantial constitutional inquiry into whether
8 statutory trustees, paid by DB, can lawfully exercise judicial power delegated by
9 the State of Washington to them as Washington State judicial officers without
10 violating the this Nation’s organic law, those principles of Natural Justice upon
11 which that organic law is based, international law, and long established equitable
12 principles.

13
14 *Second*, Plaintiffs demonstrate a material fact regarding whether the original
15 note instruments were destroyed in 2006 pursuant to industry-wide practices, such
16 that enforcement of the Note requires proof of compliance with RCW 62A.3-309.

17 *Third*, Plaintiffs demonstrate through the testimony of DB itself, that DB and
18 its paid-for Washington State officials, known as trustees’, lack standing to
19 judicially foreclose White’s title to these properties under the language of the Note
20 instrument, the security instrument, and applicable law.

21
22 *Fourth*, the pertinent complaints set forth multiple related judicial inquiries
23 warranting restraint of sale, including among others: whether later-enacted
24 provisions of the Deed of Trust Act can be retroactively applied consistent with the

1 Contract Clause.

2 This is important because at the time DB and its paid-for Washington State
3 trustee sold two of White's properties they knew that Plaintiffs asserted judicial
4 inquiries with regards to whether RCW 61.24.070(7)(a)-(c) and 61.24.127 could be
5 constitutionally applied to them pursuant to the Contracts Clause. These were not
6 judicial inquiries DB and its trustees had the authority to decide based on their own
7 best interests. These are the types of inquiries which must be decided by a court of
8 law.
9

10 ***B. There is a Presumption Against Subject Matter Jurisdiction.***

11 There is, of course, a long standing presumption against federal Courts
12 subject matter jurisdiction to adjudicate cases. The Church and White concede that
13 this presumption against jurisdiction has been rebutted for purposes of adjudicating
14 the "proper grounds" judicial inquiries they originally asserted in their state court
15 complaint. The Church and White do not concede that this Court has subject matter
16 jurisdiction to enforce the 2006 notes and security instruments by way of
17 foreclosures of White's properties. This is because Washington law provides that if
18 reasonable grounds exist to restrain the sale, a judicial foreclosure must be
19 instituted. This case is not a judicial foreclosure.
20
21

22 A second reason this Court does not have subject matter jurisdiction over
23 judicial foreclosure claims is because DB has not demonstrated its standing to
24 enforce the notes in question or to foreclose on real property by way of an Article 9

1 security instrument. *See* Stafne declaration, ¶¶ 12, 22-34. *See, also, TransUnion*
 2 *LLC v. Ramirez*, 594 U.S. 413 (2021) (holding that standing requires a concrete,
 3 particularized injury even when statutory rights are involved); *Spokeo, Inc. v.*
 4 *Robins*, 578 U.S. 330, 339–40 (2016) (standing requires more than a bare
 5 procedural violation); *Sprint Commc’ns Co. v. APCC Servs., Inc.*, 554 U.S. 269,
 6 301–12 (2008) (Roberts, C.J., dissenting) (emphasizing that Article III standing
 7 demands a personal, legally enforceable interest as established by law at the time
 8 the Constitution was ratified, not merely acting as agent or conduit for another’s
 9 claim).
 10

11 ***C. RCW 61.24.070(7)(a)-(c) and 61.24.127 as they exist now***
 12 ***do not constitute applicable law.***

13 The Contracts Clause restricts the power of States to disrupt contractual
 14 arrangements. *Sveen v. Melin*, 138, S.Ct. 1815 (2018); *Pennsylvania Coal Co. v.*
 15 *Mahon*, 260 U.S. 393 (1922) The contracts in question in this case also
 16 incorporate “applicable law” into their terms.
 17

18 Neither of the statutes DB and its paid-for trustees rely on as the basis for
 19 their MSJ was in existence in 2006. To the extent those changes in these statutes
 20 affect the outcome of this case, Plaintiffs object they violate the Contracts Clause.
 21

22 Additionally, it is Plaintiffs’ position that even if this Court assumes the
 23 most recent language of RCW 61.24.030(7)(a)-(c) applies, this does not establish
 24 DB’s standing to bring a judicial foreclosure. This is because a) if White has

1 established proper grounds to restrain the sale, then DB must bring a judicial
2 foreclosure to foreclose title; and b) no version of RCW 61.24.030(7)(a)-(c) has
3 ever stated that those provisions set forth the standing requirements to enforce
4 promissory notes for purposes of restraining a trustee sale pursuant to RCW
5 61.24.130.

6
7 Application of RCW 61.24.127 would also be problematic in this case
8 (even if it applied) because state laws cannot preempt the Fourteenth Amendment
9 which clearly protects White from the unconstitutional taking of his properties by
10 state actors. *See e.g., Murr v. Wisconsin*, 137 S. Ct. 1933, 1950 (2017); *See also*
11 generally Rappaport, Originalism and Regulatory Takings: Why the Fifth
12 Amendment May Not Protect Against Regulatory Takings, but the Fourteenth
13 Amendment May”, 45 San Diego L. Rev. 729 (2008).

14 **Conclusion.**

15
16 Deutsche Bank’s motion for summary judgment should be denied. All of the
17 motions for summary judgment filed by Plaintiffs White and Church should be
18 granted, including those asserting that DB has not demonstrated standing to
19 enforce the notes or to foreclose on White’s properties pursuant to the Article 9
20 security agreements.

21
22 I certify that this memorandum contains 6,762 words, in compliance with the
23 Local Civil Rules.
24

1 DATED this 21st day of May 2025, at Arlington, Washington.

2 By: s/ Scott E. Stafne WSBA No. 6964

3 Scott E. Stafne

4 Stafne Law *Advocacy & Consulting*

5 239 North Olympic Avenue

6 Arlington, WA 98223

7 360.403.8700

8 Scott@Stafnelaw.com

9 *Attorney for Plaintiffs*

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury under the laws of the State of Washington that a true and correct copy of the foregoing has been furnished electronically via the Court's CM/ECF system to all persons registered to receive electronic notice.

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Dated this 21st day of May 2025.

By s/ Scott E. Stafne
Scott E. Stafne, Attorney.

HONORABLE TIFFANY M. CARTWRIGHT

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA**

CHURCH OF THE GARDENS, a
Washington Not-for-Profit Corporation
operating as a faith-based religious
organization; ALVIN WHITE, in his
individual capacity,

Plaintiffs,

v.

QUALITY LOAN SERVICES
CORPORATION OF WASHINGTON;
MTC FINANCIAL INC. DBA TRUSTEE
CORPS.; DEUTSCHE BANK NATIONAL
TRUST COMPANY; LONG BEACH
MORTGAGE LOAN TRUST 2006-4;
LONG BEACH MORTGAGE LOAN
TRUST 2006-5; and STATE OF
WASHINGTON, a State of the United
States.

Defendants.

No. 3:23-cv-06193-TMC

**DECLARATION OF SCOTT E.
STAFNE IN SUPPORT OF
PLAINTIFFS' RESPONSE TO
DEUTSCHE BANK'S MOTION
FOR SUMMARY JUDGMENT
AND PLAINTIFFS' CROSS
MOTION FOR SUMMARY
JUDGMENT**

1 1) My name is Scott Erik Stafne. I am the attorney for Church of the Gardens
2 and Alvin B. White in the above captioned case. I am over the age of majority
3 and competent to provide this declaration; which I do on the basis of personal
4 knowledge and/or my status as counsel.
5

6 2) I incorporate herein those other declarations I have filed in this case, which
7 include ECFs 16-1 (declaration in support of motion to restore court record); ECF
8 21 (declaration in support of Plaintiffs' opposition to State of Washington's
9 Motion to Dismiss and in support of Plaintiffs' cross motion for summary
10 judgment against all defendants); ECF 35 (Declaration in response to
11 Defendants' Rule 56(d) motion for extension of time and in support of
12 meaningful discovery for all parties); ECF 37 (declaration in support of reply to
13 MTC Trustee's response to Plaintiffs cross motion for summary judgment); ECF
14 44* (Declaration re motion for reconsideration of Order dismissing the State of
15 Washington); ECF 53 (Declaration in support of Plaintiffs Response to MTC's
16 motion for summary judgment involving waiver, etc.); 59 Declaration re
17 stipulated motion to extend trial date); ECF 64 (Declaration in support of
18 Plaintiffs' motion for summary judgment against the State of Washington MTC
19 Trustee.
20
21
22

23 3) I am familiar with Washington's Deed of Trust Act. Much of my practice
24

1 since I returned to the full time practice of law around 2008 has involved
2 representation of clients with regards to matters arising under this statute.
3 Additionally, I have been involved throughout the course of my career since 1976
4 with litigation arising under the framework and language of this Nation's organic
5 law.
6

7 4) The first laws passed in the Washington Territory in 1854 included laws that
8 required foreclosures of the title to real property to be performed by courts. *Id.*
9 *See also* RCW 4.04.010; Laws of 1854, p. 133 § 13; p. 205 § 398; pp. 207-209 §§
10 408-417 (statutes prescribe that foreclosure actions are within the jurisdiction of
11 the Territory's courts.)
12

13 5) Power of Sale clauses authorizing private foreclosures outside the original
14 jurisdiction of Washington's superior courts did not become authorized by the
15 legislature until 1965. *See* Gose, John A., The Deed of Trust Act in Washington,
16 41 Wash. L & Rev. 94 (1966)¹. Washington's political branches had refused to
17 pass laws that would enforce power of sales clauses by entities other than courts
18 when proposed in 1955, 1957, 1959, 1961 and 1963. *Id.* at 94, n. 1 (1966).
19
20

21 6) I wrote the original complaint in this case so as to assert that the property
22

23 ¹ Accessible to the public at:

24 https://digitalcommons.law.uw.edu/cgi/viewcontent.cgi?params=/context/wlr/article/1535/&path_info=deed.pdf.

1 owner had “proper grounds” to restrain the threatened trustees’ sales of his
2 property in favor of requiring Deutsche Bank National Trust Company (hereafter
3 DB) to bring a judicial foreclosure to obtain title to his properties. This assertion
4 was based on the language of RCW 61.24.130(1) as it existed in 2006.
5

6 7) I have attached hereto as **Exhibit 1** a copy of the Deed of Trust Act as it was
7 originally enacted into law into 1965. A copy of this law is accessible at:
8 [https://leg.wa.gov/CodeReviser/documents/sessionlaw/1965c74.pdf?cite=1965%](https://leg.wa.gov/CodeReviser/documents/sessionlaw/1965c74.pdf?cite=1965%20c%2074%20s%2013)
9 [20c%2074%20s%2013](https://leg.wa.gov/CodeReviser/documents/sessionlaw/1965c74.pdf?cite=1965%20c%2074%20s%2013).
10

11 8) I have attached hereto as **Exhibit 2** a copy of Washington’s Uniform
12 Commercial Code as it existed in 2006 when the boilerplate promissory note
13 instruments were signed by the Property Owner. A copy of Chapter 62.A RCW as
14 it existed in 2006 is accessible to the public at:
15 <https://leg.wa.gov/media/keabjg1t/vol6.pdf>.
16

17 9) I have attached hereto as **Exhibit 3** a copy of Washington’s Deed of Trust
18 Act as it existed in 2006 when the pertinent boilerplate contracts, i.e. the note
19 instruments and purported Article 9 security instruments inappropriately called
20 “deed of trust” were signed by the Property Owner. A copy of Chapter 61.24
21 RCW as it existed in 2006 is accessible to the public at:
22 <https://leg.wa.gov/media/keabjg1t/vol6.pdf>.
23
24

1 10) Deutsche Bank's motion for summary judgment is premised on the
2 following statutory provisions of Washington law: RCW 61.24.127, *see* DB
3 Summary Judgment Motion (DB SJM) at 2:2-3.3, 9:18-10:11; and RCW
4 61.24.030(7)(a), *see Id.*, at 7:18-21. None of the statutory language DB and
5 Trustees rely upon for its motion existed in 2006.
6

7 11) It is the position of Plaintiff Church and Property Owner that these
8 provisions of Washington statutory law are not *applicable law* relating to the
9 enforcement of his 2006 contracts because those laws did not exist when the
10 Property Owner executed these contracts. *See* ¶16 of Security Instruments,
11 incorporating existing law into those agreements.
12

13 12) To the extent that defendants claim that these provisions are essential to
14 their cases it is Plaintiffs position they involve judicial inquiries which constitute
15 *proper grounds* pursuant to RCW 61.24.130 for restraining the sale of White's
16 properties and requiring a judicial foreclosure to adjudicate their claims. They do
17 not provide a basis for this Court to judicially enforce the Note instrument by
18 way of foreclosing on White's real properties by way of associated Article 9
19 security instruments.
20

21 13) As originally enacted section 13 of the Deeds of Trust Act, **Exhibit 1**,
22 provided:
23
24

SEC. 13. Nothing contained in this act shall prejudice the right of the grantor or his successor in interest to restrain, on any proper ground a threatened sale by the trustee under a deed of trust.

14) This section was amended in 1975 to establish a bond requirement, together with a condition that the Note maker pay to the Clerk the amount of principle and interest that would be due on a monthly obligation. *See* Non-Judicial Deed of Trust Foreclosures Under Chapter 129, Laws of 1945, Recent Development from the 1975 Legislative Session, 29 Washington State Bar News 36 (July/August 1975). Accessible at the following address at p. 38:

<https://wabarnews.org/wp-content/uploads/2024/04/1975-VOL-29-NO-7.pdf>

15) The 1975 amendments also included the addition of subsection (j) to RCW 61.24.030(6). That section was amended to state, among other things, “(j) That the grantor or any successor in interest has recourse to the courts to contest the alleged default on any proper ground.” I have attached that statutory provision to this declaration as **Exhibit 4**. The other 1975 amendments to DTA passed with this provision are accessible at the link set forth in note ² below.

16) The following language was also added to RCW 61.24.040 in 1975:

IX.

² Accessible at:

<https://leg.wa.gov/CodeReviser/documents/sessionlaw/1975ex1c129.pdf?cite=1975%201st%20ex.s.%20c%20129%20s%206>

1 Anyone having any objection to the sale on *any grounds whatsoever*
2 will be afforded an opportunity to be heard as to those objections if
3 they bring a lawsuit to restrain the sale pursuant to RCW 61.24.130.
4 Failure to bring such a lawsuit may result in a waiver of any proper
5 grounds for invalidating the trustee's sale.

(Emphasis Supplied)

6 17) RCW 61.24.130(1) was amended in 1987 to remove the just above
7 referenced language and to add this language:

8 The court shall require as a condition of granting the restraining order
9 or injunction that the applicant pay to the clerk of the court the sums
10 that would be due on the obligation secured by the deed of trust if the
11 deed of trust was not being foreclosed:

12 (a) In the case of default in making the periodic payment of
13 principal, interest, and reserves, such sums shall be the periodic
14 payment of principal, interest, and reserves paid to the clerk of the
15 court every thirty days.

16 (b) In the case of default in making payment of an obligation
17 then fully payable by its terms, such sums shall be the amount of
18 interest accruing monthly on said obligation at the nondefault rate,
19 paid to the clerk of the court every thirty days.

20 In the case of default in performance of any nonmonetary
21 obligation secured by the deed of trust, the court shall impose such
22 conditions as it deems just.

23 In addition, the court may condition granting the restraining
24 order or injunction upon the giving of security by the applicant, in
such form and amount as the court deems proper, for the payment of
such costs and damages, including attorneys' fees, as may be later
found by the court to have been incurred or suffered by any party by
reason of the restraining order or injunction. The court may consider,
upon proper showing, the grantor's equity in the property in
determining the amount of said security.

1 18) Washington's DTA was amended in a material way with regard to this
 2 lawsuit in 1998 to restrict the definition of "beneficiary". Prior to that
 3 amendment, the term was not statutorily defined, and courts permitted more
 4 flexibility, including the enforcement of mortgage interests by parties holding
 5 fractional or equitable interests in the obligation. But in 1998, RCW 61.24.005(2)
 6 was enacted to say:

8 **'Beneficiary' means the holder of the instrument or document**
 9 **evidencing the obligations secured by the deed of trust, excluding**
 10 **persons holding the same as security for a different obligation."**
 11 RCW 61.24.005(2) (emphasis added).

12 19) By the late 1990s, policymakers and courts were becoming increasingly
 13 aware of the risks of rehypothecation and the fracturing of traditional mortgage
 14 principles caused by securitization. See *Restatement (Third) of Property:*
 15 *Mortgages*, § 5.4 (1997). These relatively new financial
 16 arrangements—engineered by Wall Street's money changers³ rather than
 17 grounded in traditional lending practices—separated the legal right to enforce the
 18 note from the actual holder of the mortgage instrument.

20 20) This decoupling occurred because the mortgage loans were pooled and
 21 fractionalized. Investors purchased interests in mortgage-backed securities that
 22

23 ³ I use the term "money changer" for DB and other so-called "banks" similarly involved in the
 24 United States' "financial industry" during this time because those institutions did not loan
 money, i.e. currency, to note makers like White in 2006. *See infra*.

1 conferred rights to receive payments from certain tranches, based not on
2 possession of the actual note, but on contractual rights governed by the pooling
3 and servicing agreements (PSAs) underlying the securitized trust. As a result,
4 there was often no single party that both held the note and was legally entitled to
5 enforce the deed of trust pursuant to long established mortgage law in effect in
6 2006. *See, Bain v. Metro Mortgage* citing the Restatement 3d of Mortgages. *See*
7 also 2008 Treasury Blueprint; 2010 Congressional Oversight Report.
8

9
10 21) It is Plaintiffs' contention that DB is **not** the "holder" of the Note
11 instrument within the meaning of RCW 61.24.005(2). This is so for several
12 reasons related to the enforcement of promissory note instruments which are
13 discussed more fully below, but also because DB does not itself own or hold the
14 obligations secured by the purported mortgage because A) the security agreement
15 in question is not a mortgage which can be used to foreclose on land in
16 Washington State; B) DB is not the owner of note obligations secured by a
17 mortgage, the certificate holders, i.e. beneficiaries of defendant trusts, are the
18 beneficial owners who have claims to actual proceeds of the Note instruments.
19 *See* DB memos (attached as **Exhibits 5, 6, and 7** hereto); C) DB has settled its
20 own and the trust's rights to collect moneys for these note instruments by
21 accepting billions of dollars in settlements for releasing the beneficiaries, i.e.
22
23
24

1 certificate holders, claims against those other money changers that purportedly
 2 did not follow the rules necessary for obtaining standing to enforce note
 3 instruments, *see* Paatalo declaration, Ex. L; and D) The trust beneficiaries, i.e.
 4 certificate holders, only interests in the mortgage obligations owed to the Note
 5 holder stems from their ownership of mortgage-backed securities, not their
 6 ownership of White's Promissory Note and a valid mortgage.
 7

8 22) Although White's five 2006 security instruments (hereafter "SI")
 9 purportedly securing *successor and assigns of lender*, *see* SI, ¶12, are entitled
 10 "Deeds of Trust" they were not mortgages in 2006. The reasons these agreements
 11 were not mortgages as that term was understood in 2006 include, without
 12 limitation: 1) the agreements self identify the documents as being security
 13 instruments, not mortgage agreements; and 2) real estate was not appropriate
 14 collateral for purposes of being secured by way of an Article 9 security
 15 instrument in 2006. *See e.g. Exhibit 3*, UCC § 9-109(d)(11): "This article does
 16 not apply to the creation or transfer of an interest in or lien on real property,
 17 including a lease or rents thereunder." (2001 Official Text; in force in 2006);
 18 Official Comment to UCC § 9-109(d)(11) "Paragraph (d)(11) excludes the
 19 creation or transfer of interests in or liens on real property, including leases and
 20 rents. These transactions are governed by real-property law."; *See also* RCW
 21
 22
 23
 24

2A.9A-109(d)(11) (adopting the above cited provisions of the Model UCC).

23) The characteristics of Washington mortgages which were enforceable in 2006 are set forth in Restat 3d of Property: Mortgages, § 5.4 (1997), which is attached hereto as **Exhibit 8**. *See Bain v. Metro*, supra. This Restatement provision provided in 2006:

- (a) A transfer of an obligation secured by a mortgage also transfers the mortgage unless the parties to the transfer agree otherwise.
- (b) Except as otherwise required by the Uniform Commercial Code, a transfer of a mortgage also transfers the obligation the mortgage secures unless the parties to the transfer agree otherwise.
- (c) A mortgage may be enforced on by, or in behalf of, a person who is entitled to enforce the obligation the mortgage secures.

24) Only Note Holders who have not purposely separated themselves from a mortgage securing real estate are entitled to enforce the payment provisions of a promissory note by way of a mortgage. *See, Robinson v. Am. Home Mortg. Servicing, Inc. (In re Mortg. Elec. Registration Sys.)*, 754 F.3d 772 (9th Cir. 2014); *Edelstein v. Bank of N.Y. Mellon*, 128 Nev. 505, 286 P.3d 249 (2012). Here, it is Plaintiffs' position that where only an Article 9 security instrument, which the five security instruments in question are, purports to secure property they are not mortgages which provide a basis under Washington law as it existed

1 in 2006 to foreclose upon the title to real property. *See Exhibit 8*, Restatement 3d
2 of Property: Mortgages, § 5.4 (1997).

3 25) Plaintiffs also assert that the payments defendants claim are owed
4 pursuant to the Note instruments are dependent on defendants' compliance with
5 their contractual standing to enforce the Notes White signed in 2006. Plaintiffs
6 assert that none of the defendants are entitled to enforce the Notes White signed
7 in 2006.
8

9 26) Paragraph 1 of each of the five notes states:
10

11 In return for a loan that I have received, I promise to pay U.S \$
12 [each Note has a different dollar amount] (this amount is called
13 the "principal") plus interest, to the order of the Lender. The
Lender is

14 LONG BEACH MORTGAGE COMPANY

15 I understand that the Lender may transfer this Note. The Lender
16 or anyone who takes this Note by transfer and who is entitled to
receive payments under this Note is called the Note Holder.

17 27) Each Note agreement states that the Note's obligations can be enforced
18 by the Note Holder. There are no provisions in any of the pertinent Note
19 agreements which state the Note obligations imposed by such notes can be
20 enforced by *successors and assigns to Lender*.
21

22 28) White has testified in a declaration that it was and remains his
23 understanding that the Note could only be enforced by a Note Holder pursuant to
24

1 the terms of the contract and applicable law.

2 29) The Church and Property Owner assert that because the Note instrument
3 contract states White is only obligated to pay the Lender as the original Note
4 Holder and subsequent Note Holders if the take the Note by *transfer* he has no
5 obligation to pay what he is obligated to pay Note Holders to an entity claiming
6 to be the *successors and assigns of Lender* unless that *successor and assign*
7 demonstrates its standing to enforce the Note instrument. Thus, as is stated in the
8 pertinent complaints it is the position of Plaintiff Church and property owner that
9 White is not in default of any obligation owed to DB as the *successor and assign*
10 *of Lender* under the Note Instrument contract.

11 30) The Church and Property Owner assert that the 2006 contracts sought to
12 be enforced, i.e. Long Beach and White, require defendants comply with
13 *applicable law* as it existed when these agreements were signed. This is because
14 such laws established the expectation of the parties to these contracts, *see* White
15 declaration, and also because the contracts themselves required this. *See* ¶15 of
16 SI, which states:

17 **15. Governing Law; Severability.** This Security Instrument
18 shall be governed by federal law and the law of the jurisdiction
19 in which the Property is located. In the event that any provision
20 or clause of this Security Instrument or the Note conflicts with
21 applicable law, such conflict shall not affect other provisions of
22
23
24

1 this Security Instrument or the Note which can be given effect
2 without the conflicting provision. To this end the provisions of
3 this Security Instruments and the Note are declared to be
severable.

4 31) Paragraph 12 of the security instrument asserts that “*the covenants and*
5 *agreements of this Security Instrument shall bind and benefit the successors and*
6 *assigns of Lender.*” Plaintiffs assert this language of these Article 9 security
7 agreements purporting to authorize these foreclosures is not consistent with the
8 language of the Note because the *successor and assigns* of the Note are not
9 necessarily Note Holders as defined by the Note Agreements.
10

11 32) Nor is Paragraph 12 of the SI consistent with its paragraph 14, which
12 Plaintiffs claim is controlling under the circumstances of this case because it
13 specifically says the deed of trust will be construed based on *applicable law*.
14

15 33) The Church and Property Owner assert that a likely reason this provision
16 was included in this form boilerplate SI is because the money changers
17 responsible for creating them understood that that these security instruments were
18 inconsistent were aware that attempting to use Article 9 security agreements as if
19 they were mortgages securing the enforcement of promissory notes obligations
20 violated Washington States (and other States’) versions of the UCC.
21
22

23 34) Plaintiffs assert the 2006 SIs requirement to pay *successors and assigns*
24

1 *of lender* are also inconsistent with White's obligations under the pertinent 2006
 2 Note agreements to pay the Note Holder having obtained this status by way of
 3 *transfer*. No payments are required to be made to the first Note Holder because it
 4 was the *Lender*. This is because Long Beach Mortgage Company likely lent no
 5 money to the Property Owner because on a more likely than not basis these
 6 properties were financed by the credit of the United States Federal Reserve. As
 7 evidence tending to prove this fact, I have attached **Exhibit 9** hereto as proof of
 8 this assertion.
 9
 10

11 35) The Church and Property Owner assert on a more likely than not basis
 12 that a jury will find paragraph 14 was included in the five SIs White signed
 13 because the money changers who created these "security instruments" were
 14 aware that the SIs they crafted violated State laws, and providing the severability
 15 clause they did best protected their interests.
 16

17 36) In support of this contention the Church and Property Owner rely on the
 18 following historical evidence:
 19

20 A. 2000 - eSign Act (Electronic Signatures in Global and National
 21 (Commerce Act), Public Law 106-229. See ECF 22 p.2:17-23, and
 22 ECF 22-1 pp. 2-15. Accessible at:
<https://www.congress.gov/106/plaws/publ229/PLAW-106publ229.pdf>

23 B. 2001 - Board of Governors of the Federal Reserve System, Study of
 24 Banking Regulations Regarding the Online Delivery of Financial

Services, Notice; Request for Comment. *See* ECF 22 p.3:1-8 and ECF 22-1 pp. 17-20. Accessible at:

<https://www.federalreserve.gov/boarddocs/press/boardacts/2001/20010516/attachment.pdf>

C. 2003 - United States Department of Commerce entitled “A Review of the Exceptions to the Electronic Signatures in Global and National Commerce Act” (ESIGN Act). *See* ECF 22, p. 3:10-17 and ECF 22-1 pp. 22-100. Accessible at:

<https://www.ntia.doc.gov/files/ntia/publications/esignfinal.pdf>

D. 2004 - Office of the Comptroller of the Currency, Advisory Letter – Re: Electronic Record Keeping (AL 2004-9). *See* ECF 22 p. 3:19-25 and ECF 22-1 pp. 102-109. Accessible at:

<https://www OCC.gov/news-issuances/advisory-letters/2004/advisory-letter-2004-9.pdf>

E. 2004 - EFSC Testimony by Jeremiah S. Buckley submitted in response to June 21, 2004 OCC request entitled: Implementing Electronic Records and Signatures: Strategies Developed by the Financial Services Industry (Testimony of the Electronic Financial Services Council before the National Committee on Vital and Health Statistics.) *See* ECF 22 p. 4:1-11 and ECF 22-1 pp. 111-137. Accessible at:

<https://www.ncvhs.hhs.gov/wp-content/uploads/2014/05/041208p4.pdf>

F. 2007 - Memorandum from Deutsche Bank National Trust Company, as Trustee and Deutsche Bank Trust Company, as Trustee to SECURITIZATION LOAN SERVICERS” dated August 30, 2007. *See* ECF 22 p.8:17-23 and ECF 22-1 pp. 345-355. Accessible at:

<http://www.innercitypress.org/dbntcmemo.pdf>

G. 2008 - Press Releases: Treasury Releases Blueprint for Stronger Regulatory Structure, dated March 31, 2008. *See* ECF 46 p.1:5-10 and ECF 46-1 pp. 2. Accessible at:

<https://home.treasury.gov/news/press-releases/20083311051120043>

- 1 H. 2008 - Press Releases: Remarks by Secretary Henry M. Paulson, Jr. on
2 Blueprint for Regulatory Reform. *See* ECF 46 p.1:12-18 and ECF
3 46-1 pp. 4-15. Accessible at:
4 <https://home.treasury.gov/news/press-releases/hp897>
- 5 I. 2008 - U.S. TREASURY DEPARTMENT OFFICE OF PUBLIC
6 AFFAIRS FACT SHEET: TREASURY RELEASES BLUEPRINT
7 FOR A STRONGER REGULATORY STRUCTURE. *See* ECF 46
8 p.1:19-2:4 and ECF 46-1 pp. 17-227. Accessible at:
9 [https://home.treasury.gov/system/files/136/archive-documents/Fact_S](https://home.treasury.gov/system/files/136/archive-documents/Fact_Sheet_03.31.08.pdf)
10 [heet_03.31.08.pdf](https://home.treasury.gov/system/files/136/archive-documents/Fact_Sheet_03.31.08.pdf)
- 11 J. 2008 - The Department of the Treasury Blueprint for a Modernized
12 Financial Regulatory Structure. *See* ECF 46 p.2:5-12 and ECF 46-1
13 pp. 230-235. Accessible at:
14 [https://home.treasury.gov/system/files/136/archive-documents/Bluepri](https://home.treasury.gov/system/files/136/archive-documents/Blueprint.pdf)
15 [nt.pdf](https://home.treasury.gov/system/files/136/archive-documents/Blueprint.pdf)
- 16 K. 2008 - TARP – Troubled Asset Relief Program: Public Law 110-343:
17 “An Act to provide authority for the Federal Government to purchase
18 and insure certain types of troubled assets for the purposes of
19 providing stability to and preventing disruption in the economy and
20 financial system and protecting taxpayers, to amend the Internal
21 Revenue Code of 1986 to provide incentives for energy production
22 and conservation, to extend certain expiring provisions, to provide
23 individual income tax relief, and for other purposes”. *See* ECF 22
24 p.4:13-5:2. Accessible at:
[https://www.govinfo.gov/content/pkg/PLAW-110publ343/html/PLAW](https://www.govinfo.gov/content/pkg/PLAW-110publ343/html/PLAW-110publ343.htm)
[-110publ343.htm](https://www.govinfo.gov/content/pkg/PLAW-110publ343/html/PLAW-110publ343.htm)
- L. 2008 - Financial Agency Agreement (FAA) entered into between
Fannie Mae and the U.S.Treasury for a Homeownership Preservation
Program pursuant to the Emergency Economic Stabilization Act of
2008. *See* ECF 22 p.5:3-12 and ECF 22-1 pp. 139-177. Accessible at:
[https://home.treasury.gov/sites/default](https://home.treasury.gov/sites/default/files/initiatives/financial-stability/procurement/faa/Financial_Agency_Agreements/Fannie%20Mae%20FAA%20021809.pdf)
[/files/initiatives/financial-stability/procurement/faa/Financial_Agency](https://home.treasury.gov/sites/default/files/initiatives/financial-stability/procurement/faa/Financial_Agency_Agreements/Fannie%20Mae%20FAA%20021809.pdf)
[_Agreements/Fannie%20Mae%20FAA%20021809.pdf](https://home.treasury.gov/sites/default/files/initiatives/financial-stability/procurement/faa/Financial_Agency_Agreements/Fannie%20Mae%20FAA%20021809.pdf)

- 1 M. 2009 - Comments by the Florida Bankers Association submitted by
 2 commercial banks to the Florida Supreme Court against a propose
 3 court rule which would have required foreclosure plaintiffs to verify
 4 possession of the original paper Note signed by its maker because
 5 such notes have been destroyed pursuant to e-sign act's business
 6 practices. *See* ECF 22 p. 5:14-24 and ECF 22-1 pp. 179-187.
 Accessible at:
[https://supremecourt.flcourts.gov/content/download/328731/file/09-14](https://supremecourt.flcourts.gov/content/download/328731/file/09-1460_093009_Com)
[60_093009_Com](https://supremecourt.flcourts.gov/content/download/328731/file/09-1460_093009_Com)
- 7 N. 2010 - Memorandum from Deutsche Bank National Trust Company,
 8 as Trustee and Deutsche Bank Trust Company, as Trustee to
 9 SECURITIZATION LOAN SERVICERS" dated July 28, 2010. *See*
 10 ECF 22 p.9:1-8 and ECF 22-1 pp. 357-360. Accessible at:
[https://churchofthegardens.org/pdf/archive/2010.07.28-Memorandum-](https://churchofthegardens.org/pdf/archive/2010.07.28-Memorandum-of-Deutsche-Bank-Regarding-Securitization-Loan-Servicers.pdf)
[of-Deutsche-Bank-Regarding-Securitization-Loan-Servicers.pdf](https://churchofthegardens.org/pdf/archive/2010.07.28-Memorandum-of-Deutsche-Bank-Regarding-Securitization-Loan-Servicers.pdf)
- 11 O. 2010 - Memorandum from Deutsche Bank National Trust Company,
 12 as Trustee and Deutsche Bank Trust Company, as Trustee to
 13 SECURITIZATION LOAN SERVICERS" dated October 8, 2010. *See*
 14 ECF 22 p.9:10-17 and ECF 22-1 pp. 362-364. Accessible at:
[https://churchofthegardens.org/pdf/archive/2010.10.08-Memorandum-](https://churchofthegardens.org/pdf/archive/2010.10.08-Memorandum-from-Deutsche-Bank-to-Securitized-Loan-Servicers.pdf)
[from-Deutsche-Bank-to-Securitized-Loan-Servicers.pdf](https://churchofthegardens.org/pdf/archive/2010.10.08-Memorandum-from-Deutsche-Bank-to-Securitized-Loan-Servicers.pdf)
- 15 P. 2010 - Memorandum from Deutsche Bank National Trust Company,
 16 as Trustee and Deutsche Bank Trust Company, as Trustee to All
 17 Holders of Residential Backed securities for which Deutsche Bank of
 18 national, Trust Company or Deutsche Bank Trust Company America
 19 Acts as Securitization Trustee dated October 25, 2010. *See* ECF 22 pp.
 20 9:19-10:4. Accessible at:
[https://churchofthegardens.org/pdf/archive/2010.10.25-Memorandum-](https://churchofthegardens.org/pdf/archive/2010.10.25-Memorandum-from-Deutsche-Bank.pdf)
[from-Deutsche-Bank.pdf](https://churchofthegardens.org/pdf/archive/2010.10.25-Memorandum-from-Deutsche-Bank.pdf)
- 21 Q. 2010 - Washington Mutual Final Report of Examiner DI 5735, In re:
 22 WASHINGTON MUTUAL, INC., et al., Chapter 11 Case No.
 23 08-12229 (MFW). The report *admits that loans sold to third parties*
 24 *(i.e., REMICS / REITS) were actually held by WMB and were not in*

1 *the REITS*. (This means that all of the WAMU trusts were empty. The
 2 properties had not been transferred to any trust, there were never any
 3 “trusts” that held any homeowners’ loans. Therefore, the resulting
 4 foreclosures were fraudulent.) I have attached a copy of this report
 5 hereto as **Exhibit 10**. Accessible at:

6 [https://churchofthegardens.org/pdf/archive/2010.11.01_-_WAMU_Fin](https://churchofthegardens.org/pdf/archive/2010.11.01_-_WAMU_Final_Report_of_Examiner_DI_5735_(6).pdf)
 7 [al_Report_of_Examiner_DI_5735_\(6\).pdf](https://churchofthegardens.org/pdf/archive/2010.11.01_-_WAMU_Final_Report_of_Examiner_DI_5735_(6).pdf)

8 R. 2010 - Transcript of hearing before the U.S. Congressional
 9 Subcommittee on Housing and Community Opportunity of the
 10 Committee on Financial Services regarding: *Robo-Signing, Chain of*
 11 *Title, Loss Mitigation, and Other Issues in Mortgage Servicing*. See
 12 Plaintiffs’ Third Request for Judicial Notice, Exhibit 4. Accessible at:
 13 [https://www.govinfo.gov/content/pkg/CHRG-111hhrg63124/html/CH](https://www.govinfo.gov/content/pkg/CHRG-111hhrg63124/html/CHRG-111hhrg63124.htm)
 14 [RG-111hhrg63124.htm](https://www.govinfo.gov/content/pkg/CHRG-111hhrg63124/html/CHRG-111hhrg63124.htm)

15 S. 2010 - Fannie Mae agreement with Servicer BAC Loan Servicing:
 16 “Amended and Restated Commitment to Purchase Financial
 17 Instrument and Servicer Participation Agreement.” See ECF 22 p.
 18 6:1-9 and ECF 22-1 pp. 189-226. Accessible at:
 19 [https://home.treasury.gov/sites/default/files/initiatives/financial-stabili](https://home.treasury.gov/sites/default/files/initiatives/financial-stability/TARP-Programs/housing/mha/Documents_Contracts_Agreements/093010bankofamericahomeloansSPA%28incltransmittal%29-r.pdf)
 20 [ty/TARP-Programs/housing/mha/Documents_Contracts_Agreements/](https://home.treasury.gov/sites/default/files/initiatives/financial-stability/TARP-Programs/housing/mha/Documents_Contracts_Agreements/093010bankofamericahomeloansSPA%28incltransmittal%29-r.pdf)
 21 [093010bankofamericahomeloansSPA%28incltransmittal%29-r.pdf](https://home.treasury.gov/sites/default/files/initiatives/financial-stability/TARP-Programs/housing/mha/Documents_Contracts_Agreements/093010bankofamericahomeloansSPA%28incltransmittal%29-r.pdf)

22 T. 2010 - Congressional Oversight Panel November Oversight Report
 23 Examining the Consequences of Mortgage Irregularities for Financial
 24 Stability and Foreclosure Mitigation. Dated November 16, 2010. See
 ECF 22 p.6:11-21 and ECF 22-1 pp. 228-333. Accessible at:
[https://www.congress.gov/111/cprt/JPRT61835/CPRT-111JPRT61835.](https://www.congress.gov/111/cprt/JPRT61835/CPRT-111JPRT61835.pdf)
[pdf](https://www.congress.gov/111/cprt/JPRT61835/CPRT-111JPRT61835.pdf)

U. 2012 - Complaint in *United States of America, et al* [including
 Washington State] v. *Bank of America Corp., et al*, [including
 JPMorgan Chase Bank N.A.] USDC 1:12-cv-00361-RMC. See ECF
 22 p. 6:23-7:6. Accessible at:
[https://churchofthegardens.org/pdf/archive/2012.03.12_-_USA_v_Ban](https://churchofthegardens.org/pdf/archive/2012.03.12_-_USA_v_Bank_of_America_-_USDC_Complaint.pdf)
[k_of_America_-_USDC_Complaint.pdf](https://churchofthegardens.org/pdf/archive/2012.03.12_-_USA_v_Bank_of_America_-_USDC_Complaint.pdf)

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- V. 2012 - *United States of America* [including Washington State] v. *Bank of America Corp. et al* – Consent Judgment against Bank of America. See ECF 22 p. 7:7-18. Accessible at:
<https://scholarship.law.unc.edu/mortgage-settlements/servicing/consent-judgments/1/>
 Alternative Source:
https://churchofthegardens.org/pdf/archive/2012.04.04_-_Consent_Judgment_in_US_v_Bank_of_America.pdf
- W. 2012 - *United States of America* [including Washington State] v. *Bank of America Corp. et al* – Consent Judgment against J.P. Morgan Chase & Company and J.P. Morgan Chase Bank, N.A, attached hereto as **Exhibit 11** . Accessible at:
<https://scholarship.law.unc.edu/mortgage-settlements/servicing/consent-judgments/2/>
 Alternative Source:
https://churchofthegardens.org/pdf/archive/2012.04.04_-_US_v_Bank_of_America_-_Consent_Judgment_-_JPMorgan_Chase.pdf
- X. 2013 - IN RE: New Century TRS Holdings, Inc., Delaware Corporation, et. al., Chapter 11, Case No. 07-10416: “MOTION OF THE NEW CENTURY LIQUIDATING TRUST FOR AN ORDER AUTHORIZING THE IMMEDIATE ABANDONMENT AND DESTRUCTION OF CERTAIN MORTGAGE LOAN FILES AND NON-MORTGAGE LOAN BUSINESS FILES.” See ECF 22 p.7:19-8:6 and ECF 22-1 pp. 335-352. Accessible at:
<https://churchofthegardens.org/pdf/archive/2013.02.14-New-Century-Motion-for-Order-Authorizing-Abandonment-and-Destruction-of-Mortgage-Loan-Files.pdf>
- Y. 2014 - Government National Mortgage Association (Ginnie Mae) report, “An Era of Transformation” documenting changes in the mortgage industry through September 14, 2014. See ECF 22 p.8:7-15. Accessible at:
https://www.ginniemae.gov/newsroom/Documents/ginniemae_an_era_of_transformation.pdf

1 37) The Church and White could go on citing other documents tending to
2 prove the indisputable historical fact that promissory notes, like those signed by
3 White, were routinely destroyed by the money changers in 2006, but what's the
4 point if this Court, through its acknowledged Article III judge of this Court is
5 going to ignore an alphabet of evidence to rule in favor of the money changers
6 claims that history didn't happen as it so obviously did? Nonetheless, for
7 purposes of the record, the Church and property owner once again respectfully
8 request that this Court take judicial notice of the above cited documents. *See* FRE
9 201.
10

11 38) I took the deposition of Deutsche Bank with regards to its standing to
12 enforce White's 2006 Note instruments in this case. I have attached a copy of
13 DB's deposition regarding its standing and compliance with applicable laws
14 hereto as **Exhibit 12**. I have attached my observations and my clients' legal
15 assertions about what this deposition proves with regard to standing under the
16 UCC as **Exhibit 13** hereto.
17

18 39) It is the position of the Church and Property Owner that DB must comply
19 with those prerequisites imposed by the UCC to enforce the promissory note
20
21
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24

1 instrument. It is my understanding that defendants concede this assertion, but if
2 they do not it remains one of allegations of Plaintiffs' complaints.

3 40) As the response to DB's latest summary judgment motion supports, the
4 biggest factual argument between the parties presently is whether there was any
5 historical evidence that promissory note instruments like those signed by White
6 were routinely destroyed. Deutsche Bank, through its designee, testified that there
7 is no credible evidence that Notes were destroyed in 2006 in favor of keeping
8 electronic copies of the originals (which were then destroyed).
9

10 41) It is Plaintiffs position that this assertion in light of the evidence of
11 Deutsche Bank's knowledge otherwise (both with regards to its own practices and
12 those of the other money changers during this time period) is so demonstrably
13 contrived as to constitute perjury. This is significant for two reasons: first it
14 screams that a material question of fact exists; and second, it supports the
15 Church's contention that Deutsche Bank's testimony is so incredible that no
16 reasonable juror could believe it. If this latter contention is true, Plaintiffs assert
17 they must be afforded a summary judgment that Deutsche Bank has not presented
18 adequate evidence that it possessed the note for purposes of demonstrating
19 standing to bring a judicial foreclosure.
20

21 42) Notwithstanding DB's false testimony that there is no historical evidence
22
23
24

1 supporting that the notes were destroyed as part of the money changers business
 2 practices during the first decade of the twenty-first century, DB did acknowledge
 3 that money changers are obligated to comply with those which are in effect when
 4 contracts are signed, not later enacted laws. In this regard, DB testified:
 5

6 Page 41:

7 ·6· · · · Q· Okay· Are you familiar with RCW 62A.3-309?

8 ·7· · · · · MS. SAGARA:· Objection· Form· Foundation.

9 ·8· · · · · **THE WITNESS:· No.**

10 ·9· ·BY MR. STAFNE:

11 ·10· · · · Q· Okay· Are -- what do you know, if anything,

12 ·11· about whether it is necessary for notes which are sought

13 ·12· to be enforced by way of foreclosure of an associated

14 ·13· deed of trust must be signed in wet ink by their maker?

15 ·14· · · · · MS. SAGARA:· Object to form.

16 ·15· · · · · You can go ahead.

17 ·16· · · · · **THE WITNESS:· Notes -- there is some changes**

18 ·17· **I know that are going on more recently, but when these**

19 ·18· **notes were signed, they were all due to be signed by the**

20 ·19· **borrower in ink at a time of closing.**

21 ·20· ·BY MR. STAFNE:

22 ·21· · · · Q· Okay· And you talked about that there are some

23 ·22· changes going around -- on around the country· Tell us

24 ·23· what you know about those.

25 ·24· · · · A· **Just there are some notes that are being -**

26 ·25· **electronic signatures are being accepted in some**

Page 42

27 ·1· **situations· Those are more recent· They would not have**

28 ·2· **any effect on the notes in question today.**

29 ·3· · · · Q· Okay· And do you know if those laws related to

30 ·4· the ones we talked about earlier which we talked about

31 ·5· the differences between electronic signatures for

32 ·6· chattel mortgages in 2005 as opposed to where they were

33 ·7· not allowed for real estate deeds of trust in 2005?

8. MS. SAGARA: Object to form. Foundation.
 9. **THE WITNESS: I don't recall us talking**
 10. **about all of that with electronic signatures. I -- I do**
 11. **believe I stated that I didn't know the difference or**
 12. **wasn't aware of the chattel real estate -- or the**
 13. **chattel notes versus the real estate or -- but**
 14. **electronic signatures were not a thing in 2005 as they**
 15. **are today.**
 16. BY MR. STAFNE:
 17. . . . Q. Okay. And do you know if there were changes in
 18. Washington law following 2005 with regard to the Deeds
 19. of Trust Act?
 20. . . . A. No, I don't know.

Exhibit 12, DB's deposition, pp. 41-42.

43) But compliance with RCW 62A-3.309 is not the only prerequisite for DB's standing to enforce these promissory notes by way of a judicial foreclosure against White. This is an important legal contention because there can be no dispute that DB has not offered evidence tending to prove its compliance with many of those other statutory provisions.

44) To be clear, it is Plaintiffs' position that by demonstrating the existence of material fact questions regarding DB's right to enforce these notes pursuant to applicable law they establish one type of "proper grounds" to restrain trustee sales in favor of requiring DB to judicially foreclose on these properties. But the Church and White also assert they have also established other proper grounds that warrant judicial inquiry and equitable relief by (1) raising a substantial

1 constitutional question regarding whether trustees, compensated by Deutsche
2 Bank, are competent to exercise the judicial power of the State of Washington in
3 effectuating nonjudicial foreclosure, (2) by presenting evidence that raises a
4 material question of fact as to whether the five purported promissory notes were
5 fabricated from electronic copies rather than original instruments, consistent with
6 practices employed by financial institutions during the relevant period; and (3) by
7 showing that Deutsche Bank has neither alleged nor demonstrated Article III
8 standing, nor statutory standing under Washington law, to enforce the deed of
9 trust or proceed with foreclosure.
10

11
12 45) Because the constitutional challenges to Washington State trustees being
13 paid by purported beneficiaries and those related to the Contracts Clause are
14 pending pursuant to other motions before this Court, I will not address them here.
15 However, what I will address next is my clients' contentions that DB has not
16 established their standing to enforce the promissory note instruments in this case.
17

18 46) RCW 62A.3-201 defines the entities which can enforce a promissory
19 note:
20

21 "Person entitled to enforce" an instrument means (i) the holder of the
22 instrument, (ii) a nonholder in possession of the instrument who has
23 the rights of a holder, or (iii) a person not in possession of the
24 instrument who is entitled to enforce the instrument pursuant to RCW
62A.3-309 or **62A.3-418(d)**. A person may be a person entitled to

1 enforce the instrument even though the person is not the owner of the
2 instrument or is in wrongful possession of the instrument.

3 47) As can be seen from subsection (iii) above, if DB does not possess the
4 original note then the only way it can be enforced is through compliance with
5 RCW 62A.3-309, which I have previously discussed.

6 48) But as Plaintiffs' complaints make clear, possessing the original notes is
7 not the only prerequisite which DB must comply with to enforce these
8 promissory note instruments.

9 49) In judicial foreclosures entities like DB must demonstrate proof of
10 endorsement and negotiation in order to have standing to enforce notes they
11 acquire by transfer. This is because RCW 62A.3-201 through 205 provide:
12

13
14 **RCW 62A.3-201**

15 **Negotiation.**

16 (a) "Negotiation" means a transfer of possession, whether voluntary or
17 involuntary, of an instrument by a person other than the issuer to a
18 person who thereby becomes its holder.

19 (b) Except for negotiation by a remitter, if an instrument is payable to
20 an identified person, negotiation requires transfer of possession of the
21 instrument and its indorsement by the holder. If an instrument is
22 payable to bearer, it may be negotiated by transfer of possession
23 alone.

24 **RCW 62A.3-203**

Transfer of instrument; rights acquired by transfer.

1 (a) An instrument is transferred when it is delivered by a person other
2 than its issuer for the purpose of giving to the person receiving
3 delivery the right to enforce the instrument.

4 (b) Transfer of an instrument, whether or not the transfer is a
5 negotiation, vests in the transferee any right of the transferor to
6 enforce the instrument, including any right as a holder in due course,
7 but the transferee cannot acquire rights of a holder in due course by a
8 transfer, directly or indirectly, from a holder in due course if the
9 transferee engaged in fraud or illegality affecting the instrument.

10 (c) Unless otherwise agreed, if an instrument is transferred for value
11 and the transferee does not become a holder because of lack of
12 indorsement by the transferor, the transferee has a specifically
13 enforceable right to the unqualified indorsement of the transferor, but
14 negotiation of the instrument does not occur until the indorsement is
15 made.

16 (d) If a transferor purports to transfer less than the entire instrument,
17 negotiation of the instrument does not occur. The transferee obtains no
18 rights under this Article and has only the rights of a partial assignee.

13 **RCW 62A.3-204**

14 **Indorsement.**

15 (a) "Indorsement" means a signature, other than that of a signer as
16 maker, drawer, or acceptor, that alone or accompanied by other words
17 is made on an instrument for the purpose of (i) negotiating the
18 instrument, (ii) restricting payment of the instrument, or (iii) incurring
19 indorser's liability on the instrument, but regardless of the intent of the
20 signer, a signature and its accompanying words is an indorsement
21 unless the accompanying words, terms of the instrument, place of the
22 signature, or other circumstances unambiguously indicate that the
23 signature was made for a purpose other than indorsement. For the
24 purpose of determining whether a signature is made on an instrument,
a paper affixed to the instrument is a part of the instrument.

(b) "Indorser" means a person who makes an indorsement.

(c) For the purpose of determining whether the transferee of an
instrument is a holder, an indorsement that transfers a security interest
in the instrument is effective as an unqualified indorsement of the
instrument.

(d) If an instrument is payable to a holder under a name that is not the name of the holder, indorsement may be made by the holder in the name stated in the instrument or in the holder's name or both, but signature in both names may be required by a person paying or taking the instrument for value or collection.

RCW 62A.3-205

Special indorsement; blank indorsement; anomalous indorsement.

(a) If an indorsement is made by the holder of an instrument, whether payable to an identified person or payable to bearer, and the indorsement identifies a person to whom it makes the instrument payable, it is a "special indorsement." When specially indorsed, an instrument becomes payable to the identified person and may be negotiated only by the indorsement of that person. The principles stated in RCW **62A.3-110** apply to special indorsements.

(b) If an indorsement is made by the holder of an instrument and it is not a special indorsement, it is a "blank indorsement." When indorsed in blank, an instrument becomes payable to bearer and may be negotiated by transfer of possession alone until specially indorsed.

(c) The holder may convert a blank indorsement that consists only of a signature into a special indorsement by writing, above the signature of the indorser, words identifying the person to whom the instrument is made payable.

(d) "Anomalous indorsement" means an indorsement made by a person who is not the holder of the instrument. An anomalous indorsement does not affect the manner in which the instrument may be negotiated.

50) The complaints in this case allege, and provide evidence trending to prove that the endorsements on the Note instrument are fraudulent. Specifically, there is a declaration from Jess Almanza testifying that he never endorsed note instruments for Long Beach. I have personal knowledge that this is true because Mr. Almanza told me so and I arranged to have that declaration prepared.

1 51) Defendants DB and the Washington State Trustee were aware of these
2 allegations, that Almanza's endorsements on these documents were fraudulent
3 and illegal, when they removed this case so they could sell White's properties
4 without his consent, notwithstanding this constituted "proper grounds" to restrain
5 the sale in favor of requiring a judicial foreclosure.
6

7 52) Defendants have presented no evidence that Almanza's signature was not
8 forged. Nor has DB attempted to provide any evidence that the other purported
9 endorsement is an original signature. Dr. Kelley opines that it likely is not. Given
10 that Defendants have the burden of proof with regard establishing standing, it is
11 plaintiffs' contention that they have not met their burden. *See Peterson v.*
12 *Citibank N.A.*, 2021 (unpublished opinion) Division II, No. 53747-8-II, attached
13 as **Exhibit 14**.
14
15

16 53) I represented the Petersons before Division Two in the appeal reference
17 above. Our argument was that the money changer could not enforce a forged note
18 and a material question of fact existed with regards to whether the Petersons'
19 signatures had been forged because the wife's name had been misspelled.
20

21 54) Plaintiffs asked Deutsche Bank (DB) whether it had a partial interest in
22 White's Note instruments. DB responded that it did not know what a partial
23 interest is. This admission is significant because **RCW 62A.3-203(b)** expressly
24

1 provides: "*A transferee of a partial interest in an instrument is not a person*
2 *entitled to enforce the instrument.*" (emphasis supplied). Accordingly, even if DB
3 were in possession of the original Note (which Plaintiffs dispute), it lacks
4 standing to enforce it unless it can prove it holds the **entire enforceable interest**
5 in the instrument or is acting pursuant to valid agency authority from the party
6 that does. Article 3 of Washington's UCC treats a negotiable note as a single,
7 indivisible obligation that may only be enforced by a party with complete
8 authority to do so. The law prohibits enforcement by those who acquire only a
9 partial or fractional interest in the instrument.
10
11

12 55) Moreover, even if DB claims authority as a trustee or fiduciary for a
13 securitized trust, it must still demonstrate that the Note was properly transferred
14 to it—or to the trust it represents—as required by RCW 62A.3-203(a). A party is
15 not a "holder" of an instrument merely by operation of law or appointment; the
16 instrument must be delivered by a person other than the issuer with the intent to
17 give the transferee the right to enforce it. RCW 62A.3-203(a) makes clear that a
18 transfer occurs only when there is physical delivery accompanied by the intent to
19 confer enforcement rights. DB has failed to produce any evidence of such a
20 transfer—either to itself or to the trust—and therefore lacks standing under RCW
21 62A.3-301, even if it were otherwise authorized to act in a representative
22
23
24

1 capacity.

2 56) The SIs in this case provide evidence that the drafters of this form
 3 intended to violate this law because they state at paragraph 19: "The Note *or a*
 4 *partial interest in the Note (together with this Security Instrument)* may be sold
 5 one or more times without prior notice to the Borrower." The reason the sale of
 6 partial interests in the Note and SIs was necessary is because the certificate
 7 holders of defendant trusts claim rights to parts of the mortgage payments, which
 8 is inappropriate under this provision. In any event, DB cannot dispute the SIs
 9 assert that partial interests in Notes do not afford holder status sufficient to
 10 enforce the Notes White signed.

13 57) Additionally, RCW 62A.3-508(a) provides:

15 "If a representative signs the name of the representative to an
 16 instrument and the signature is on behalf of the represented
 17 person, the represented person is bound by the signature to the
 18 same extent the represented person would be bound if the
 19 signature were on a simple contract."

20 58) DB claims to act not in its own right, but as fiduciary for a trust. Under
 21 RCW 62A.3-508, a fiduciary cannot bind or enforce an instrument unless it acts
 22 within the scope of a disclosed agency relationship on behalf of a principal with
 23 legal rights. Here, DB has failed to show that its purported principal—the
 24 trust—ever acquired the full interest in White's Note, or that DB has authority to

1 enforce on the trust's behalf. Because DB has not presented evidence it possesses
2 both a personal claim and proof of valid agency, it has presented evidence
3 pursuant to RCW 62A.3-301 to enforce the instrument.
4

5 59) If DB is claiming to act as trustee for a securitized trust, DB needs to
6 produce the Pooling and Servicing Agreement (PSA) or any trust document
7 showing that the trust acquired the White Note in a manner that complies with
8 RCW 62A.3-203(a). The declaration of William Paatalo provides evidence that
9 no such document exists. The statute requires actual delivery of the instrument
10 with intent to vest enforcement rights. If the trust never received proper transfer
11 of the Note—either before the PSA cut-off date or as required by the trust's
12 terms—then the trust itself never became the “person entitled to enforce” under
13 RCW 62A.3-301. Consequently, DB, as trustee, lacks standing because its
14 alleged principal never lawfully acquired enforceable rights in the Note.
15
16

17 60) If DB can prove by way of evidence that it does have standing as a
18 trustee under RCW 62A.3-508 it still lacks standing because the rights of the
19 trusts and its certificate holders to enforce the Note in light of the same claims as
20 Plaintiffs are making against the trusts and trustee here have already been settled.
21 See Paatalo declaration, Exhibit L, 2016 FDIC Settlement Agreement involving
22 DB, JPMorgan Chase, and FDIC.
23
24

1 61) The Church and White timely filed a complaint and motion premised on
2 RCW 61.24.130 to restrain the threatened trustee sales of the properties White
3 acquired by way of fee simple ownership in 2006.
4

5 62) Justin Wood, a paralegal and White's disability advocate who worked
6 with me with regard to the preparation of filings and performed or coordinated
7 the actual filing of all the documents in that superior court has provided a
8 declaration in this regard which I affirm is true and correct.
9

10 63) Other evidence that the Church and White timely filed this case with the
11 superior court of Pierce County include the Notice of Removal to this Court and
12 the documents filed with this Court supporting removal.
13

14 64) It is also my personal testimony that White, through Church of the
15 Gardens, timely filed and moved to restrain the trustees from selling White's
16 property. I further testify that the assertion by DB that White did not move to
17 restrain the sale of the properties for which trustee sales were scheduled is
18 categorically false.
19

20 65) Now I want to address the declaration testimony of Midori Sagara,
21 purportedly the attorney for defendant DB, Select Portfolio Servicing, defendant
22 trusts (and possibly their certificate holders).
23

24 66) Ms. Sagara has presented a declaration containing evidence

1 demonstrating that the superior court for Whatcom County, Washington granted a
2 motion in limine filed by DB excluding the testimony of Dr. James Madison
3 Kelley. That case was brought by the Church and White to restrain the sale of a
4 different property pursuant to RCW 61.24.130. I was the attorney for the Church
5 and White in that case, which was pursued based on the same theories regarding
6 RCW 61.24.130 as are being advanced here.
7

8 67) In that case the superior court found that a material fact question
9 regarding whether White's promissory note executed in 2006 had been destroyed
10 pursuant the business practices of that time constituted a proper grounds to
11 restrain the trustees sale of White's property. Thus, that part of the superior
12 court's decision supports Plaintiffs' contention here that industry practices in
13 2006 provide proper grounds for restraining trustee sales where (as here and in
14 that case) such a theory is advanced and supported by evidence.
15
16

17 68) It is Plaintiffs' position that the motion and order in limine offered by Ms.
18 Sagara proves that the superior court found this fact issue constituted a proper
19 ground to restrain the sale of their Whatcom County property otherwise there
20 would have been no basis for an adjudication of judicial inquiry.
21

22 69) Justin Wood, the paralegal and disability advocate who is working with
23 me on this case also worked with me on that case. Mr. Wood has assembled
24

1 materials which prove this point including the pertinent pages of the transcript of
2 the summary judgment hearing where the court found a question of fact existed
3 and ordered an evidentiary hearing to adjudicate. Mr. Wood has also attached to
4 his declaration the court order reflecting this scenario of events. I have reviewed
5 these documents and Mr. Wood's declaration and assert both are true and
6 accurate.
7

8 70) I acknowledge the judicial official acting as judge of the Whatcom
9 County Superior Court without confirming whether she had an interest in the
10 outcome of that case refused to permit Dr. Kelley to testify based on her
11 conclusion that he did not qualify as an expert in that case.
12

13 71) With respect, I assert that the state judicial officer's ruling in that case
14 was plainly erroneous and unsupported by the evidence. Dr. Kelley has a masters
15 and Phd degree in computer engineering and has decades of experience working
16 as an engineer working with specialized equipment. Additionally he has decades
17 of experience performing forensic document examination. Kelley testified in the
18 Whatcom County case, based on microscopic ink analysis and image comparison,
19 that the Note instruments sought to be enforced were forged. Indeed, Kelley even
20 created a forged Note for the superior court to compare to the Note he opined had
21 been forged by DB's predecessor in interest pursuant to the money changers
22
23
24

1 business practices in 2006.

2 72) Despite the scientific rigor of Dr. Kelley's findings, the court refused to
3 admit his testimony so the court could credit the testimony of Hannah McFarland,
4 the same "graphologist/forensic document examiner" expert who has submitted a
5 declaration in support of DB's motion for summary judgment. This judicial
6 maneuvering allowed the court to ignore the facts that McFarland conceded that
7 she would change her testimony about the signature being authentic if an ink or
8 paper analysis revealed that either the paper or the ink was not in existence at the
9 time the note was purported to have been signed.
10
11

12 73) It is my testimony here that I believe the most likely reason for this
13 judicial result was to allow the superior court to avoid having to consider these
14 conflicting testimonies against one another for purposes of adjudicating whether
15 the Note instrument was copied, i.e. forged, pursuant to the business practices
16 which caused the subprime mortgage crisis. This is because arguing that a
17 signature of a copy of a signature is an original signature is not dispositive of the
18 issue of whether the entire contracts have been forged.
19
20

21 74) With regret it is also my testimony on a more likely than not basis that
22 the reason for this ruling by the judicial officer in the Whatcom County case is
23 because she, as an elected "judge", has been economically incentivized by the
24

1 political branches of Washington State to reach this result. I base this conclusion
2 on the following facts: 1) In 2006 Washington State's political branches enacted a
3 retirement program for Washington State's elected and appointed judges which
4 transferred the funding for their retirements from mostly taxpayer funding to
5 funding which relied heavily upon the value of mortgage-backed securities. Thus
6 at the very time judicial inquiries were likely to be litigated, laws were being
7 passed which economically incentivized Washington State judges to rule in favor
8 of enforcing mortgage-backed securities; 2) Litigants have been raising this
9 dispositive judicial inquiry with superior courts and court of appeals "judges" for
10 at least five years in numerous cases but these "judges" refuse to consider or
11 adjudicate this issue; and 3) It is the duty of judges to adjudicate those judicial
12 inquiries which are presented to them.
13
14
15

16 75) The Whatcom County case discussed above is presently on appeal. One
17 of the issues of that appeal involves the judicial inquiry as to what should happen
18 when a court with jurisdiction decides that a proper ground exists to restrain a
19 trustee sale of real property. It is Plaintiffs' position in this appeal based on the
20 language and history of the DTA that where a trustee sale is restrained the
21 purported beneficiary must bring a judicial foreclosure to obtain title to the
22 property. A copy of Plaintiffs' Opening Appeal Brief is attached as Exhibit B to
23
24

1 my declaration in support of Plaintiffs' motion for summary judgment against
2 Washington State Trustee MTC Financial Inc. *See* ECF 64-1, pp. 57-167.

3 76) I have litigated other cases against DB where I have submitted as
4 evidence the three memoranda from DB attached as RFJN Exhibits 15, 16 and 17
5 to Plaintiffs' First Requests for Judicial Notice. At no point has DB or any of its
6 servicers disputed that these historical documents are not what they purport to be.
7 I have been studying the historical facts and circumstances leading up to the
8 subprime mortgage crash for well over a decade and testify that based on this
9 study I would seek to impeach DB's testimony that there is no credible evidence
10 that promissory notes were destroyed in 2006 with this evidence.
11

12 77) In my study of the historical facts leading up to and culminating in the
13 subprime mortgage crisis I have reviewed evidence demonstrating that these
14 types of transactions involving the purchase of real property by note makers did
15 not involve loans of money, and by that I mean currency, to borrowers. *See e.g.*
16 Deposition of Walker Todd, attached hereto as **Exhibit 9**. This, of course, is one
17 of the reasons I have chosen to refer to DB and others like it as "money
18 changers" as opposed to "lenders" or "banks".
19

20 78) Walker Todd's 2009 testimony confirms that most mortgage loans in the
21 United States during the pertinent time period were funded not by lenders
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23
24

1 transferring their own money, but through credit created by the banking system
2 and monetized via the Federal Reserve, which is a part of the federal government.
3 Although promissory notes given by borrowers state that the lender is providing
4 them with a loan, Walker Todd explained that in modern fractional reserve
5 banking, the “bank,” i.e. money changer, typically does not lend its own funds.
6 Instead, it creates credit based on the value of the note and may pledge that note
7 to the Federal Reserve or sell it to another institution. In my opinion, this reveals
8 what is called a “loan” in these instruments is in fact not a transfer of actual
9 money from the lender to the borrower, but rather a process whereby the
10 borrower’s signed promise is monetized—effectively funding the transaction
11 without the bank paying any real consideration. As Walker Todd, a former lawyer
12 for the Federal Reserve, put it, “when the bank discounts your promissory note at
13 the Federal Reserve, 10 percent of that is real money and the other 90 percent is
14 thin air money”. See **Exhibit 9**, Todd deposition, p. 558:14-18.

15
16
17
18 79) And finally, I have the unpleasant but necessary task of presenting to this
19 Court my clients’ position regarding DB’s abuse of this Court’s diversity
20 jurisdiction. DB invoked federal jurisdiction not to ensure a fair adjudication on
21 the merits, but rather to obstruct White’s ability to obtain timely judicial review
22 of forced sales of his real properties in a court of competent jurisdiction. By
23
24

1 removing this case while White's motion to restrain the sale was pending—and
2 before any hearing could be held—DB effectively prevented the state court from
3 timely adjudicating White's motion while at the same time ordering its hired
4 trustee to sell White's property because his motion for relief pursuant to RCW
5 61.24.130 could not be granted because that state court no longer had jurisdiction
6 over this case. This is not a good faith use of diversity jurisdiction. It is a strategic
7 abuse of the judicial process that denied White a meaningful opportunity to be
8 heard before his real property was taken from him.
9

10
11 80) The most unpleasant part of advocating for White and the Church of the
12 Gardens regarding this issue is the obligation to fairly and professionally, as a
13 zealous and ardent advocate, represent my clients' position that officers of this
14 Court have participated—whether knowingly or not—in enabling an
15 unconstitutional deprivation of property without due process. It is painful to raise
16 these concerns in a forum that ought to be a refuge for justice, but it is my ethical
17 and constitutional duty to do so when the facts compel it.
18

19
20 81) It is undisputed that at the time this case was removed, it was this Court's
21 standard practice to assign newly filed civil cases—this one included—to a
22 magistrate judge for initial handling. This occurred in this case as a result of this
23 court's rules despite the fact that magistrate judges do not hold Article III
24

1 commissions and are not appointed to serve “during good behavior” as is
2 required by Article III, Section 1 of the United States Constitution. *See also* 28
3 U.S.C. §§ 128 (establishing the district courts for Eastern and Western
4 Washington); 132 (stating: [e]ach district court shall consist of the district judges
5 for the district in regular active service.); 133 (authorizing the appointment of 7
6 district judges for the Western Washington District Court); 134 (stating that the
7 district judges shall hold office during good behavior) Thus, at the time this case
8 was removed DB and its trustees knew or should have known that this Court
9 likely would not assign this case to a constitutionally competent judge. I base this
10 assertion on the fact that DB and the Washington State Trustee who sold White’s
11 two properties based on this maneuvering were involved in a similar case
12 involving this same issue; i.e. whether judicial officers not holding the office
13 judge during good behavior can impose themselves on litigants without the
14 litigants’ consent.

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18 82) It is the impression of Plaintiffs’ counsel—based on his education,
19 including Juris Doctor and Master of Laws degrees, his training as a disability
20 rights advocate, and his decades of experience practicing law in both state and
21 federal courts—that this case likely exposes a structural constitutional defect that
22 may reflect more than mere oversight.
23
24

1 83) It is my professional opinion, based on a more-likely-than-not standard,
2 that this Court—through the conduct of certain of its judicial and clerical
3 officers—has, knowingly or not, supported and enabled the enforcement of
4 mortgage-backed securities in ways that raise serious constitutional concerns.
5 This pattern of institutional alignment appears to favor the interests of powerful
6 financial actors and the law firms that represent them (“Big Law”) at the expense
7 of the due process rights of individual homeowners. In *DeBotton*, for example, it
8 was not Deutsche Bank or its attorneys who defended the legitimacy of a senior
9 judge acting as an Article III judge—it was Judge Lasnik himself who advanced
10 those arguments in the court’s own order. Senior Judges Coughenouer and Robart
11 have done the same thing in other cases. Nor was it the purported beneficiary or
12 its paid-for trustee in *DeBotton* who made the winning argument in that case; it
13 was the senior judge who created and adopted it sua sponte. Similarly, in other
14 cases, I have observed that senior judges routinely invoke judicial immunity or
15 institutional deference to avoid scrutiny of their authority under Article III—often
16 with the active support of large law firms representing securitized trusts. Yet
17 these same courts refuse to meaningfully engage with the structural arguments
18 raised by homeowners concerning the constitutional limitations on judicial
19 power, including the requirement that federal judges serve “during good
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1 behavior,” not by designation or retirement status. The effect—whether
2 intentional or systemic—is that powerful private actors are permitted to use the
3 machinery of this federal court to take the real property of ordinary people
4 without engaging in—or appearing to engage in—the kind of neutral factfinding
5 and faithful application of law that has long characterized the legitimate exercise
6 of judicial power.
7

8 84) Writing this declaration, which directly criticizes both Washington State
9 courts’ and this Court’s handling of the judicial inquiries presented by my
10 property owner clients since 2012 against today’s money changers suing to take
11 their properties, has not been easy for me. You see, I come from parents both of
12 whom are descended from families of lawyers. And although I wasn’t sure in my
13 youth that I wanted to be trapped in this profession, once I made the decision to
14 practice law, I have always tried to do so in an honest way consistent with the
15 obligations of an advocate. Accordingly, it pains me to have to level these
16 criticisms at institutions I was taught to revere—institutions my family has served
17 for generations.
18
19
20

21 85) What I have witnessed for more than a decade in the trustee sales,
22 judicial foreclosures, and eviction cases I have handled in favor of property
23 owners—against entities claiming title and possession of property—has led me to
24

1 the unpleasant conclusion that Washington State courts and this Court, are no
2 longer appropriately exercising judicial power in these cases because they are
3 not: (a) operated by judicial officials who are neutral or even appear to be neutral;
4 (b) engaging in appropriate fact finding based on the presentations of the parties;
5 and (c) adjudicating judgments based on applicable constitutional provisions,
6 governing statutes, and established precedent as applied to the facts properly
7 found to exist. The refusal to make those factual determinations—as repeatedly
8 requested by my clients—renders these courts’ legal conclusions arbitrary, and
9 transforms what should be judicial adjudication into something more akin to a
10 private collection agency. In my judgment there can be no genuine application of
11 law without honest fact finding relating to the contentions of the parties. And it is
12 my observation that such fact finding does not occur in the courts in Washington
13 in these types of cases involving *successes and assigns* of these types of security
14 instruments.

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17
18 86) It is not only my ancestral ties to practicing law which have led me to
19 confront the question of what my duties as a lawyer to my clients are in these
20 types of cases. It is also a duty my Christian faith imposes upon me as a citizen of
21 God’s kingdom here on Earth.

22
23 87) I realise that the burden is on me to explain to this Court the basis for my
24

1 contention that my Christian Faith also requires me to make those constitutional,
 2 statutory, equitable, and international law arguments my clients are advancing in
 3 this case as well as others.

4
 5 88) On August 12, 2024 I requested ethical advice from the Washington State
 6 Bar Association with regard to whether I must continue representing litigants like
 7 White where I had concluded that Washington's judiciary, i.e. judicial officers
 8 holding the title of "judge", had been corrupted for purposes of deciding these
 9 types of cases impartially because they had been made biased in favor of the
 10 *successors and assigns of mortgage-backed securities* and against property
 11 owners. I have attached a copy of that request for ethical advice hereto as **Exhibit**
 12

13 **15.** A copy of that request is accessible at:

14
 15 https://www.academia.edu/122820275/Stafnes_Letter_to_the_Washington_State_Bar_Association_seeking_written_ethical_guidance_as_to_how_handle_his_judgment_that_the_judicial_officers_of_Washington_are_biased_and_not_independent_with_regards_to_cases_brought_by_successors_and_assigns_of_mortgages_to_foreclose_promissory_notes
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 17
 18

19 89) I explained to Bar Association committee that considers these kind of
 20 ethical inquiries that:

21 After much thought and prayer I have determined that Jesus'
 22 admonition in Matthew 7:6 KJV applies to this situation which I now
 23 find myself in. As you may know, in this part of the Bible, Jesus
 24 instructs: "Give not that which is holy unto the dogs, neither cast ye
 your pearls before swine, lest they trample them under their feet, and

1 turn again and rend you.”

2 Jesus’ message in this verse is about “wasting things of value
3 on those who not only won’t appreciate them, but might be angered by
4 the offer.”

5 My experience is that Christ’s observation that one may be
6 trampled for speaking what others, particularly judicial officers in
7 Washington State, don’t want to hear is that it is right on the mark.
8 And although I have tried my best to get Washington’s judicial
9 officers to address the judicial inquiries my clients appropriately raise,
10 I have come to the conclusion that I will never be able to get them to
11 do so because those judicial officials are, in the words of John
12 Marshall: “corrupt” and “dependent.” See *infra*, at p.8.

9 **Exhibit 15**, Request for Ethical Guidance, p. 5.

10 90) After the Bar Association declined to consider my request for ethical
11 advice, that Association’s disciplinary counsel began investigating me because I
12 had cited a decision by Senior Judge Robart of this Court referenced in **Exhibit**
13 **15** as a basis for my request for ethical advice. Disciplinary counsel asserted that
14 my client’s challenges to Senior Judge Robart’s status as an Article III judge
15 against her will was frivolous.

16 91) Disciplinary Counsel recently concluded that my challenges to this
17 Court’s senior judges’ assertions that they remain judicial officers holding the
18 office of judge during their good behavior merited disciplinary action against me,
19 including the possibility of disbarment.

20 92) On Christmas Eve, 2024 I requested an extension of time to provide
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1 disciplinary counsel with further scriptural analysis supporting my contention that
2 as a Christian I owned a duty to God's Kingdom speak out against the practices
3 of Washington State courts, including this Court, with regards to deciding these
4 types of judicial inquiries prejudicing property owners in Washington State. *See*
5 **Exhibit 16**, attached hereto. Specifically, in that presentation I requested an
6 extension of time to better prepare my faith based arguments, but set forth my
7 research on that topic as it existed at that point in time.
8
9

10 35.) To the extent Disciplinary Counsel is unwilling to grant me an
11 extension of time to present those judicial inquiries related to what I
12 must do as a lawyer based on conflicted duties of citizenship owed
13 to God's Kingdom and earthly governments I will rely on those
14 judicial inquiries I presented to the Washington Bar Association
(including Disciplinary Counsel) in my August 12, 2024 letter
seeking ethical guidance. Additionally, I will rely on those aspects of
scripture which I discuss below.

15 36.) My Bible, given to me by a pastor client before he
16 passed, teaches that when a person trespasses against things holy to
17 the Lord, even unintentionally, they are called to acknowledge their
18 guilt and make restitution. Specifically, *Leviticus 5:1-5* illustrates
19 this principle by stating that if a person fails to testify when they
20 know the truth, or if they touch something unclean, they bear guilt
21 once they realize their wrongdoing. *Leviticus 5:15-16* further
22 emphasizes that for a trespass against holy things, atonement
23 requires restitution, adding value to what was taken or harmed. I
24 believe that justice, anchored to truth, is a holy thing of the Lord.
Accordingly, I see it as my spiritual obligation to address my
participation in a legal system that has strayed from truthful
factfinding and neutral adjudication. This recognition has led me to
seek guidance and make restitution in accordance with my faith.

37.) Unlike for sins generally, Leviticus requires the penitence for a trespass against a thing holy to the Lord to include restitution. (Leviticus 5:15-16). This is because “if a person commits a trespass, and sins unintentionally in regard to the holy things of the LORD” he has committed a specific wrong against God or another person. (Leviticus 5:14–6:7).

38.) It is my judgment based on my study of Scripture that adjudicative justice anchored to truth is a “holy thing of the LORD.” Accordingly, once I concluded that Washington State courts (both State and federal) were no longer engaging in such factfinding as is necessary to establish justice in cases where *successors and assigns* of mortgages were using the courts to steal homes, my faith required I atone for my unintentional trespass of participating in that secular legal system.⁴ I did so by seeking ethical guidance from the Bar Association.

39.) As I have continued to study scripture, I have become increasingly aware that the time for atonement is now. My participation in a legal system that has rendered itself incapable of truthful factfinding and neutral application of the law weighs heavily on my conscience, especially in light of the prophecies of *Revelation*. *Revelation 18:4* commands, “Come out of her, my people, so that you will not share in her sins, so that you will not receive any of her plagues.” This passage warns believers to separate themselves from corrupt systems to avoid complicity in their sins and the judgment that follows. I believe that Christ’s return is imminent, as described in *Revelation 22:12*: “Look, I am coming soon! My reward is with me, and I will give to each person

⁴ Although I am not required to do so, I will share my analysis of this spiritual inquiry with Disciplinary Counsel. As I reflected on Leviticus 5, I appreciated that God called on me to acknowledge my trespass against things Holy to the Lord by participating in a justice system not anchored to truthful fact finding. I realized that it was necessary for me to make restitution for harm done to His holy purposes. While I may have delayed acting as boldly as I should have in challenging corruption within Washington’s legal system, I am now offering my work—my writings, my advocacy, and my dedication to truth—as a modern form of restitution pursuant to my personal relationship with God established by my performance of Christ’s two great commandments. This is my way of restoring what was harmed and adding value to it, as God requires. This work is not for my own benefit but as an offering to the Lord, guided by His commandments to love Him fully and to love my neighbors as myself.

1 according to what they have done.” This prophecy impresses upon
 2 me the urgency of aligning my actions with God’s will. My faith
 3 requires me to act now to make amends for my unintentional
 4 trespass, by challenging systemic corruption and dedicating myself
 5 to the pursuit of truth and justice.

6 40.) But even if we are not approaching end times, the Bible
 7 has long taught that truth, justice, and mercy are not optional but
 8 central to the character of God and the requirements of His people.
 9 Micah 6:8 declares, “He has shown you, O mortal, what is good. And
 10 what does the Lord require of you? To act justly and to love mercy
 11 and to walk humbly with your God.” These principles apply
 12 universally, transcending time and circumstance, and they extend
 13 beyond individuals to nations. Proverbs 14:34 teaches,
 14 “Righteousness exalts a nation, but sin condemns any people,”
 15 emphasizing that nations are accountable for upholding justice and
 16 righteousness. Similarly, Psalm 82:3-4 commands leaders to “Defend
 17 the weak and the fatherless; uphold the cause of the poor and the
 18 oppressed. Rescue the weak and the needy; deliver them from the
 19 hand of the wicked.” These obligations, placed upon individuals and
 20 nations alike, compel me, as a Christian and an officer of the court, to
 21 speak out against systems that deny justice and truth. My obligation to
 22 God requires me to advocate for courts to return to their divinely
 23 intended purpose: to uphold righteousness and protect the oppressed.

24 **Exhibit 16**, pp. 34-37.

93) I finalize my contentions here regarding what my course of action as a
 Christian American lawyer must be when I encounter a situation which makes me
 choose between the duties of owe to my country and my God; both of which I
 recognise as my sovereign.

94) The tension between these two sovereignties—God’s Kingdom and the
 civil institutions of this world—is not new. Scripture makes clear that obedience

1 to earthly authority is commendable when that authority serves justice. But when
2 it strays from truth and righteousness, the faithful must choose. As Peter and the
3 apostles declared before the Sanhedrin: “We ought to obey God rather than men.”
4 (Acts 5:29). My professional obligations as a lawyer have meaning only when
5 they are grounded in a legal system that honors justice. But when that system is
6 manipulated to serve the powerful at the expense of the vulnerable, then fidelity
7 to God’s higher law must prevail.
8

9
10 95) This is not a rejection of law. To the contrary, it is a reaffirmation of law’s
11 true purpose. Romans 13 tells us that civil authorities are to be *ministers of God*
12 *for good*—servants who punish wrongdoing and protect the innocent. When those
13 authorities become corrupted or refuse to perform their adjudicative role, the
14 people of God must call them to account. I do not do so lightly. I do so because I
15 believe that silence in the face of systemic injustice is complicity, and that
16 complicity in unrighteous judgment is a trespass against the holy purpose for
17 which justice was created.
18

19
20 96) When faced with the type of decision that I must make here, I
21 conclude—based on my faith—that the best way to discern the right course is
22 through the application of Christ’s two great commandments to the specific
23 factual circumstances that exist. As this Court may or may not know, these
24

1 commandments are found in Matthew 22:37–40, where Jesus declares: “*You*
2 *shall love the Lord your God with all your heart, and with all your soul, and with*
3 *all your mind.*’ This is the first and great commandment. And the second is like
4 unto it, ‘*You shall love your neighbor as yourself.*’ On these two commandments
5 hang all the law and the prophets.” These commandments are not abstract ideals.
6 They are interpretive principles—living tools for evaluating what justice, love,
7 and fidelity require in real-world conflicts. When I apply them here, I must ask:
8 Am I honoring God by remaining silent in the face of systemic injustice? Am I
9 loving my neighbors—my clients and the meek among us—by failing to confront
10 a court system that I believe no longer provides them with fair adjudication? My
11 faith answers those questions clearly: I must speak the truth. I must act. And
12 especially, is this so where, as here, the Bar Association and Washington courts
13 tell me I must continue to represent these clients notwithstanding that I have
14 respectfully asked to be freed of my obligation to do so because such
15 representation forces me to cast pearls before swine in violation of Jesus
16 admonition at Matthew 7:6.

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21 97) Well, if—according to the order of a Washington court, and implicitly
22 affirmed by the Bar Association’s refusal to respond to my request for ethical
23 guidance—I am to continue representing clients in these matters, then I will do so
24

1 honestly, ethically, and as their zealous and unwavering advocate. Like Patrick
2 Henry, I cannot sit silent while injustice prevails under the guise of lawful
3 authority. He warned against the illusion of hope when it serves only to quiet
4 resistance to tyranny. I too believe that the time for mere words has passed; the
5 cause now requires action rooted in conscience, and I will meet that burden with
6 every measure of conviction I have left.
7

8 98) Therefore, my decision to raise these constitutional and legal
9 challenges—on behalf of clients like White, and in other matters—is not merely
10 professional. It is devotional. Micah 6:8 teaches that the Lord requires us “to act
11 justly, and to love mercy, and to walk humbly with your God.” These are not
12 passive virtues. They demand courage. They require action. And for those called
13 to serve as officers of the court, they require a willingness to speak plainly when
14 the courts themselves abandon justice. That is what I am doing here.
15
16

17 99) As I stated earlier, I do not relish criticizing institutions I was taught to
18 revere. But to remain silent—to pretend that justice is being done when I know it
19 is not—would be to betray both my oath as a lawyer and my faith as a Christian.
20 Isaiah 59:14 laments, “Justice is turned back, and righteousness stands far away;
21 for truth has stumbled in the public squares.” I believe we are living in such a
22 time. And so I must stand for righteousness and justice, because God has called
23
24

1 and qualified me to do so.

2 100) I submit that the judicial and clerical officers of this Court—including
3 those holding the office of judge during good behavior—are required to confront
4 the same type of decision I have had to face. They, too, must reconcile the duties
5 of their public office with the higher moral obligations that govern all people,
6 especially those who claim to serve both the public and, if they are Christian,
7 their God. Their decisions, like mine, must be measured not merely by legal
8 standards but by whether they serve justice, truth, and their neighbors or mostly
9 just the rich..
10

11
12 101) I respectfully bring to this Court's attention that it has the authority to
13 certify unresolved questions of Washington law to the Washington Supreme
14 Court. Under RCW 2.60.020, when a federal court determines that state law has
15 not been clearly determined and must be ascertained to resolve the matter before
16 it, the court may certify the question to the Washington Supreme Court for
17 resolution. The Washington Rules of Appellate Procedure further authorize this
18 procedure under RAP 16.16. This mechanism honors principles of federalism by
19 allowing Washington's highest court to provide authoritative interpretations of its
20 own law—particularly appropriate where, as here, the dispute raises novel and
21 significant questions under Washington's Deed of Trust Act and Uniform
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23
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1 Commercial Code.

2 102) Finally, I am no longer young and no longer in good health. I do not have
3 the luxury of time to waste on procedural games (like motions to compel DB to
4 produce evidence of its standing) or that legal theater designed by the money
5 changers to obscure rather than illuminate the truth.
6

7 103) What my clients—the Church and the Property Owner—seek is not
8 special treatment, but a fair hearing grounded in facts and law. And this Court, as
9 an Article III tribunal, should insist upon it.
10

11 104) In this case, DB has refused to produce the foundational documents in
12 discovery necessary to establish its authority to enforce the instruments at issue.
13 See Exhibit K to Wood declaration, *See also Exhibit 12*, attached hereto (DB's
14 deposition). Plaintiffs specifically requested information—described in detail
15 above—regarding the original notes, endorsements, delivery records, pooling and
16 servicing agreements, the amount of value paid for each instrument, and related
17 evidence. Yet none of this has been produced, despite Deutsche Bank's
18 longstanding awareness that Plaintiffs were challenging this Court's subject
19 matter jurisdiction on the basis of a lack of Article III standing.
20
21

22 105) The designated CR 30(b)(6) witness testified as DB on the topic of
23 standing with no knowledge of the underlying facts and no apparent
24

1 understanding of the legal requirements necessary to establish it. Based on my
2 experience litigating these types of cases, I do not believe this failure to produce
3 evidence regarding DB's standing to enforce these notes is accidental.
4

5 106) It is my testimony, as an attorney who has practiced law for over 50
6 years, and who has spent more than a decade focused on this area of litigation,
7 that the money changer defendants in this case routinely conduct themselves with
8 the expectation that courts—this one included—will continue to shield their
9 claims to take People's homes from any meaningful judicial scrutiny. That
10 expectation appears validated by the frequency with which summary judgment is
11 granted in favor of lenders, often without the evidentiary foundation required
12 under Article 3 and/or Rule 56.
13
14

15 107) Plaintiffs respectfully submit that this case should not continue that trend.
16 Deutsche Bank must be held to the same standards of proof as are other litigants
17 in other cases.
18

19 I declare under the penalty of perjury that the foregoing is true and correct to
20 my best of information and belief.
21

22 Dated this May 21, 2025, at Arlington, Washington.

23 By: s/ Scott E. Stafne WSBA No. 6964
24 Scott. E. Stafne, declarant.

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury under the laws of the State of Washington that a true and correct copy of the foregoing has been furnished electronically via the Court's CM/ECF system to all persons registered to receive electronic notice.

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Dated this 21st day of May 2025.

By s/ Scott E. Stafne
Scott E. Stafne, Attorney.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

CHURCH OF THE GARDENS et al.,

Plaintiffs,

v.

QUALITY LOAN SERVICES

CORPORATION et al.,

Defendants.

Case No. 3:23-cv-06193-TMC

ORDER GRANTING MOTION TO
DETERMINE VALIDITY OF NOTICE OF
NONMONETARY STATUS

I. INTRODUCTION

Before the Court is Defendant MTC Financial Inc.’s (doing business as “Trustee Corps”) motion to determine validity of its notice of nonmonetary status (Dkt. 51). Because Trustee Corps has satisfied the statutory requirements for filing a declaration of nonmonetary status under RCW 61.24.180 and Plaintiffs Church of the Gardens and Alvin White failed to timely object, the Court GRANTS the motion.

II. BACKGROUND

Plaintiffs filed suit in Pierce County Superior Court on December 13, 2023, and Defendant Deutsche Bank removed the case to this Court on December 28, 2023. Dkt. 1; Dkt. 1-2. On January 8, 2024, Plaintiffs amended their complaint. Dkt. 8.

1 The 109-page complaint alleges that Alvin B. White is a fee simple owner of five
2 fourplex parcels in Pierce County, Washington, which Plaintiffs refer to as Lots 7, 10, 11, 12, 16.
3 Dkt. 8 ¶ 1.1. White purchased these properties on February 29, 2006 using funds borrowed from
4 Long Beach Mortgage Company, *id.* ¶ 3.7, and he executed promissory notes and deeds of trust
5 to secure the loans. *See* Dkt. 8-1 at 3–116. Defendant Deutsche Bank National Trust (“Deutsche
6 Bank”) is the “purported beneficiary claiming to be in possession of [the] paper note[s]” that are
7 secured by the deeds of trust to the properties. Dkt. 8 ¶ 2.11.

8 Defendant Quality Loan Services Corporation of Washington (“QLS”) is acting as the
9 successor trustee for Lots 16 and 11, and Defendant Trustee Corps is acting as the successor
10 trustee for Lots 7, 10, and 12. *Id.* ¶¶ 1.3–1.4. Plaintiffs assert that Deutsche Bank directed QLS
11 “to conduct the nonjudicial sale of . . . Lots [16] and 11 . . . by way of a credit bid.” *Id.* ¶ 1.5.
12 Plaintiffs allege that, on January 5, 2024, QLS sold Lots 16 and 11 at a nonjudicial foreclosure
13 sale “under color of state law in violation of the organic law of this Nation and the State of
14 Washington.” *Id.* ¶ 1.3. While Trustee Corps has sent White a notice of default with respect to
15 Lots 7 and 12, it has not conducted a nonjudicial sale of the properties. *Id.* ¶ 1.4.

16 The amended complaint contains numerous allegations and legal theories for why any
17 past or potential future nonjudicial sale of White’s properties is unlawful. *See generally* Dkt. 8.
18 But the core allegation is that after White executed the five original promissory notes for the
19 properties, they were “destroyed and/or lost.” *Id.* ¶ 3.33. Long Beach Mortgage Company then
20 “[cancelled] the debt owed by [White] . . . when it assigned its interests in the mortgage loan” to
21 Deutsche Bank. *Id.* ¶ 3.35. Since Deutsche Bank does not hold the original promissory notes and
22 there is no outstanding debt on the loan, Plaintiffs allege that Deutsche Bank is not authorized to
23 conduct any nonjudicial sales of the properties. *Id.* ¶¶ 3.34–3.35.
24

Plaintiffs assert the following causes of action and requests for relief: (1) an action for a declaratory judgment that certain portions of Washington’s Deeds of Trust Act, RCW Chapter 61.24 *et seq.*, violate the Washington State Constitution and the Fourteenth Amendment to the United States Constitution, *id.* ¶¶ 4.1–4.8; (2) a request for an injunction restraining the nonjudicial sale of White’s remaining properties by Trustee Corps, *id.* ¶¶ 4.9–4.10; (3) an action for damages against QLS and Deutsche Bank arising from the previous sale of White’s properties based on allegations of breach of contract, violations of the Deeds of Trust Act, and violations of Washington’s Consumer Protection Act, *id.* ¶¶ 4.11–4.18; and (4) an action for damages against QLS and Deutsche Bank for due process violations under 42 U.S.C. § 1983, *id.* ¶¶ 4.19–4.22.

On January 19, 2024, Trustee Corps filed a declaration of nonmonetary status. Dkt. 17. Plaintiffs filed their objection and answer to the declaration of nonmonetary status on February 21, 2024. Dkt. 34. Trustee Corps then moved to determine the validity of the notice of nonmonetary status. Dkt. 51. In their response, Plaintiffs requested relief from the deadline. Dkt. 52. The Court granted in part Plaintiffs’ request for an extension of time to respond and renoted Trustee Corps’ motion for April 28, 2025. Dkt. 62. Plaintiffs responded, Dkt. 65, and Trustee Corps replied, Dkt. 66. The motion is ripe for the Court’s consideration.

III. DISCUSSION

A. Legal Standard

“In construing a statute in a case of first impression, we look to the traditional signposts for statutory interpretation: first, the language of the statute itself.” *Tourgeman v. Nelson & Kennard*, 900 F.3d 1105, 1109 (9th Cir. 2018) (cleaned up). “It is well established that, when the statutory language is plain, [courts] must enforce it according to its terms.” *Jimenez v. Quarterman*, 555 U.S. 113, 118 (2009) (citing cases).

Similarly, when interpreting Washington law, federal courts “first look to its plain language.” *HomeStreet, Inc. v. State, Dep’t of Revenue*, 166 Wn.2d 444, 451, 210 P.3d 297 (2009) (citation omitted). “Where statutory language is plain and unambiguous, a statute’s meaning must be derived from the wording of the statute itself.” *Id.* (citation omitted). And if “the plain language is subject to only one interpretation, our inquiry ends because plain language does not require construction.” *Id.* (citation omitted); *see also State ex rel. M.M.G. v. Graham*, 159 Wn.2d 623, 632, 152 P.3d 1005 (2007), *as amended* (Feb. 21, 2007), *as amended* (May 10, 2007) (“If the text is clear and unambiguous on its face, [courts] do not resort to statutory construction principles, such as legislative history[.]”). “A statute is ambiguous only if it can be reasonably interpreted in more than one way and [courts] do not try to discern an ambiguity by imagining a variety of alternative interpretations.” *State ex rel. M.M.G.*, 159 Wn.2d at 632–33 (cleaned up).

B. Trustee Corps has satisfied the statutory requirements of RCW 61.24.180.

1. The amended complaint does not assert any claims for damages or seek to enjoin foreclosure based on any alleged unlawful actions or omissions by Trustee Corps.

The nonmonetary status statute, RCW 61.24.180, was enacted in 2018 and has not yet been interpreted by any state or federal court. But the statute through its plain language provides a procedure that allows a trustee to remove itself from litigation by filing a “declaration of nonmonetary status” if certain conditions are met. *See* RCW 61.24.180(1); *HomeStreet, Inc.*, 166 Wn.2d at 451. The statute provides:

(1) If a trustee under a deed of trust is named as a defendant in an action or proceeding in which that deed of trust is the subject, and if there are no substantive allegations that seek damages from the trustee or seek to enjoin the foreclosure based on any alleged unlawful actions or omissions by the trustee, including causes of action where the trustee is a codefendant alleged to be jointly or derivatively liable with respect to the trustee’s conduct as to the borrower or the trustee’s statutory obligations, not less than thirty-five days after service of the summons and complaint on the trustee, the trustee may file a declaration of nonmonetary status.

1 The declaration must be served on the parties in the manner set forth in superior
2 court civil rule (CR) 5.

3 (2) The declaration of nonmonetary status must set forth:

4 (a) The status of the trustee as trustee under the deed of trust that is the
5 subject of the action or proceeding;

6 (b) That the complaint or pleading does not assert any substantive
7 allegations that seek damages from the trustee or seek to enjoin the
8 foreclosure based on any alleged unlawful actions or omissions by the
9 trustee;

10 (c) That it has been named as a defendant in the proceeding solely in its
11 capacity as a trustee under the deed of trust and that the trustee agrees to be
12 bound by whatever order or judgment is issued by the court regarding the
13 subject deed of trust;

14 (d) A statement printed in no less than twelve-point font and bolded that
15 reads: “You have 30 days from service of this declaration to file and serve
16 an objection with the court in compliance with RCW 61.24.180. If you do
17 not timely object, the trustee will be deemed a nominal party to this action
18 and you may not seek monetary relief against it. Your case may also be
19 removed to federal court if the trustee was the only defendant domiciled in
20 Washington.”

21 RCW 61.24.180(1)–(2).

22 Trustee Corps contends that on “the undisputed facts of this matter, RCW 61.24.180
23 authorized Trustee Corps to serve and file a declaration of nonmonetary status, and Trustee
24 Corps complied with the requirements for doing so effectively.” Dkt. 51 at 5. Specifically,
Trustee Corps argues that “the Amended Complaint neither contains ‘substantive allegations that
seek damages from [it],’ nor does it seek to enjoin any foreclosure involving Trustee Corps
‘based on any alleged unlawful actions or omissions by the trustee.’” *Id.* (quoting RCW
61.24.180(1)). While the amended complaint does seek to restrain Trustee Corps from
conducting any future sale of Lots 7, 10, and 12, *see* Dkt. 8 ¶¶ 4.9–4.10, Trustee Corps argues
that it does not allege that “any such sale has been scheduled” or that Trustee Corps committed
any “unlawful actions or omissions” as a basis for Plaintiffs’ request. Dkt. 51 at 5; Dkt. 66 at 3.

1 Since all claims for damages are directed at QLS and Deutsche Bank, who conducted the
2 nonjudicial sale of the properties at issue, Trustee Corps maintains it is “entitled to the nominal
3 defendant status conferred by RCW 61.24.180.” Dkt. 51 at 5; Dkt. 66 at 4.

4 Trustee Corps further asserts that it has complied with the procedural requirements for
5 filing a declaration of nonmonetary status. Dkt. 51 at 5. First, it waited “not less than thirty-five
6 days after service of the summons and complaint on the trustee” before filing the declaration. *Id.*
7 (citing RCW 61.24.180(1)). Trustee Corps was served on December 15, 2023 and filed its
8 declaration on January 19, 2024. *See* Dkt. 2-1 at 613–14; Dkt. 17. Second, its declaration of
9 nonmonetary status contains all the information required under RCW 61.24.180(2)(a)–(d). *See*
10 Dkt. 17 ¶¶ 2–7. Since it has satisfied “all the statutory requirements for filing a proper
11 declaration,” Trustee Corps argues it is entitled to nonmonetary status. Dk. 51 at 5–6; Dkt. 66 at
12 4.

13 Plaintiffs do not contest that Trustee Corps complied with the procedural requirements
14 under RCW 61.24.180. *See* Dkt. 65. But they argue that Trustee Corps cannot classify itself as a
15 nonmonetary party because it “cannot disclaim responsibility for its role in the foreclosure
16 structure.” *Id.* at 8 (cleaned up). For example, Plaintiffs assert that Trustee Corps: “1) Issued
17 Notices of Default to White; 2) Participated in the underlying nonjudicial foreclosure structure;
18 3) Is tasked with enforcing an instrument whose validity is in doubt; and 4) now seeks to avoid
19 participation in the very judicial process that is necessary to resolve that doubt.” *Id.* Even if
20 Trustee Corps has not yet conducted a sale of a property, Plaintiffs argue that “its participation in
21 the foreclosure process—and its refusal to acknowledge the pending legal questions under
22 RCW 61.24.130—disqualify it from claiming nominal status.” *Id.*

23 These arguments are unpersuasive. A trustee may seek nonmonetary status under
24 RCW 61.24.180 if there are no substantive allegations that (1) “seek damages from the trustee”

1 or (2) “seek to enjoin the foreclosure based on any alleged unlawful actions or omissions by the
2 trustee[.]” RCW 61.24.180(1). First, the amended complaint does not seek damages from Trustee
3 Corps; it requests only injunctive relief to prevent the future sale of White’s properties. *See*
4 Dkt. 8 ¶ 4.10 (“the non judicial sale of Plaintiff’s properties should be restrained until the matters
5 posed by this complaint have been appropriately resolved.”). Second, Plaintiffs do not allege any
6 unlawful action or omission by Trustee Corps. Plaintiffs point to the fact that Trustee Corps
7 issued notices of default to White, *see* Dkt. 65 at 8, but unlike QLS, it has taken no further action
8 to foreclose on the properties, *see* Dkt. 8 ¶¶ 1.3–1.4. And as stated in its declaration for
9 nonmonetary status and required by the statute, “Trustee Corps agrees to be bound by whatever
10 order or judgment is issued by the court regarding the subject [deeds of trust] pertaining to
11 Trustee Corps.” Dkt. 17 ¶ 6; *see* RCW 61.24.180(2)(c).

12 Instead, all allegations against Trustee Corps arise from its participation in the
13 “underlying nonjudicial foreclosure structure.” Dkt. 65 at 8. Plaintiffs focus extensively on
14 “disputes regarding ownership or authenticity of the promissory note[s],” but those claims are
15 directed at Deutsche Bank, who possesses the notes at issue. *Id.* at 7. Trustee Corps is neither the
16 lender nor holder of any of the notes. *See* Dkt. 8 ¶ 1.4; Dkt. 66 at 5. Asserting wrongdoing based
17 solely on serving as a trustee in a foreclosure dispute, absent specific allegations of wrongful
18 conduct, is insufficient.

19 Furthermore, if the Court accepted Plaintiffs’ argument, it is highly unlikely that any
20 trustee could seek nonmonetary status because of its nominal “role” in the underlying dispute.
21 This interpretation of RCW 61.24.180 would render meaningless the statute’s purpose—to
22 excuse a trustee without substantive allegations asserted against it from participating in the legal
23 proceeding. *See Arizona All. for Cmty. Health Centers v. Arizona Health Care Cost Containment*
24 *Sys.*, 47 F.4th 992, 999 (9th Cir. 2022) (holding that “courts must interpret [a] statut[e] as a

1 whole, giving effect to each word and making every effort not to interpret a provision in a
2 manner that renders other provisions of the same statute inconsistent, meaningless or superfluous
3 and that [p]articular phrases must be construed in light of the overall purpose and structure of the
4 whole statutory scheme.”) (cleaned up); *see also R.J. Reynolds Tobacco Co. v. Cnty. of Los*
5 *Angeles*, 29 F.4th 542, 556 (9th Cir. 2022) (rejecting a party’s interpretation of a statute because
6 it not only “contravene[s] the [] text, framework, and historical context” but also “nullifies key
7 aspects” of the statute).

8 Since Plaintiffs have not asserted any substantive allegations against Trustee Corp, and
9 Trustee Corp properly filed a declaration under RCW 61.24.180, it is entitled to nonmonetary
10 status.

11 2. *Plaintiffs’ due process and public policy arguments also fail.*

12 Still, Plaintiffs argue that applying RCW 61.24.180 would violate due process and
13 undermine the public policy objectives of the Deed of Trust Act. Dkt. 65 at 9–10. Citing
14 *Securities and Exchange Commission v. Jarkesy*, 603 U.S. 109, 127 (2024), Plaintiffs contend
15 that “private rights—particularly those involving property—must be adjudicated by a neutral
16 court when factual disputes are present.” *Id.* at 9. But *Jarkesy* is inapposite. There, the issue was
17 whether “the Seventh Amendment permits the SEC to compel respondents to defend themselves
18 before the agency rather than before a jury in federal court.” *Jarkesy*, 603 U.S. at 115. The
19 Supreme Court held that the case must be adjudicated by an Article III court. *Id.* at 140. Here,
20 however, Plaintiffs *are* pursuing their claims in federal court. *See* Dkt. 1. And they provide no
21 explanation for how excusing a nominal trustee from participating in the lawsuit prevents their
22 claims from being adjudicated by a neutral court. *See generally* Dkt. 65. Again, Trustee Corps
23 will be bound by this Court’s decision on Plaintiffs’ claims, which shows that upholding Trustee
24 Corps’ nonmonetary status does not raise any due process concerns. *See* RCW 1.24.180(2)(c).

1 Plaintiffs next argue that “Washington courts have repeatedly emphasized that the Deed
 2 of Trust Act must be interpreted in light of its three¹ central public policy objectives.” Dkt. 65 at
 3 9–10 (first citing *Bain v. Metro. Mortg. Grp., Inc.*, 175 Wn.2d 83, 93, 285 P.3d 34 (2012); and
 4 then citing *Cox*, 103 Wn.2d at 387). To start, Plaintiffs contend that the “first policy—promoting
 5 efficient nonjudicial foreclosure—only applies when there is no dispute.” *Id.* at 10. Here,
 6 Plaintiffs assert that “there is a genuine factual dispute about whether the authentic, wet ink
 7 original, enforceable promissory notes exist.” *Id.* But as explained above, *see supra* Sec. III.B.1,
 8 that dispute involves Deutsche Bank, the holder of the relevant promissory notes, not Trustee
 9 Corps. And the Court agrees with Trustee Corps that the “policy objective that the nonjudicial
 10 foreclosure process should be efficient and inexpensive is . . . supported by relieving trustees of
 11 the duty to actively participate in litigation when they are not substantively necessary parties.”
 12 Dkt. 66 at 4; *see Meyers Way Dev. Ltd. P’ship v. Univ. Sav. Bank*, 80 Wn. App. 655, 670, 910
 13 P.2d 1308 (1996) (“RCW 61.24 establishes a streamlined, statutory method for foreclosing on
 14 deeds of trust” and “[o]ne of the primary reasons that parties use a deed of trust is the availability
 15 of this foreclosure method which is less expensive for everyone involved.”) (citation omitted).

16 Plaintiffs next argue that the “second policy is designed to protect borrowers from the
 17 trustee’s sale of their property when proper grounds for requiring judicial adjudication exist.”
 18 Dkt. 65 at 10. They assert that if Trustee Corps is granted nonmonetary status, it “would shield
 19 [Trustee Corps] from accountability while paving the way for future unlawful sales.” *Id.* The
 20 Court again disagrees. If Plaintiffs’ claims are meritorious, then Trustee Corps will be restrained

21
 22 ¹ Plaintiffs raises objections based on only the first two of three policy goals underlying the
 23 Washington Deed of Trust Act. *See Cox v. Helenius*, 103 Wn.2d 383, 387, 693 P.2d 683 (1985)
 24 (“First, the nonjudicial foreclosure process should remain efficient and inexpensive. . . . Second,
 the process should provide an adequate opportunity for interested parties to prevent wrongful
 foreclosure. Third, the process should promote the stability of land titles.”) (cleaned up).
 Accordingly, the Court only addresses arguments raised by the parties in their briefs.

1 from foreclosing on White's properties regardless of its participation in this proceeding. *See*
2 RCW 61.24.180(2)(c). Thus, providing Trustee Corps nonmonetary status does not prevent
3 Plaintiffs from "having an adequate opportunity to prevent wrongful foreclosure." *Plein v.*
4 *Lackey*, 149 Wn.2d 214, 225, 67 P.3d 1061 (2003) (en banc), *as amended on denial of*
5 *reconsideration* (June 6, 2003). Accordingly, there are no due process or policy concerns that
6 support denying Trustee Corps nonmonetary status.

7 **C. Plaintiff failed to timely object to Trustee Corps' declaration of nonmonetary status.**

8 Finally, Trustee Corps argue that Plaintiffs' objection and answer to its declaration of
9 nonmonetary status was untimely and defective. Dkt. 51 at 6. The statute provides that the
10 objection must be filed within thirty days of the declaration being filed, but Plaintiffs objected
11 thirty-one days after Trustee Corps filed its declaration. *Id.*; *see* Dkt. 17; Dkt. 34.
12 RCW 34.24.180(6) states that if "an objection is not filed and served within the thirty-day
13 objection period, the trustee . . . [is] not required to participate any further in the action or
14 proceeding" and thus Trustee Corps asserts that its nonmonetary status should be in effect.
15 Dkt. 51 at 6. Trustee Corps further argues that even if the objection had been timely, it would
16 still be defective because the contents of the objection do not comply with the requirement of
17 RCW 61.24.180(4)(b) that it "[c]ontain a short and plain statement of the claim against defendant
18 trustee as described in the complaint, showing that the plaintiff is entitled to relief." *Id.*

19 Plaintiffs do not respond to this argument in their opposition brief, *see* Dkt. 65, and the
20 Court "considers the lack of response to be a concession of merit." *Gray v. Washington State*
21 *Dep't of Transp.*, No. 3:23-CV-05418-DGE, 2023 WL 6622232, at *6 (W.D. Wash. Oct. 11,
22 2023), *aff'd sub nom. Gray v. Washington Dep't of Transp.*, No. 23-3278, 2024 WL 5001484
23 (9th Cir. Dec. 6, 2024). Thus, Trustee Corps is also entitled to nonmonetary status on this basis.

IV. CONCLUSION

For these reasons, Trustee Corps' motion to determine validity of its notice of nonmonetary status (Dkt. 51) is GRANTED.

Dated this 16th day of May, 2025.



Tiffany M. Cartwright
United States District Judge

HONORABLE TIFFANY M. CARTWRIGHT

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA**

CHURCH OF THE GARDENS, a
Washington Not-for-Profit Corporation
operating as a faith-based religious
organization; ALVIN WHITE, in his
individual capacity,

Plaintiffs,

v.

QUALITY LOAN SERVICES
CORPORATION OF WASHINGTON;
MTC FINANCIAL INC. DBA TRUSTEE
CORPS.; DEUTSCHE BANK NATIONAL
TRUST COMPANY; LONG BEACH
MORTGAGE LOAN TRUST 2006-4;
LONG BEACH MORTGAGE LOAN
TRUST 2006-5; and STATE OF
WASHINGTON, a State of the United
States.

Defendants.

No. 3:23-cv-06193-TMC

**PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT
AGAINST WASHINGTON STATE
TRUSTEE MTC FINANCIAL
INC.**

**NOTE ON MOTION CALENDAR
MAY 16, 2025**

I. RELIEF REQUESTED:

Plaintiffs Alvin White and Church of the Gardens respectfully move this Court for summary judgment against Defendant MTC Financial Inc., d/b/a Trustee Corps, under Federal Rule of Civil Procedure 56, that 1) at all material times proper legal and equitable grounds” existed pursuant to RCW 61.24.130 to afford Property-Owner White and his co-plaintiff Church a judicial foreclosure under the factual circumstances of this case; 2) that MTC refused to refrain from initiating and continuing its legally inappropriate nonjudicial foreclosure activity.

Plaintiffs do not seek monetary damages from MTC at this time. Instead, Plaintiffs Church and White seek **declaratory relief** by way of this summary judgment as to the meaning of the Deeds of Trust Act; including specifically the meaning of RCW 61.24.130. Specifically, the Church and White seek a judgment declaring that MTC, purportedly acting as a Washington State Trustee, does not have legal or governmental authority as a non-judicial or quasi-judicial trustee to sell White’s real properties known as Lots 7, 10, and 12 after White’s request that the sale be restrained in favor of requiring that their dispute with Deutsche Bank be adjudicated pursuant to a judicial foreclosure.

II. STATEMENT OF THE ISSUES:

1. Whether RCW 61.24.130 prohibits a nonjudicial foreclosure trustee from proceeding with foreclosure where “proper legal or equitable grounds” exist

1 to restrain the sale—including factual disputes as to whether the promissory
2 note is authentic, enforceable, or even exists.

3 2. Whether MTC Financial Inc. may retain and exercise delegated state power
4 under RCW 61.24.030—including issuing Notices of Default and initiating
5 foreclosure—while simultaneously seeking immunity from judicial scrutiny
6 under RCW 61.24.180.

7 3. Whether MTC Financial Inc. may lawfully claim nonmonetary status under
8 RCW 61.24.180 while continuing to act under the Washington Deed of Trust
9 Act as a foreclosure trustee, in a process that is actively contested as ultra
10 vires on statutory and constitutional grounds.

11 4. Whether MTC Financial Inc.’s lack of neutrality—as a compensated agent of
12 a successor mortgagor exercising quasi-judicial authority over disputed
13 private rights—constitutes a “proper legal or equitable ground” to restrain
14 the trustee’s sale under RCW 61.24.130, in light of the language of that
15 statute; Washington Const. art. IV, section 7; constitutional principles of due
16 process; international law; natural justice; and equitable principles and
17 maxims.

18
19
20
21 **III. STATEMENT OF FACTS:**

22 The first laws passed in the Washington Territory in 1854 contemplated that
23 foreclosures of the title to land would be pursued judicially. *See* RCW 4.04.010;
24

1 Laws of 1854, p. 133 § 13; p. 205 § 398; pp. 207-209 §§ 408-417 (statutes
2 prescribe that foreclosure actions are within the jurisdiction of the Territory's
3 courts.) Twenty years later, in 1889, Washington enacted a Constitution with
4 provisions designed to ensure that only Washington State's superior courts could
5 decide disputes about the title and possession of real estate located in Washington
6 State. Among the provisions designed to achieve this result was Wash. Const, art.
7 IV, § 6, which states in pertinent part: "The superior court shall have original
8 jurisdiction in all cases in equity and in all cases which involve the title or
9 possession of real property.
10 possession of real property.

11
12 *Undisputed Facts Supporting Issue 1:*

13 1. Plaintiffs filed a motion to restrain Washington State Trustee MTC's sale of
14 White's property under RCW 61.24.130 in the Pierce County Superior Court
15 on or about December 15, 2023, asserting that:

- 16 ● There were unresolved factual and legal questions as to whether the
17 notes it purported to be enforcing were authentic, enforceable, or even
18 existed.
19
- 20 ● These were "proper grounds" under the statute to stop the sale of
21 White's properties in favor of having these judicial inquiries
22 adjudicated by a court pursuant to a judicial foreclosure.
23
24

1 2. This motion was never ruled upon by the Pierce County Superior Court
2 because the day before the hearing regarding this judicial inquiry the case
3 was removed to federal court by SPS, a servicer representing Deutsche Bank
4 National Trust Company (the purported beneficiary).

5
6 3. Recently, a graphologist handwriting expert, Hanna McFarland, testifying
7 for SPS and the purported beneficiary Deutsche Bank regarding the Note's
8 authenticity, swore that there has always been a factual dispute regarding the
9 existence and authenticity of the original wet-ink promissory notes sought to
10 be enforced by the the Washington State trustees by way of the sales of these
11 properties. *See* McFarland deposition, attached as Exhibit A to Stafne's
12 declaration. McFarland also testified that no one has ever asked her to
13 consider whether the endorsement on the notes were genuine and what
14 impact this would have on her opinion that White signed each of the separate
15 promissory notes related to each of the five real properties involved in this
16 litigation.
17
18

19 These factual disputes show that RCW 61.24.130 was triggered and never
20 resolved by MTC, meaning MTC was not lawfully authorized to proceed with
21 selling White's properties without his consent in lieu of a judicial foreclosure.
22

23 *Undisputed Facts Supporting Issue 2:*
24

- 1 4. MTC issued Notices of Default for Lots 7, 10, and 12, thereby: A) Declaring
2 White is in default; B) Initiating the statutory foreclosure timeline; and C)
3 Invoking the trustee's statutory power to sell the trustee's power pursuant to
4 RCW 61.24.030(7) as that statutory provision existed in 2005 at the time
5 White signed the pertinent notes and deeds of trust.
6
- 7 5. MTC has not rescinded or withdrawn those Notices of Default; and
- 8 6. MTC is currently claiming nonmonetary status under RCW 61.24.180,
9 asserting that it has no stake in the outcome of the litigation and should be
10 excused notwithstanding that it has made money from a party by its
11 exercising the judicial power of the State of Washington for the benefit of
12 Deutsche Bank.
13

14 These facts show that MTC is exercising the same statutory power it now
15 seeks to avoid responsibility for—a legal contradiction that must be resolved in
16 favor of judicial accountability.
17

18 Undisputed Facts Supporting Issue 3:

- 19 7. Plaintiffs filed an Amended Complaint after the removal of this case to
20 federal court and utilization of that removal by Deutsche Bank and Quality
21 Loans to sell White's properties without his consent, asserting that: 1) MTC
22 and QLS's actions violated due process; and 2) RCW 61.24.130 and the
23 Washington Constitution were violated by the trustee's attempt to foreclose
24

1 without adjudication of disputed facts going to the authority of the purported
2 trustee to enforce the promissory notes in question.

3 8. MTC is seeking to proceed with foreclosure—or at minimum retain its
4 authority to do so—without any court having ruled on the propriety of its
5 sale procedures under RCW 61.24.130.

6
7 9. MTC does not dispute that it is a state-authorized trustee operating under a
8 delegation of quasi-judicial power.

9 These facts support that MTC's continued participation in a challenged
10 foreclosure process—while simultaneously disclaiming its role—constitutes ultra
11 vires action.

12
13 Undisputed Facts Supporting Issue 4:

14 10. MTC Financial Inc. was appointed by a party adverse to Property Owner
15 White—specifically, the loan servicer or purported beneficiary, to exercise
16 the judicial power of the State of Washington by selling White's properties
17 out from under White without his consent. Plaintiffs Church and Property
18 Owner had no contractual relationship with MTC and no say in MTC's
19 selection as a quasi-judicial state actor.

20
21 11. MTC is a private business entity that receives compensation from
22 successors of deeds of trust or such successors' agents for services rendered
23 in initiating and carrying out the nonjudicial foreclosure process.
24

1 12. MTC is authorized by RCW 61.24.030(7) (as that statute existed and was
2 enforceable in 2006) to initiate foreclosure based on its unilateral
3 determination that the borrower is in default—a decision traditionally
4 reserved for courts. This includes the power to issue Notices of Default,
5 trigger the statutory foreclosure timeline, and proceed toward sale without
6 judicial review unless restrained.
7

8 13. MTC exercised this delegated state authority by issuing Notices of Default
9 for Lots 7, 10, and 12—thereby exercising quasi-judicial power over
10 property despite Plaintiffs’ challenge to the validity of the notes sought to be
11 enforced and the chain of title.
12

13 14. MTC does not claim to be a neutral party, nor has it attempted to recuse
14 itself or suggest a neutral adjudicator should be substituted for it.
15

16 15. MTC has claimed nonmonetary status under RCW 61.24.180, asserting it is
17 merely a nominal party—all while continuing to retain its statutory authority
18 and refusing to acknowledge the judicially contested nature of its role.
19 Previously, Plaintiff Church and White have asserted that RCW 61.24.180
20 does not apply to these sale transactions because the pertinent promissory
21 notes and mortgages were executed long before that statute was enacted. See
22 ECF 34, 3:8-13.
23
24

1 16. The structure of the Deed of Trust Act allows MTC to act as both enforcer
 2 and adjudicator, effectively determining whether a sale may proceed, despite
 3 a live factual dispute regarding the underlying debt instruments.

4 These facts demonstrate that MTC is not a neutral party and that its
 5 structural bias and financial alignment with successor mortgagor's interests
 6 disqualify it from exercising quasi-judicial authority over White's property without
 7 violating Washington precedent relating to trustee neutrality as well as principles of
 8 due process, separation of powers, natural justice, etc. *See infra*. Accordingly,
 9 MTC's lack of neutrality constitutes a proper legal and equitable ground under
 10 RCW 61.24.130 requiring judicial foreclosure.
 11

12 **IV. EVIDENCE RELIED UPON:**

13
 14 Plaintiffs Church and Property Owner White rely on the Declaration of Scott
 15 Erik Stafne in support of this Motion for Summary Judgment.

16 **V. ARGUMENT:**

17 ***A. Summary Judgment Standards***

18
 19 Summary judgment is appropriate where there is "no genuine dispute as to
 20 any material fact" and the moving party "is entitled to judgment as a matter of
 21 law." Fed. R. Civ. P. 56(a). The moving party bears the initial burden of identifying
 22 the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S.
 23 317, 323 (1986). Once that burden is met, the nonmoving party must present
 24

1 specific facts, supported by admissible evidence, showing that a genuine issue
2 remains for trial. *Id.*; *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

3 A fact is material if it might affect the outcome of the case under the
4 governing law. *Anderson*, 477 U.S. at 248. “Factual disputes that are irrelevant or
5 unnecessary will not be counted.” *Id.* And “[w]here the record taken as a whole
6 could not lead a rational trier of fact to find for the nonmoving party,” summary
7 judgment must be granted. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475
8 U.S. 574, 587 (1986).

9
10 Importantly, where the dispute turns not on contested facts, but on the legal
11 meaning of a statute or whether undisputed facts establish a “proper ground” for
12 judicial foreclosure under RCW 61.24.130, summary judgment is especially
13 appropriate. *See Bain v. Metro. Mortg. Grp., Inc.*, 175 Wn.2d 83, 92–93 (2012)
14 (interpreting scope of DTA is question of law); *see also Klem v. Washington*
15 *Mutual Bank*, 176 Wn.2d 771, 789–90 (2013) (applying equitable principles under
16 the DTA where facts were not in dispute).

17
18 Here, Plaintiffs seek declaratory relief based on statutory interpretation,
19 constitutional safeguards, and facts that MTC does not—and
20 cannot—meaningfully dispute. Summary judgment is not only proper; it is
21 required where the record reveals no genuine dispute and the law mandates
22 restraint.
23
24

1 Accordingly, because the material facts relevant to Plaintiffs' claims are not
2 in dispute, and because the interpretation and application of RCW 61.24.130 and
3 RCW 61.24.180 present pure questions of law, this Court should grant summary
4 judgment. As set forth below, the undisputed record demonstrates that (1) proper
5 legal and equitable grounds existed to require judicial foreclosure; (2) MTC
6 exercised and it continues to seek to exercise quasi-judicial authority under RCW
7 61.24.030 to sell White's properties without his consent while disclaiming
8 responsibility for such a taking under RCW 61.24.180—which did not exist when
9 the pertinent contracts were signed and should not be interpreted in this manner;
10 and (3) MTC's lack of neutrality and structural alignment with mortgage successor
11 disqualify it from lawfully determining whether foreclosure may proceed.
12 Declaratory relief is appropriate and necessary here to vindicate Plaintiffs' rights
13 under Washington law, applicable organic laws, international law, natural justice
14 and controlling equitable principles.
15
16

17
18 ***B. Proper Legal and Equitable Grounds Existed to Restrain the Foreclosure***
19 ***Under RCW 61.24.130***

20 RCW 61.24.130 provides that any party entitled to notice of a nonjudicial
21 foreclosure “may apply to the superior court for an order restraining the sale on any
22 proper legal or equitable ground.” The Washington Supreme Court has consistently
23 interpreted this provision broadly, affirming that disputed material facts concerning
24 the validity, enforceability, or ownership of the promissory note are proper grounds

1 to restrain a trustee's sale. *See e.g. Albice v. Premier Mortg. Servs.*, 174 Wn.2d
2 560, 567–68 (2012); *Walker v. Quality Loan Serv. Corp.*, 176 Wn. App. 294,
3 307–08 (2013); *Frizzell v. Murray*, 179 Wn. App. 611, 627–28 (2014); *see also*
4 *Klem v. Wash. Mut. Bank*, 176 Wn.2d 771, 789 (2013); *Bain v. Metro. Mortg. Grp.*,
5 175 Wn.2d 83, 93 (2012).

7 Here, it is undisputed that: 1) Plaintiffs timely sought judicial restraint of the
8 sale in Pierce County Superior Court under RCW 61.24.130; 2) Ms. McFarland, an
9 expert hired by MTC's purported beneficiary customer, acknowledged at her
10 deposition that factual disputes exist with regard whether any of White's
11 promissory notes are enforceable under the provisions of Washington State's
12 Uniform Commercial Code; 3) No state court was allowed to adjudicate these
13 judicial inquiries because Deutsche Bank, claiming to be a beneficiary within the
14 meaning of RCW 61.24.005(2) removed the case to federal court before the motion
15 to restrain the sale could be heard.

17 This factual dispute—confirmed by the purported beneficiary's own retained
18 expert—alone satisfies the threshold for a proper ground under RCW 61.24.130.
19 Where the very existence of the debt instrument is in doubt, the trustee is without
20 lawful authority to sell an owner's property against his or her will. Indeed, that is
21 the central function of RCW 61.24.130—to prevent wrongful sales acting as
22 foreclosures from occurring; and to ensure that borrowers are not deprived of
23
24

1 property rights by the government against their will except by way of judicial
2 foreclosure.

3 Because these proper legal and equitable grounds were raised and remain
4 unresolved, MTC's continued assertion of authority to proceed with nonjudicial
5 sale is legally improper, and summary judgment in Plaintiffs' favor is warranted.
6

7 ***C. MTC Financial Inc. Cannot Simultaneously Exercise State Power and Avoid***
8 ***Accountability Under RCW 61.24.180***

9 The Washington Deed of Trust Act does not permit a trustee to act with
10 quasi-judicial authority over property and then disavow responsibility for that
11 authority once challenged. Yet that is precisely what MTC Financial Inc. seeks to
12 do here: to retain its power to sell White's properties under RCW 61.24.030, while
13 invoking RCW 61.24.180 to avoid participation in the very proceedings
14 challenging that authority. This dual posture is not only inconsistent with the
15 statutory structure, it is constitutionally problematic and provides an additional
16 basis for summary judgment.
17

18 ***1. MTC Exercised Statutory Power by Issuing Notices of Default.***

19 It is undisputed that MTC issued Notices of Default for Lots 7, 10, and 12.
20 This act was not ministerial—it was the first binding legal determination under
21 RCW 61.24.030(7) that a default occurred and that foreclosure was lawfully
22 underway. This is because issuing a Notice of Default: 1) Invokes state-delegated
23 power to determine default; 2) Initiates a foreclosure timeline under state law, *see*
24

RCW 61.24.030(8) and RCW 61.34.040(1)(b); and 3) Places a cloud on title and affects the owner's legal and financial interests. *See* 61.24.040(1) and (2). In summary, by issuing a Notice of Default, MTC exercised delegated state authority under RCW 61.24.030 to determine that White was in default—a function traditionally reserved for courts. This act triggered the statutory nonjudicial foreclosure timeline under RCW 61.24.040(1)(b), imposed immediate legal consequences, and impaired White’s title and ability to convey or refinance the property. This was not a ministerial act but a substantive exercise of state power with real property and due process implications.

MTC has not rescinded those notices and continues to hold authority to sell White’s properties without his consent—a role that remains active, not nominal.

2. *MTC Claims to Be a Nominal Party Under RCW 61.24.180.*

At the same time, MTC has filed a Declaration of Nonmonetary Status under RCW 61.24.180, seeking to be excused from the litigation entirely. But that statute, if it is applicable, can only constitutionally protect trustees who are neutral and uninvolved in the dispute, and only when they are named “**solely in their capacity as trustee**” with no allegations of wrongdoing. *See* RCW 61.24.180(1).

Here, MTC’s issuance of Notices of Default in the face of contested facts, coupled with its refusal to acknowledge or comply with Plaintiffs’ motion for judicial restraint under RCW 61.24.130, is more than passive participation—it is

1 active use of state power in a contested proceeding.

2 As the Washington Supreme Court made clear in *Cox v. Helenius*, 103 Wn.
3 2d 383, 389-390 (1985) and *Klem v. Washington Mutual Bank*, 176 Wn.2d 771,
4 789–90 (2013) trustees must act with utmost impartiality and cannot take
5 properties away from their owners when fairness or legal uncertainty requires
6 judicial adjudication of disputed factual contentions.

8 3. This Statutory Contradiction Requires Judicial Resolution.

9 MTC’s simultaneous assertion of foreclosure authority and procedural
10 immunity creates a contradiction that must be resolved in favor of Plaintiffs. The
11 trustee cannot: 1) Issue Notices of Default under RCW 61.24.030 (invoking state
12 power); 2) Refuse to acknowledge proper grounds under RCW 61.24.130 (ignoring
13 judicial safeguards); and 3) then claim immunity under RCW 61.24.180 (evading
14 accountability). Indeed, this is the classic “**sword and shield**” problem, where the
15 trustee wields state authority to impair the borrower’s property rights, while raising
16 statutory immunity to shield itself from its violations of this Nation’s and
17 Washington State’s organic laws, including those going to Due Process and the
18 Separation of Powers, this nation’s natural justice principles, and Washington’s
19 equitable principle and maxims as well as the mandates of international law. *See*
20 *infra*.

21 No statute—and certainly not the DTA—supports such a result. The Court
22
23
24

1 should therefore enter summary judgment declaring that MTC is **not entitled to**
 2 **nonmonetary status** and that it remains subject to judicial review, at least as long
 3 as it purports to retain the authority to sell White’s properties out from under him.

4 ***D. MTC’s Continued Assertion of Foreclosure Authority Is Ultra Vires Where***
 5 ***the Foreclosure Process Is Statutorily and Constitutionally Contested***

6 The Washington Deed of Trust Act was not designed to allow parties with
 7 structural bias or improper authority to sell the titles to owners’ real properties
 8 where proper judicial inquiries exist with regard to the exercise of such power.
 9 When a trustee proceeds under RCW 61.24 et seq. despite live factual and legal
 10 disputes that implicate ownership, enforceability, and neutrality, that trustee’s
 11 actions become ultra vires—meaning outside the legal authority granted.
 12

13 Here, MTC’s actions exceed lawful bounds under the DTA and violate the
 14 structural limitations of Washington’s constitutional and common law traditions.
 15 Summary judgment is appropriate to declare that MTC cannot continue to assert
 16 power under a foreclosure process that is itself under judicial and constitutional
 17 challenge without first having those challenges adjudicated by a court of law.
 18

19 ***1. The Trustee’s Authority Is Conditional on Statutory Compliance and Neutrality.***
 20

21 RCW 61.24.130 requires restraint of sale where “proper legal or equitable
 22 grounds” exist. The statute thus creates a judicial safety valve intended to prevent
 23 the exercise of governmental power by trustees where proper grounds exist
 24 between adverse parties for adjudication of judicial foreclosures by courts. *See*

1 *Larson v. Snohomish County*, 499 P. 3d 957 (2021). (“The DTA preserves the
2 superior court's jurisdiction by giving a borrower the right to file an action in
3 superior court to restrain the sale, RCW 61.24.130(1)....”)

4
5 When such a request pursuant to RCW 61.24.130 is pending, and especially
6 when the facts are in dispute as to whether the Note is enforceable under
7 Washington law (as McFarland confirmed here, *see* Stafne declaration ¶¶ 4-9), the
8 trustee must stand down in favor of a judge. And Plaintiffs Church and Property
9 Owner are entitled to a summary judgment in this regard.

10
11 In this case, the process itself—including who may act as trustee, what
12 qualifies as a valid note, and whether RCW 61.24.030 can constitutionally be
13 applied—has been contested since the initial filing. Any further foreclosure efforts
14 under this cloud are unauthorized and ultra vires.

15 2. *The Trustee’s Authority Is Subject to Constitutional Limits.*

16
17 Even if the Deed of Trust Act permits certain forms of nonjudicial action, it
18 cannot authorize unconstitutional acts. Washington’s Constitution—like the U.S.
19 Constitution—requires: 1) Separation of powers (Wash. Const. art. IV, § 1); 2) Due
20 process of law before deprivation of property (Wash. Const. art. I, § 3); and 3)
21 Neutral adjudication of private rights (*see Tumey v. Ohio*, 273 U.S. 510 (1927);
22 *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009)).

23
24 Here, Plaintiffs have raised constitutional objections to a trustee acting as

1 judge, without neutrality, over contested property rights. That objection remains
 2 unadjudicated, and MTC has neither rebutted the constitutional issues nor paused
 3 its assertion of state power for adjudicating judicial inquiries related to its assertion
 4 of state power to sell White's property without White's consent. MTC's ongoing
 5 authority to sell White's properties because it has been paid to do so by a customer
 6 claiming to be a beneficiary must therefore be deemed **ultra vires and voidable**,
 7 unless and until a judicial process validates this contested government authority.
 8

9 3. *Declaratory Relief Is Necessary to Prevent Further Unauthorized Conduct.*
 10

11 Given the pending disputes, MTC's retention of foreclosure authority creates
 12 continuing harm to White and Church. Even if MTC does not immediately
 13 schedule a sale, the existence of the Notices of Default, MTC's legal posture, and
 14 its invocation of RCW 61.24.180 all create legal uncertainty and strategic
 15 advantage for Deutsche Bank and its paid trustee.
 16

17 This Court should resolve that uncertainty now by declaring that MTC may
 18 not proceed with foreclosure under RCW 61.24 et seq. without prior judicial
 19 determination of the issues raised by Plaintiffs under the DTA statute, the
 20 Constitutions of the United States and Washington State, natural justice,
 21 Washington's equitable principles and maxims, and applicable International law.
 22

23 *See infra.*

24 ***E. MTC's Lack of Neutrality Constitutes a Proper Legal or Equitable Ground
 for Restraint Under RCW 61.24.130***

RCW 61.24.130 authorizes courts to restrain a trustee's sale upon "any proper legal or equitable ground." One such ground is when the foreclosure process itself violates the fundamental requirement that adjudication of contested rights be conducted by a neutral and impartial authority. Here, MTC cannot meet that standard. It was appointed by a successor mortgagor which is compensating it for its role in completing foreclosure. In exchange for that pay from the wanna-be beneficiary MTC has taken affirmative steps to advance to sell White's properties without regard to White's statutory and constitutional rights. MTC thus functions not as a neutral intermediary but as a private agent exercising state-delegated adjudicatory power—without judicial supervision or structural impartiality.

1. The Trustee's Role Under RCW 61.24.030 Is Quasi-Judicial and Demands Neutrality.

The issuance of a Notice of Default, the determination of default, the setting of sale dates, and the ability to transfer title without judicial review are all powers that in a judicial system would be reserved to a judge. When the state delegates that power to a private actor, due process requires that the actor be neutral. *Tumey v. Ohio*, 273 U.S. 510 (1927).

Washington courts appear to have implicitly confirmed this principle by emphasizing that foreclosure trustees must act **impartially**. See *Cox v. Helenius*, *supra.*; *Klem v. Washington Mutual Bank*, *supra.* But here, MTC has no structural

1 impartiality because: 1) *MTC was appointed by the adverse party* claiming to be a
 2 beneficiary seeking foreclosure; 2) *MTC is being paid by that adverse party* (which
 3 claims to be the beneficiary pursuant to RCW 61.24.005) to sell White’s real
 4 property from him without his permission; 3) *MTC claims to owe no fiduciary duty*
 5 *to White*; and 4) *it refused to halt the sale after White and the Church requested it*
 6 *to*.

8 This failure by MTC to function neutrally and/or appear to be functioning as
 9 an impartial adjudicator particularly in a system where MTC is both initiator and
 10 executor of the contested sale process—is a sufficient ground itself to restrain
 11 MTC’s sale of White’s property for the benefit of Deutsche Bank against White’s
 12 will.
 13

14 2. *MTC’s pecuniary interest in selling White’s property without White’s consent*
 15 *is a Proper Ground for Judicial Restraint.*

16 Washington courts have emphasized that RCW 61.24.130 must be construed
 17 broadly to protect against improper trustee sales. *See Frizzell v. Murray*, 179 Wn.
 18 App. 611, 627–28 (2014). The statute’s open-ended reference to “any proper legal
 19 or equitable ground” includes defects in the fairness of the process, not just errors
 20 in documents. Plaintiffs Church and White assert that the system as applied
 21 here—where MTC acts in a partisan fashion as a quasi-judicial official while
 22 having a financial stake in the outcome—violates Washington’s DTA as it has been
 23 construed by Washington’s Supreme Court in *Cox v. Helenius*, *supra.*, and *Klem v.*
 24

1 *Washington Mutual Bank*, supra. It is also the position of Plaintiff Church and
 2 Property Owner that this adjudication system violated due process, basic principles
 3 of natural justice, the Washington Constitution, and international norms governing
 4 judicial decision-making. *See infra*.

5
 6 Indeed, such bias by adjudicators who appear to profit by the injustice they
 7 cause has long been recognized as a ground for restraint and avoidance of their
 8 judicial decision-making in legal systems committed to independent adjudication
 9 of private rights. *See Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 876 (2009)
 10 (due process is violated where an adjudicator's financial ties raise a serious risk of
 11 bias); *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 53–54 (1989) (private rights
 12 must be adjudicated in Article III courts or by consent).

13
 14 To be clear, it is Plaintiff's position that the question of MTC's bias was a
 15 proper grounds for restraining the sale and requiring these nonjudicial sale
 16 proceedings to be restrained. And MTC's failure to stop these proceedings based
 17 on White's request to do so is actionable under these circumstances.

18
 19 3. *This Court Should Declare That MTC Cannot Lawfully Foreclose Absent*
 20 *Judicial Review because Washington's DTA creates an untenable*
 21 *foreclosure system which is unconstitutional on its face and*
 22 *this constitutes proper grounds to restrain the sale.*

23 To the extent *Klem v. Washington Mut. Bank*, 295 P. 3d 1179 (2012) and
 24 other Washington case law approve of a Washington state trustee undertaking the

1 role of a judge adjudicating foreclosure defenses related to specific sales, it is the
2 Church's and White's position that *Klem* violates the language of the aforesaid
3 language of Article IV, § 6. *See supra.* at p. 4. Additionally, the Church and White
4 assert that allowing MTC as the Washington State Trustee to act as a judge with
5 regard to determining whether it can sell White's property to DB without White's
6 consent violates due process under the circumstances of this case where it is
7 undisputed that MTC is being paid by Deutsche Bank to act as a judicial officer
8 selling White's home without his consent.
9

10 If MTC is functioning "as a judge" (or is given the authority by Washington
11 State to act as a judge) then it is exercising judicial power. And that raises profound
12 structural due process concerns when a state government creates its own
13 adjudicative system where a "judicial officer" of that system is being paid for its
14 services by one of the parties to a dispute.
15

16 In *Tumey v. Ohio*, 273 U.S. 510 (1927), the U.S. Supreme Court held that a
17 judicial officer may not have a direct, personal, substantial interest in the outcome
18 of a proceeding. This principle is structural because even the appearance of
19 financial bias in the adjudicator is constitutionally intolerable. Similarly, in *Ward v.*
20 *Monroeville*, 409 U.S. 57 (1972), and *In re Murchison*, 349 U.S. 133 (1980), the
21 Court held that adjudication is constitutionally defective when the adjudicator is
22 financially or institutionally incentivized to decide cases one way or the other.
23
24

1 More recently, in *Cain v. White*, 972 F.3d 750 (5th Cir. 2020), and *Caliste v.*
2 *Cantrell*, 937 F.3d 525 (5th Cir. 2019), federal courts invalidated local judicial
3 schemes where judicial officers presiding over cases were financially tied to the
4 enforcement apparatus—including receiving fees from bond conditions they
5 themselves imposed. The courts held that the structure of the proceeding itself
6 violated due process, regardless of whether actual bias could be proven.
7

8 Additionally, the Church and White assert that allowing the Washington
9 State Trustee to act as a judge in determining whether to sell White’s property
10 without White’s consent while being paid by Deutsche Bank to do so also violates
11 international law. *See, e.g.* Universal Declaration of Human Rights, Art. 10
12 (“Everyone is entitled in full equality to a fair and public hearing by an
13 independent and impartial tribunal, in the determination of his rights and
14 obligations....”); International Covenant on Civil and Political Rights (ICCPR),
15 Art. 14(1), adopted Dec. 16, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23,
16 1976) (“All persons shall be equal before the courts and tribunals...everyone shall
17 be entitled to a fair and public hearing by a competent, independent and impartial
18 tribunal established by law.”).
19
20

21 The United States ratified the ICCPR in 1992 with the declaration that it is
22 not self-executing, but its provisions nonetheless reflect those human rights
23 afforded to the Peoples of the world with regard to the exercise of judicial power
24

1 by governments. Accordingly, it is the position of the Church and White that these
 2 provisions constitute customary international law which should not be ignored, *c.f.*
 3 *Murray v. Schooner Charming Betsy*, 6 U.S. (2 Cranch) 64, 118 (1804), where its
 4 objective judicial neutrality provisions are the same as those mandated by the
 5 United States Constitution. *See supra*.

7 Additionally, the Church and White assert that allowing the Washington
 8 State Trustee to act as a judge in determining whether to sell White's property
 9 without White's consent while being paid by DB to do so violates natural justice.

10 In *Calder v. Bull*, 3 U.S. 386 (1798) the Supreme Court stated that the
 11 principles of natural justice require the "obligation" of laws established by
 12 governments based on express compact and republican principles "must be
 13 determined by the nature of the power on which it is founded." The Supreme Court
 14 gave four examples of when governments exceeded their authority by violating
 15 principles of natural justice. Those four examples, all of which apply here, are:
 16

17 A law that punished a citizen for an innocent action, or in
 18 other words for an act which when done was in violation
 19 of no existing law; a law that destroys or impairs the
 20 lawful private contracts of citizens; a law that makes a
 21 man a judge in his own cause, or a law that takes
 property from A. and gives it to B.

22 3 U.S. at 388.

23 Additionally, the Church and White assert that allowing the Washington
 24 State Trustee to act as a judge in determining whether to sell White's property

1 without White's consent while being paid by DB to do so violates several maxims
 2 of equity jurisprudence. This is relevant because an adjudication of whether White
 3 has "proper grounds" to restrain the Washington State Trustee's sale of White's
 4 property under the DTA is different from adjudicating the merits of a judicial
 5 foreclosure dispute based on the facts of a private equitable dispute.
 6

7 Among those maxims of equity which apply in this case are:

- 8 ● "No one may be a judge in his own cause," which is both a maxim of
 9 natural justice and a foundational rule of equity. Equity demands impartiality
 10 not only in appearance, but in structure. A trustee paid by one party to make
 11 determinations affecting another cannot satisfy this standard.
- 12 ● "Equity will not suffer a wrong to be without a remedy." When a
 13 homeowner faces the loss of property through a process infected by
 14 structural bias and non-neutral adjudication, equity requires meaningful
 15 judicial oversight and protection.
- 16 ● "Equity regards as done that which ought to be done." Where the law
 17 presumes that a neutral judicial inquiry is required before depriving a person
 18 of property, equity treats the right to that inquiry as substantive. The court
 19 cannot ignore this obligation merely because statutory foreclosure
 20 procedures are invoked.
- 21 ● "Equity acts in personam." This principle reinforces that judicial power
 22 must be exercised by courts acting upon persons, not delegated to private
 23 corporate trustees lacking constitutional or institutional neutrality.
- 24 ● "He who comes into equity must come with clean hands." A beneficiary
 that pays and aligns with a trustee purporting to adjudicate title disputes
 without judicial process cannot invoke equitable protections while
 subverting the neutral framework equity requires. These equitable maxims
 also confirm that White, the property owner, was entitled to have a properly
 qualified judge of the Superior Court adjudicate any proper judicial inquiries

1 he could raise as a defense to a judicial foreclosure brought by DB in that
2 court's equity jurisdiction.

3 However politically or financially expedient it may be for Washington's
4 judiciary (both state and federal) to allow modern-day money changers to
5 dispossess citizens of their homes without judicial adjudication, the cost is high:
6 the people's trust in their courts as instruments of justice is being lost—and with it,
7 the legitimacy of the rule of law.
8

9 **Conclusion.**

10 The cross motion for summary judgment by the Church and Property Owner
11 White should be granted.
12

13 DATED this 21st day of April, 2025 at Arlington, Washington.

14 By: s/ Scott E. Stafne WSBA No. 6964
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22 I certify that this memorandum contains 5,554
23 words, in compliance with the Local Civil Rules.
24

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury under the laws of the State of Washington that a true and correct copy of the foregoing has been furnished electronically via the Court's CM/ECF system to all persons registered to receive electronic notice.

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Dated this 17th day of April 2025.

By s/ Scott E. Stafne
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UNITED STATES DISTRICT COURT
 WESTERN DISTRICT OF WASHINGTON
 AT TACOMA

CHURCH OF THE GARDENS, *et al.*,

 Plaintiffs,

 vs.

 QUALITY LOAN SERVICES
 CORPORATION OF WASHINGTON, *et al.*,

 Defendants.

CASE NO. 3:23-cv-06193-TMC

 MTC FINANCIAL, INC.’S MOTION TO
 DETERMINE VALIDITY OF ITS
 NOTICE OF NONMONETARY STATUS
 FILED PURSUANT TO RCW 61.24.180

 NOTE ON MOTION CALENDAR:
 FEBRUARY 14, 2025

I. INTRODUCTION AND RELIEF REQUESTED

Acting in accordance with RCW 61.24.180, Defendant MTC Financial, Inc., d/b/a Trustee Corps (“Trustee Corps”) timely filed and served its Trustee’s Declaration of Nonmonetary Status (ECF No. 17) on January 19, 2024. More than thirty days later, on February 21, 2024, Plaintiffs Church of the Garden (“Church”) and Alvin B. White (“White”) filed their Objection and Answer to Declaration of Nonmonetary Status (ECF No. 34) (“Plaintiffs’ Objection”). Because Plaintiffs’ Objection is both untimely and otherwise defective as explained below, Trustee Corps brings this Motion to Determine Validity of its Notice of Nonmonetary Status (“Motion”). In this Motion, Trustee Corps asks the Court to determine that its Declaration of Nonmonetary Status has the effects specified by RCW 61.24.180(6) and that Plaintiffs’ Objection is overruled.

MTC’S MOTION TO DETERMINE VALIDITY OF
 DECLARATION OF NONMONETARY STATUS - 1

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II. STATEMENT OF FACTS

1. Relevant Background Facts Regarding Properties, Notes, Deeds of Trust, and Status of Foreclosure Proceedings.

Trustee Corps believes that there are no material disputes of fact relevant to this Motion. Accordingly, Trustee Corps takes the facts to be as alleged in Plaintiff's Amended Complaint (ECF No. 8) and the Exhibits attached thereto (ECF No. 8-1).

White is the fee simple owner of five fourplex parcels located in Pierce County, Washington, which are referred to in the Amended Complaint as Lots 7, 10, 11, 12, and 16 (collectively, "the Properties"). ECF No. 8, at ¶ 1.1. White purchased the Properties on or about February 24, 2006, using funds borrowed from the Long Beach Mortgage Company. ECF No. 8, at ¶ 3.7. That same day, White executed certain promissory notes (the "Notes") and deeds of trust ("Deeds of Trust") relating to the Properties. ECF No. 8 at ¶¶ 1.6-1.7, 3.2, 3.6-3.7, and 3.12-3.13; ECF No.8-1 at Exs. 2(a)-(e) and 3(a)-(e). Defendant Deutsche Bank National Trust Company ("Deutsche Bank") is the "purported beneficiary claiming to be in possession of [the] paper note[s]" secured by the Deeds of Trust to the Properties. ECF No. 8, at ¶ 2.11.

White has not personally paid off the debts indicated by the Notes and secured by the Deeds of Trust. *See, e.g.*, ECF No. 8, ¶ 3.37 (asserting that "unpaid interest...has been accumulating since 2010"). However, White alleges that unidentified third parties have paid off (or paid down) his debt. *See, e.g.*, ECF No. 8, ¶ 3.38 (asserting "[o]n information and belief this debt . . . was paid in full or partially satisfied . . . whenever a sale/transfer/assignment of those loans or credit transactions occurred").

Defendant Quality Loan Services Corporation of Washington ("QLS") is acting as the successor trustee with regard to Lots 11 and 16. ECF No. 8, at ¶ 1.3. QLS allegedly sold Lots 11 and 16 at a non-judicial foreclosure sale on January 5, 2024. *Id.*

Trustee Corps, by contrast, is acting as successor trustee for Lots 7, 10, and 12. ECF No. 8, at ¶ 1.4. Unlike QLS, Trustee Corps has not conducted any non-judicial foreclosure of any of the Lots. *Id.* Trustee Corps did send White Notices of Default relating to the notes secured by

1 Lots 7 and 12, but the Amended Complaint does not and could not allege that Trustee Corps has
2 sent any Notice of Trustee's Sale to White, let alone conducted any sale. *Id.*¹

3 2. Relevant Procedural Facts.

4 Plaintiffs commenced this action in Pierce County Superior Court on December 13, 2023,
5 asserting that they had done so for the purpose of “declaring the meaning of RCW 61.24.130 and
6 also for purposes of restraining the nonjudicial sale of any of the five fourplexes purchased by
7 Alvin White.” ECF 2-1 at pp. 3-4 of 659. Trustee Corps was served with the Complaint two
8 days later, on December 15, 2023. *Id.* at pp. 613-614 of 659. That same day, Plaintiffs filed a
9 “Motion to Restrain Trustee Sale pursuant to RCW 61.24.130 and/or for Preliminary Injunction
10 Pursuant to CR 65” (the “Motion to Restrain Sale”). *Id.* at p. 542 of 659. By its plain terms, the
11 Motion to Restrain Sale focused on QLS and its announced intent to sell Lots 11 and 16 on
12 January 5, 2024. *Id.* at p. 543 of 659, and note 1. The Motion to Restrain Sale makes no mention
13 of Trustee Corps. *Id.* at pp. 542-548 of 659.

14 Defendant Deutsche Bank removed this action to this Court on December 28, 2023. ECF
15 No. 1. Plaintiffs then filed an Amended Complaint on January 8, 2024. ECF No. 8. Unlike the
16 original state court Complaint, the Amended Complaint asserts claims for damages *against* QLS.
17 Compare ECF 2-1 at pp. 91-93 (state court Complaint asserting claims for declaratory relief and
18 restraint of sale), with ECF No. 8, at pp. 101-106 (Amended Complaint adding claims for
19 damages against QLS). The Amended Complaint does not assert *any* claims for damages against
20 Trustee Corps, *nor* does it allege any “unlawful actions or omissions” by Trustee Corps. *See*
21 *generally* ECF No. 8 (referring to Trustee Corps or “MTC” only in paragraphs 1.4, 1.5, 3.15,
22 3.99(D), 3.100(A), and at paragraph (2) on p. 106 of 109, none of which allege any wrongdoing
23 by Trustee Corps/MTC).

24 _____
25 ¹ Since the Amended Complaint acknowledges White's receipt of a Notice of Default from Trustee Corps, it may be
26 relevant to note that the Amended Complaint does not allege that Church of the Gardens has any title or other
27 economic interest in the Properties, and therefore was not entitled to receive a Notice of Default. *See, e.g.*, ECF No.
8 at ¶¶ 1.1-1.2 (referring to White as “Plaintiff Property Owner,” and referring to the Church simply as an
organization acting to achieve “its spiritual and religious purposes as per its mission statement”). *See also* RCW
61.24.030(8) (designating to whom a notice of default must be sent). Whether this deprives the Church of any
standing to serve as a Plaintiff in this case is not an issue that the Court needs to address to resolve this Motion.

Then, on January 19, 2024, Trustee Corps filed and served its Declaration of Nonmonetary Status. ECF No. 17. Subsequently, on January 29, 2024, Plaintiffs filed their Cross Motion for Summary Judgment, nominally against all “Defendants.” ECF No. 19, at p. 1. However, as Trustee Corps pointed out in a Response dated February 20, 2024, Plaintiff’s Cross Motion for Summary Judgment did not seek any relief against Trustee Corps. ECF No. 33 at p. 3. In its Response, Trustee Corps also noted that any objection to Trustee Corps Declaration of Nonmonetary status was due that day, Tuesday, February 20, 2024. ECF No. 33, at pp. 1-2.² Plaintiffs then belatedly filed their Objection and Answer to Declaration of Non-monetary Status on February 21, 2024. ECF No. 34.

III. STATEMENT OF ISSUE

In applying the law to the undisputed facts relevant to this Motion, should this Court give RCW 61.24.180 its intended effect, and determine that Trustee Corps “[i]s not required to participate any further in the action or proceeding; is not subject to any monetary awards as and for damages, attorneys’ fees, or costs; and is bound by any court order relating to the subject deed of trust that is the subject of the action or proceeding”?³ Yes.

IV. EVIDENCE RELIED UPON

This Motion relies on the pleadings and other documents already of record in this matter.

V. ARGUMENT

1. RCW 61.24.180 does not expressly contemplate motion practice abouts its application, but in the circumstances here a “21-day motion” pursuant to LCR 7(d)(3) is appropriate to resolve an issue contested by the parties.

RCW 61.24.180 authorizes a trustee to file a “declaration of nonmonetary status” if certain conditions are met.⁴ The statute also allows for a timely objection to the declaration, but then states that “[i]f an objection is not filed and served within the thirty-day objection period,”

² Monday, February 19, 2024, was a court holiday. See, e.g., <https://www.opm.gov/policy-data-oversight/pay-leave/federal-holidays/#url=2024>.

³ RCW 61.24.180(6).

⁴ RCW 61.24.180(1).

1 the declaration is effective and the trustee is deemed a “nominal party.”⁵ However, the statute
 2 makes no other provision for disputes about whether either a declaration or an objection thereto
 3 is effective.

4 2. Trustee Corps complied with RCW 61.24.180(1) and (2).

5 On the undisputed facts of this matter, RCW 61.24.180 authorized Trustee Corps to serve
 6 and file a declaration of nonmonetary status, and Trustee Corps complied with each of the
 7 requirements for doing so effectively.

8 Regarding statutory authorization to file its declaration, the Amended Complaint neither
 9 contains “substantive allegations that seek damages from [Trustee Corps],” nor does it seek to
 10 enjoin any foreclosure involving Trustee Corps “based on any alleged unlawful actions or
 11 omissions by the trustee.”⁶ The Amended Complaint states claim for money damages against
 12 QLS, but not against Trustee Corps.⁷ The Amended Complaint does seek to restrain Trustee
 13 Corps from conducting any future sale, but neither alleges that any such sale has been scheduled
 14 nor alleges any “unlawful actions or omissions” by Trustee Corps as the basis for this request.⁸
 15 Accordingly, RCW 61.24.180(1) permitted Trustee Corps to file its Declaration of Nonmonetary
 16 Status.

17 Trustee Corps also complied with all the statutory requirements for filing a proper
 18 declaration. First, since Trustee Corps was served with the “summons and complaint” on
 19 December 15 2023 (ECF No. 2-1 at 613-614 of 659), and then filed and served its Declaration on
 20 January 19, 2024 (ECF 17), it complied with the statutory stricture to wait “not less than thirty-
 21 five days after service of the summons and complaint on the trustee” before filing its
 22 Declaration.⁹ The contents of Trustee Corps’ Declaration of Nonmonetary Status precisely track
 23

24 ⁵ RCW 61.24.180(6) and RCW 61.24.180(2).

25 ⁶ RCW 61.24.180(1).

26 ⁷ See ECF No. 8 at ¶¶ 4.11-4.22, and ¶¶ 3-4 at page 106 of 109 (asking for damages against QLS and Deutsche
 Bank).

27 ⁸ See ECF No. 8 at ¶¶ 4.1-4.10. In their Objections and Answer to Declaration of Nonmonetary Status, Plaintiffs
 “[d]eny that MTC has not violated the law.” ECF No. 34 at ¶ 5. The effect (or lack thereof) of this denial on the
 validity of Trustee Corps’ Declaration of Nonmonetary Status is addressed below in subsection (3).

⁹ RCW 61.24.180(1).

1 the substantive requirements of RCW 61.24.180(2).¹⁰ Trustee Corps' Declaration of
2 Nonmonetary Status is facially valid.

3 3. Plaintiff's Objection and Answer to Declaration of Nonmonetary Status was untimely
4 and otherwise defective.

5 Plaintiffs did not file their Objection and Answer until February 21, 2024.¹¹ Accounting
6 for the application of Fed. R. Civ. P. 6(a)(1)(c) to the fact that Monday, February 19, 2024, was a
7 federal holiday, this was 31 days after January 19, 2024, the date Trustee Corps filed its
8 Declaration of Nonmonetary Status. Under the plain terms of the RCW 61.24.180, Plaintiffs'
9 Objection and Answer was untimely.¹² In addition, the statute states as follows:

10 If an objection is not filed and served within the thirty-day objection period, the trustee:
11 Is not required to participate any further in the action or proceeding; is not subject to any
12 monetary awards as and for damages, attorneys' fees, or costs; and is bound by any court
13 order relating to the subject deed of trust that is the subject of the action or proceeding.
14 The trustee's nonmonetary status is not established until the thirty-day objection period
has passed without filing and service of an objection pursuant to subsection (5) of this
section.¹³

15 Because Plaintiffs' Objection and Answer was not timely, the unambiguous terms of this
16 provision require that Trustee Corps' Declaration of Nonmonetary Status be given the specified
17 effect.

18 Moreover, even if it had been timely, Plaintiffs' Objection and Answer would still be
19 deficient and ineffective. Specifically, the Objection and Answer does not comply with the
20 requirement of RCW 61.24.180(4)(b) that it "[c]ontain a short and plain statement of *the claim*
21 *against defendant trustee* as described in the complaint, showing that the plaintiff is entitled to
22 relief."¹⁴ The closest the Objection and Answer comes to this is in its paragraph 5, which states
23 in part that "Plaintiffs deny that MTC [Trustee Corps] has not violated the law; i.e. specifically
24 RCW 61.24.130 which required at the time the pertinent contracts were signed in this case that it

25 ¹⁰ Compare ECF No. 17 at ¶¶ 2-7 with RCW 61.24.180(2)(a)-(d).

26 ¹¹ See ECF No. 34.

27 ¹² RCW 61.24.180(4)(c).

¹³ RCW 61.24.180(6).

¹⁴ RCW 61.24.180(4)(b) (emphasis added). Here, of course, Trustee Corps is the relevant "defendant trustee."

not go forward with any nonjudicial sale after proper legal or equitable ground for requiring judicial foreclosure were demonstrated.”¹⁵ However, the statutory grant to the “borrower, grantor, or any guarantor” of the right to go to court to seek a restraining order does not establish any basis for trustee liability, at the very least when a restraining order has been neither sought nor granted.¹⁶ Although this is not a motion for judgment on the pleadings, it is still appropriate to point out that as a claim against Trustee Corps, Plaintiffs’ assertions in paragraph 5 of their Objection and Answer fail to state a claim for which relief can be granted as a matter of law, for the simple reason that RCW 61.24.130 does not impose liability on a trustee when a restraining order has not even been requested from a court, let alone granted. Because of this, Plaintiffs Objection and Answer fails to comply with RCW 61.24.180(4)(b), and should be disregarded even if the Court were to deem it timely.

4. RCW 61.24.180 went into effect on June 7, 2018, and clearly applies to this case.

RCW 61.24.180 was enacted by the Washington State Legislature as part of 2017 Washington House Bill 2057, was approved by the governor on March 28, 2018, and went into effect on June 7, 2018.¹⁷ Plaintiffs’ allegation that “RCW 61.24.180 is not applicable to this case because it was not enacted until over a decade after the pertinent contracts were executed” is unsupported by any authority, and contrary to clear Washington law.¹⁸

By its terms, RCW 61.24.180 does not alter or diminish Plaintiffs’ rights under the respective Deeds of Trust; instead, it simply clarifies the trustee’s role in litigation when the plaintiff fails to even sufficiently allege that the trustee is liable for damages or has acted wrongfully with regard to a threatened foreclosure.¹⁹ Accordingly, the statute clearly does not “substantially impair” any contractual relationship related to deeds of trust, nor does giving it

¹⁵ ECF No. 34 at ¶ 5.

¹⁶ Whether Plaintiffs properly sought a restraining order *against QLS* may be an issue between Plaintiffs and QLS, but it is not an issue involving Trustee Corps. *Cf.* ECF 2-1 at pp. 542-549 of 659.

¹⁷ *See, e.g.*, 2018 Wa. ALS 306; 2018 Wa. Ch. 306; 2017 Wa. HB 2057 at § 8, *and* RCW 61.24.180.

¹⁸ *See* ECF No. 34, at ¶ 5.

¹⁹ *See* RCW 61.24.130(6).

1 effect here create any “manifest injustice.”²⁰ Accordingly, the statute applies in all lawsuits
2 commenced after its effective date, and in particular applies to this case.²¹

3 **VI. CONCLUSION**

4 For the reasons stated above, the Court should grant Trustee Corps’ Motion, determine
5 that Trustee Corps’ Declaration of Nonmonetary Status (ECF No. 17) is valid and effective, and
6 accord it the legal effect specified by RCW 61.24.180(6).

7 DATED: January 23, 2025.

8 I certify that this memorandum contains 2,569 words, in compliance with the Local Civil Rules.
9

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25 ²⁰ *Larson v. Snohomish Cty.*, 20 Wn. App. 2d 243, 283, 499 P.3d 957, 980 (2021). *See also Marine Power & Equip.*
26 *Co. v. Wash. State Human Rights Com. Hearing Tribunal*, 39 Wn. App. 609, 621, 694 P.2d 697, 704 (1985) (noting
27 that “the United States Supreme Court held that ‘a court is to apply the law in effect at the time it renders its
decision, unless doing so would result in manifest injustice or there is statutory direction or legislative history to the
contrary’”).

²¹ *Id.*

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

CHURCH OF THE GARDENS et al.,

Plaintiffs,

v.

QUALITY LOAN SERVICES

CORPORATION et al.,

Defendants.

Case No. 3:23-cv-06193-TMC

ORDER GRANTING MOTION TO
DISMISS DEFENDANT STATE OF
WASHINGTON

I. INTRODUCTION

This case arises from Plaintiffs Church of the Gardens and Alvin White’s challenge to the past and potential future “nonjudicial sale of . . . five fourplexes purchased by Alvin White . . . on February 24, 2006.” Dkt. 8 at 2. Plaintiffs raise contractual, statutory, and state and federal constitutional challenges to the nonjudicial sale process. Before the Court is Defendant State of Washington’s motion to dismiss for failure to state a claim upon which relief can be granted. Dkt. 12. Because Plaintiffs’ complaint does not allege sufficient facts to show the State’s involvement in the sale of White’s properties, or otherwise show that the State is liable for the misconduct alleged in Plaintiffs’ causes of action, the Court GRANTS the motion and DISMISSES the State of Washington from this case.

II. BACKGROUND

A. Relevant Procedural History

Plaintiffs filed this case in Pierce County Superior Court, and Defendant Deutsche Bank National Trust Company removed the case to this Court on December 28, 2023. *See* Dkt. 1, 1-2. Plaintiffs amended their complaint on January 8, 2024. Dkt. 8. On January 11, Defendant State of Washington filed a motion to dismiss all claims against it under Federal Rule of Civil Procedure 12(b)(6). Dkt. 12. Plaintiffs responded on January 29, Dkt. 18, and the State replied, Dkt. 25. The motion is ripe for the Court’s consideration.

B. Facts and Legal Theories Alleged in the Amended Complaint

The amended complaint, which is 109 pages long with 459 additional pages of exhibits, alleges that White is “the fee simple owner” of five properties in Pierce County, Washington, which Plaintiffs refer to as Lots 7, 10, 11, 12, and 16. Dkt. 8 ¶ 1.1. Plaintiffs allege that Defendant Quality Loan Services Corporation of Washington (which Plaintiffs at times refer to as “QLS Statutory Trustee,” “QLS Washington State Statutory Trustee,” or just “Washington State Trustee”) “non judicially sold . . . Lots 16 and 11 under color of state law in violation of the organic law of this Nation and the State of Washington,” *id.* ¶ 1.3, and that it was ordered to do so by Defendant Deutsche Bank National Trust Company, *id.* ¶ 1.5. Plaintiffs further allege that Defendant MTC Financial Inc. dba Trustee Corp. (which Plaintiffs mostly refer to as “MTC Statutory Trustee”) “recently provided [White] with a Notice of Default with regards to Lots 7 and 12,” and Plaintiffs fear it “will likely soon also initiate a nonjudicial sale of Lot 10.” *Id.* ¶ 1.4. Plaintiffs also allege that Defendants Long Beach Mortgage Trusts 2006-4 and 2006-5 “claim[] to be the assignee of the deed of trust security instrument” applicable to the properties and “falsely claim[] to possess through agents or others the paper original Note . . . signed by” White. *Id.* ¶¶ 1.6–1.7.

1 Most of the amended complaint consists of factual allegations, historical context, and
2 legal theories for why Plaintiffs contend the actions of the above-described Defendants are
3 illegal and the nonjudicial sale or attempted sale of White's properties should be void. Based on
4 these allegations, Plaintiffs assert the following causes of action and requests for relief: (1) an
5 action for a declaratory judgment that certain portions of Washington's Deeds of Trust Act,
6 RCW Chapter 61.24 *et seq.*, violate the Washington State Constitution and the Fourteenth
7 Amendment to the United States Constitution, *id.* ¶¶ 4.1–4.8; (2) a request for an injunction
8 restraining the nonjudicial sale of White's remaining properties by MTC Statutory Trustee, *id.*
9 ¶¶ 4.9–4.10; (3) an action for damages against QLS Statutory Trustee and Deutsche Bank arising
10 from the previous sale of White's properties based on allegations of breach of contract,
11 violations of the Deeds of Trust Act, and violations of Washington's Consumer Protection Act,
12 *id.* ¶¶ 4.11–4.18; and (4) an action for damages against QLS Statutory Trustee and Deutsche
13 Bank for due process violations under 42 U.S.C. § 1983, *id.* ¶¶ 4.19–4.22.

14 None of these causes of action are asserted against or seek relief from the State of
15 Washington. The allegations in the complaint concerning the State of Washington consist of the
16 following:

- 17 • “Defendant State of Washington is made a party hereto in order to give that
18 entity an opportunity to demonstrate in this action, if it can, that the
19 Constitutional and other judicial inquiries at issue here do not involve ‘proper
20 grounds’ to restrain the sale of White’s property pursuant to that version of
21 RCW 61.24.130, which applies the pertinent promissory notes and deeds of
22 trust that Plaintiff Property Owner executed on February 24, 2006.” Dkt. 8
23 ¶ 1.8.
- 24 • “On information and belief [Plaintiffs] assert that the political branches of
Washington enacted these later provisions so as to allow lost and destroyed
notes to be foreclosed upon by statutory trustees so as to benefit the State of
Washington, its government officials, the federal government, its government
officials and creditors claiming an interest in such mortgage loans at the
expense of Washington property owners, who were dubbed to be ‘consumers’

as opposed to property owners, which they were under Washington State property law.” *Id.* ¶ 3.20.

- “In 1955, 1957, 1959, 1961, and 1963, banks and other lenders lobbied Washington’s legislature to enact a law that would allow for the enforcement of power of sale clauses in deeds of trust The political branches of Washington State promptly acceded to these requests from creditors in 1975.” *Id.* ¶ 3.40.
- “In 1993 the political branches of Washington State enacted RCW 62A.3-309” *Id.* ¶ 3.46.
- “[C]irca 2006–2007, the political branches of the State of Washington enacted legislation that aligned the pecuniary interests of Washington’s judicial officers with the pecuniary interests of the State of Washington, other state and municipal government workers, and their wealthy private allies with regards to enforcing mortgages which had been sold as mortgage backed securities.” *Id.* ¶ 3.59.
- “On information and belief some Washington State government officials, including members of the political branches of that state government, were aware during this time period that the business practices of Financial Institutions, including without limitation the destruction or loss of the original promissory note signed by makers, threatened the economies of this Nation and the State of Washington.” *Id.* ¶ 3.60.
- “On information and belief several of these Washington State officials, including members of all three branches of Washington’s State government, began taking steps during this period of time to enact changes in Washington’s statutory laws, which were designed to make real estate deeds of trust mortgages applicable to real estate (and Property Owner’s fourplexes) enforceable against homeowners notwithstanding that such instruments were not enforceable pursuant to the laws which were in effect when the pertinent instruments (Exhibits 2 and 3) were signed, including but not limited to those previously referenced.” *Id.* ¶ 3.61.
- “Exhibit 11 [a copy of a bill making amendments to Washington judges’ retirement accounts] which was enacted as law on March 24, 2006, and went into effect on January 1, 2007, was enacted by the political branches of Washington’s government in order to incentivize judges to exercise their judicial power in such a way as to make subprime mortgages purportedly included in mortgage pools associated with mortgage backed securities enforceable by way of foreclosure notwithstanding that these judicial inquiries were then poised for judicial consideration in Washington State and would determine the value of such judicial officers’ retirement fund investments after 2007.” *Id.* ¶ 3.63.

- 1 • “Plaintiffs Church and Property Owners allege that the November 2010
2 Congressional Oversight report presents evidence from which a reasonable trier
3 of fact could infer that government officials for the United States government
4 and Washington’s state government (including judicial officials purporting to
5 exercise judicial power) were aware that the Financial Industry’s reckless
6 practices prior to 2010, see November 2010 Congressional Oversight Report,
7 threatened this Nation’s economy and those officials’ own well being.” *Id.*
8 ¶ 3.77.
- 9 • Several allegations regarding consent judgments that “the United States of
10 America and the fifty States of the United States (including the State of
11 Washington)” entered with a number of mortgage lenders in April 2012. *See id.*
12 ¶¶ 3.89–3.96.
- 13 • “Plaintiffs Property Owner and Church allege that these consent judgments
14 reflect at least in part payment for misconduct which was perpetrated on
15 homeowners by those Defendants identified above and which was acquiesced
16 to by the governments of the United States and Washington State, which
17 governments have profited economically from the misconduct of these
18 defendants against Washington’s real property owners, including Plaintiff
19 Property Owner.” *Id.* ¶ 3.96.
- 20 • “Plaintiffs Church and Property Owner assert that under these circumstances
21 Article III courts and courts in the State of Washington are precluded from
22 taking Plaintiff property Owner’s fourplexes and awarding those fourplexes to
23 other private parties without compensation by the Takings Clause of the Fifth
24 Amendment to the United States Constitution.” *Id.* ¶ 3.98.

Defendant State of Washington argues that these allegations are not sufficient to state a claim against it and asks the Court to dismiss the State from the case.

III. DISCUSSION

A. Legal Standard

Federal Rule of Civil Procedure 8(a)(2) requires that a complaint contain “a short and plain statement of the claim showing that the pleader is entitled to relief.” Under Federal Rule of Civil Procedure 12(b)(6), the Court may dismiss a complaint for “failure to state a claim upon which relief can be granted.” Rule 12(b)(6) motions may be based on either the lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory.

1 *Shroyer v. New Cingular Wireless Servs., Inc.*, 622 F.3d 1035, 1041 (9th Cir. 2010) (citation
2 omitted).

3 To survive a Rule 12(b)(6) motion, the complaint “does not need detailed factual
4 allegations,” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, but “must contain sufficient factual
5 matter, accepted as true, to ‘state a claim to relief that is plausible on its face,’” *Boquist v.*
6 *Courtney*, 32 F.4th 764, 773 (9th Cir. 2022) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678,
7 (2009)). “A claim is facially plausible ‘when the plaintiff pleads factual content that allows the
8 court to draw the reasonable inference that the defendant is liable for the misconduct alleged.’”
9 *Id.* (quoting *Iqbal*, 556 U.S. at 678). “[A] plaintiff’s obligation to provide the grounds of his
10 entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the
11 elements of a cause of action will not do.” *Twombly*, 550 U.S. at 555 (internal quotation marks
12 omitted). In a case alleging claims against multiple defendants, there must be specific allegations
13 explaining what each defendant allegedly did wrong, rather than general allegations asserted
14 against them as a group. *See In re Nexus 6P Prod. Liab. Litig.*, 293 F. Supp. 3d 888, 908 (N.D.
15 Cal. 2018) (“Plaintiffs must identify what action each Defendant took that caused Plaintiffs’
16 harm, without resort to generalized allegations against Defendants as a whole.” (internal
17 quotation marks and citation omitted)).

18 The Court “must accept as true all factual allegations in the complaint and draw all
19 reasonable inferences in favor of the nonmoving party.” *Retail Prop. Tr. v. United Bhd. of*
20 *Carpenters & Joiners of Am.*, 768 F.3d 938, 945 (9th Cir. 2014). But the Court is “not bound to
21 accept as true a legal conclusion couched as a factual allegation.” *Twombly*, 550 U.S. at 555.
22 “Threadbare recitals of the elements of a cause of action, supported by mere conclusory
23 statements, do not suffice.” *Iqbal*, 556 U.S. at 678.

B. Plaintiffs do not state a claim against the State of Washington.

The State’s motion to dismiss argues that “[t]he State has nothing to do with the foreclosure actions” that are the basis for Plaintiffs’ claims, and “Plaintiffs do not plead otherwise.” Dkt. 12 at 1. The State is correct. The amended complaint does not allege any involvement by the State in the actual sale or anticipated sale of White’s properties. Instead, as set forth above, the factual allegations concerning the State of Washington relate almost entirely to Plaintiffs’ perspective on the historical background of the mortgage industry’s lobbying efforts, the financial crisis surrounding mortgage-backed securities, and the motivations of the Washington legislature at various points in time. *See* Dkt. 8 ¶¶ 3.20, 3.40, 3.46, 3.59, 3.60, 3.61, 3.63, 3.77, 3.89–3.96. None of these allegations show that the State of Washington is liable for any of the legal claims brought by Plaintiffs in this case—and indeed, none of Plaintiffs’ causes of action are asserted against the State, nor do Plaintiffs seek any relief from the State. *See id.* ¶¶ 4.1–4.22 and page 106.

Plaintiffs’ response to the motion to dismiss does not meaningfully dispute this. Plaintiffs say they “disagree” that the State “has nothing to do with the two nonjudicial foreclosures which have occurred” because “the statutory trustee acting as a substitute judge under color of Washington law has now confiscated White’s properties.” Dkt. 18 at 3–4. But this argument goes to whether the actions of the statutory trustee defendants amount to “state action” sufficient to show they “committed the alleged deprivation while acting under color of state law,” and therefore may be subject to suit under 42 U.S.C. § 1983. *Rawson v. Recovery Innovations, Inc.*, 975 F.3d 742, 747 (9th Cir. 2020). Even if Plaintiffs have alleged that the private defendants are “state actors” under Section 1983, that does not mean the State of Washington itself is a proper defendant. To the contrary, the State is not considered a “person” under Section 1983 at all and is

1 immune from suit under that statute because of the Eleventh Amendment. *Will v. Mich. Dep't of*
2 *State Police*, 491 U.S. 58, 63–64 (1989).

3 Plaintiffs also argue that “the Amended Complaint alleges that the properties the statutory
4 trustee sold to Deutsche Bank . . . have been confiscated by Washington State in violation of the
5 Takings Clause of the Fifth Amendment as incorporated against the State of Washington by the
6 Fourteenth Amendment.” Dkt. 18 at 14. But the amended complaint does not allege this.
7 Plaintiffs have not asserted a cause of action against the State under the Takings Clause. *See*
8 Dkt. 8 ¶¶ 4.1–4.22 and page 106. Nor have they made any specific factual allegations that the
9 State confiscated White’s property. The only reference to the State of Washington and the
10 Takings Clause in the amended complaint is this:

11 Plaintiffs Church and Property Owner assert that under these circumstances Article
12 III courts and courts in the State of Washington are precluded from taking Plaintiff
13 property Owner’s fourplexes and awarding those fourplexes to other private parties
without compensation by the Takings Clause of the Fifth Amendment to the United
States Constitution.

14 *Id.* ¶ 3.98. This is a conclusory legal statement that is not tied to any cause of action Plaintiffs’
15 assert. Plaintiffs have not included specific factual allegations that any “Article III courts” or
16 “courts in the State of Washington” have taken White’s fourplexes and given them to other
17 private parties; nor have Plaintiffs sued the state or federal courts. Instead, Plaintiffs’ later
18 references to their Takings Clause theory appear in the context of their allegation that the
19 Takings Clause is “a proper legal or equitable ground” on which to restrain the sale of White’s
20 properties by the statutory trustees. *See id.* ¶ 3.99. Even then, Plaintiffs’ Takings Clause
21 allegations relate to “the political branches of the United States government” and “the judicial
22 branch of the United States government,” not the State of Washington. *Id.*

23 That leaves only one paragraph of the complaint concerning the State of Washington,
24 which is likely the most candid:

1 Defendant State of Washington is made a party hereto in order to give that entity
2 an opportunity to demonstrate in this action, if it can, that the Constitutional and
3 other judicial inquiries at issue here do not involve ‘proper grounds’ to restrain the
4 sale of White’s property pursuant to that version of RCW 61.24.130, which applies
5 the pertinent promissory notes and deeds of trust that Plaintiff Property Owner
6 executed on February 24, 2006.

7 Dkt. 8 ¶ 1.8. Plaintiffs appear to explain in this paragraph that they named the State as a
8 defendant to give the State a chance to defend against Plaintiffs’ statutory and constitutional
9 arguments regarding the Deeds of Trust Act. But as the State points out in its motion, “[a]lthough
10 Wash. Rev. Code § 7.24.110 requires that the State be given notice in cases seeking declaratory
11 relief challenging the constitutionality of a statute, the statute merely gives the State the right to
12 be heard, it does not make the State a proper defendant in every such case.” Dkt. 12 at 5 (citing
13 *Fordyce v. City of Seattle*, 55 F.3d 436, 441 (9th Cir. 1995) (holding that notice requirement does
14 not require joinder of the State as a necessary party)). The State’s presence is not required to hear
15 Plaintiffs’ claims against the other Defendants or to afford Plaintiffs relief should they prevail.

16 **C. Leave to amend would be futile.**

17 Plaintiffs have already amended their complaint once. Plaintiffs have not sought further
18 leave to amend and have not “proposed any specific allegations” that would show the State’s
19 involvement in the challenged sales of White’s property or otherwise rectify Plaintiffs’ failure to
20 state a claim against the State of Washington. *See Carrico v. City & County of San Francisco*,
21 656 F.3d 1002, 1008 (9th Cir. 2011). The Court “take[s] that as a demonstration of their inability
22 . . . to make the necessary amendment.” *Id.* The Court denies leave to amend as futile.

23 **IV. CONCLUSION**

24 For the reasons explained above, the State’s motion to dismiss is GRANTED. The First
Amended Complaint (Dkt. 8) and the claims therein against the State of Washington are
DISMISSED with prejudice.

1 Dated this 18th day of March, 2024.

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4 Tiffany M. Cartwright
5 United States District Judge
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Honorable Tiffany M. Cartwright

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA**

CHURCH OF THE GARDENS, a
Washington Not-for-Profit Corporation
operating as a faith-based religious
organization; ALVIN WHITE, in his
individual capacity,

Plaintiffs,

v.

QUALITY LOAN SERVICES
CORPORATION OF WASHINGTON;
MTC FINANCIAL INC. DBA
TRUSTEE CORPS.; DEUTSCHE
BANK NATIONAL TRUST
COMPANY; LONG BEACH
MORTGAGE LOAN TRUST 2006-4;
LONG BEACH MORTGAGE LOAN
TRUST 2006-5; and STATE OF
WASHINGTON, a State of the United
States.

Defendants.

Case No.: 3:23-cv-06193-TMC

**PLAINTIFFS' REPLY TO STATE
OF WASHINGTON'S RESPONSE
TO PLAINTIFFS' CROSS
MOTION FOR SUMMARY
JUDGMENT**

**NOTE ON MOTION CALENDAR
FEBRUARY 23, 2024**

1 Plaintiffs Church of the Gardens' (hereafter "Church") and Property Owner
2 Alvin B. White's (hereafter "Property Owner" or "White") motion for summary
3 judgment is a cross motion to the defendant State of Washington's dispositive
4 motion to dismiss this case. Plaintiffs Church and Property Owner pleadings in
5 regard to these cross motions include: (1) the verified under penalty of perjury
6 state court complaint, including exhibits attached thereto; (2) the verified under
7 penalty of perjury amended complaint, including exhibits thereto filed with this
8 Court; (3) the declaration Alvin B. White in support of Plaintiffs' cross motion
9 for summary judgment;¹ (4) the declaration of Scott Stafne in opposition to the
10 Motion to Dismiss and in support of Plaintiffs' cross motion for summary
11 judgment;² (5) Plaintiffs Request for Judicial Notice; (6) Plaintiffs' Objection
12 and Answer to Declaration of non-monetary status of MTC Financial Inc., dba
13 Trustee Corps (hereafter Regional Trustee) with subjoined declaration; and (7)
14 Declaration of Scott Stafne in support of Plaintiffs' Reply Trustee Corps response
15 to Plaintiffs' cross motion for summary judgment.
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21 ¹ White, a businessman owning numerous real properties testified in his declaration that his
22 expectation when he signed the contract -- based on the language in the pertinent contracts --
23 was that they incorporated applicable law as part of the terms of those contracts.

24 ² Stafne's declaration should be considered by this Court because it was responsive to arguments
made by the State of Washington about the plausibility and appropriateness of the complaint
prepared by Stafne.

1 The Church's and Property Owner White's verified complaints, including
2 the exhibits attached thereto, declarations submitted in support of his cross
3 motion and documents Plaintiffs requested be judicially noticed assert that on a
4 more likely than not basis that the five promissory notes Property Owner
5 executed at a single closing occurring in 2006 have been lost or destroyed.
6

7 No defendant, including the State of Washington, has disputed this
8 allegation, which is proved by the verified allegations of the Complaint, *see*
9 *infra.*, White's declaration in support of this motion for summary judgment, ECF
10 20 and 24 at ¶¶ 3, 5-8; Request for Judicial notice exhibits 1, 3, 4, 8, 10; Exhibits
11 to verified complaint including Ex. 5, 6, 9, 12, 14. In fact, the purported
12 beneficiary, i.e. Deutsche Bank and/or the trusts and/or SPS acting as the
13 attorney-in-fact for both the Bank and trusts has asked for more time to take the
14 deposition of Jess Almanza, whose testimony will be key to any fact finders
15 consideration of whether the paper notes in question, i.e. the ones White actually
16 signed, were lost or destroyed for purposes of enforcing those notes by way of the
17 nonjudicial foreclosures being challenged.
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21 Additional evidence supporting the allegations of the complaint in this
22 regard, and evidence which has been offered in support of White's allegations
23 that the paper Note(s) he signed was destroyed in favor of keeping an "electronic
24

1 original” copy comes from the answer to the amended complaint by Washington
2 State statutory trustee Quality Loan Service Corporation of Washington (hereafter
3 referred to as “Washington State statutory trustee (QLS)”
4

5 Paragraph 3.24 of Plaintiffs’ complaint asserts under penalty of perjury:

6 **3.24.** Plaintiff Church and Plaintiff Property Owner dispute that
7 Almanza endorsed these promissory notes for several reasons,
8 including without limitation among them (1) evidence that these
9 promissory notes were lost or destroyed; (2) the likelihood that the
10 debt related to these mortgage loans was canceled; and (3) Jeff
11 Almanza’s declaration that he never signed any such endorsements. A
12 copy of Almanza’s declaration in this regard is attached hereto as
13 **Exhibit 5.**

14 Washington State statutory trustee QLS answered:

15 3.24 Defendant is without knowledge sufficient to admit or deny and
16 therefore denies the same.

17 Paragraph 3.33 of Plaintiffs’ complaint asserts under penalty of perjury:

18 **3.33.** On information and belief Plaintiff Property Owner and Church
19 allege that the 2009 assignments of the Deed of Trusts set forth in
20 **Exhibit 6**, at pages 11-13 of Paatalo’s declaration see *infra.*, are false
21 and/or fraudulent because (a) each purports to assert that the
22 Defendant Trusts possess the original paper promissory Note
23 instrument signed in wet ink by Plaintiff Property Owner in favor of
24 Lender, but no such trusts were ever created or existed in 2009 when
these trusts purport to assign them; (b) Those persons executing these
2009 assignments knew that the original paper promissory note signed
by Property Owner in wet ink had been destroyed and/or lost at the
time the assignments were made and could only be enforced in
Washington State pursuant to to RCW 62A.3-309; (c) the debt owed
to Lender had been canceled pursuant to IRS regulations; and (d) for
such other reasons as will be proved at a trial in Property Owner’s

1 defense to any judicial actions brought to enforce the promissory
2 notes and/or to foreclose on those deeds of trust security instruments
3 which are at issue in this case.

4 Washington State statutory trustee (QLS) answered:

5 3.33 This pleading alleges legal conclusions; no response is required.

6 Paragraphs 3.47-3:52 of Plaintiffs' Complaint alleges under penalty of
7 perjury:

8 **3.47.** From the late 1990s through approximately 2009 it was a
9 common business practice for commercial banks, shadow banking
10 entities, and securities firms (hereinafter referred to collectively as
11 "*Financial Institutions*") to convert physical mortgage documents into
12 an electronic format within 90 days of loan closures, like the one
13 occurring in this case on February 24, 2006. Once converted into such
14 electronic "originals" it was common practice for these *Financial*
15 *Institutions* to destroy (and/or lose) the original paper promissory
16 notes (actually signed in wet ink ink by mortgagors and endorser) in
17 favor of keeping the electronic copy "original."³

18 **3.48.** On information and belief, the reasons these *Financial*
19 *Institutions* destroyed or lost the original paper notes included, but
20 were not limited to 1) the cancellation of debt process established by
21 the IRS as set forth above; 2) minimizing expenses attributed to
22 archiving, indexing, and security of the paper original Notes, and 4)
23 the fact that the process of securitization of such mortgage loans into a
24 common pool required the frequent transfer of such loans between
various entities.

3.49. On information and belief, in June of 2004, the United States
Office of the Comptroller of the Currency (hereafter referred to by its
name or "OCC") issued an advisory letter to the Chief Executive
Officers of all National Banks, Federal Branches, and Agencies

³ This following footnote appears at this point as part of the Plaintiffs' Complaint: "2. To be clear Plaintiff Church and Property Owner allege that electronic copies of the Notes Plaintiff Property Owner signed in wet ink are not the same or the equivalent of paper notes that property owner actually signed as maker."

(which likely included Fannie Mae and Freddie Mac), Service Providers and Software Vendors, Department and Division Heads, and All Examining Personnel advising that these paper promissory notes signed by makers for mortgage loans should not be lost or destroyed. A copy of that OCC advisory letter is attached hereto as **Exhibit 9**.

3.50. Among other things the OCC advisory letter advised; 1) that under the E-SIGN Act, 15 U.S.C. Sec. 7001, et seq. Banks were authorized to implement *electronic record retention systems* for loan file imaging, retention of paperless applications and online agreements, and the use of electronic payment systems; 2) that under the “*Interagency Guidelines and Standards for Safety and Soundness, Appendix A of 12 CFR Part 30*,” it is an unsafe and unsound practice if the bank fails to maintain loan documentation that, among other things, ensures that the bank’s claims against its borrowers are legally enforceable; 3) that the electronic record retention system authorized by the E-SIGN Act *specifically excluded checks and other negotiable instruments* governed by the Uniform Commercial Code; and 4) that the E-Sign Act does not ensure admissibility of electronic records in litigation.

3.51. Following the issuance of the OCC’s 2004 advisory letter (**Exhibit 9**) warning *Financial Institutions* that they should be keeping the paper original note instruments signed by makers, the *Financial Institutions* and their service industries continued to destroy and/or lose the paper original note instruments signed by makers. On information and belief, these *Financial Institutions’* conduct in this regard, including the conduct of Deutsche Bank, was for purposes of threatening government officials, including those of the United States and those of the State of Washington, with the prospect that the failure to enforce electronic copies of original paper notes, as if they were the original paper notes (as the law required), would likely cause the United States’ economy to collapse.

3.52. On information and belief, government officials (including judicial officials) were aware that *Financial Institutions* were continuing to destroy or lose the original paper promissory notes and as a result of this conduct were putting this Nation’s economy at risk of failure.

Washington State statutory trustee QLS answered:

1 3.47 Defendant is without knowledge sufficient to admit or deny and
2 therefore denies the same.

3 3.48 Defendant is without knowledge sufficient to admit or deny and
4 therefore denies the same.

5 3.49 Defendant is without knowledge sufficient to admit or deny and
6 therefore denies the same. The document in question speaks for itself.

7 3.50 Defendant is without knowledge sufficient to admit or deny and
8 therefore denies the same.

9 3.51 Defendant is without knowledge sufficient to admit or deny and
10 therefore denies the same.

11 3.52 Defendant is without knowledge sufficient to admit or deny and
12 therefore denies the same.

13 Paragraph 3.86 of Plaintiffs Complaint quotes from the November, 2010
14 Congressional Oversight for the Troubled Asset Relief (TARP) program, which
15 was enacted to bail the Financial Industry out of the mess they created by losing
16 and/or destroying paper notes signed by borrowers in favor of keeping “electronic
17 original” copies that:

18 Many lawyers and stakeholders who have worked with
19 borrowers and servicers on a regular basis over the past few years,
20 primarily in bankruptcy and foreclosure cases, maintain that
21 documentation problems, including potentially fraudulent practices,
22 have been pervasive and apparent. These actors, including academics
23 who study the topic, argue that bankruptcy and foreclosure
24 procedures have been revealing major deficiencies in mortgage
servicing and documentation for quite some time. Professor Katherine
M. Porter, a professor of law who testified at the Panel's most recent
hearing, wrote: "The robo-signing scandal should not have been a
surprise to anyone; these problems were being raised in litigation for
years now. Similarly, I released a study in 2007—three years
ago—that showed that mortgage companies who filed claims to be
paid in bankruptcy cases of homeowners did not attach a copy of the

1 note to 40% of their claims." According to this view, the servicing
2 process was severely flawed, and "servicers falsify court documents
3 not just to save time and money, but because they simply have not
4 kept the accurate records of ownership, payments, and escrow
5 accounts that would enable them to proceed legally." In 2008—2009
6 over 1,700 lost note affidavits were filed in Broward County, Florida
7 alone. These affidavits claim that the original note has been lost or
8 destroyed and cannot be produced in court. It is important to
9 recognize, however, that a lost note affidavit may not actually mean
10 that the note has been lost. In her written testimony to the Panel,
11 Professor Katherine Porter points out that her study of lost notes in
12 bankruptcies "does not prove . . . whether the mortgage companies have
13 a copy of the note and refused to produce it to stymie the consumers'
14 rights or to cut costs, whether the mortgage companies or their
15 predecessors in a securitization lost the note, or whether someone
16 other than the mortgage company is the holder/bearer of the note."

17 If the lawyers' and advocates' assertions of widespread
18 irregularities are correct, it could mean that potentially millions of
19 shoddily documented mortgages have been pooled improperly into
20 securitization trusts. Lawyers are using a lack of standing by the
21 servicers due to ineffective conveyance of ownership of the mortgage
22 as a defense in foreclosure cases. Some of these lawyers argue that the
23 disconnect between what was happening on the "street level," i.e., with
24 the origination and documentation of mortgages, and the transfer
requirements in the PSAs, is so huge that no credence can be given to
the banks' argument that the issues are merely technical. However,
commentators who believe that the problem is widespread also believe
that investors in these securitization pools, rather than homeowners,
may be the best placed to pursue the cases on a larger scale
successfully.

Washington State statutory trustee (QLS) answers:

3.86 This pleading alleges legal conclusions; no response is required.
The subject report speaks for itself.

Plaintiffs allege in subparagraph D of paragraph 3.101 of their Complaint:

1 **3.101.**Based on the foregoing referenced evidence and factual
2 allegations Plaintiff Church and Property Owner assert that judicial
3 inquiries based on state law are, without limitation, are also
4 appropriate for adjudication by this Court pursuant to RCW
61.24.130. Such judicial inquiries include:

*

*

*

5 D. If Defendants cannot prove on a more likely than not basis
6 that Defendant Deutsche Bank or Defendants Trusts or their
7 agents possess the original paper notes signed by Plaintiff
8 Property Owner have they proved their statutory standing to
9 enforce those lost and/or destroyed promissory notes pursuant
10 to RCW 62A.3-309, which has been continuously in effect
11 1993?

12 Washington State statutory trustee (QLS) answered:

13 3.101 This pleading alleges legal conclusions; no response is required.

14 The State of Washington asserts that Plaintiffs Church and Property
15 Owners' case should be dismissed because Plaintiffs are attempting to "conjure
16 up facts to support their position that the State is responsible for the non-judicial
17 foreclosures at issue." ECF #25, at 1. But that is not Plaintiffs' position.

18 Plaintiffs Church and Property Owner assert that it is more likely than not
19 under the facts asserted in their complaint -- and proved through the evidence
20 they rely upon here in support of their Cross Motion -- that the State of
21 Washington, through its officials, has aligned itself with the financial industry so
22 as to make homeowners bear the brunt of the governments' bailout of purportedly
23 too-big-to-fail entities for the benefit of the public by way of uncompensated
24

1 takings of real properties accomplished by way of Washington State's impairment
2 of White's contracts, i.e. his 2006 promissory Notes and deeds of trust. *See e.g.*
3 Complaint, ¶¶ 3.8-3.21. *See also* ¶¶ 4.3; 4.20; *Cf.* Amended Complaint, ¶3.76
4 quoting November 2010 Congressional Oversight Report at Verified Amended
5 Complaint p. 45:5-8 ("The Panel emphasizes that mortgage lenders and
6 securitization servicers should not undertake to foreclose on any homeowner
7 unless they are able to do so in full compliance with applicable laws and their
8 contractual agreements with the homeowner."); *Id.* at Verified Amended
9 Complaint p. 68:13-20.
10
11

12 Now that all the argument and evidence pursuant to Plaintiffs' partial
13 motion for summary judgment has been filed, this Court and the public which it
14 is supposed to serve can observe that no defendant, including the State of
15 Washington, disputes that the paper promissory notes that White signed were lost
16 or destroyed pursuant to those banking business practices which existed across
17 the Nation in 2006.
18

19 This is significant with regards to the AGs argument that the State has
20 nothing to do with accomplishing this foreclosure because notwithstanding the
21 AG knows there is no evidence that the purported beneficiary possesses the
22 original note signed by White, he has the State of Washington arguing this
23
24

1 doesn't matter in a constitutional sense. But the AG is wrong in this regard. Or, at
2 least, that is an issue of law which must be resolved under the facts of this case as
3 those facts appear in the record before this Court.
4

5 The AG's arguments that contracts can be changed anytime the political
6 branches want -- no matter what those officials' motivations are for concluding
7 the contract should be impaired -- is not correct. *See e.g. Iten v. Cnty. of Los*
8 *Angeles*, 81 F.4th 979, 987 (9th Cir. 2024) (identifying mortgages as the basis for
9 the Contracts Clause). Here, Plaintiffs assert that the State of Washington cannot
10 impair his mortgage contracts in violation of the "Takings Clause" in order to pay
11 the federal government for monies the taxpayers expended to bail out the banks
12 for the public good.
13

14 The Contracts Clause restricts the power of States to disrupt contractual
15 arrangements. *Sveen v. Melin*, 138 S. Ct. 1815, 1821 (2018). That Clause
16 provides that no State shall pass any law impairing the obligation of contracts.
17 U.S. Const. Art. 1, §10, cl. 1. If Plaintiffs show (as they have here) that
18 Washington State law has been changed its laws so as to allow a foreclosure of
19 their property which would not have been allowed at the time the contract was
20 executed, the burden shifts to State of Washington to demonstrate "a significant
21 and legitimate public purpose behind the regulation" and show that the regulation
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1 is a reasonable and appropriate means of achieving that public purpose. *S.*
2 *California Healthcare Sys., Inc. v. City of Culver City*, 2023 U.S. App. LEXIS
3 1084 at *4, (9th Cir 2023) citing *Energy Rsrvs. Grp.*, 459 U.S. 400, at 411-12
4 (1983).
5

6 Here, the State has not presented any argument or evidence demonstrating
7 any significant and/or legitimate public purpose for the taking of White's real
8 properties for the benefit of third parties, including all of the defendants. Nor has
9 the State argued or presented evidence that its impairment of his contracts
10 through later changes in Washington's laws is reasonable and appropriate now;
11 after the government has stopped attempting to collect those public funds which
12 were expended for the benefit of the Nation. *See e.g.* GAO-24-107033,
13 TROUBLED ASSET RELIEF PROGRAM: Lifetime Cost (December 2023).⁴ In
14 other words, what might have been reasonable and appropriate to save the
15 Nation's economy in 2008, does not establish that such a taking is reasonable
16 forever.
17
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19 Here, Defendants knew all they needed to do to avert the partial summary
20 judgment White requested was to have someone testify that a purported
21
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23
24 ⁴ Last retrieved on February 22, 2024 at:
<https://home.treasury.gov/system/files/256/GAO-Audit-TARP-Costs.pdf>

1 beneficiary actually held the paper note signed by White as opposed to an
2 “electronic original.” But no one has appeared willing to do so.

3
4 Plaintiffs are willing to stipulate that they will agree that any summary
5 judgment should be denied by this Court if within ten days from the receipt of
6 this reply a defendant presents evidence that it possesses the original paper notes
7 signed by Property Owner White -- and a not just an “electronic original” copy of
8 such notes.

9
10 This, of course, will in no way prejudice defendants because they were
11 arguably required to have possessed such paper original notes under RCW
12 61.24.030(7) in order to begin these procedures to non judicially sell White’s
13 properties without any judicial oversight.

14
15 **Conclusion.**

16 Plaintiffs' motion for partial summary judgment should be granted because
17 there is no dispute of material fact and they are entitled to a judgment as a matter
18 of law.
19
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1 Dated this 22nd day of February, 2024 at Arlington, Washington.

2
3 By: s/ Scott E. Stafne
4 Scott E. Stafne, WSBA No. 6964
5 Stafne Law *Advocacy & Consulting*
6 239 North Olympic Avenue
7 Arlington, WA 98223
8 360.403.8700
9 *Attorney for Plaintiffs*

10 I certify that this memorandum contains 3,274
11 words, in compliance with the Local Civil Rules.
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Dated this 22nd day of February 2024.

By s/Justin Wood
Justin Wood, Paralegal

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

CHURCH OF THE GARDENS et al.,

Plaintiffs,

v.

QUALITY LOAN SERVICES

CORPORATION et al.,

Defendants.

Case No. 3:23-cv-06193-TMC

ORDER GRANTING MOTION TO
RESTORE PLEADING

Before the Court is Plaintiffs' motion "to restore their pleading denominated as 'Notice and Objection to Assignment of Magistrate Judge.'" Dkt. 16 at 2. No defendant has opposed the motion. For the reasons explained below, the Court GRANTS Plaintiffs' motion and directs the Clerk to restore the "Notice and Objection" (Dkt. 4) as originally filed.

I. BACKGROUND

Plaintiffs originally filed this case in Pierce County Superior Court, and Defendant Deutsche Bank National Trust Company removed the case to this Court on December 28, 2023. *See* Dkt. 1, 1-2. The case was initially assigned to the Honorable S. Kate Vaughan, United States Magistrate Judge, pursuant to this District's Second Amended General Order 11-22, entered on September 28, 2022 by the Honorable David G. Estudillo, Chief United States District Judge,

1 and available on the Court's website: <https://www.wawd.uscourts.gov/general-orders-current>.

2 General Order 11-22 provides that some of the Court's civil cases will be initially assigned upon
3 filing to Magistrate Judges, and that:

4 The Clerk shall (a) advise the parties that consent to the assigned Magistrate Judge
5 is voluntary, consent may be declined and that a request for reassignment may be
6 made; (b) provide the parties with a Notice of Assignment to a U.S. Magistrate
7 Judge and Declination of Consent Form, and advise them the form must be received
8 by the Clerk by the date designated in the form should they choose to decline
9 consent; and (c) advise the parties that, upon receipt of a request for reassignment,
10 the case will be assigned to a District Judge, randomly selected from the District
11 Judges in the division where the case is properly filed.

12 Here, before the Clerk's office provided the above-described notice, Plaintiffs filed their
13 own "Notice and Objection to assignment of Magistrate Judge," requesting reassignment to a
14 District Judge. Dkt. 4. An employee of the Clerk's office then emailed Plaintiffs' counsel to
15 explain the procedure for requesting reassignment. Dkt. 16-1 at 12. The employee referenced
16 General Order 01-15 (an earlier version of the applicable General Order, with substantially
17 similar procedures). *Id.* The employee further informed counsel that "[a]t the direction of
18 chambers, this notice will be stricken for failure to follow the Court's procedures and a consent
19 form will be posted once all parties have appeared." *Id.* "Chambers" plainly refers to the
20 chambers of Judge Vaughan, the then-presiding Judge. The Clerk's office then struck Plaintiffs'
21 filing at Dkt. 4, although it remains visible in the record.

22 Twelve days later, on January 16, 2024, the Clerk's office provided the notice and
23 declination of consent form, consent to a Magistrate Judge was declined, and the case was
24 reassigned the same day to the undersigned District Judge. Dkt. 13, 14. Judge Vaughan never
25 issued any substantive rulings in the case. Plaintiffs, however, object to the Clerk's office having
26 stricken their original objection to a Magistrate Judge from the docket and now move for it to be
27 restored. Dkt. 16. No defendant has opposed the motion.

II. DISCUSSION

A district court has broad discretion to enforce local rules that place parameters on the parties' filings. *See Christian v. Mattel, Inc.*, 286 F.3d 1118, 1129 (9th Cir. 2002). The statute setting forth the "Jurisdiction, powers, and temporary assignment" of Magistrate Judges, 28 U.S.C. § 636, directs that "[e]ach district court shall establish rules pursuant to which the magistrate judges shall discharge their duties." 28 U.S.C. § 636(b)(4). The Court's procedures for declining consent to a Magistrate Judge, as set forth in General Order 11-22 and its predecessors, are meant to allow any party to decline consent through submission of a form to the Clerk's office, without a public filing on the docket, so that the District Judge to whom the case is reassigned does not know which party objected to the Magistrate Judge.

Plaintiffs' motion challenges the authority of the Court's staff to strike, at the direction of the presiding Judge's chambers, filings from the docket that fail to comply with the Court's rules and procedures. Plaintiffs do not cite any relevant authority for this argument and it is unpersuasive. But having reviewed General Order 11-22, as well as its earlier versions, this Court concludes that nothing in the order *prohibits* a party from filing a public objection to assignment to a Magistrate Judge, and that Plaintiffs' objection was therefore stricken in error and should be restored.

III. CONCLUSION

For the reasons explained above, the Court GRANTS Plaintiff's motion (Dkt. 16) and directs the Clerk's office to restore Dkt. 4 as it was originally filed.

Dated this 15th day of February, 2024.



Tiffany M. Cartwright
United States District Judge

Honorable Tiffany M. Cartwright

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA**

CHURCH OF THE GARDENS, a
Washington Not-for-Profit Corporation
operating as a faith-based religious
organization; ALVIN WHITE, in his
individual capacity,

Plaintiffs,

v.

QUALITY LOAN SERVICES
CORPORATION OF WASHINGTON;
MTC FINANCIAL INC. DBA
TRUSTEE CORPS.; DEUTSCHE
BANK NATIONAL TRUST
COMPANY; LONG BEACH
MORTGAGE LOAN TRUST 2006-4;
LONG BEACH MORTGAGE LOAN
TRUST 2006-5; and STATE OF
WASHINGTON, a State of the United
States.

Defendants.

Case No.: 3:23-cv-06193-TMC

**PLAINTIFFS' RESPONSE TO
DEFENDANT STATE OF
WASHINGTON'S MOTION TO
DISMISS PURSUANT TO CR 8
AND 12(B)(6)**

NOTED: February 2, 2024

Relief Requested:

Plaintiffs Church of the Gardens (hereafter referred to as “Church” or “COTG”) and Alvin B. White (hereafter referred to as “White” or “Property Owner”) request this Court carefully review the facts, including the historical facts, alleged in the verified complaints and supporting exhibits they have filed in this Court and in the originating state court to determine whether they are “plausible” enough so as to support the judicial inquiries asserted.¹

Statement of Issues:

- 1.) Are the facts alleged, and as supported by exhibits, in Plaintiffs Amended Complaint filed with this Court on January 8, 2024 plausible enough under Iqbal/Twombly so as to require this Court to conduct any judicial inquiries regarding them?
- 2.) Does the Amended Complaint filed by Plaintiff Church of the Gardens and Property Owner White comply with Fed. R. Civ. Pro. 8?

Evidence Relied Upon:

As support for this Response Plaintiffs rely on (1) the verified Amended Complaint and Exhibits (both paper and digital exhibits) filed with this Court on

¹ As this Court surely knows (but litigants and observers may not): “A judicial inquiry investigates, declares, and enforces liabilities as they stand on present or past facts and under laws supposed already to exist. *That is its purpose and end.*” *Prentis v. Atlantic Coast Line Co.*, 211 U.S. 210, 226 (1908)

1 January 8, 2024; (2) the verified original Complaint filed with the Pierce County
2 Washington superior court on December 13, 2023, together with all the pleadings
3 filed with that Court before removal. Additionally, Plaintiffs rely on their Cross
4 Motion for Summary Judgment and those pleadings and that evidence filed by
5 the parties relating thereto.
6

7 **Statement of Facts:**

8 Plaintiffs' adversary, i.e. the State of Washington through its current
9 Attorney-General (AG), does not include a "statement of facts" section in its
10 MDT; only a section entitled "BACKGROUND" and this section is factually
11 misleading and argumentative.
12

13 Plaintiffs Church and Property Owner rely on the Statement of Facts
14 section of their Cross Motion for Summary Judgment against the AG and the
15 other defendants as being accurate and plausible and accordingly incorporate that
16 section herein.
17

18 With regards to the Washington State's Motion to Dismiss, Plaintiffs
19 Church and Property Owner respond as follows:
20

21 *Response to AG's "Introduction" MTD, 1:16-2:5*

22 Washington State argues that the State has nothing to do with the two
23 nonjudicial foreclosures which have occurred. Plaintiffs disagree because the
24

1 statutory trustee acting as a substitute judge under color of Washington law has
2 now confiscated White's properties. *See Klem v. Wash. Mut.*, 176 Wn.2d 771,
3 789-790 (2013).² And the AG for the State of Washington has been working with
4 those defendants regarding this case since at least December 29, 2023 and is
5 making this motion to dismiss on behalf of the other defendants as well.
6

7 The AG pejoratively states without evidentiary support that "this is only
8 the latest attempt by Plaintiffs' counsel to invalidate the Deed of Trust Act."
9 MTD 1:23-24. Plaintiffs counsel has filed a declaration disputing this assertion.
10 *See* Stafne Declaration. This case is about obtaining declaratory and other relief
11 stemming from RCW 61.24.130 and therefore is appropriate pursuant to Chapter
12 7.24 RCW. *See* RCW 7.24.010; 020; 030; 050; 090; 110; 120; 190.
13

14 Further, Washington State's AG falsely argues that Plaintiffs Church and
15 Property Owner:
16

17 ² In *Klem* the Washington Supreme Court observed:

18 In a judicial foreclosure action, an impartial judge of the superior
19 court acts as the trustee and the debtor has a one year redemption
20 period. RCW 61.12.040; RCW 4.12.010; RCW 6.23.020(1). In a
21 nonjudicial foreclosure, the trustee undertakes the role of the judge as
22 an impartial third party who owes a duty to both parties to ensure that
23 the rights of both the beneficiary and the debtor are protected. *Cox*,
24 103 Wn.2d at 389. While the legislature has established a mechanism
for nonjudicial sales, neither due process nor equity will countenance
a system that permits the theft of a person's property by a lender or its
beneficiary under the guise of a statutory nonjudicial foreclosure.

Id., at 789-790

1 allege no facts supporting their claims for declaratory relief, as the
2 Complaint instead predominantly focuses on baseless theories about
3 mortgage-backed securities, the fallout of the 2008 subprime
4 mortgage crisis, and various parties' attempts to profit from
foreclosures and trustee's sales. And even if facts were alleged here,
Plaintiffs' theories are without legal merit.

5 MTD 1:26-2:4.

6 Plaintiffs Church and Property again refer the AG to Chapter 7.24 RCW
7 specifically RCW 7.24.010; 020; 030; 050; 090; 110; 120; and 190 and the law
8 related to damages. Further, they would observe that, among other things, the
9 Declaratory Judgments statute is "remedial; is to settle and to afford relief from
10 uncertainty and insecurity with respect to rights, status and other legal relations."
11

12 COTG and Property Owner White assert that the facts, historical and
13 otherwise, are well known throughout the world and that it is not to any degree
14 tenable that those set forth in their verified complaints and exhibits are not
15 *plausible*.³
16

17 ³ See e.g. David Webb, The Great Taking (2023); Mervin King, The End of
18 Alchemy: Money, Banking, and the Future of the Global Economy, ISBN:
19 9780393247022 (2016); Roger E. A. Farmer Prosperity for All: How to Prevent
20 Financial Crises ISBN: 9780190621438 (2016); Rana Foroohar, Makers and
21 Takers: The Rise of Finance and the Fall of American Business ISBN:
22 9780553447231 (2016); Ben S. Bernanke, The Courage to Act: A Memoir of a
23 Crisis and Its Aftermath ISBN: 9780393247213 (2015); Bethany McLean, Shaky
24 Ground: The Strange Saga of U.S. Mortgage Giants ISBN: 9780990976301
(2015); Joris Luyendijk Swimming with the Sharks: My Journey into the World of
the Bankers ISBN: 9781783350643 (2015); Charles W. Calomiris & Stephen H.
Haber Fragile by Design: The Political Origins of Banking Crises and Scarce

Response to AG's "Background" Section MTD, 2:6-4:21

Plaintiffs counter the claims in the AG's "Background" section as follows:

The AG states Property Owners' 5 mortgages related to the real property at issue herein are "**held**" by two statutory trustees. Plaintiffs do not know what the AG means when it uses the term "**holds**" with regards to mortgages. This is because there were no "holder in due course" principles applicable to mortgages when the Whites entered into the Promissory Notes and associated deed of trust relating to these properties in 2006. This is significant because the holder of a deed of trust contract, who does not possess the original paper note, must comply with RCW 62A.3-309 to foreclose on the real estate security. *See e.g. JP Morgan Chase Bank, N.A. v. Morton*, No. 49846-4-II, 2018 Wn. App. LEXIS 700 (Ct. App. Mar. 27, 2018).

Credit ISBN: 9780691155241 (2014); Atif Mian & Amir Sufi House of Debt: How They (and You) Caused the Great Recession, and How We Can Prevent It from Happening Again ISBN: 9780226081946 (2014); Timothy F. Geithner Stress Test: Reflections of Financial Crises ISBN: 9780804138598. (2014); Chris Dodd and Barney Frank Interviewed by David Brancaccio Harvard University, Dodd & Frank on Dodd-Frank: The Politics Behind its Passage (May 5, 2014); Larry Doyle In Bed With Wall Street : The Conspiracy Crippling Our Global Economy (2014); Library of Congress, video "In Bed with Wall Street: The Conspiracy Crippling the Global Economy" (2014); Sheila Bair, Bull by the Horns: Fighting to Save Main Street from Wall Street and Wall Street From Itself (ISBN: 9781451672480) (2012); Henry M. Paulson Jr. On the Brink: Inside the Race to Stop the Collapse of the Global Financial System, SBN: 9780446561938 (2010); Henry M. Paulson Jr. Five Years Later (2013); Barney Frank, Foreword to Paulson's On the Brink (2010); *See also* UF Libraries, Financial Crisis Books.

1 Plaintiff Church and Property Owner observe that the AG's admission that
2 the Deutsche Bank *holds* only the mortgage in light of the allegations in the
3 verified Complaints that the pertinent notes were destroyed appears to be an
4 admission against interest which concedes Plaintiffs' allegations that the original
5 paper promissory note was lost or destroyed within a year of its signing.
6 Complaints, ¶¶ 3.23-3.28. *See also* infra.

8 The 5 specific deeds of trust mortgages White signed in 2006 incorporated
9 "applicable law" into the terms of these mortgage agreements. The word
10 *applicable* means: "capable of being applied." Plaintiffs alleged this provision of
11 the mortgage security contract incorporated into those agreements only that law
12 which was capable of being applied at the time these contracts were signed and
13 not law which would come into existence after the fact. *See e.g.* Amended
14 complaint, ¶¶ 3.13. And the Washington State Statutory Trustee QLS does not
15 dispute this, but apparently the AG does.⁴

18 Furthermore, Plaintiffs assert that the provisions of the paper promissory
19 Note and deed of trust agreements incorporating existing law into their terms is a
20 circumstance that differentiates this case from *Sveen v. Medlin*, 138 C. Ct. 1815
21

22 ⁴ *See* Stafne Declaration in Support of Response and Cross Motion for Summary
23 Judgment, Exhibit 13, pp. 53:25-59:12, deposition testimony of Jeff Stenman,
24 President of statutory trustee QLS.

1 (2018) and counsels that Property Owners intent in this regard be controlling. *See*
2 *also* *infra*, at p. 25.

3 The AG's assertion that "Plaintiffs allege QLS conducted the trustee's sale
4 at the direction of Deutsche Bank" MTD, at 2:14-15, is misleading to the extent
5 that it ignores the evidence Plaintiffs' submitted to the Court that Deutsche Bank
6 or its agent was the statutory trustee's client and that the trustee would only
7 consider delaying or restraining a sale after Deutsche Bank refused such a
8 request. *See* Stafne Declaration, Exhibit 12 (materials filed with regard to motion
9 to restrain sale in State Court)
10
11

12 Unfortunately, the Church and Property Owner must also point out that
13 Washington State's AG appears to be deliberately misstating the allegations of
14 Plaintiffs' Complaints. The AG asserts:

15 Although the bases of Plaintiffs' claims are difficult to parse, it
16 appears Plaintiffs allege that the deeds of trust do not secure any of the
17 promissory notes held by the Defendants because his original lender
18 canceled the loans, and thus the notes are not enforceable by way of a
19 non-judicial foreclosure sale. *Id.* at ¶¶ 3.12, 3.30, 3.35, 3.38. Plaintiffs
20 also allege that the original paper notes signed by Mr. White were
21 never transferred to the Defendant Trusts, and so none of the
22 Defendant Trusts have authority to foreclose on his properties. *Id.* at
23 ¶¶ 3.26–3.30, 3.33.

24 MTD, 2:19-3:4.

1 But the AG ignores the Complaints' allegations that the promissory notes
2 were fraudulently endorsed and/or not endorsed by Jess Almanza, whose
3 endorsement appears on the notes but who has testified under Oath that he never
4 executed such endorsements while employed by Long Beach and JP Morgan
5 Chase. *See* Complaints at ¶¶ 3.21-3.23. *See also* Stafne Declaration.
6

7 It is Plaintiffs' position that because the authenticity of Almanza's
8 signature has been timely asserted in their Complaints the trustees should not be
9 allowed to adjudicate this judicial inquiry over Plaintiffs' objection pursuant to
10 RCW 61.24.130 because Plaintiffs are entitled to have this issue, which is a
11 proper one, adjudicated by a court as a defense to a properly brought foreclosure
12 action. And with regards to the likely success of that defense, Church and
13 Property Owner would invite this Court to review *Erickson v. Power*, 2022 Wash.
14 App. LEXIS 877 (2022) (not deciding this same judicial inquiry because it wasn't
15 timely raised as it is here).
16
17

18 Furthermore the AG inappropriately fails to acknowledge that the verified
19 complaints also alleged that within a year of the date the paper notes were signed
20 by White, those promissory notes were lost or destroyed, and as a result, could
21 only be enforced in Washington State by way of compliance with RCW
22 62A.3-309. *See* Complaints, ¶¶ 3.28-3.33; 3.47-3.51; 3.72; 3.75-3.104.
23
24

1 RCW 62A.3-309 is a part of the Uniform Commercial Code, which was
2 enacted by Washington State in 1993 and has at all material times provided:

3 **Enforcement of lost, destroyed, or stolen instrument.**

4 (a) A person not in possession of an instrument is entitled to
5 enforce the instrument if (i) the person was in possession of the
6 instrument and entitled to enforce it when loss of possession occurred,
7 (ii) the loss of possession was not the result of a transfer by the person
8 or a lawful seizure, and (iii) the person cannot reasonably obtain
9 possession of the instrument because the instrument was destroyed, its
10 whereabouts cannot be determined, or it is in the wrongful possession
11 of an unknown person or a person that cannot be found or is not
12 amenable to service of process.

13 (b) A person seeking enforcement of an instrument under
14 subsection (a) must prove the terms of the instrument and the person's
15 right to enforce the instrument. If that proof is made, RCW **62A.3-308**
16 applies to the case as if the person seeking enforcement had produced
17 the instrument. The court may not enter judgment in favor of the
18 person seeking enforcement unless it finds that the person required to
19 pay the instrument is adequately protected against loss that might
20 occur by reason of a claim by another person to enforce the
21 instrument. Adequate protection may be provided by any reasonable
22 means.

23 The AG's attempt to dodge this issue by deceit is inappropriate because
24 Courts around the Nation (and in this State) have determined that this statute
means precisely what it says; namely that no assignee of the mortgage loan or
mortgage contract can enforce a promissory note that was lost or destroyed by the
Lender or its predecessor in interest. *JP Morgan Chase Bank, N.A. v. Morton*, No.
49846-4-II, 2018 Wn. App. LEXIS 700 (Ct. App. Mar. 27, 2018). *See also Seven*

1 *Oaks Enters., L.P. v. Devito*, 185 Conn. App. 534, 554-64, 198 A.3d 88 (2018);
2 *Zullo v. HMC Assets, LLC*, 25 LCR 400, 403-07 (Mass. Land Ct. 2017); *Emerald*
3 *Portfolio, LLC v. Outer Banks/Kinnakeet Assocs., LLC*, 249 N.C. App. 246,
4 249-51, 790 S.E.2d 721, 724-25 (2016); *U.S. Bank Nat'l Ass'n Tr. v. Jones*,
5 2016-Ohio-7168, ¶¶ 13-24, 71 N.E.3d 1233, 1238-40 (Ct. App.) (2016); *State St.*
6 *Bank & Tr. Co. v. Lord*, 851 So. 2d 790, 791-93 (Fla. Dist. Ct. App. 2003);
7 *McCAY v. CAPITAL Res. Co.*, 327 Ark. 737, 738-41, 940 S.W.2d 869, 869-71
8 (1997).
9

10
11 The AG also inappropriately argues in the Background section of the MTD
12 at 3:5-19:

13 In addition, Plaintiffs seek a declaratory judgment as to the
14 constitutionality and meaning of the Washington Deed of Trust Act,
15 Wash. Rev. Code §62.24.130 (“DTA”) in 2006 and today. *See id.* at
16 ¶¶ 3.99(C), (H), (I); 4.2, 4.7-4.8. It appears that Plaintiffs object to the
17 DTA on several theories: first, that its bond requirement violates the
18 Washington Constitution, because it purportedly infringes the superior
19 court’s jurisdiction, prevents access to the courts, and improperly
20 favors other litigants over property owners; second, that amendments
21 to the DTA that post-date Mr. White’s mortgages violate the federal
22 Contracts Clause by making it easier to foreclose and sell defaulted
23 properties; and finally that the bond requirement violates the
24 Fourteenth Amendment’s guarantees of due process and equal
protection. Plaintiffs allege that certain changes to the DTA that
post-date Mr. White’s mortgages were made “so as to benefit the State
of Washington, government officials, and their wealthy allies.” *Id.* at
¶¶ 3.13–3.19. The rest of the Complaint alleges (1) Plaintiffs’
grievances with this Court and the use of magistrate judges, *Id.* at ¶¶
2.6–2.16, (2) a high-level history of mortgage-backed securities,

1 related recordkeeping practices, changes to Washington and federal
2 law, and (3) the fallout of the 2008 subprime mortgage crisis. Id. at ¶¶
3.40–3.98

3 MDT, p. 3:7-19.

4 As has been previously stated, Plaintiffs as is their right,⁵ wrote the original
5 Complaint that was filed with the state court so as to seek only a declaratory
6 judgment pursuant to RCW 61.24.130 that Property Owner White was entitled to
7 restrain the statutory trustee's sale of his properties because he had proper
8 grounds to do so, i.e. judicial defenses with regards to any foreclosure action
9 which Deutsche Bank or the Trusts or their attorneys in fact could file against
10 White with regards to these real properties. See e.g. Complaints, ¶¶ 4.4, 4.5, 4.9.
11 Following the filing of their complaint in state court the parties exchanged
12 pleadings in the state court with regards to Plaintiffs' motion to restrain the
13 trustee's sale of these properties on January 5, 2024. Copies of those pleading are
14 attached as Exhibits 12 and 13 to Stafne's declaration in support of Plaintiffs'
15 Response and Cross Motion for Summary Judgment. In this regard, Plaintiffs
16 presented evidence and argued to the state superior court that under the
17 circumstances of that case as it existed then that it would be constitutionally
18
19
20
21

22 ⁵ Plaintiffs are the Masters of their complaint with regards to the parties it is filed
23 against and its subject matter. See e.g. *Lincoln Prop. Co. v. Roche*, 546 U.S. 81, 94
24 (2005); *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 391-95 (1987).

1 inappropriate to require White to (a) make payments to that Court and (b) obtain
2 an order restraining the sale five days before that sale was scheduled during the
3 Christmas/New Years season. *See* Stafne declaration, Exhibit 12. But those
4 arguments were never considered by the state court or this Court because
5 Deutsche Bank removed the state court complaint to this Court in a way which
6 inappropriately prevented either court from adjudicating Plaintiffs timely filed
7 motion to restrain the sale before the sale occurred. *See e.g. Schroeder v.*
8 *Excelsior Mgmt. Grp. LLC*, 177 Wn.2d 94, 110-113 (2013). *See also* RCW
9 7.24.190 (“The court, in its discretion and upon such conditions and with or
10 without such bond or other security as it deems necessary and proper, may ...
11 may restrain all parties involved in order to secure the benefits and preserve and
12 protect the rights of all parties to the court proceedings.”)

13
14
15 So shortly after the arguably inappropriate removal was utilized by
16 Deutsche Bank so as to allow its paid trustee acting as a substitute judge to sell
17 White’s properties before his motion could be heard by a judge, Plaintiffs filed
18 their Amended Complaint with this Court which seeks damages as a result of the
19 alleged impropriety of Deutsche Bank’s removal of this case to this Court and to
20 its paid trustee’s, i.e. substitute judge’s, use of that circumstance to sell White’s
21 properties pursuant to a Deutsche Bank credit bid on January 5, 2024.
22
23
24

1 So the liability issue which arises under the allegations of the now
2 Amended Complaint includes whether Defendants QLS Trustee, as a statutory
3 trustee acting under color of law as a substitute judge exercising judicial power,
4 and Deutsche Bank as its client, and potentially State of Washington are liable to
5 White and Church for damages for inappropriately sabotaging Plaintiffs right to
6 restrain the sale by removing the state court proceeding to this Court. Plaintiffs
7 have filed a cross motion for summary judgment on that issue and rely on that
8 motion and supporting documents as further demonstrating the facts and law
9 applicable to such judicial inquiry.
10

11
12 The AG claims in the Background (should be Statement of Facts) section
13 of its MTD that “none of the allegations involving the State connect to the
14 non-judicial foreclosures or trustee’s sales in this case.” MTD, 3:25-26. But that is
15 not true.
16

17 For example, the Amended Complaint alleges that the properties the
18 statutory trustee sold to Deutsche Bank in return for a fee from Deutsche Bank
19 (without affording Property Owner the right to restrain the sale pursuant to RCW
20 61.24.130) have been confiscated by Washington State in violation of the Takings
21 Clause of the Fifth Amendment as incorporated against the State of Washington
22 by the Fourteenth Amendment. The Takings Clause of the Fifth Amendment
23
24

1 provides that private property shall not be taken for public use without just
2 compensation. The United States Supreme Court has long held “[t]he taking by a
3 state of the private property of one person or corporation without the owner’s
4 consent, for the private use of another, is not due process of law and is a violation
5 of the Constitution.” *Missouri P. R. Co. v. Nebraska*, 164 U.S. 403, 417 (1896)
6 *citing Wilkinson v. Leland*, 27 U.S. 627, 658 (1829); *Murray v. Hoboken Co.*, 59
7 U.S. 272, 276 (1855); *Loan Association v. Topeka*, 87 U.S. 655 (1874); *Davidson*
8 *v. New Orleans*, 96 U.S. 97, 102 (1877); *Cole v. La Grange*, 113 U.S. 1 (1885).
9
10 *See also*, *supra.*, note 1.

12 Under the facts alleged, the Financial Industry lost or destroyed notes in
13 2006 because this business practice profited its members. The Financial Industry
14 was warned by the government that this was a bad practice because it could cause
15 notes to become unenforceable under state laws. The Financial Industry ignored
16 these warnings and continued to profit from subprime loans which its members
17 knew or should have known were unenforceable under many state laws,
18 including most versions of the Uniform Commercial Code. Ultimately, the
19 federal government bailed out the Financial Industry by paying hundreds of
20 billions of dollars in public funds to purchase interests in those real property
21 assets owned by property owners, which because of the Financial Industry’s bad
22
23
24

1 practices offered little value to secondary markets because they likely could not
2 be enforced.

3 While the Church and Property Owner do not agree with the federal
4 government's stupid decision to bail out the Financial Industry, they understand
5 that an argument can be made that bailing out *too-big-to-fail banks* (as opposed to
6 property owners as was first proposed) was in the public interest. But they
7 disagree with the notion that the federal government and financial industry can
8 require them to bear the costs of that entire transaction, which has now been paid
9 back by the treasury, mostly through foreclosing on property owners. *See e.g.*
10 GAO Troubled Asset Relief Program: Lifetime Cost GAO-24-107033 (Dec. 7,
11 2023)⁶

14 The factual situation here is much like the uncompensated taking that
15 occurred in *Thompson v. Consolidated Gas Utilities Corp.*, 300 U.S. 55 (1937).
16 There, a commission issued an order which had the effect of taking some natural
17 gas producer's property from them for the benefit of others without the payment
18 of any compensation. The same type of illegal taking is occurring here because
19 the government reimbursed itself these bail out costs by foreclosing on
20 homeowners like White who under the Washington state law then in effect could
21

23 ⁶ Last accessed on January 29, 2024 at:
24 <https://www.gao.gov/products/gao-24-107033>

1 not be foreclosed upon except by way of compliance with RCW 62A.3-309 (as
2 well as RCW 62A.3-308). And Washington State, coupled with the statutory
3 trustee, have continued to pursue this anti-property owner approach
4 notwithstanding they know (and knew) that (1) property owners did less wrong
5 than had the Financial Industry with regard to making such subprime loans
6 worthless; and (2) that this Nation's organic law did not allow governments to
7 change the terms of private contracts after the fact.
8

9 Similarly the AG's next arguments are also flawed. In those the AG argues
10 as fact in the State's Background section that:
11

12 Plaintiffs allege that the State amended portions of the Deeds of Trust Act
13 "to authorize a statutory trustee to rely on a declaration of perjury" from
14 the beneficiary to institute a trustee's sale, and that those amendments were
15 made "so as to benefit the State of Washington, its government officials,
16 the federal government, its government officials[,] and creditors claiming
17 an interest in such mortgage loans at the expense of Washington property
18 owners[.]" Id. at ¶ 3.20; see also id. at ¶¶ 3.60–61 (alleging the State
19 amended the DTA to make deeds of trust mortgages enforceable against
20 homeowners "notwithstanding that such instruments were not enforceable
21 pursuant to the laws which were in effect when the pertinent instruments
22 were signed"), ¶ 3.63 (alleging the DTA was amended "to incentivize
23 judges to exercise their judicial power in such a way as to make subprime
24 mortgages purportedly included in mortgage pools associated with
mortgage backed securities enforceable by way of foreclosure" and such
exercise "would determine the value of such judicial officers' retirement
fund investments after 2007"), ¶ 3.71 (similar).

The Judicial Inquiry Related to RCW 61.24.030(7)

1 At the time White executed the paper Note and deed of trust security
2 agreement the Note provided that only the Lender or Note Holder could enforce
3 the paper promissory note note. Specifically the promissory Note stated and
4 White understood that “Lender may transfer this Note. Lender or anyone who
5 takes this Note by *transfer*⁷ and who is entitled to receive payments under this
6 Note is called the ‘Note Holder.’”

8 Under the allegations of the complaint Defendants could not have been
9 Note Holders because the original paper note was destroyed before it was
10 assigned. RCW 62A.3-203(a). And if defendants are claiming to this Court they
11 transferred the paper note originals, but did not do so, they are precluded by their
12 “fraud and illegality” from enforcing that instrument. RCW 62A.3-203(b).

14 In 2006 RCW 62A.3-309 provided that if a note was lost or destroyed its
15 obligations could not be enforced except by way of compliance with its
16 provisions. Under the facts plausibly alleged here the Note was lost or destroyed

18 ⁷ See RCW 62A.3-203(a) which states “[a]n instrument is *transferred* when it is
19 delivered by a person other than its issuer for the purpose of giving to the person
20 receiving delivery the right to enforce the instrument.” Under the facts as they
21 have been alleged by the Church and Property Owner none of the Defendants
22 possess the original paper note signed by White because they were destroyed
23 pursuant to prevailing business practices in 2006. If this is true, the lost paper note
24 could not have been *transferred* to the possession of Deutsche Bank because it did
not exist. And if defendants are falsely claiming they transferred the paper note
originals, but did not do so they are precluded by their fraud and illegality from
enforcing those instruments. RCW 62A.3-203(b).

1 within a year after its execution by White and could not be enforced by those who
2 never acquired it. And in this case, the Church and Property Owner have alleged
3 that Jess Almanza never endorsed White's promissory note under these facts
4 because it did not exist and Almanza has testified under penalty of perjury that he
5 never made such an endorsement. Now it's time for Defendants (including their
6 ally State of Washington) to show any evidence they have that Almanza endorsed
7 the original paper note signed by White.
8

9 In 2006 there was no provision in the DTA which allowed a statutory
10 trustee for the State of Washington to foreclose on White in violation of the terms
11 of the note's definition of note holder and without compliance with RCW
12 62A.3-203 and 3-309.
13

14 This changed in 2010 when RCW 61.24.030 was amended by adding the
15 following provision:
16

17 (7)(a) That at least thirty days before notice of sale shall be recorded,
18 transmitted or served, the trustee shall have proof that the beneficiary
19 is the owner of any promissory note or other obligation secured by the
20 deed of trust. A declaration prepared under the penalty of perjury
21 stating that the beneficiary is the actual holder of the promissory note
22 secured by the deed of trust shall be sufficient proof as required under
23 this subsection.
24

(b) Unless the trustee has violated his or her duty under RCW
RCW 61.24.010(4), the trustee is entitled to rely on the beneficiary's
declaration as evidence of proof required under this subsection.

1 The Church and Property Owner contend this new statutory language
2 changed material terms of the Note and Deed of Trust because it purports to
3 provide authorization for the Washington State statutory trustee to sell White's
4 property to entities, like defendants, *who are not note holders* under the terms of
5 the note and who have not complied with RCW 62A.3-309, and who had no right
6 to foreclose on Whites' properties under the *applicable law* in effect in 2006.
7

8 This 2010 statutory provision was amended in 2018 by Washington's
9 political branches in 2018 so as to state:
10

11 (7)(a) That, for residential real property, before the notice of trustee's
12 sale is recorded, transmitted, or served, the trustee shall have proof
13 that the beneficiary is the holder of any promissory note or other
14 obligation secured by the deed of trust. A declaration by the
15 beneficiary made under the penalty of perjury stating that the
16 beneficiary is the holder of any promissory note or other obligation
17 secured by the deed of trust shall be sufficient proof as required under
18 this subsection.⁸

19
20 ⁸ The bracketed language below demonstrates words which were removed from the
21 statute and the underlined words were those which were added to the statute.
22

23 (7)(a) That, for residential real property, before the notice of trustee's
24 sale is recorded, transmitted, or served, the trustee shall have proof
that the beneficiary is the ((owner)) holder of any promissory note or
other obligation secured by the deed of trust. A declaration by the
beneficiary made under the penalty of perjury stating that the
beneficiary is the ((actual)) holder of ((the)) any promissory note or
other obligation secured by the deed of trust shall be sufficient proof
as required under this subsection.

1 The Judicial Inquiry Relating to the Impartiality of the statutory trustee to act as a
2 substitute judge of the issues Plaintiffs raised

3 As can be seen from the Complaints the Church and Property Owner also
4 contend that the statutory trustee could not rely on the beneficiary's arguably
5 false declaration that beneficiary possessed the note because the trustee violated
6 that duty of good faith which existed in 2006 pursuant to *Cox v. Helenius*, 103
7 Wn.2d 383 (1985). *Helenius* required that the statutory trustee be an impartial
8 judicial substitute. See Amended Complaint, ¶¶ 3.15-3.18. It is Plaintiffs' position
9 that in 2006, statutory trustees were required to be -- and appear to be -- impartial
10 tribunals. See *Cox*, supra. And that this same *Cox* standard has at all material
11 times been required by due process. See *Tumey v. Ohio*, 273 U.S. 510 (1927);
12 *Williams v. Pennsylvania*, 195 L. Ed. 2d 132 at 134 (2016). Further, the facts as
13 alleged in the Complaint plausibly demonstrate the statutory trustee was not
14 impartial. Such facts include those established by the pleadings Plaintiffs filed
15 with the state court to restrain the sale of the properties sold pursuant to the
16 manipulation of this Court's removal process by Deutsche Bank and its Trustee in
17 such a way as to allow them to foreclose without allowing Plaintiffs to restrain
18 the sale proper grounds.
19
20
21

22 The judicial inquiries related to Washington Judges pecuniary interests in
23 mortgage backed securities
24

1 In 2006 while the subprime crisis was spiraling out of control and huge
2 numbers of paper promissory notes signed by their makers had been or were
3 being destroyed and/or lost, the political branches of Washington's government
4 changed judicial retirement laws so as to require judges' retirement benefits to be
5 funded by those same private investment funds as fueled Washington state's
6 budget expenditures, and as were available as retirement benefits for other
7 government employees. These funds, managed by the Washington State's
8 Investment Board, were heavily invested in mortgage backed securities about this
9 time. The custodian of those securities is State Street Bank.
10
11

12 On February 4, 2010, the SEC filed a press release indicating the
13 government had charged State Street Bank with misleading its investors about
14 their exposure to subprime investments while selectively disclosing more
15 complete information to preferred investors, like the State of Washington⁹. The
16 SEC ultimately issued an order against State Street bank "instituting cease and
17 desist proceedings pursuant to Section 8A of the Securities Act of 1933, Making
18 Findings, and Imposing a Cease and Desist Order." This Order can be accessed at
19 <https://www.sec.gov/litigation/admin/2010/33-9107.pdf>. The Church and White
20 allege having judges' retirement funds managed by State Street Bank is
21
22

23 ⁹ This press release can be accessed at:
24 <https://www.sec.gov/news/press/2010/2010-21.htm>.

1 inappropriate given this Nation's commitment to neutral judicial officers
2 exercising judicial power. It is virtually the same thing as allowing trustees acting
3 as substitute judges to get paid and get instructions from only one side.

4
5 Courts applying due process principles have held that where state laws put
6 state judges in situations which compromise or appear to compromise those
7 judges' neutrality the decisions of those judges are void. *See e.g., Cain v. White*,
8 937 F.3d 446 (5th Cir. 2019) *cert. denied* 140 S. Ct. 1120 (2020); *Caliste v.*
9 *Cantrell*, 937 F.3d 525 (5th Cir. 2019).

10
11 Plaintiffs Church and Property Owner claim this case presents a similar
12 situation for Washington State judicial officers as well because in 2006 and 2007,
13 the time period in which Washington's laws affecting the judicial retirements
14 were being changed, judges had not yet decided many of the issues which would
15 determine the value of mortgage backed securities in their new retirement
16 accounts. Accordingly, it is Plaintiffs' position that by requiring that all public
17 employees' retirement funds be based on the executive branch's heavy
18 investment in mortgage backed securities was and appeared to be inappropriate
19 commingling of interests inimical with judicial neutrality. *See Tumey, supra*.

20
21
22 Other judicial inquiries related to Due Process

1 Finally the AG argues that “the mere fact that borrowers must pay a bond
2 to secure an injunction does not implicate due process” citing *Angelotti*
3 *Chiropractic, Inc. v. Baker*, 791 F.3d 1075, 1083 (9th Cir. 2015). But that
4 argument ignores the fact that this judicial inquiry was never adjudicated by a
5 court because the purported beneficiary (Deutsche Bank) strategically removed
6 this case to federal court and its paid trustee used that circumstance to sell
7 Plaintiffs' properties on January 5, 2024 without ever having to litigate the
8 judicial inquiries Plaintiffs posed pursuant to RCW 61.24.130 before an Article
9 III judge.
10
11

12 With regard to those properties left for nonjudicial sale by a statutory
13 trustee it is obvious that *Angelotti* is more supportive of Plaintiffs' position than
14 Defendants. This is because real property, unlike a chiropractic lien, is protected
15 by the Takings Clause. It is also because the chiropractors in *Angelotti* were
16 attempting to bring affirmative claims for relief, while Plaintiffs here are only
17 seeking to pose proper defenses to any future judicial foreclosure actions which
18 may be brought against them.
19
20

21 Additionally, *Angelotti*'s due process holding is not applicable to the facts
22 of this case because Plaintiffs have been “thrust into the judicial process” since
23 that is the only way they can preserve their properties from being taken from
24

1 them by the State of Washington through its statutory trustee, which statutory
2 trustee is now being sued for damages pursuant to 42 U.S.C § 1983,
3 Washington's DTA and Washington's Consumer Protection Act for "taking"
4 White's property.
5

6 Now it is important for this Court to understand that Plaintiffs Church and
7 Property Owner do not contend here that the laws the political branches of
8 Washington State have enacted (and which promote the interests of too-big-to-fail
9 banks against the rest of us, *see* Webb, The Great Taking, *see* supra n. 3) are
10 unconstitutional. Plaintiffs position is that these later statutory changes should not
11 be applied to White because the note specifically requires that applicable, not
12 future, law apply to enforcement of White's Note. Additionally and separately,
13 Plaintiffs rely on *Sveen v Melin*, 138 S. Ct. 1815 (2018) for their assertion that the
14 AG and its client should not have impaired their contracts by enacting laws
15 intending to do so. See MTD 10:22-12:2, where defendant State appears to
16 acknowledge Washington State's legislative changes impose substantial
17 impairments on White's contract rights, but appear to argue Washington State has
18 the authority to alter contracts whenever the political branches determine there is
19 a significant and legitimate public purpose for doing so. MTD 10:22-12:2. The
20 AG needs to go back to law school.
21
22
23
24

Judicial Inquiries related to the bond requirement posed by RCW 61.24.130(1)

Finally the AG argues that “the mere fact that borrowers must pay a bond to secure an injunction does not implicate due process” citing *Angelotti Chiropractic, Inc. v. Baker*, 791 F.3d 1075, 1083 (9th Cir. 2015). But that argument does not address the properties recently sold by the statutory trustee because it and the purported beneficiary did not make that argument pursuant to the circumstances of this case because Deutsche Bank removed this case to this federal court and sold the properties before Plaintiffs motion for relief pursuant to RCW 61.24.130 could be adjudicated. Indeed, it is Plaintiffs’ position that what happened here supports their argument that tying restraint to obtaining injunctive relief, as opposed to a set deadline with regard to when such relief must be sought, is constitutionally objectionable because such a moving deadline can so easily be sabotaged.

Response to Argument A. Legal Standard, MTD 4:22-5:14

Plaintiffs Church of the Gardens and Property Owner accept the AG’s statement of the law regarding the Iqbal/Twombly standard, except with respect to any assertion that this case has been brought to address any misconduct by the State for damages as that suit will be brought pursuant to Chapter 4.92 RCW after the appropriate claims forms have been filed. Further, Plaintiffs would note that

1 they assert in their complaint that *Twombly* was inappropriately decided by way
2 of an exercise of judicial power, most likely to prevent cases by homeowners
3 against banks from ever being adjudicated by a neutral fact finder. *See e.g.*
4 Federal Judicial Center, “Motions to Dismiss for Failure to State a Claim after
5 *Iqbal*” (2011).¹⁰ *See also e.g.* Suja A. Thomas, *Why the Motion to Dismiss Is Now*
6 *Unconstitutional*, 92 Minn. L. Rev. 1851 (2008); Arthur R. Miller, *From Conley*
7 *to Twombly to Iqbal: A Double Play of the Federal Rules of Civil Procedure*, 60
8 Duke L.J. 1 (October 2010); Howard M. Wasserman, *The Roberts Court and the*
9 *Civil Procedure Revival*, 31 Rev. Lit. 313, 334 (2012); Clermont, Kevin M. and
10 Yeazell, Stephen C., “Inventing Tests, Destabilizing Systems” (2010). Cornell
11 Law Faculty Publications. Paper 201; *Hawkeye Foodservice Distrib. v. Iowa*
12 *Educators Corp.*, 812 N.W.2d 600, 607-608 (2012).

13
14
15
16 Plaintiffs would observe, however, that *Twombly*’s plausibility standard
17 only makes sense to the extent it is applied by a judge who is -- and appears to be
18 -- neutral as between the parties.
19
20

21 ¹⁰ Retrieved from https://www.uscourts.gov/sites/default/files/motioniqbal_1.pdf
22 (“Only in cases challenging mortgage loans on both federal and state grounds did
23 we find an increase in the rate of grants of motions to dismiss without leave to
24 amend.”) The amount of increase in cases decided against property owners
exceeded 90%.

1 *Response to Argument B. Plaintiffs Fail to State a Claim for Relief Against*
2 *the State*, MTD 5:15-6:18

3 The AG argues “[t]he complaint does not contain well-pleaded factual
4 allegations that would ‘nudge’ Plaintiffs’ claims against the State ‘across the line
5 from the conceivable to plausible.’” MTD 6:26-7:1. Further, that:

6 This is not the first time Plaintiffs’ counsel has been confronted with
7 the requirements of Fed. R. Civ. P. 8—indeed, this is only the latest in
8 a long string of cases where courts have dismissed lawsuits brought by
9 Plaintiffs’ counsel for failure to comply with that rule. *See, e.g., John*
10 *v. Quality Loan Serv. Corp. of Washington,...*; *Cervantes Orchards &*
11 *Vineyards, LLC v. Deere & Co., ...; Mickelson v. Chase Home Fin.*
12 *LLC, ...* Therefore this Court should dismiss on this basis alone
13 because the Complaint lacks factual allegations suggesting plausible
14 constitutional claims against the State.

15 MTD, 7:23-8:13.

16 Plaintiffs and their counsel disagree. The only way Plaintiffs and this Court
17 can know the position of the State on the judicial inquiries at issue here is by
18 having the State tell us what that position is. For example, at the time the
19 mortgage was signed, Article 9 did not allow security interests to be perfected in
20 electronic records, only with regard to electronic chattel mortgages. *See*
21 Amended Complaint, ¶3.11. To the extent this is an issue in this case, is it the
22 State’s position that the subsequent amendment of this statute to include
23 electronic documents justified perfecting security interests in electronic note
24 originals before there was statutory authority to do so? Similarly, is it the State’s

1 position that the mandates of RCW 61.24.127 apply to the contracts at issue here
2 where historical evidence documents that statute was not enacted until 2011, or
3 some five years after the contracts in this case were executed?
4

5 And Plaintiffs Church and Property Owner do not dispute that their
6 counsel (an old lawyer who is presently disabled and acutely sick and doesn't
7 charge his homeowner clients for representing them) was the lawyer in those
8 cases cited by the AG as having been dismissed for failing to comply with Rule
9 8. But given that all these cases involved homeowners, Plaintiffs question what
10 these cases demonstrate. Is Stafne a bad lawyer? Or do judicial officers just want
11 to ignore the judicial inquiries which he raises in favor of property owners against
12 the Financial Industry?
13

14 How does one go about preparing a complaint in a case like this, which
15 necessarily must involve the consideration of historical facts like those being
16 mentioned herein?
17

18 Or is that the point: Judicial officers -- and Washington's AG -- don't want
19 to adjudicate the judicial inquiries being raised because of the potential
20 consequences of doing so?
21

22 *Response to Argument B 2, The DTA does not violate the Washington*
23 *Constitution, MTD 8:14-10:18.*
24

1 As originally ratified Wash. Const. 4, § 6 stated in pertinent part: “The
2 superior court shall have original jurisdiction in all cases in equity, and in all
3 cases at law which involve the title or possession of real property, ...”. In 1993
4 this language was amended by the People to state: “Superior courts and district
5 courts have concurrent jurisdiction in cases in equity. The superior court shall
6 have original jurisdiction in all cases at law which involve the title or possession
7 of real property, ...”
8

9 In *Moore v Perrot*, 2 Wash. 1 (1891) Washington’s Supreme Court
10 interpreted this language as giving to the superior courts “universal original
11 jurisdiction, leaving the legislature to carve out from that jurisdiction the
12 jurisdiction ... of any other inferior courts that may be created.” *Id.* at 2 Wash. 4.
13

14 In *Larson v. Snohomish Cnty*, 20 Wn. App. 2d 243 (2021) the Court of
15 Appeals explained:
16

17 a nonjudicial foreclosure is conducted under a specific contractual
18 agreement made between the borrower and the beneficiary of the deed
19 of trust. ... The DTA preserves the superior court’s jurisdiction by
20 giving the borrower the right to file an action in superior Court to
21 restrain the sale, RCW 61.24.130(1), granting the borrower the power
22 to initiate court action, RCW 61.24.040(2), and granting the borrower
23 the right to request a court to decide the reasonableness of fees a
24 lender demands before reinstating the mortgage. RCW 61.24.090(2).

22 *Id.* at 244-245.

1 To the extent defendants, supported by Washington State through its AG as
2 their advocate, are arguing that Plaintiffs must do anything more than establish
3 that proper grounds exist for requiring a beneficiary to pursue a judicial
4 foreclosure (as opposed to a nonjudicial foreclosure) Plaintiffs respectfully
5 disagree and rely on the plain language of RCW 61.24.130 as it was construed in
6 *Larson*.

8 And further Plaintiffs argue in support of their construction of RCW
9 61.24.130 that the legislature does not have the authority to carve out jurisdiction
10 for statutory trustees to exercise judicial power with regards to adjudicating those
11 judicial inquiries which are required to be tried by courts. *See State v. Posey*, 174
12 Wn.2d 131 (2011) citing *Blanchard v. Golden Age Brewing Co.*, 188 Wash. 396,
13 418 (1936).

15 Accordingly, it is Plaintiffs' position that he should be allowed to assert the
16 judicial inquiries he makes in his Complaints to restrain the sale pursuant to
17 RCW 61.24.130 as part of his defenses to a judicial foreclosure action asserting
18 those defenses. Property owners are not required to proceed with judicial
19 inquiries before substitute judges who are being paid by an entity which seeks to
20 benefit from the nonjudicial sale. *Tumey*, supra.

1 Plaintiffs have (or will) timely cross-move for a summary judgment against
2 the State and other defendants on this ground and rely on the arguments in both
3 this response and that cross-motion to refute the State's untenable position with
4 regards to the Contract Clause.
5

6 *Response to Argument B 3, The DTA does not violate the United States*
7 *Constitution, MTD 10:19-13:19*

8 It is plaintiffs position that they are appropriately asserting that laws passed
9 after the execution by White of the note and deed of trust in 2006 cannot be used
10 to alter the contractual bargain he reasonably expected to occur. Further, as has
11 been stated previously Plaintiffs Church and Property Owner concede the bailout
12 was for a public purpose and therefore invoke the Takings Clause analysis
13 asserted herein.
14

15 **Conclusion**

16 This State's motion to dismiss should be denied.

17 Respectfully submitted this 29th day of January, 2024.

18 By: s/ Scott E. Stafne
19 Scott E. Stafne, WSBA No. 6964
20 Stafne Law *Advocacy & Consulting*
21 239 North Olympic Avenue
22 Arlington, WA 98223
23 360.403.8700
24 *Attorney for Plaintiffs*

I certify that this memorandum contains 7,362 words, in compliance with the Local Civil Rules.

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury under the laws of the State of Washington that a true and correct copy of the foregoing has been furnished electronically via the Court's CM/ECF system to all persons registered to receive electronic notice.

Dated this 29th day of January 2024.

By s/Justin Wood
Justin Wood, Paralegal

Honorable Tiffany M. Cartwright

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA**

CHURCH OF THE GARDENS, a
Washington Not-for-Profit Corporation
operating as a faith-based religious
organization; ALVIN WHITE, in his
individual capacity,

Plaintiffs,

v.

QUALITY LOAN SERVICES
CORPORATION OF WASHINGTON;
MTC FINANCIAL INC. DBA
TRUSTEE CORPS.; DEUTSCHE
BANK NATIONAL TRUST
COMPANY; LONG BEACH
MORTGAGE LOAN TRUST 2006-4;
LONG BEACH MORTGAGE LOAN
TRUST 2006-5; and STATE OF
WASHINGTON, a State of the United
States.

Defendants.

Case No.: 3:23-cv-06193-TMC

**CROSS MOTION FOR SUMMARY
JUDGMENT AGAINST
DEFENDANTS**

**NOTE ON MOTION CALENDAR
FEBRUARY 23, 2024**

Relief Requested:

Plaintiffs Church of the Gardens (hereafter “Church” or “COTG”) and Alvin White (hereafter “White” or “Property Owner”) move for summary judgment as to the liability of the statutory trustee and its client Deutsche Bank for selling White’s property on January 5, 2024 when they were aware that proper grounds existed to restrain the sale of those properties.

Issues:

1. Under the facts of this case did Deutsche Bank and its statutory trustee violate Plaintiffs’ rights to restrain the trustee sale of White’s properties on any proper grounds when Deutsche Bank removed this case to this District Court on December 28, 2024 and thereby prevented Plaintiffs from arguing their timely filed motion to restrain the sale in state court and its paid statutory trustee completed the sale before Plaintiffs’ was assigned an Article III judge?
2. Where Plaintiffs in the state court action below brought claims to restrain the statutory trustee from selling White’s properties and timely moved for equitable relief in this regard, and Deutsche Bank removed the case to this Court in such a manner that such relief could not be timely granted, what duties, if any, did the Washington State superior court have pursuant to

1 RCW 61.24.130 with regard to adjudicating the timely filed restraint of
2 sale motion after this case was removed to this Court?

3
4 3. Where Plaintiffs in the state court action brought claims to restrain the
5 statutory trustee from selling White's properties and timely moved for
6 equitable relief in this regard, and Deutsche Bank removed the case to this
7 Court in such a manner that such relief could not be timely granted, what
8 duties, if any, did this Court have to provide Plaintiffs with a neutral and
9 independent forum to timely exercise the federal judicial power under the
10 circumstances of this case?
11

12 4. Where Plaintiffs in the state court action below brought claims to restrain
13 the statutory trustee from selling White's properties and timely moved for
14 equitable relief in this regard, and Deutsche Bank removed this case to this
15 Court in such a manner that such relief could not be timely granted, what
16 duties, if any, did the Washington State statutory trustee have with regard
17 to allowing a Court to adjudicate Plaintiffs' timely filed motion under the
18 circumstances of this case?
19
20

21 5. Where Plaintiffs in the state court action below brought claims to restrain
22 the statutory trustee from selling White's properties and timely moved for
23 equitable relief in this regard, and Deutsche Bank removed the case to this
24

1 Court in such a manner that such relief could not be timely granted, what
2 duties, if any, did the State of Washington have with regards to allowing a
3 Court to adjudicate the merits of their timely filed motion to restrain the
4 sale under the circumstances of this case?

5
6 6. Whether the original paper promissory note signed by White has been lost
7 or destroyed?

8
9 7. Must Deutsche Bank both allege and prove its standing for removing this
10 case to this Court?

11 **Evidence Relied Upon:**

12 Church and Property Owner rely on the declarations of Alvin B. White and
13 Scott E. Stafne in support of this Cross Motion for summary Judgment and in
14 opposition to the State of Washington's Motion to Dismiss. Additionally,
15 Plaintiffs rely upon their Requests for Judicial Notice (RFJN).

16
17 **Statement of Facts:**

18 Generally:

19
20 (1) The Financial Industry, including Deutsche Bank and those Lenders
21 from which it bought or fronted mortgage loans, destroyed or lost original notes
22 signed by borrowers after the passage of the E-Sign Act in 2000.¹ (2) the

23
24 ¹ See e.g. United States Commerce Department, "A Review of the Exceptions to the Electronic Signatures in Global and National Commerce Act" (June 2003);

1 Financial Industry was warned to stop this business practice because it created a
2 risk the lost or destroyed notes would not be enforceable under those state laws
3 applicable to them as contracts with regard to the transfer of real property located
4 within a state's borders;² (3) that notwithstanding that risk to themselves, this
5 Nation, and the People of this Nation, members of the financial industry
6 continued to lose or destroy notes to such an extent that by 2006 most original
7 notes were being destroyed pursuant to these business practices;³ (4) that by 2008
8 the bad practices by this Nation's Financial Industry with regards to mortgages
9
10

11
12 Office of the Comptroller of the Currency, Advisory Letter - Re Electronic Record
13 Keeping (AL-2004-9) (June 21, 2004); Electronic Financial Service Council
14 testimony "Implementing Electronic records and Signatures: Strategies Developed
15 by the Financial Services Industry" (December, 2004); Treasury Department, "The
16 Department of the Treasury Blueprint for a Modernized Regulatory Structure"
17 (March 2008); "Comments of the Florida Bankers Association" (September 28,
18 2009); Congressional Oversight Panel "Examining the Consequences of Mortgage
19 Irregularities for Financial Stability and Foreclosure Mitigation" (November
20 2010) as well as a copy of a printed copy of this same report, RFJN Ex. 10; Henry
21 M. Paulson Jr. On the Brink: Inside the Race to Stop the Collapse of the Global
22 Financial System, SBN: 9780446561938 (2010) (hereafter "Paulson Book"). *See*
23 *also* Stafne Declaration, Ex. 5 and 6.

24 ² *Id.* *See also* Treasury Department, Press Release, "Treasury Releases Blueprint
for Stronger Regulatory Structure" (March 31, 2008); "Remarks by Secretary M.
Paulson, Jr on Blueprint for Regulatory Reform" (March 31, 2008); Press Release
"Treasury Releases Blueprint for a Stronger Regulatory Structure"; "The
Department of the Treasury Blueprint for a Modernized Regulatory Structure"
(March 2008).

³ *Id.*

1 and the creation of mortgage backed securities threatened to collapse the United
2 States economy;⁴ (5) After Bear Stearnes collapsed in March 2008, the
3 Department of the Treasury released a “Blueprint for a Stronger Regulatory
4 Structure,” which acknowledged that the financial system which existed in the
5 United States during this period of time, i.e. 2000-2006, was not conforming to
6 the federal regulatory structure then in existence, which included state laws
7 applicable to the origination of mortgages;⁵ (6) Although the Treasury
8 Department appears to float the idea that a way of solving state origination laws
9 would be to preempt them,⁶ that likely is not possible to do under the Nation’s
10 federal structure of government. *See e.g. United States v. Burnison*, 339 U.S. 87,
11 91-92 (1950); *United States v. Fox*, 94 U.S. 315 (1867); *American Land Company*
12 *v. Zeiss*, 219 U.S. 47 (1911); *Arndt v. Griggs*, 134 U.S. 316 (1890); (7) that in
13 September 2008 Fannie Mae (hereafter “Fannie” and Freddie Mac (hereafter
14
15
16
17
18

19 ⁴ *See* Paulson Book.

20 ⁵ Treasury Department, Press Release, “Treasury Releases Blueprint for Stronger
21 Regulatory Structure” (March 31, 2008); “Remarks by Secretary M. Paulson, Jr
22 on Blueprint for Regulatory Reform” (March 31, 2008); Press Release “Treasury
23 Releases Blueprint for a Stronger Regulatory Structure”; “The Department of the
24 Treasury Blueprint for a Modernized Regulatory Structure” (March 2008).

⁶ *See* Treasury 2008 Blueprint, 79-80. *See also* Paulson Book, at pp. 1-18.

1 “Freddie”) were put into into conservatorships;⁷ (8) that in October, 2008 the
2 political branches bailed out the Financial Industry by acquiring interests in
3 mortgages and mortgage backed securities, i.e. “Troubled Assets”⁸ through the
4 authority of the Emergency Economic Stabilization Act (hereafter referred to as
5 “EESA”)⁹ (9) that the Supreme Court has determined that the government’s
6 bailing out the financial industry from the subprime mortgage crisis and placing
7 Fannie and Freddie into a conservatorship was for the public good. *See Collins v.*
8 *Yellen*, 141 S. Ct. 1761 (2021);¹⁰ (10) that the Treasury Department appointed
9 Fannie and Freddie as its financial agents for purposes of enforcing the “troubled
10 assets” it acquired pursuant to the EESA;¹¹ (11) that Fannie and Freddie entered
11 into agreements with servicers in the Financial Industry authorizing servicers to
12
13
14

15 ⁷ Federal Housing Finance Agency, “Conservatorship” website

16 ⁸ *See* Paulson book.

17 ⁹ *See* Paulson book.

18 ¹⁰ Plaintiffs Church and Property Owner assert that to the extent the federal
19 government acquired TARP assets through taxpayer funds for a public purpose, it
20 was precluded by the Fifth Amendment from making real property owners bear
21 the burden of repaying those costs which were premised on the misconduct of
22 others.

23 ¹¹ *See* e.g. 12 U.S.C. §§ 5211, 5216. *See* also FINANCIAL AGENCY
24 AGREEMENT for a HOMEOWNERSHIP PROGRAM under the EMERGENCY
ECONOMIC STABILIZATION ACT OF 2008 between U.S. Department of the
Treasury and Fannie Mae.

1 act as agents for the Treasury with regard to collecting payments or obtaining
2 foreclosures with regards to those Troubled Assets which were acquired by the
3 United States government from servicers;¹² (12) that as the TARP program was
4 winding down in 2010 the Financial Industry began publicizing the fact that
5 lenders and servicers had made many technical mistakes with regards to the
6 signing and notarization of mortgages and their attempts to foreclose on real
7 property security, i.e. dubbed “robo-signing”¹³; (13) that in November 2010 the
8 Congressional Oversight Committee for TARP¹⁴ wrote a report which evaluated
9 the Financial Industry's claims with regards to “robosigning” and concluded that
10 the problems before the country could be much more than technical ones. “The
11 worst case scenario is considerably grimmer.” Oversight Report, at 1. (14) That
12 the Congressional Oversight Committee appropriately found that in 2010:

13
14
15
16 Effective transfers of real estate depend on parties’ being able to
17 answer seemingly straightforward questions: who owns the property?
18 how did they come to own it? Can anyone make a competing claim to
19 it? The irregularities have the potential to make these seemingly
20 simple questions complex. As a threshold matter, a party seeking to
21 enforce the rights associated with the mortgage must have standing in

22
23
24
¹² Id. *See also* Amended and Restated Commitment to Purchase Financial Instrument and Servicer Participation Agreement, between Fannie and BAC Homes Loans Servicing, dated January, 2010.

¹³ Oversight Report, pp. 1-5.

¹⁴ *See* 12 U.S.C. 5233 (a) creating that Oversight Panel “as an establishment in the legislative branch.”

1 court, meaning that a party must have an interest in the property
2 sufficient that a court will hear their claim and can provide them with
3 relief. For a mortgage, “[a] mortgage may be enforced only by, or in
4 behalf of, a person who is entitled to enforce the obligation the
5 mortgage secures.” Thus, the only party that may enforce the rights
6 associated with the mortgage, with standing to take action on a
7 mortgage in a court, must be legally able to act on the mortgage.³⁰
8 Accordingly, standing is critical for a successful foreclosure, because
9 if the party bringing the foreclosure does not have standing to enforce
10 the rights attached to the mortgage and the note, that party may not be
11 able to take the property with clear title that can be passed on to
12 another buyer. Thus, if prior transfers of the mortgage were
13 unsuccessful or improper, subsequent transfers of the property, such as
14 a foreclosure or even an ordinary sale, could be affected. Further,
15 failure to foreclose properly—whether because the foreclosing party
16 did not actually hold the mortgage and the note, or because
17 robo-signing affected the homeowner’s due process rights—means
18 that the prior homeowner may be able to assert claims against a
19 subsequent owner of the property.¹⁵

20 (15) That as of today the federal government has been paid back the
21 government’s investment in bailing out the banks. *See e.g.* GAO-24-107033
22 Troubled Asset Relief Program: Lifetime cost (December 7, 2023). (16) This
23 Payback of funds expended for the public good has been accomplished by way of
24 the federal government itself or through others foreclosing on the real properties,
like those involved in this case, under laws which did not exist when the pertinent
promissory notes and deeds of trust were executed.

With regards to this case:

¹⁵ Oversight Report, 10-11.

1 Purported copies of the promissory note White signed are attached as
2 exhibits 2(a), 2(b), 2(c), 2(d) and 2(e) to the Amended Complaint. The pertinent
3 deeds of trust are set forth as Exhibits 3(a)-(e).
4

5 Plaintiffs have presented evidence demonstrating that in 2006, the year
6 White executed the paper promissory notes in this case, it was standard business
7 practice for entities like Long Beach to lose or destroy those paper notes signed
8 by borrowers in favor of making and retaining electronic originals of those notes.
9 So far, defendants haven't disputed this fact.
10

11 Additionally, Plaintiffs have presented evidence that the person who is
12 claimed to have endorsed those notes to obtain bearer status, i.e. Jess Almanza,
13 has testified that he never did so. *See* Stafne declaration, Exhibit 4.
14

15 The beneficiary declaration which the statutory trustee claims to have
16 relied upon to sell White's real properties on January 5, 2024 states in pertinent
17 part:

18 Deutsche Bank Deutsche National Trust Company, as Trustee, in trust
19 or registered Holders of Long beach Mortgage 2006-4, Asset Backed
20 Certificates Series 2006-4 is the actual holder of the Promissory Note
21 evidencing the above referenced loan.

22 *See* Stafne Declaration, Exhibit 11.

23 In 2006, the year the pertinent notes and deeds of trust were executed by
24 White, RCW 62A.3-309 provided:

Enforcement of lost, destroyed, or stolen instrument.

(a) A person not in possession of an instrument is entitled to enforce the instrument if (i) the person was in possession of the instrument and entitled to enforce it when loss of possession occurred, (ii) the loss of possession was not the result of a transfer by the person or a lawful seizure, and (iii) the person cannot reasonably obtain possession of the instrument because the instrument was destroyed, its whereabouts cannot be determined, or it is in the wrongful possession of an unknown person or a person that cannot be found or is not amenable to service of process.

(b) A person seeking enforcement of an instrument under subsection (a) must prove the terms of the instrument and the person's right to enforce the instrument. If that proof is made, RCW **62A.3-308** applies to the case as if the person seeking enforcement had produced the instrument. The court may not enter judgment in favor of the person seeking enforcement unless it finds that the person required to pay the instrument is adequately protected against loss that might occur by reason of a claim by another person to enforce the instrument. Adequate protection may be provided by any reasonable means.

There was nothing in Washington statutory law in 2006 which purported to give statutory trustees the authority to sell properties without assuring beneficiaries' compliance with RCW 62A.3-309. In 2006 RCW 61.24.030(7)(j) stated in pertinent part:

It shall be requisite to a trustee's sale:

* * *

(7) That at least thirty days before notice of sale shall be recorded, transmitted or served, written notice of default shall be transmitted by the beneficiary or trustee to the borrower and grantor at their last known

addresses by both first class and either registered or certified mail, return receipt requested, and the beneficiary or trustee shall cause to be posted in a conspicuous place on the premises, a copy of the notice, or personally served on the borrower and grantor. This notice shall contain the following information:

* * *

(j) That the borrower, grantor, and any guarantor has recourse to the courts pursuant to RCW 61.24.130 to contest the alleged default on any proper ground.

In 2010 as the bleak aspects of the subprime mortgage crisis continued to explode, *see* 2010 Congressional Oversight Report, RFJN Exhibit 10, the political branches of the State of Washington amended RCW 61.24.030(7) to provide:

It shall be requisite to a trustee's sale:

* * *

(7)(a) That at least thirty days before notice of sale shall be recorded, transmitted or served, the trustee shall have proof that the beneficiary is the *owner* of any promissory note or other obligation secured by the deed of trust. A declaration prepared under the penalty of perjury stating that the beneficiary is the *actual holder* of the promissory note secured by the deed of trust shall be sufficient proof as required under this subsection.

(b) Unless the trustee has violated his or her duty under RCW RCW 61.24.010(4),¹⁶ the trustee is entitled to rely on the beneficiary's declaration as evidence of proof required under this subsection.

¹⁶ In 2006 RCW 61.24.030(4) did not exist. The applicable law with regards to statutory trustees at the time White executed the pertinent contracts required that trustees be impartial as between the parties. *See Cox v. Helenius*, 103 Wn.2d 383 (1985). RCW 61.24.010 as it went into effect in 2010 provided: "(4) The trustee or successor trustee has a duty of good faith to the borrower, beneficiary, and grantor."

1 In 2018 the political branches amended RCW 61.24.030(7) so as to
2 provide:
3

4 It shall be requisite to a trustee's sale:

*

*

*

5 (7)(a) That, for residential real property, before the notice of trustee's
6 sale is recorded, transmitted, or served, the trustee shall have proof
7 that the beneficiary is the *holder* of any promissory note or other
8 obligation secured by the deed of trust. A declaration by the
9 beneficiary made under the penalty of perjury stating that the
10 beneficiary is the *holder* of any promissory note or other obligation
secured by the deed of trust shall be sufficient proof as required under
this subsection.

11 As can be seen the 2018 amendment removed the requirement that the
12 trustee have proof the statutory trustee is the *owner* of the promissory note and
13 states that the trustee can rely upon the declaration from the beneficiary that it is
14 the holder (not “actual” holder) of the note in order to sell properties actually
15 owned by persons like White.
16

17 The President of the statutory trustee corporation which sold White's
18 properties to Deutsche Bank (pursuant to a credit bid by Deutsche Bank) on
19 January 5, 2024 testifying as a 30(b)(6) designee in another case testified that the
20 statutory trustee bases its confiscatory sales of other people's real properties on
21 present law no matter what the circumstances or when the note and mortgage
22 sought to be enforced were executed. Here's exactly what Mr. Stenamn said:
23
24

Page 53

25· Q· ·Okay· Okay· What version -- and I think you already

Page 54

·1· · · testified as to this generally, but what version of RCW ·2· · ·
61.24.030 was applied to performing the sale of de ·3· · · Botton's
home?

·4· A· **What version of the DTA was applied?**

·5· Q· ·Yes· ·6·

A· **The current version at the time the foreclosure was ·7· · ·
conducted.**

·8· Q· ·Okay· And why was that?

·9· A· **Well, we would always proceed under the current law.**

* * *

Q·5· · · · Do you see where the term applicable trust -- excuse ·6· · ·
me -- "applicable law" is included in the definitions?

·7· A· **I see it at the very beginning under deed of trust --**

·8· Q· ·And what --

·9· A· **-- Sections 3, 11, 13, 18, 20, and 21.**

10· Q· ·What does it -- how does it define the term "applicable 11· · ·
law"?

12· A· **It means all controlling applicable federal, state, and 13· ·
· local statutes, regulations, ordinances, and 14· · · administrative
rules and orders that have the effect of 15· · · law, as well as all
the applicable final nonappealable 16· · · judicial opinions.**

17· Q· ·Okay· And does that definition mean that all applicable 18· · ·
· law is incorporated into the deed of trust and promissory 19· · ·
note?

20· A· **Can you restate that, please?**

21· Q· ·Okay· So what does that mean to you as the 30(b)(6) 22· · ·
designee for the statutory trustee?

23· · · · As I read it, it indicates that all applicable 24· · · law -- and
"applicable law" is cited numerous times in 25· · · the deed of trust, is
incorporated into the deed of trust

Page 56

·1· · · and the promissory note· Would you agree with that?

·2· A· **I would.**

1 ·3· Q· ·Okay· And when you use the term "applicable law," how do
2 ·4· ·· you interpret the term "applicable"?

3 ·5· A· **·I don't· I would -- I would defer to my in-house counsel ·6·
·· and my compliance attorney to ensure that my process ·7· ··
4 follows all applicable law· I'm not trying to identify ·8· ·· what
5 those issues are myself and in my process· ·9· Q· ·Okay· But it
6 would be -- if you had questions about 10· ·· that, you would go to
7 them for resolutions; right?**

8 **11· A· ·Correct.**

9 12· Q· ·All right· So I'm just going to grab -- you know, I 13· ··
10 injured my arm· I'm trying to get back in shape and I 14· ·· really
11 hurt myself· It's not been much fun· 15· ·· ·· So I'm going to this
12 Merriam-Webster Dictionary and 16· ·· I'm looking up the term
13 "applicable·" Okay· And the 17· ·· term this has for "applicable" is
14 -- the definition is 18· ·· capable of being applied· Then it's got a
15 colon -- 19· ·· relevant, and then it's got a dash, applicability· 20· ··
21 · So is that how you understand the term "applicable," 21· ·· capable
22 of being applied?

23 **22· A· ·I don't have a reason to refute what you just said.**

24 23· Q· ·Okay· So using that definition, wouldn't the term 24· ··
"applicable law" mean that law which was capable of being 25· ··
applied at the time the document was executed?

26 *Page 57*

27 **·1· A· ·Yes, I guess.**

28 ·2· Q· ·And would it be fair to say that -- when was -- when were ·3· ··
· the promissory note and deed of trust signed in this ·4· ·· case?

29 **·5· A· ·He executed the deed of trust on September 15th of 2006.**

30 **·6· ·· It was dated September 14, 2006· I don't see a date ·7· ··
· stamp· Maybe I have -- yeah, he executed the note on ·8· ··
September 15th of 2006.**

31 *

32 *

33 *

34 *Page 58*

35 ·5· Q· ·But you would agree with me that the law which should ·6· ··
36 have been applied under the applicable law provision of ·7· ·· the
37 contract should have been that which was in effect at ·8· ·· the time
38 that document was signed because that's what the ·9· ·· applicable
39 law was at that time?

10· A· ·I -- I don't have knowledge of -- I guess I'm not sure 11· · ·
what you're -- if you're asking me were they required to 12· · ·
follow the law in 2006 when they executed their 13· · ·
documents?· Okay· I guess· I wasn't there· I was not 14· · · the
closer.

15· Q· ·When you say --

16· A· ·I would assume that the escrow company's following the
17· · · law when they closed the loan.

18· Q· ·Sure. 19· · · · · But are you following the law when you
foreclosed on 20· · · them based on provisions that were enacted
later?· That's 21· · · my question.

22· A· ·I followed the law as it was in 2019.

23· Q· ·Okay· But what did the contract require you to do?

24· A· ·I'm assuming that it -- I make the assumption that I 25· · ·
followed it based on my current process.

Page 59

·1· Q· ·And why do you make that assumption, given the fact that ·2·
· · there's a specific provision in there that incorporates ·3· · ·
applicable law?

·4· A· ·This sounds like a -- it's just confusing· I'm not sure ·5· · ·
where you're -- if you -- I'm not sure where you're going ·6· · ·
with this· My thought is that I would follow the current ·7· · · law
that's on the books· I would not go back to 2006 and ·8· · · follow
the law as it related back in 2006 in my 2019 ·9· · · foreclosure.

10· Q· ·Well, doesn't that allow amendments of the law to affect 11· · ·
· how mortgages are enforced?

12· A· ·Yeah, I would assume so, yes.

19 Plaintiffs do not here, by way of this motion, challenge the constitutional
20 appropriateness of any of these versions of RCW 61.24.030. They assert only that
21 the statutory version of RCW 61.24.030 which the trustee was required to have
22 used for purposes of selling their home was that which existed in 2006, when
23 these agreements were signed.
24

1 Similarly, Plaintiffs Church and Property Owner assert that the duty which
2 the statutory trustee owed to White with regard to enforcing these 2006
3 agreements pursuant to the authority of the DTA was one of *impartiality* as per
4 the Washington Supreme Court's holding in *Cox v. Helenius*, 103 Wn.2d 383
5 (1985). There is a little bit of nuance here, however, because if this Court does
6 not resolve this proposition in Plaintiffs' favor, their fall back position later will
7 be that RCW 61.24.010(4) is unconstitutional pursuant to the Fourteenth
8 Amendment. *See Tumey*, supra.

11 **Authority and Argument:**

12 *A. Summary Judgment Standards*

13 This Court shall grant summary judgment if no genuine issue of material
14 fact exists and the moving party is entitled to judgment as a matter of law. *See*
15 Fed. R. Civ. P. 56(a) and (c). The moving party bears the initial burden of
16 demonstrating the absence of a genuine issue of material fact. *Celotex Corp. v.*
17 *Catrett*, 477 U.S. 317, 323 (1986). A fact is material if it might affect the
18 outcome of the suit under the governing law. *Anderson v. Liberty Lobby, Inc.*, 477
19 U.S. 242, 248 (1986).

22 *B. Deutsche Bank does not possess the paper note signed by White and thus*
23 *cannot enforce that note by way of foreclosure except through compliance*
24 *with RCW 62A.3-308 and 62A.3-309.*

1 RCW 62A.3-308 provides in pertinent part:

2 (a) In any action with respect to an instrument, the authenticity
3 of, and authority to make, each signature on the instrument is
4 admitted unless specifically denied in the pleadings. If the
5 validity of a signature is denied in the pleadings, the burden of
6 establishing validity is on the person claiming validity...

7 RCW 62A.3-309 provides in full:

8 (a) A person not in possession of an instrument is entitled to
9 enforce the instrument if (i) the person was in possession of the
10 instrument and entitled to enforce it when loss of possession
11 occurred, (ii) the loss of possession was not the result of a
12 transfer by the person or a lawful seizure, and (iii) the person
13 cannot reasonably obtain possession of the instrument because
14 the instrument was destroyed, its whereabouts cannot be
15 determined, or it is in the wrongful possession of an unknown
16 person or a person that cannot be found or is not amenable to
17 service of process.

18 (b) A person seeking enforcement of an instrument under
19 subsection (a) must prove the terms of the instrument and the
20 person's right to enforce the instrument. If that proof is made,
21 RCW **62A.3-308** applies to the case as if the person seeking
22 enforcement had produced the instrument. The court may not
23 enter judgment in favor of the person seeking enforcement
24 unless it finds that the person required to pay the instrument is
adequately protected against loss that might occur by reason of
a claim by another person to enforce the instrument. Adequate
protection may be provided by any reasonable means.

21 Property Owner White has submitted a declaration based on evidence that
22 the original paper Note he signed was destroyed shortly after he signed it. As yet,
23 no defendant has disputed that the original paper note signed by White was not
24

1 destroyed or lost shortly after it was executed. Accordingly, Plaintiffs Church and
2 Property Owner expect that all defendants will admit or deny this plausible claim
3 in responding to this Motion for summary judgment.
4

5 *C. The statutory trustee was obligated under the circumstances of this case to*
6 *allow Plaintiffs to assert their claims that Deutsche Bank had no standing*
7 *to foreclose.*

8 In 2006 applicable law provided pursuant to *Cox v. Helenius*, 103 Wn.2d
9 383 (1985) that statutory trustees must be impartial as between beneficiaries and
10 borrowers. It is believed based on past interactions with the statutory trustee that
11 sold two of White's properties on January 5, 2024 that it will concede that it has
12 not acted impartially as between White and its client, Deutsche Bank or Deutsche
13 Bank's attorney in fact.
14

15 To the extent the statutory trustee will not make this concession, it is the
16 position of Plaintiff Church and Property Owner that a reasonable juror could not
17 find otherwise based on the present facts before this Court.
18

19 It is also the position of Plaintiff Church and Property Owner that the facts
20 of record do not support an argument that the statutory trustee acted in good faith
21 when it sold White's property under the circumstances of this case, which include
22 without limitation, that (1) the trustee knew or should have known that proper
23 grounds existed for White to assert a judicial inquiry pursuant to RCW
24

1 61.24.130; (2) that the trustee participated in or went along with Deutsche Bank's
2 removal charade which allowed them to steal White's property without ever
3 considering the legal issues he raised. *See e.g. Schroeder v. Excelsior Mgmt. Grp.,*
4 *LLC*, 177 Wn.2d 94 (2013) ("We emphasize the obvious. If Schroeder's land was
5 agricultural, then not only did the trustee not have authority to proceed with a
6 nonjudicial foreclosure, but the very statute upon which the trustee relies to
7 support its five-day notice requirement, RCW 61.24.130(2), is inapplicable." *Id.*,
8 at 111.
9

10
11 Similarly in this case the statutory trustee and its client had no standing
12 under Washington law, either by way of the contracts or statutory law, in 2006 to
13 enforce a lost or destroyed note (or one not properly endorsed) by foreclosure.
14 And Plaintiffs had a right to have their claims under both the language of the
15 promissory note defining Note Holder and the requirements of RCW 62A.3-308
16 and 62A.-308 adjudicated pursuant to the Declaratory Judgment Acts.
17

18 Interpreting the DTA in a manner which authorizes the type of
19 gamesmanship reflected here by all of the defendants led by the AG violates the
20 plain language of RCW 61.24.130 as it has existed in various forms over time. It
21 also is inconsistent with the DTA's policies, which include: (1) that the
22 nonjudicial foreclosure process remain efficient and expensive; (2) that the
23
24

1 process provide an adequate opportunity for parties to prevent wrongful
2 foreclosure; and (3) the process should promote the stability of land titles.

3
4 *D. Standing Considerations.*

5 This is a court of limited jurisdiction. The party invoking federal
6 jurisdiction, i.e. Deutsche Bank in this case, must both allege and prove its
7 standing to obtain relief. *Gill v. Whitford*, 138 S. Ct. 1916 (2018). So far Deutsche
8 Bank has done neither. Nor has the State of Washington or any other defendant
9 tried to do either.
10

11 **Conclusion**

12 Plaintiffs' cross motion for summary judgment should be granted.
13
14

15 Respectfully submitted this 29th day of January, 2024.

16 By: s/ Scott E. Stafne

17 Scott E. Stafne, WSBA No. 6964

18 Stafne Law Advocacy & Consulting

19 239 North Olympic Avenue

20 Arlington, WA 98223

21 360.403.8700

22 *Attorney for Plaintiffs*

23 I certify that this memorandum contains 5,118
24 words, in compliance with the Local Civil Rules.

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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury under the laws of the State of Washington that a true and correct copy of the foregoing has been furnished electronically via the Court's CM/ECF system to all persons registered to receive electronic notice.

Dated this 29th day of January 2024.

By s/Justin Wood
Justin Wood, Paralegal

Honorable Tiffany M. Cartwright

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA**

CHURCH OF THE GARDENS, a
Washington Not-for-Profit Corporation
operating as a faith-based religious
organization; ALVIN WHITE, in his
individual capacity,

Plaintiffs,

v.

QUALITY LOAN SERVICES
CORPORATION OF WASHINGTON;
MTC FINANCIAL INC. DBA
TRUSTEE CORPS.; DEUTSCHE
BANK NATIONAL TRUST
COMPANY; LONG BEACH
MORTGAGE LOAN TRUST 2006-4;
LONG BEACH MORTGAGE LOAN
TRUST 2006-5; and STATE OF
WASHINGTON, a State of the United
States.

Defendants.

Case No.: 3:23-cv-06193-TMC

**PLAINTIFFS' REQUEST FOR
JUDICIAL NOTICE**

1 Under Federal Rule of Evidence 201(b)(2) the court may judicially notice a
2 fact that is not subject to reasonable dispute because it can be accurately and
3 readily determined from sources whose accuracy cannot be reasonably
4 questioned. *See e.g. Tug Constr., LLC v. Harley Marine Fin., LLC*, 412 F. Supp.
5 3d1293, 1296 (W.D. Wash. 2019) (citing *Reyn's Pasta Bella, LLC v. Visa USA,*
6 *Inc.*, 442 F.3d 741,746 n.6 (9thCir. 2006))("The Court may however, take into
7 consideration such facts as are available from judicial notice such as court filings
8 and other matters of public record.") *Gsouri v. Gentry*, No. 3:18-cv-5472
9 BHS-JRC, 2019 U.S. Dist.Lexis 152502, at *2 n.2 (W.D. Wash. Aug.8, 2019)
10 ("This Court takes judicial notice of court filings and other matters of public
11 record pursuant to Fed. R. Evid. Rule 201. *See Reyn's Pasta Bella, LLC v. Visa*
12 *USA, Inc.*, 442 F.3d 5741, 746 n. 6 (9th Cir. 2006)").
13
14
15
16

17
18 1. **RFJN Exhibit 1** which is a true and correct paper copy of the Public
19 Law 106-229: eSign Act of 2000 (Electronic Signatures in Global and National
20 Commerce Act), U.S. Government Printing Office, stored and available to the
21 public for retrieval and review at the following government website:
22

23 <https://www.congress.gov/106/plaws/publ229/PLAW-106publ229.pdf>
24
25
26

1 2. **RFJN Exhibit 2** which is a true and correct paper copy of the Board of
2 Governors of the Federal Reserve System, Study of Banking Regulations
3 Regarding the Online Delivery of Financial Services, Notice; Request for
4 comment, stored and available to the public for retrieval and review at the
5 following government website:
6

7 [https://www.federalreserve.gov/boarddocs/press/boardacts/2001/20010516/attach](https://www.federalreserve.gov/boarddocs/press/boardacts/2001/20010516/attachment.pdf)
8 [ment.pdf](https://www.federalreserve.gov/boarddocs/press/boardacts/2001/20010516/attachment.pdf)
9

10 3. **RFJN Exhibit 3** which is a true and correct paper copy of a report
11 prepared by the United States Department of Commerce entitled “A Review of
12 the Exceptions to the Electronic Signatures in Global and National Commerce
13 Act” (ESIGN Act). This report is stored and available to the public for retrieval
14 and review at the following government website:
15

16 <https://www.ntia.doc.gov/files/ntia/publications/esignfinal.pdf>
17
18

19 4. **RFJN Exhibit 4** which is a true and correct paper copy of the Office of
20 the Comptroller of the Currency, Advisory Letter – Re: Electronic Record
21 Keeping (AL 2004-9). A copy of this letter is stored and available to the public
22 for retrieval and review at the following government website:
23

24 [https://www.occ.gov/news-issuances/advisory-letters/2004/advisory-letter-2004-9](https://www.occ.gov/news-issuances/advisory-letters/2004/advisory-letter-2004-9.pdf)
25 [.pdf](https://www.occ.gov/news-issuances/advisory-letters/2004/advisory-letter-2004-9.pdf)
26

1 **5. RFJN Exhibit 5** which is a true and correct paper copy of the EFSC
2
3 Testimony by Jeremiah S. Buckley submitted in response to June 21, 2004 OCC
4 request entitled: Implementing Electronic Records and Signatures: Strategies
5 Developed by the Financial Services Industry (Testimony of the Electronic
6 Financial Services Council before the National Committee on Vital and Health
7 Statistics.) This document is stored and available to the public for retrieval and
8
9 review at the following government website:

10 <https://www.ncvhs.hhs.gov/wp-content/uploads/2014/05/041208p4.pdf>
11

12 **6. RFJN Exhibit 6** which is a true and correct electronic copy of the TARP
13
14 – Troubled Asset Relief Program: Public Law 110-343: “An Act to provide
15 authority for the Federal Government to purchase and insure certain types of
16 troubled assets for the purposes of providing stability to and preventing
17 disruption in the economy and financial system and protecting taxpayers, to
18 amend the Internal Revenue Code of 1986 to provide incentives for energy
19 production and conservation, to extend certain expiring provisions, to provide
20 individual income tax relief, and for other purposes”. This statute is stored and
21
22 available to the public for retrieval and review at the following government
23
24 website:
25
26

1 <https://www.govinfo.gov/content/pkg/PLAW-110publ343/html/PLAW-110publ343.htm>
2

3
4 7. **RFJN Exhibit 7** which is a true and correct paper copy of the Financial
5 Agency Agreement (FAA) entered into between Fannie Mae and the U.S.
6 Treasury for a Homeownership Preservation Program pursuant to the Emergency
7 Economic Stabilization Act of 2008. This FAA stored and available to the public
8 for retrieval and review at the following government website:
9

10 [https://home.treasury.gov/sites/default/files/initiatives/financial-stability/procure](https://home.treasury.gov/sites/default/files/initiatives/financial-stability/procurement/faa/Financial_Agency_Agreements/Fannie%20Mae%20FAA%20021809.pdf)
11 [ment/faa/Financial_Agency_Agreements/Fannie%20Mae%20FAA%20021809](https://home.treasury.gov/sites/default/files/initiatives/financial-stability/procurement/faa/Financial_Agency_Agreements/Fannie%20Mae%20FAA%20021809.pdf)
12 [.pdf](https://home.treasury.gov/sites/default/files/initiatives/financial-stability/procurement/faa/Financial_Agency_Agreements/Fannie%20Mae%20FAA%20021809.pdf)
13

14 8. **RFJN Exhibit 8** which is a true and correct paper copy of the
15 Comments by the Florida Bankers Association submitted by commercial banks to
16 the Florida Supreme Court against a propose court rule which would have
17 required foreclosure plaintiffs to verify possession of the original paper Note
18 signed by its maker because such notes have been destroyed pursuant to e-sign
19 act's business practices. This document is stored and available to the public for
20 retrieval and review at the following government website:
21

22
23 [https://supremecourt.flcourts.gov/content/download/328731/file/09-1460_093009](https://supremecourt.flcourts.gov/content/download/328731/file/09-1460_093009_Com)
24 [_Com](https://supremecourt.flcourts.gov/content/download/328731/file/09-1460_093009_Com)
25
26

1 **9. RFJN Exhibit 9** which is a true and correct paper copy of the Fannie
2 Mae agreement with Servicer BAC Loan Servicing: “Amended and Restated
3 Commitment to Purchase Financial Instrument and Servicer Participation
4 Agreement.” A copy of this Agreement is stored and available to the public for
5 retrieval and review at the following government website:
6

7 [https://home.treasury.gov/sites/default/files/initiatives/financial-stability/TARP-Pr
8 ograms/housing/mha/Documents_Contracts_Agreements/093010bankofamericah
9 omeloansSPA%28incltransmittal%29-r.pdf](https://home.treasury.gov/sites/default/files/initiatives/financial-stability/TARP-Programs/housing/mha/Documents_Contracts_Agreements/093010bankofamericahomeloansSPA%28incltransmittal%29-r.pdf)
10

11 **10. RFJN Exhibit 10** which is a true and correct paper copy of the
12 “Congressional Oversight Panel November Oversight Report Examining the
13 Consequences of Mortgage Irregularities for Financial Stability and Foreclosure
14 Mitigation.” Dated November 16, 2010. A copy of this report is stored and
15 available to the public for retrieval and review at the following government
16 website:
17

18 [https://www.govinfo.gov/content/pkg/CPRT-111JPRT61835/html/CPRT-111JPRT
19 61835.htm](https://www.govinfo.gov/content/pkg/CPRT-111JPRT61835/html/CPRT-111JPRT61835.htm)
20

21 Alternative Source:

22 <https://www.congress.gov/111/cprt/JPRT61835/CPRT-111JPRT61835.pdf>
23

24 **11. RFJN Exhibit 11** which is a true and correct electronic copy of the
25 Complaint in *United States of America, et al* [including Washington State] v.
26

1 *Bank of America Corp.*, et al, USDC 1:12-cv-00361-RMC, which Niczyporuk's
2 attorney retrieved from PACER. A copy of this complaint is stored and available
3 to the public for retrieval and review at the following website:
4

5 [https://churchofthegardens.org/pdf/archive/2012.03.12_-_USA_v_Bank_of_Ame](https://churchofthegardens.org/pdf/archive/2012.03.12_-_USA_v_Bank_of_America_-_USDC_Complaint.pdf)
6 [rica_-_USDC_Complaint.pdf](https://churchofthegardens.org/pdf/archive/2012.03.12_-_USA_v_Bank_of_America_-_USDC_Complaint.pdf)

7
8 12. **RFJN Exhibit 12** which is a true and correct electronic copy of the
9 *United States of America* [including Washington State] v. Bank of America Corp.
10 *et al* – Consent Judgment against Bank of America. A copy of this consent
11 judgment is stored and available to the public for retrieval and review at the
12 following websites:
13

14 [https://scholarship.law.unc.edu/mortgage-settlements/servicing/consent-judgment](https://scholarship.law.unc.edu/mortgage-settlements/servicing/consent-judgments/1/)
15 [s/1/](https://scholarship.law.unc.edu/mortgage-settlements/servicing/consent-judgments/1/)

16 Alternative Source:

17 [https://churchofthegardens.org/pdf/archive/2012.04.04_-_Consent_Judgment_in_](https://churchofthegardens.org/pdf/archive/2012.04.04_-_Consent_Judgment_in_US_v_Bank_of_America.pdf)
18 [US_v_Bank_of_America.pdf](https://churchofthegardens.org/pdf/archive/2012.04.04_-_Consent_Judgment_in_US_v_Bank_of_America.pdf)

19 13. **RFJN Exhibit 13** which is a true and correct paper copy of the IN RE:
20 New Century TRS Holdings, Inc., Delaware Corporation, *et. al.*, Chapter 11,
21 Case No. 07-10416: "MOTION OF THE NEW CENTURY LIQUIDATING
22 TRUST FOR AN ORDER AUTHORIZING THE IMMEDIATE
23 ABANDONMENT AND DESTRUCTION OF CERTAIN MORTGAGE LOAN
24
25
26

1 FILES AND NON-MORTGAGE LOAN BUSINESS FILES.” This document
2 was retrieved from PACER by White’s attorney and is is stored and available to
3 the public for retrieval and review at the following website:
4

5 [https://churchofthegardens.org/pdf/archive/2013.02.14-New-Century-Motion-for-](https://churchofthegardens.org/pdf/archive/2013.02.14-New-Century-Motion-for-Order-Authorizing-Abandonment-and-Destruction-of-Mortgage-Loan-Files.pdf)
6 [Order-Authorizing-Abandonment-and-Destruction-of-Mortgage-Loan-Files.pdf](https://churchofthegardens.org/pdf/archive/2013.02.14-New-Century-Motion-for-Order-Authorizing-Abandonment-and-Destruction-of-Mortgage-Loan-Files.pdf)

7
8 14. **RFJN Exhibit 14** which is a true and correct electronic copy of the
9 Government National Mortgage Association (Ginnie Mae) report, “An Era of
10 Transformation” documenting changes in the mortgage industry through
11 September 14, 2014. A copy of this Report is stored and available to the public
12 for retrieval and review at the following government website:
13

14 [https://www.ginniemae.gov/newsroom/Documents/ginniemae_an_era_of_transfo](https://www.ginniemae.gov/newsroom/Documents/ginniemae_an_era_of_transformation.pdf)
15 [rmation.pdf](https://www.ginniemae.gov/newsroom/Documents/ginniemae_an_era_of_transformation.pdf)

16
17 15. **RFJN Exhibit 15** which is a true and correct paper copy of the
18 “Memorandum from Deutsche Bank National Trust Company, as Trustee and
19 Deutsche Bank Trust Company, as Trustee to SECURITIZATION LOAN
20 SERVICERS” dated August 30, 2007. A copy of this Report is stored and
21 available to the public for retrieval and review at the following website:
22

23 <http://www.innercitypress.org/dbntcmemo.pdf>
24
25
26

1 16. **RFJN Exhibit 16** which is a true and correct paper copy of the
2 “Memorandum from Deutsche Bank National Trust Company, as Trustee and
3 Deutsche Bank Trust Company, as Trustee to SECURITIZATION LOAN
4 SERVICERS” dated July 28, 2010. A copy of this Report is stored and available
5 to the public for retrieval and review at the following website:
6

7 <https://churchofthegardens.org/pdf/archive/2010.07.28-Memorandum-of-Deutsche-Bank-Regarding-Securitization-Loan-Servicers.pdf>
8
9

10 17. **RFJN Exhibit 17** which is a true and correct paper copy of the
11 “Memorandum from Deutsche Bank National Trust Company, as Trustee and
12 Deutsche Bank Trust Company, as Trustee to SECURITIZATION LOAN
13 SERVICERS” dated October 8, 2010. A copy of this Report is stored and
14 available to the public for retrieval and review at the following website:
15

16 <https://churchofthegardens.org/pdf/archive/2010.10.08-Memorandum-from-Deutsche-Bank-to-Securitized-Loan-Servicers.pdf>
17
18

19 18. **RFJN Exhibit 18** which is a true and correct paper copy of the
20 Memorandum from Deutsche Bank National Trust Company, as Trustee and
21 Deutsche Bank Trust Company, as Trustee to All Holders of Residential Backed
22 securities for which Deutsche Bank of national, Trust Company or Deutsche
23 Bank Trust Company America Acts as Securitization Trustee dated October 25,
24
25
26

1 2010. A copy of this Report is stored and available to the public for retrieval and
2 review at the following website:

3 <https://churchofthegardens.org/pdf/archive/2010.10.25-Memorandum-from-Deutsche-Bank.pdf>
4
5
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7

8 DATED this 29th day of January, 2024.

9 By: s/ Scott E. Stafne WSBA No. 6964
10 Scott. E. Stafne

11 Stafne Law *Advocacy & Consulting*
12 239 North Olympic Avenue
13 Arlington, WA 98223
14 360.403.8700
15 *Attorney for Plaintiffs*
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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury under the laws of the State of Washington that a true and correct copy of the foregoing has been furnished electronically via the Court's CM/ECF system to all persons registered to receive electronic notice.

Dated this 29th day of January 2024.

By s/Justin Wood
Justin Wood, Paralegal

Honorable Tiffany M. Cartwright

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA**

CHURCH OF THE GARDENS, a
Washington Not-for-Profit Corporation
operating as a faith-based religious
organization; ALVIN WHITE, in his
individual capacity,

Plaintiffs,

v.

QUALITY LOAN SERVICES
CORPORATION OF WASHINGTON;
MTC FINANCIAL INC. DBA
TRUSTEE CORPS.; DEUTSCHE
BANK NATIONAL TRUST
COMPANY; LONG BEACH
MORTGAGE LOAN TRUST 2006-4;
LONG BEACH MORTGAGE LOAN
TRUST 2006-5; and STATE OF
WASHINGTON, a State of the United
States.

Defendants.

Case No.: 3:23-cv-06193-TMC

**DECLARATION OF SCOTT E.
STAFNE IN SUPPORT OF
PLAINTIFFS' RESPONSE TO
DEFENDANT STATE OF
WASHINGTON'S MOTION TO
DISMISS AND IN SUPPORT OF
PLAINTIFFS' CROSS MOTION
FOR SUMMARY JUDGMENT
AGAINST DEFENDANTS**

MTD Noted for: February 2, 2024

MSJ Noted for: February 23, 2024

Declaration of Scott Stafne In Support of
Response to Motion to Dismiss and Cross Motion
for Summary Judgment Against Defendants

Stafne Law Advocacy & Consulting
239 N. Olympic Ave
Arlington, WA 98223
360.403.8700

- 1 1. My name is Scott Stafne. I am over the age of majority and competent to
2 make this declaration, which I do on the basis of personal knowledge and
3 also in my capacity as the attorney for Plaintiffs Church of the Gardens
4 (hereafter “Church” or COTG”) and Alvin White (hereafter “White”).
5
- 6 2. With regard to the State of Washington’s Motion to Dismiss (MTD)
7 argument that the complaint does not comply with Fed. R. Civ. Pro 8
8 because it does not contain a “short and plain” statement of the claim
9 showing that the pleader is entitled to relief,” and “does not contain
10 well-pleaded factual allegations that would ‘nudge Plaintiffs’ claims
11 against the State across the line from conceivable to plausible”, MTD
12 6:19-25 I respond as follows:
13
 - 14 A. I wrote both the original complaint filed with the state court and the
15 Amended and supplemental Complaint which was filed with this
16 Court promptly after Deutsche Bank removed this case to this Court
17 and as a result thereof instructed its paid trustee to sell two of the
18 properties which White owned on January 5, 2024.
19
 - 20 B. The Amended Complaint in this case is the most recent iteration of
21 complaints which I have been drafting since at least January 31,
22 2023 when I filed a different version of it in DeBotton v. Quality
23
24

1 Loan Corp of Washington, et al. case no. 2:23-cv-00223-RSL
2 (hereafter referred to as “DeBotton case”).

3 C. I have done my best to comply with Rules 8 and 12(b)(6) given the
4 inherent tension between the requirements set forth in each, i.e.
5 complaint must be short but state enough facts so as to be plausible.
6 It is my judgment that the Amended Complaint I filed with this
7 Court needs to be fact intensive in order to demonstrate that the
8 factual inquiries Plaintiffs want to adjudicate as defense to a judicial
9 foreclosure are plausible.
10

11 D. I am somewhat taken aback by the AG’s arguments that the
12 complaint is defective because if I cannot write a complaint which
13 complies with these standards, I wonder who can. I am a third
14 generation lawyer. I graduated from the University of Iowa law
15 School fourth in my class in 1974 and obtained a Master of Laws
16 degree from the University of Washington in 1976. Accordingly, I
17 believe I have sufficient education and practice with my calling that
18 I can write a short and plain complaint sufficient to budge a neutral
19 judge into concluding that the facts Plaintiffs have alleged make
20 Plaintiffs claims “plausible” for purposes of obtaining the relief
21

1 Plaintiffs request. That relief, except for those properties now
2 improperly sold, is simply a declaratory judgment of the facts and
3 law applicable to the 2006 contracts at issue herein.
4

5 E. The State of Washington's assertion that "this is only the latest
6 attempt by Plaintiffs' counsel to invalidate the Deed of Trust Act."
7 MTD 1:23-24 is not true. This case is about interpreting the
8 language of RCW 61.24.130 in a way that preserves its
9 constitutionality given the Appeals Court's assertion in *Larson v*
10 *Snohomish County* that "[t]he DTA preserves the superior court's
11 jurisdiction by giving the borrower to file an action in superior court
12 to restrain the sale." It is my sworn testimony that this case is about
13 obtaining declaratory and other relief about the meaning of RCW
14 61.24.130 under the facts, the applicability of various statutes to the
15 specific provisions of the pertinent contracts; and other matters
16 appropriate for relief under Chapter 7.24 RCW. *See* RCW 7.24.010;
17 020; 030; 050; 090; 110; 120; 190.
18
19
20

21 F. The following facts related to this and other cases should also be
22 considered for purposes of this Court's consideration of the
23 "plausibility" of the Amended Complaint and Original Complaint.
24

- 1 3. I am involved with other cases in which Deutsche Bank claims to be a
2 beneficiary for purposes of foreclosing on my clients. For example, *COTG*
3 *v. Clear Recon Corp.*, Whatcom County Superior Court case no.
4 23-2-00351-37 (which I will subsequently refer to as the Whatcom County
5 case) is very similar to this one. In that case COTG and White originally
6 sought declaratory and injunctive relief to stop a scheduled sale of real
7 property owned by White in Whatcom County. Deutsche Bank intervened
8 in that case claiming that it was the beneficiary of the deed of trust and had
9 an interest in the property. This claim was supported by the declaration of
10 Eric Moore, which I have attached hereto as **Exhibit 1**. As can be seen
11 from Mr. Moore's declaration, he has attached an obvious copy of White's
12 note as being a copy of the original when clearly it is not.
13
14
15
16 4. Because of the obvious discrepancy in his testimony, I noted the deposition
17 Eric Moore in that case but have been told by Deutsche Bank's attorney
18 (who more likely is only the attorney for Select Portfolio Servicing,
19 Deutsche Bank's attorney in fact), that he no longer works for Select
20 Portfolio Servicing and no one knows where to find him.
21
22 5. Plaintiffs Church and Property Owner White argued in the Whatcom
23 County case, as they do here, that relief pursuant to RCW 61.24.130 is
24

1 appropriate because, among other things, an issue of fact exists with regard
2 to whether the promissory note the statutory trustee is relying upon as the
3 basis for its nonjudicial foreclosure is the original paper per note White
4 signed or an “electronic original.” In support of this issue of fact, White
5 produced numerous historical documents as well as the testimony of
6 expert’s witnesses. One of those witnesses had worked for Countrywide
7 testified that the Note attached to Moore’s declaration was not the original
8 paper copy of the note signed by White because it did not contain a
9 Countrywide barcode sticker used for tracking the location and ownership
10 of original paper notes.
11
12

- 13 6. Deutsche Bank, through its counsel (who is the same counsel representing
14 Deutsche Bank in this case) argued to the Whatcom County Superior Court
15 that Select Portfolio Servicing, Deutsche Bank’s attorney-in-fact, most
16 likely removed the barcode from the note because that was part of Select
17 Portfolio Servicing’s normal process. I have attached hereto as **Exhibit 2** a
18 copy of a transcript of the Court proceedings demonstrating this. It is the
19 Plaintiffs’ position that Deutsche Bank’s colloquy suggests that it may be a
20 routine Deutsche Bank practice to have declarants alter notes purported to
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1 be true and correct copies of an original paper note possessed by Deutsche
2 Bank.

3 7. By way of full disclosure the Whatcom County Court has not yet agreed
4 with my clients that Property Owner is entitled to restrain the sale in favor
5 of requiring Deutsche Bank to proceed with judicial foreclosure. However,
6 that court did agree that Plaintiffs were entitled to an evidentiary hearing
7 on their judicial inquiries regarding the authenticity of note. I have attached
8 hereto as **Exhibit 3** a copy of the relevant Orders. Presently, the
9 evidentiary hearing on these judicial inquiries are scheduled for late
10 March, 2024.
11

12 8. In the past my former law firm, Stafne Trumbull, represented Shelly
13 Erickson. I consider Shelly a friend, notwithstanding that I have not seen
14 her for some time. It is my recollection that Stafne Trumbull was required
15 to withdraw from our representation of Shelly but sometime after this I was
16 contacted by her or her counsel regarding Jess Almanza, the individual
17 who purportedly endorsed the promissory notes at issue here. As I recall
18 they had wanted me to depose Mr. Almanza. After verifying that it was
19 proper to do so, I recall talking with Almanza about his role at Long
20 Beach. After hearing what he had to say I recommended that a declaration
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22
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1 from him might be more effective under the circumstances. I have attached
2 hereto as **Exhibit 4** copy of Almanza's declaration.

3 9. I also am representing homeowners Thomas Bergeron and Carmen
4 Bergeron in the defense of their home against a judicial foreclosure being
5 brought by Deutsche Bank in Snohomish County, case no. 20-2-00225-31.
6 The Bergeron case also involves, among others, judicial inquiries as to
7 whether Deutsche Bank possesses the original paper Note signed by the
8 Bergerons. I have attached as **Exhibit 5** hereto those pleadings relating to
9 this issue which were filed with the Superior Court of Snohomish County
10 and were not adjudicated because Deutsche Bank withdrew its motion for
11 summary judgment before oral argument occurred.
12

13
14 10. Thereafter, Deutsche Bank obtained, from a commissioner of that superior
15 court, an inappropriate¹ ruling prohibiting the Bergerons from making this
16 argument as a sanction against them. I would be happy to provide this
17 Court with that Order and the subsequent pleadings related to that sanction
18 if this Court would like to see the pleadings, but they are voluminous and
19 will be appealed if that ruling ever becomes final. In any event, the point I
20 am making here is that when presented with the argument in the Bergeron
21
22

23 ¹ By this I mean that the Bergerons and I believe that ruling to be inappropriate and
24 have taken steps to have it rescinded.

1 case that Deutsche Bank did not possess the original paper note signed by
2 the Bergerons, the Bank withdrew its motions and that subsequently in a
3 manner which I believe to have been improper a judicial official of the
4 Snohomish Court inappropriately decided this fact issue by way of a
5 judicial manipulation contrived to avoid it.
6

7 11. I am also representing former homeowners Christopher and Angela
8 Larson with regard to an ongoing appeal, appeal No. 854542-I, of their
9 family's eviction from their home by that same court, case no.
10 19-2-09056-31; namely the Superior Court of Snohomish County,
11 Washington. I also represented Christopher and Angela Larson with
12 regards to the nonjudicial foreclosure of that same home by the Snohomish
13 County Superior Court through a pro tem judge² in Snohomish County
14 case no. 18-2-01234-29.
15
16

17 12. As part of the Larsons' defense to their eviction the Larsons argued that
18 the note relied upon by the statutory trustees to nonjudicially sell the
19 Larsons' home was not the original promissory note. The Larsons
20 presented evidence in this regard that the paper note signed by them had
21

22 ² A pro tem judge was appointed by the Court after all its judicial officers were
23 recused pursuant to the Larson's claim they were disqualified by federal due
24 process from adjudicating that case.

1 been destroyed by First Century Mortgage Company pursuant to its
2 business practices shortly after it was made in 2006. The Larsons justified
3 belatedly asserting this defense (they had argued in the nonjudicial sale
4 case that the securitized trust never acquired the loan) in the eviction action
5 by providing authority that fraud vitiates all. I have attached a copy that
6 pleading the Larsons filed with the superior court in this regard, **Exhibit 6**
7 hereto. Shortly after receiving this pleading the superior court promptly
8 canceled oral argument with regard to the proposed summary eviction and
9 engaged in emails with counsel, that are attached hereto as **Exhibit 7**. I
10 believe these emails, coupled with the judge's (a) refusal to address the
11 issues the Larsons raised; (b) willingness to bend the rules in favor of
12 Deutsche Bank so as to allow homeowners' property to be taken from
13 them; and (c) refusal to hear oral argument are evidence of bias. And in
14 this regard, I would observe that notwithstanding that this Court frequently
15 does not allow oral argument, superior courts do. Indeed, I do not recall
16 any other time a superior court has denied me the opportunity to orally
17 argue dispositive motions.

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21
22 13. The State of Washington was involved in the Larsons' challenge to the
23 statutory trustee's nonjudicial sale of the Larsons' home. The State of
24

1 Washington resisted presenting any witnesses and as a compromise the
2 Larsons' agreed to accept the declaration of Joseph Vicent, an official with
3 Washington's Department of Financial Institutions, with regards to facts
4 the Larsons sought to establish as true. I have attached a copy of Vincent's
5 declaration hereto as **Exhibit 8**.
6

7 14. I submitted a copy of the Vincent declaration to the Snohomish County
8 Superior Court by way of my clients filing it along with all of their other
9 responsive pleadings with the Clerk of that court. I subsequently learned
10 that the clerk's office did not file Vincent's declaration and that as a result
11 of this, Vincent's declaration was not part of that court's record. I also
12 subsequently learned that there appeared to be improprieties with regard to
13 the transfer of the court record in that case between the Clerk of the Skagit
14 County Superior Court and the Clerk of the Snohomish County Superior
15 Court. It is my judgment based on my experience that the manipulation of
16 these courts' records was intentional and designed to sabotage (and did
17 sabotage) the Larsons' case.
18
19

20 15. The State of Washington suggests Division One's published opinion
21 (Larson v. Snohomish County, 20 Wn.App. 243 (2021)) provides a basis
22 for this Court finding and concluding that the complaint I prepared in this
23
24

1 case, does not comply with Rule 8 and 12(b)(6). I disagree and in this
2 regard I testify

3 (a) that I was the Larsons' attorney in the above referenced appeal;

4 (b) that Washington State was represented by the AG;

5
6 (c) that Deutsche Bank and the same statutory trustee that sold
7 White's properties on January 5, 2024 were also parties to that
8 appeal;

9 (d) that with regard to the Larsons' jurisdictional argument the Court
10 of Appeals observed and held:
11

12 A superior court has subject matter jurisdiction "where it
13 has authority to adjudicate the type of controversy
14 involved in the action." Boudreaux, 10 Wash. App. 2d at
15 295, 448 P.3d 121(quoting In re McDermott, 175 Wash.
16 App. at 480-81, 307 P.3d 717). As the Jackson court
17 explained, a nonjudicial foreclosure is conducted under a
18 specific contractual agreement made between the
19 borrower and the beneficiary of the deed of trust. 186
20 Wash. App. at 847, 347 P.3d 487. The DTA preserves the
21 superior court's jurisdiction by giving a borrower the
22 right to file an action in superior court to restrain the sale,
23 RCW 61.24.130(1), granting the borrower the power to
24 initiate court action, RCW 61.24.040(2), and granting the
borrower the right to request a court to decide the
reasonableness of fees a lender demands before
reinstating the mortgage. RCW 61.24.090(2). We
conclude that the legislature had the authority to enact the
DTA and its enactment does not encroach on the
jurisdiction of the superior court. Summary judgment as
to this claim was appropriate.

20 Wn. App at 284-285.

16. I interpret this part of *Larson* to hold that the political branches could not carve out from the superior courts' original jurisdiction and give to a statutory trustee cases involving promissory notes and deeds of trust contracts unless those affected by the statutory trustee's sale had recourse to the superior court to adjudicate proper judicial inquiries.

17. I was also the attorney for Sandra Shelley Jackson in *Jackson v. Quality Loan Serv. Corp.*, 186 Wn.App 838 (2015). The State of Washington was not a party to that decision. It is my recollection that Jackson did not raise any argument at trial or on appeal that her original promissory note had been destroyed and therefore could only be enforced through compliance with RCW 62A.3-309.

18. I specifically wrote the complaint that Plaintiffs Church and White filed in this case to seek only relief under RCW 61.24.130. And by that I mean to restrain the sale so that those seeking a private sale could secure the property through a judicial foreclosure. I did this because my experience in *Larson* and *Jackson* suggested that property owners can best obtain the relief they sought, i.e. to restrain a statutory trustee from selling their property so that

1 they can assert proper defenses to a judicial foreclosure, by not seeking to
2 adjudicate all their defenses.

3 19. Presently, I work for Stafne Law Advocacy and Consulting (hereafter
4 referred to as SLAC). SLAC is a not for profit faith based corporation
5 affiliated with Church of the Gardens (hereafter "COTG"). COTG was
6 established in 2015 to, among other things, fight against that government
7 corruption (especially judicial corruption) which I believe routinely occurs
8 in cases like this one; where people in Washington State, like Mr. White in
9 this case, become dispossessed of their real property as a result of
10 governments' willingness to violate organic law to promote government
11 officials best interests.

14 20. I do not charge people like Mr. White for my services. I work for the
15 Church of Gardens. Church of the Gardens pays me approximately \$1,000
16 per month to represent Mr. White and others like him, i.e. those persons who
17 qualify for representation pursuant to COTG's mission statement.
18 Accordingly, by way of full disclosure I have attached hereto a copy of the
19 disclosure statement that clients like Mr. White must sign to obtain
20 representation, as **Exhibit 9**.³
21
22

23 ³ People sometimes ask me why I am willing to work so hard when for all
24 practical purposes I am not getting paid. The answer is because I consider doing

1 21. I also act as the Church Advocate for COTG. And in that capacity I have
2 been acquiring and posting historical evidence tending to prove the
3 constitutional and other theories asserted in Mr. White's original complaint
4 and amended complaint. A copy of that site and that evidence can be
5 retrieved by clicking here.⁴
6

7 22. I am helped in this effort to post historical evidence on COTG's website by
8 COTG board member, Josh Plumb, who like myself believes he has lost a
9 family member⁵ for reasons associated with the governments' asserted
10 constitutional misconduct. Presently, Mr. Plumb's own responsibilities and
11 efforts to stop his family's eviction have made it difficult for him to keep up
12
13

14 so a duty of citizenship, which lasts only as long as there is a hope that justice can
15 be obtained from our courts. I expect someday that future generations will
16 continue to explore the failings of governments during these times. I don't want to
17 be arguing that greed was the cause for government officials' failings and appear
18 to be greedy myself. And I have come to conclude that not seeking money allows
19 me to better serve and achieve my purpose.

20 ⁴ Retrieved on January 28, 2024 at: <https://churchofthegardens.org/research/>

21 ⁵ I believe my brother Todd's death was directly related to Bank of New York
22 Mellon's lawsuit against him and me. And, indeed it is my judgment that the
23 deaths and injuries of many of other people who have been unconstitutionally
24 evicted to the streets to promote the best interests of government officials and their
financial allies constitute an ongoing genocide. But my judgment in this regard is
not something Plaintiffs intend to prove in this lawsuit as their primary obligation
here is to demonstrate that the governments should apply the laws existing in 2006
for purposes of enforcing White's 2006 promissory note and deed of trust.

1 with this task. But my hope is that he will soon be able to post some of the
2 new materials which I have found, including without limitation David
3 Webb's new book, The Great Taking, a copy of which can be accessed by
4 clicking here. See also historical evidence cited in book's appendix.
5

6 23. I have attached hereto as **Exhibit 10** pertinent testimony from Jeff Stenman,
7 the president of the statutory trustee which sold White's property after the
8 case was removed. Stenman was testifying as a 30(b)(6) designee in the
9 DeBotton case. As can be seen he concedes for the statutory trustee that the
10 term *applicable* law as used in the deed of trust does not mean *future* law.
11 See **Exhibit 10**, pp. 53:25-59:12. Plaintiff's offer this testimony to show that
12 the Trustee knew or should have known that the judicial inquiry posed by
13 White was a proper ground for restraining the sale which his company
14 nonetheless completed on January 5, 2024.
15
16

17 24. I have attached hereto as **Exhibit 11** a copy of "beneficiary declaration" the
18 statutory trustee relied upon for purposes of completing the January 5, 2024
19 sales of White's *two* properties. As this Court can see, this declaration does
20 not say that any of the defendants possess the original paper note signed by
21 White. And even if they had, it is White's position that he could pose a
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24

1 question of fact regarding this issue that the statutory trustee could not
2 ignore simply because the trustee was being paid by a purported beneficiary.

3 25. I have attached hereto as **Exhibit 12** a copy of those pleadings and pertinent
4 supporting documents Plaintiffs filed with the superior court to restrain the
5 sales of White's properties scheduled for January 5, 2024.
6

7 26. I have attached hereto as **Exhibit 13** copies of the statutory trustee's
8 responsive pleadings to Plaintiffs' motion to restrain the sale and supporting
9 declarations.
10

11 27. I have had many conversations with the General Counsel for the QLS
12 statutory trustee and know this statutory trustee asserts that the purported
13 beneficiary paying for its services is the statutory trustee's client and that it
14 only owes property owners, like White, a duty of good faith. It is Plaintiffs
15 position that selling a home based on a declaration which does not confirm
16 possession of the original paper note where that fact is challenged does not
17 constitute good faith under the circumstances of this case because only an
18 entity which possesses the actual paper note signed by the borrower has the
19 contractual and statutory standing to enforce the note by way of foreclosure
20 without having to prove compliance with RCW 62A.3-309. *See also the*
21 contractual definition of Note Holder.
22
23
24

1 28. On December 29, 2023 I received an email from Sarah E. Smith-Levy,
2 Assistant Attorney General, requesting an extension of time to respond to
3 the Complaint in this case. My recollection is that after I received this email
4 I called her back and we briefly discussed the facts of this case, and
5 specifically White's need to have the judicial inquiries he raised adjudicated
6 before a non judicial sale occurred.
7

8 29. I have attached hereto a copy of Senior Adjudicator Lasnik's Orders for this
9 Court in the DeBotton case which deny motion to dismiss with regard to
10 similar constitutional inquiries raised by DeBotton against Deutsche Bank
11 and the statutory trustee in that case. I have attached those Orders hereto as
12 **Exhibit 14.**
13

14 30. While it is true that the senior adjudicator ultimately granted a summary
15 judgment in favor of these parties, it should be considered that DeBotton did
16 not respond to the motions for summary judgment because he refused to
17 argue his case before an adjudicator who did not hold the office of judge
18 during good behavior.
19

20
21 I declare under penalty of perjury under the laws of the State of
22 Washington that the foregoing is true and correct.
23
24

1 Dated this 29th day of January, 2024 at Arlington, Washington.

2 By s/ Scott E. Stafne
3 Scott E. Stafne, Declarant
4
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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury under the laws of the State of Washington that a true and correct copy of the foregoing has been furnished electronically via the Court's CM/ECF system to all persons registered to receive electronic notice.

Dated this 29th day of January 2024.

By s/Justin Wood
Justin Wood, Paralegal

Honorable Tiffany M. Cartwright

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA**

CHURCH OF THE GARDENS, a
Washington Not-for-Profit
Corporation operating as a faith-based
religious organization; ALVIN
WHITE, in his individual capacity,

Plaintiffs,

v.

QUALITY LOAN SERVICES
CORPORATION OF
WASHINGTON; MTC FINANCIAL
INC. DBA TRUSTEE CORPS.;
DEUTSCHE BANK NATIONAL
TRUST COMPANY; LONG BEACH
MORTGAGE LOAN TRUST
2006-4; LONG BEACH
MORTGAGE LOAN TRUST
2006-5; and STATE OF
WASHINGTON, a State of the
United States.

Defendants.

Case No.: 3:23-cv-06193-TMC

**DECLARATION OF SCOTT E.
STAFNE IN SUPPORT OF
PLAINTIFFS' MOTION TO
RESTORE COURT RECORD BY
REPLACING PLEADING
UNLAWFULLY STRICKEN BY
"CHAMBERS"**

1 1. My name is Scott E. Stafne. I am over the age of majority and am
2
3 competent to make this declaration; which I do based on personal knowledge as
4 appears more fully herein and also on the basis of my status as the attorney for
5 Church of the Gardens and Alvin White, the Plaintiffs in the above captioned
6 action which was removed by a defendant to this United States District Court for
7 Western Washington.
8

9 2. I was first admitted to practice law in the states of Iowa and Indiana
10 in 1974, after I graduated from law school at the University of Iowa
11 approximately 50 years ago. I was also inducted into the Order of the Coif in
12 1974. The Order of the Coif is an honorary scholastic society the purpose of
13 which is to encourage excellence in legal education by fostering a spirit of careful
14 study, recognizing those who as law students attained a high grade of scholarship,
15 and honoring those who as lawyers, judges and teachers attained high distinction
16 for their scholarly or professional accomplishments.
17
18

19 3. I was admitted to practice law in Washington State and before this
20 United States District Court in 1976, the year I enrolled in an advanced law
21 program at the University of Washington, approximately 48 years ago.
22

23 4. After becoming aware that this Court had assigned a magistrate
24 “judge” to this case, Plaintiffs promptly filed a Notice and Objection to
25
26

1 Assignment of Magistrate Judge on January 4, 2024, which is attached hereto as

2 **Exhibit 1.**

3
4 5. On January 4, 2024 at 2:09 PM I received an email from someone
5 named Stefanie Prather from this district court which stated in pertinent part:

6 Regarding the below filing: when a case is initially assigned to a
7 Magistrate Judge, please note that it is the Court's procedure
8 (General Order 01-15) to wait for all parties to first make an
9 appearance. Once all parties have appeared, a consent letter
10 (example attached) is distributed to all parties allowing them the
11 option to decline consent to appear before a Magistrate Judge. At
12 that time, if any party should decline to consent, the case is then
13 reassigned to a District Judge without noting on the docket which
14 party does not wish to consent

12 * * *

13 At the direction of chambers, this notice will be stricken for failure
14 to follow the Court's procedures and a consent form will be posted
15 once all parties have appeared.

15 A copy of this email is attached hereto as **Exhibit 2.**

16
17 9. On that same day at 4:47 PM COTG and White, through me as their
18 attorney, responded:

19 Ms. Prather,

20 With respect for the Court but pursuant to my obligation as
21 counsel I respectfully object to "chambers" striking my objection
22 from the Court record. My clients sought a restraining order with
23 regard to the Washington State Statutory's Trustee sale of Property
24 Owner's real properties pursuant to RCW 61.24.130. And in this
25 regard, they timely filed this action in state court. By removing this
26 case to a judicial officer without authority to rule on the issues
raised in the state court complaint the Washington State Statutory
Trustee and its client Deutsche Bank have purposely attempted to

1 sabotage my clients rights under RCW 61.24.130 and the
2 Constitutions of the United States and the State of Washington to
3 restrain the sale on any proper legal or equitable grounds.

4 It is the position of the Church of the Gardens and Property
5 Owner that a judicial official does not have the authority to exercise
6 the kind of discretion "chambers" asserts to be exercising here.

7 A copy of this email is attached hereto as **Exhibit 3**.¹

8 10. On the next day, after White's properties had been sold pursuant by a
9 Washington State Statutory Trustee under color of law pursuant to Washington
10 State's Deeds of Trust Act, Chapter 61.12 RCW, I received an email from
11 uscourts@updates.uscourts.gov which stated that this Court's previous order
12 assigning cases to magistrate judges had been changed. I have attached a copy of
13 this email hereto as **Exhibit 4**.

14 11. On January 8, 2024 COTG and White filed the Amended Complaint
15 for Declaratory Relief Regarding the meaning of RCW 61.24.130; Injunctive
16 relief Pursuant to RCW 61.24.130; to Void Specific Sales of Real Property in
17 Violation of RCW 61.24.130; and for Damages." A copy of this pleading can be
18 found at ECF # 8.
19
20
21
22

23 ¹ I have observed that Prather or the Court through a judicial officer inappropriately removed
24 White's objection from the Court record. Church and Property owner asserts this is further
25 evidence tending to prove the bias of this Court against allowing litigants to assert their
26 constitutional right to have removed cases adjudicated only by a judicial officer who holds the
office of judge during good behavior.

1 12. I believe the behavior of “Chambers” and/or Stefanie Prather in
2 striking the presentation submitted by the Church and the Property Owner,
3 through me their attorney, is constitutionally inappropriate. A court operates
4 through its record. Appeals are decided based on the Court record. It is not
5 appropriate for unidentified entities and persons to be striking pleadings from the
6 record.
7

8
9 13. Moreover, this behavior violates the separation of power and
10 federalism structures of our government which requires that the exercise of power
11 by any of its branches or divisions must be by officials who are accountable.
12

13 14. I believe these materials need to be in the record because they are
14 evidence of this Court’s and its judicial officers’ behavior demonstrating a bias in
15 favor of those which have been deemed to be too big to fail.
16

17 I declare under the penalties of perjury that the foregoing is true and
18 correct to the best of my information and belief.
19

20 DATED this 17th day of January, 2024, at Arlington, Washington.

21 By: s/ Scott E. Stafne
22 Scott E. Stafne, declarant.
23
24
25
26

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury under the laws of the State of Washington that a true and correct copy of the foregoing has been furnished electronically via the Court's CM/ECF system to all persons registered to receive electronic notice.

Dated this 17th day of January 2024.

By s/ Justin Wood
Justin Wood, Paralegal

EXHIBIT 1

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA**

CHURCH OF THE GARDENS, a
Washington Not-for-Profit
Corporation operating as a faith-based
religious organization; ALVIN
WHITE, in his individual capacity,

Plaintiffs,

v.

QUALITY LOAN SERVICES
CORPORATION OF WASHINGTON;
MTC FINANCIAL INC. DBA
TRUSTEE CORPS.; DEUTSCHE
BANK NATIONAL TRUST
COMPANY; LONG BEACH
MORTGAGE LOAN TRUST 2006-4;
LONG BEACH MORTGAGE LOAN
TRUST 2006-5; and STATE OF
WASHINGTON, a State of the United
States.

Defendants.

Case No.: 3:23-cv-06193-SKV

**PLAINTIFFS' NOTICE AND
OBJECTION TO ASSIGNMENT OF
MAGISTRATE JUDGE**

1 Church of the Gardens (hereafter “Church”) and Alvin White (hereafter
2 “Property Owner”) plaintiffs in the Washington State court proceeding which has
3 been removed to this United States District Court, by and through their attorney
4 Scott E. Stafne, hereby object to this case having been assigned to a magistrate
5 judge. Church of the Gardens and White demand this case be adjudicated by a
6 judicial officer who is a judge within the meaning of Article III. *See e.g. Wellness*
7 *Int’l Network, Ltd. v. Sharif*, 575 U.S. 665 (2015); *Nguyen v. United States*, 539
8 *U.S. 69* (2003); *Gomez v. United States*, 490 U.S. 858 (1989); *Commodity Futures*
9 *Trading Com v. Schor*, 478 U.S. 833 (1986).

11 If an appropriate Article III judicial judge, i.e. a judicial officer that holds
12 the office of judge during behaviour is not assigned to this case within seven days
13 Plaintiffs Church and Property Owner will file a motion to remand and also seek
14 whatever other judicial relief as may be appropriate against this Court and its
15 judicial officers for their oft repeated violations of litigants’ personal rights under
16 the Constitution to have cases and controversies adjudicated by Article III judges.

18 DATED this 4th day of January, 2024, at Arlington, Washington.

19 By: s/ Scott E. Stafne
20 Scott E. Stafne, WSBA No. 6964
21 Stafne Law Advocacy & Consulting
22 239 North Olympic Avenue
23 Arlington, WA 98223
24 360.403.8700
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury under the laws of the State of Washington that on January 4, 2024, that **PLAINTIFFS' NOTICE AND OBJECTION TO ASSIGNMENT OF MAGISTRATE JUDGE** was served upon opposing counsel through electronically filing this document with the Courts CM/ECF system upon the following parties:

Robert William McDonald
QUALITY LOAN SERVICE CORP
108 1ST AVE S STE 450
SEATTLE, WA 98104
206-596-4862
Email: rmcdonald@qualityloan.com
Counsel for Quality Loan

Michael Steven DeLeo
PETERSON RUSSELL KELLY PLLC
1850 SKYLINE TOWER
10900 NE 4TH ST
BELLEVUE, WA 98004-8341
425-462-4700
Email: mdeleo@prklaw.com
Counsel for MTC Financial, Inc.

Midori R Sagara
BUCHALTER PC (SEA)
1420 FIFTH AVE STE 3100
SEATTLE, WA 98101
206-319-7035
Email: msagara@buchalter.com
*Counsel for Deutsche Bank National
Trust Company*

Dated this 4th day of January 2024.

By s/Justin Wood
Justin Wood, Paralegal

EXHIBIT 2



Scott Stafne <scott@stafnelaw.com>

FW: Activity in Case 3:23-cv-06193-SKV Church of the Gardens et al v. Quality Loan Services Corporation et al Notice-Other

Stefanie Prather <Stefanie_Prather@wawd.uscourts.gov>

Thu, Jan 4, 2024 at 2:09 PM

To: "scott@stafnelaw.com" <scott@stafnelaw.com>, "rmcdonald@qualityloan.com" <rmcdonald@qualityloan.com>, "mdeleo@prklaw.com" <mdeleo@prklaw.com>, "Sagara, Midori" <msagara@buchalter.com>
Cc: WAWDml_MAGCLRKSEACRD <magclerkseacrd@wawd.uscourts.gov>

Mr. Stafne,

Regarding the below filing: when a case is initially assigned to a Magistrate Judge, please note that it is the Court's procedure (General Order 01-15) to wait for all parties to first make an appearance. Once all parties have appeared, a consent letter (example attached) is distributed to all parties allowing them the option to decline consent to appear before a Magistrate Judge. At that time, if any party should decline to consent, the case is then reassigned to a District Judge without noting on the docket which party does not wish to consent.

These procedures can be found on the Court's website at: [Civil Case Opt-Out Consent Procedures \(effective 4/2/19\) | Western District of Washington | United States District Court \(uscourts.gov\)](#)

General Order 01-15 can be found on the Court's website at: [Current General Orders by Topic | Western District of Washington | United States District Court \(uscourts.gov\)](#)

At the direction of chambers, this notice will be stricken for failure to follow the Court's procedures and a consent form will be posted once all parties have appeared.

Stefanie Prather

From: ECF@wawd.uscourts.gov <ECF@wawd.uscourts.gov>**Sent:** Thursday, January 4, 2024 12:51 PM**To:** WAWDdb_CMECFQC <ecf@wawd.uscourts.gov>**Subject:** Activity in Case 3:23-cv-06193-SKV Church of the Gardens et al v. Quality Loan Services Corporation et al Notice-Other

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.

*****NOTE TO PUBLIC ACCESS USERS***** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.

U.S. District Court

United States District Court for the Western District of Washington

Notice of Electronic Filing

The following transaction was entered by Stafne, Scott on 1/4/2024 at 12:50 PM PST and filed on 1/4/2024

Case Name: Church of the Gardens et al v. Quality Loan Services Corporation et al

Case Number: 3:23-cv-06193-SKV

Filer: Church of the Gardens

Alvin White

Document Number: 4

Docket Text:

NOTICE and Objection to assignment of Magistrate Judge re Add and Terminate Judges ; filed by All Plaintiffs. (Stafne, Scott)

3:23-cv-06193-SKV Notice has been electronically mailed to:

Michael Steven DeLeo mdeleo@prklaw.com, iordonez@prklaw.com, vcoleman@prklaw.com

Midori R Sagara msagara@buchalter.com, kreger@buchalter.com, midori.sagara@gmail.com

Robert William McDonald rmcdonald@qualityloan.com, cvnotice@mccarthyholthus.com, rockymcdonald@gmail.com

Scott E Stafne scott@stafnelaw.com, leeann@stafnelaw.com, wwactfilings@aol.com

3:23-cv-06193-SKV Notice will not be electronically mailed to:

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1035929271 [Date=1/4/2024] [FileNumber=9690358-0]
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a751c29cac87d3c54f19598de575694f047a3c6beb18a20aff3a14f25c59]]



Consent Letter and Form.pdf

73K

EXHIBIT 3



Scott Stafne <scott@stafnelaw.com>

Re: FW: Activity in Case 3:23-cv-06193-SKV Church of the Gardens et al v. Quality Loan Services Corporation et al Notice-Other

Scott Stafne <scott@stafnelaw.com>

Thu, Jan 4, 2024 at 4:47 PM

To: Stefanie Prather <Stefanie_Prather@wawd.uscourts.gov>

Ms. Prather,

With respect for the Court but pursuant to my obligation as counsel I respectfully object to "chambers" striking my objection from the Court record. My clients sought a restraining order with regard to the Washington State Statutory's Trustee sale of Property Owner's real properties pursuant to RCW 61.24.130. And in this regard, they timely filed this action in state court. By removing this case to a judicial officer without authority to rule on the issues raised in the state court complaint the Washington State Statutory Trustee and its client Deutsche Bank have purposely attempted to sabotage my clients rights under RCW 61.24.130 and the Constitutions of the United States and the State of Washington to restrain the sale on any proper legal or equitable grounds.

It is the position of the Church of the Gardens and Property Owner that a judicial official does not have the authority to exercise the kind of discretion "chambers" asserts to be exercising here.

Respectfully,

Scott Stafne

On Thu, Jan 4, 2024 at 2:09 PM Stefanie Prather <Stefanie_Prather@wawd.uscourts.gov> wrote:

Mr. Stafne,

Regarding the below filing: when a case is initially assigned to a Magistrate Judge, please note that it is the Court's procedure (General Order 01-15) to wait for all parties to first make an appearance. Once all parties have appeared, a consent letter (example attached) is distributed to all parties allowing them the option to decline consent to appear before a Magistrate Judge. At that time, if any party should decline to consent, the case is then reassigned to a District Judge without noting on the docket which party does not wish to consent.

These procedures can be found on the Court's website at: [Civil Case Opt-Out Consent Procedures \(effective 4/2/19\) | Western District of Washington | United States District Court \(uscourts.gov\)](#)

General Order 01-15 can be found on the Court's website at: [Current General Orders by Topic | Western District of Washington | United States District Court \(uscourts.gov\)](#)

At the direction of chambers, this notice will be stricken for failure to follow the Court's procedures and a consent form will be posted once all parties have appeared.

Stefanie Prather

From: ECF@wawd.uscourts.gov <ECF@wawd.uscourts.gov>

Sent: Thursday, January 4, 2024 12:51 PM

To: WAWDdb_CMECFQC <ecf@wawd.uscourts.gov>

Subject: Activity in Case 3:23-cv-06193-SKV Church of the Gardens et al v. Quality Loan Services Corporation et al
Notice-Other

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.

*****NOTE TO PUBLIC ACCESS USERS***** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.

U.S. District Court

United States District Court for the Western District of Washington

Notice of Electronic Filing

The following transaction was entered by Stafne, Scott on 1/4/2024 at 12:50 PM PST and filed on 1/4/2024

Case Name: Church of the Gardens et al v. Quality Loan Services Corporation et al

Case Number: 3:23-cv-06193-SKV

Filer: Church of the Gardens

Alvin White

Document Number: 4

Docket Text:

NOTICE and Objection to assignment of Magistrate Judge re Add and Terminate Judges ; filed by All Plaintiffs. (Stafne, Scott)

3:23-cv-06193-SKV Notice has been electronically mailed to:

Michael Steven DeLeo mdeleo@prklaw.com, iordonez@prklaw.com, vcoleman@prklaw.com

Midori R Sagara msagara@buchalter.com, kreger@buchalter.com, midori.sagara@gmail.com

Robert William McDonald rmcdonald@qualityloan.com, cvnotice@mccarthyholthus.com, rockymcdonald@gmail.com

Scott E Stafne scott@stafnelaw.com, leeann@stafnelaw.com, wwactfilings@aol.com

3:23-cv-06193-SKV Notice will not be electronically mailed to:

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1035929271 [Date=1/4/2024] [FileNumber=9690358-0]

[8bef71a05ac54f37ea99756587b4d47498fd4524614519776a670d3a140adebf41ed
a751c29cac87d3c54f19598de575694f047a3c6beb18a20aff3a14f25c59]]

EXHIBIT 4



Scott Stafne <scott@stafnelaw.com>

Washington Western District Court - General Order No. 01-24 re Division of Court Business

U.S. Courts <uscourts@updates.uscourts.gov>

Fri, Jan 5, 2024 at 1:35 PM

Reply-To: uscourts@updates.uscourts.gov

To: scott@stafnelaw.com

General Order No. 01-24 re Division of Court Business

General Order No. 01-24 re Division of Court Business was signed by Chief Judge Estudillo on January 5, 2024. All orders concerning the division of this Court's business previously entered are vacated by this order.

The general order has also been posted to the Western District of Washington's [public website](#).

Thank you,

Ravi Subramanian

District Court Executive/Clerk of Court

- [General Order 01-24 - Division of Court Business.pdf](#)

This message was sent by the United States Courts



General_Order_01-24_-_Division_of_Court_Business.pdf

117K

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8 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
9

10
11 IN RE:

GENERAL ORDER 01-24

12 DIVISION OF COURT BUSINESS
13
14
15

16 Pursuant to 28 U.S.C. § 137, the active judges of this court will divide the court's
17 business among themselves as follows:

18 1. Definitions:

- 19 a. Civil cases include bankruptcy appeals, habeas corpus petitions, and contested
20 miscellaneous matters, but exclude Section 2255 motions and other similar
21 cases described in paragraph 8.
22 b. Criminal cases include appeals from Magistrate Judges and all proceedings
23 under Federal Rules of Criminal Procedure 7, 20, and 40.
24

1 2. All civil cases filed in this district will be assigned as follows:

2 Civil cases in the Tacoma division equally and randomly to all the active judges. Civil
3 cases in the Seattle division equally and randomly to all the active judges. Civil cases
4 may also be assigned to a senior judge. Civil cases may also be assigned to a magistrate
5 judge under General Order 11-22, and if all parties consent, the magistrate judge will
6 be the presiding judge in that matter.

7 3. All criminal cases filed in this district will be assigned as follows:

8 Criminal cases in the Tacoma division equally and randomly to all the active judges.
9 Criminal cases in the Seattle division equally and randomly to all the active judges.
10 Criminal cases may also be assigned to a senior judge.

11 4. All naturalization proceedings in the district, including contested petitions, will be
12 handled by Judge Tana Lin and Chief Judge David G. Estudillo.

13 5. Judge John H. Chun will be responsible for all matters related to the functions of grand
14 juries (with authority to delegate specific functions to magistrate judges as necessary)
15 and the review of wiretap applications in the Seattle division. Judge Lauren King will
16 serve as the backup for presentations of wiretap applications in the Seattle division.
17 Chief Judge David G. Estudillo will be responsible for the review of wiretap
18 applications in the Tacoma division. Judge John H. Chun will serve as the backup for
19 presentations of wiretap applications in the Tacoma division.

20 6. Judge Tana Lin will be responsible for all issues involving the jury selection process
21 and the call and qualification of petit jurors in the Seattle division. Chief Judge David
22 G. Estudillo will be responsible for all issues involving the jury selection process and
23 the call and qualification of petit jurors in the Tacoma division.
24

- 1 7. All active judges of the Seattle Division except the judge assigned to review wiretap
2 applications (i.e., Judge John H. Chun) will be responsible for all claims for wages
3 and the effects of deceased or deserting seamen, unassigned ex parte matters
4 involving requests or post-judgment execution, and all other miscellaneous matters in
5 the Seattle Division. These cases will be assigned equally and randomly.
6 All active judges of the Tacoma Division will be responsible for all claims for wages
7 and the effects of deceased or deserting seamen, unassigned ex parte matters
8 involving requests for post-judgment execution, and all other miscellaneous matters
9 in the Tacoma Division. These cases will be assigned equally and randomly.
- 10 8. Proceedings under Section 2255, Title 28, United States Code, will be assigned to and
11 handled by the judge who imposed the sentence involved.
- 12 9. If immediate action is necessary in any case or proceeding assigned to a particular
13 judge and that judge is unavailable for any reason, any other judge may hear and
14 dispose of the matter requiring immediate attention, but no such action constitutes
15 reassignment of the case or the proceeding.
- 16 10. When civil or criminal actions involving common questions of law and fact (but not
17 necessarily the same parties) are assigned to different judges and it appears to any judge
18 of this court that there may be good reason to assign all such actions to one judge, those
19 cases may be assigned to the judge with the case bearing the earliest filing date, at that
20 judge's option.
- 21 11. Motions to consolidate civil or criminal actions for trial, or otherwise, will be heard by
22 the judge with the case bearing the earliest filing date; in the event consolidation is
23 ordered, the consolidated cases will be heard by that judge.

12. The reassignment of a case necessitated by the disqualification of a judge will be to the judge who would have received the assignment of the case filed; the disqualified judge will be assigned an additional case from the assignment wheel.

13. The assignment of all civil and criminal cases is made subject to changes established by the chief judge for purposes of equalization of case assignments to all active judges of the district.

14. The clerk will refer any matter or proceeding not provided under this division of business order to the chief judge for assignment and disposition.

15. Notwithstanding the above provisions, each of the judges of this court will perform any acts of authority and duty otherwise conferred by law and will try and dispose of any and all cases, matters, and business of this court when the judge consents to do so.

16. This order does not impact General Order 11-22 regarding consent and referrals to magistrate judges.

17. All orders concerning the division of this Court's business previously entered are vacated by this order. This order is effective immediately and remains in force until rescinded.

IT IS SO ORDERED.

Dated this 5th day of January, 2024.



David G. Estudillo
Chief United States District Judge

Honorable Tiffany M. Cartwright

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA**

CHURCH OF THE GARDENS, a
Washington Not-for-Profit Corporation
operating as a faith-based religious
organization; ALVIN WHITE, in his
individual capacity,

Plaintiffs,

v.

QUALITY LOAN SERVICES
CORPORATION OF WASHINGTON;
MTC FINANCIAL INC. DBA
TRUSTEE CORPS.; DEUTSCHE
BANK NATIONAL TRUST
COMPANY; LONG BEACH
MORTGAGE LOAN TRUST 2006-4;
LONG BEACH MORTGAGE LOAN
TRUST 2006-5; and STATE OF
WASHINGTON, a State of the United
States.

Defendants.

Case No.: 3:23-cv-06193-TMC

**MOTION TO RESTORE COURT
RECORD BY REPLACING
PLEADING UNLAWFULLY
STRICKEN BY “CHAMBERS”**

Noting date: February 2, 2024

Request for Relief:

Plaintiffs Church of the Gardens (hereafter “Church” or “COTG”) and Alvin White (hereafter “White” or “property Owner”) move this Court to restore their pleading denominated as “Notice and Objection to Assignment of Magistrate Judge.” The notice appears to have been stricken from this Court’s record by Stefanie Prather pursuant to the authority of “Chambers.”

Issues:

Does Stefanie Prather have the authority to strike pleadings from this Court’s record?

Does “Chambers” have the authority to strike pleadings from this Court’s record?

Evidence Relied Upon:

The Church and Property Owner rely upon this Court’s docket, the emails between this Court and their counsel, and the declaration of Scott E. Stafne in support of this Motion.

Statement of Facts:

The complaint in this case was originally filed in the Superior Court of Pierce County to prevent the nonjudicial sale of five real properties owned by Property Owner by various Washington State statutory trustees pursuant to the

1 provisions of Chapter 61.24 RCW. Property Owner's complaint in this regard,
2 *see* ECF # 1-2, was based on the first sentence of RCW 61.24.130, which states:

3
4 (1) Nothing contained in this chapter shall prejudice the right of the
5 borrower, grantor, any guarantor, or any person who has an interest
6 in, lien, or claim of lien against the property or some part thereof, to
restrain, on any proper legal or equitable ground, a trustee's sale. ...

7 Property Owner was not able to obtain an order restraining the sale of two
8 of his real estate properties because Deutsche Bank, which claimed to be the
9 beneficiary within the meaning of RCW 61.24.005(b) of all of the pertinent deeds
10 of trust, removed this case a day before White's motion for a restraining order
11 was scheduled for argument. This Court assigned a magistrate "judge" to White's
12 case. As this Court knows or should know, magistrate judges are not Article III
13 judges; that is to say that magistrate judges are not judicial officers who hold the
14 office of a federal judge during good behavior.
15

16
17 When Plaintiffs Church and White became aware of this fact, they filed a
18 Notice and Objection to Assignment of Magistrate Judge, which is attached as
19 **Exhibit 1** to the declaration of Scott Stafne in support of this Motion.

20 On that same day (January 4, 2024 at 2:09 PM) Stefanie Prather emailed
21 counsel for Plaintiff Church and White an email, which stated in pertinent part:
22

23 Regarding the below filing: when a case is initially assigned to a
24 Magistrate Judge, please note that it is the Court's procedure

(General Order 01-15) to wait for all parties to first make an appearance. Once all parties have appeared, a consent letter (example attached) is distributed to all parties allowing them the option to decline consent to appear before a Magistrate Judge. At that time, if any party should decline to consent, the case is then reassigned to a District Judge without noting on the docket which party does not wish to consent

* * *

At the direction of chambers, this notice will be stricken for failure to follow the Court's procedures and a consent form will be posted once all parties have appeared.

A copy of this email is attached as **Exhibit 2** to Stafne's declaration in support of this Motion.

On that same day at 4:47 PM COTG and White, through their attorney, responded Ms. Prather:

Ms. Prather,

With respect for the Court but pursuant to my obligation as counsel I respectfully object to "chambers" striking my objection from the Court record. My clients sought a restraining order with regard to the Washington State Statutory's Trustee sale of Property Owner's real properties pursuant to RCW 61.24.130. And in this regard, they timely filed this action in state court. By removing this case to a judicial officer without authority to rule on the issues raised in the state court complaint the Washington State Statutory Trustee and its client Deutsche Bank have purposely attempted to sabotage my clients rights under RCW 61.24.130 and the Constitutions of the United States and the State of Washington to restrain the sale on any proper legal or equitable grounds.

It is the position of the Church of the Gardens and Property Owner that a judicial official does not have the authority to exercise the kind of discretion "chambers" asserts to be exercising here.

1 A copy of this email is attached to Stafne's declaration as **Exhibit 3**.

2
3 On the next day, January 5, 2024, after statutory trustee Quality Loan
4 Services sold two of White's properties under color of law Stafne received an
5 email from uscourts@updates.uscourts.gov which stated that its previous order
6 assigning cases to magistrate judges had been changed that very day, i.e. January
7 5, 2024, just after the Washington State statutory trustee sold two of White's
8 properties under color of law.
9

10 On January 8, 2024 COTG and White filed the Amended Complaint for
11 Declaratory Relief Regarding the meaning of RCW 61.24.130; Injunctive relief
12 Pursuant to RCW 61.24.130; to Void Specific Sales of Real Property in Violation
13 of RCW 61.24.130; and for Damages." See ECF # 8.
14

15 **Argument:**

16 Ours is an adversary system of justice. Stephen Landsman, *The Adversary*
17 *System: A Description and Defense* (1984)
18

19 In our adversary system, in both civil and criminal cases, in the first
20 instance and on appeal, we follow the principle of party presentation.
21 That is, we rely on the parties to frame the issues for decision and
22 assign to courts the role of neutral arbiter of matters the parties
23 present. To the extent courts have approved departures from the party
24 presentation principle in criminal cases, the justification has usually
been to protect a *pro se* litigant's rights. See *Castro v. United States*,
540 U.S. 375, 381-383, 124 S. Ct. 786, 157 L. Ed. 2d 778 (2003). But
as a general rule, "[o]ur adversary system is designed around the

1 premise that the parties know what is best for them, and are
2 responsible for advancing the facts and arguments entitling them to
3 relief." *Id.*, at 386, 124 S. Ct. 786, 157 L. Ed. 2d 778 (Scalia, J.,
4 concurring in part and concurring in judgment). As cogently
5 explained:

6 "[Courts] do not, or should not, sally forth each day
7 looking for wrongs to right. We wait for cases to come to
8 us, and when they do we normally decide only questions
9 presented by the parties. Counsel almost always know a
10 great deal more about their cases than we do, and this
11 must be particularly true of counsel for the United States,
12 the richest, most powerful, and best represented litigant
13 to appear before us." *United States v. Samuels*, 808 F.2d
14 1298, 1301 (CA8 1987) (R. Arnold, J., concurring in
15 denial of reh'g en banc).

16 *Greenlaw v. United States*, 554 U.S. 237, 244 (2008). *See also United States v.*
17 *Sineneng-Smith*, 140 S. Ct. 1575 (2020) ("[C]ourts are essentially passive
18 instruments of government" citing *United States v Samuels*, 1298, 1301 (8th Cir.
19 1987) *Id.* at 1579); *Wood v. Milyard*, 566 U.S. 463, 132 S. Ct. 1826 (2012)

20 Here, under the circumstances of this case, the Church and Property Owner
21 chose to file the instant Notice and Objection to the Assignment of a Magistrate
22 Judge and they had every right to do so as they are parties to this proceeding,
23 which has been removed to this federal Court.

24 Stefanie Prather, on the other hand, has not demonstrated that she is a
judicial officer or clerk or court employee or contractor with authority to tell
parties and their attorneys how they must present their case. Moreover, the

1 “chambers”¹ she purports to speak for does not appear to be a court nor a judge or
2 other official who has taken an oath to uphold the Constitution. Accordingly,
3 there is no basis in fact or law for this Court’s or “chambers” striking of the
4 Notice and Objection to the assignment of a magistrate judge filed by the Church
5 and Property Owner. *See, In re Oliver*, 333 U.S. 257 (1948).
6

7 **Conclusion**

8
9 The record of this Court should be restored to reflect the presentation of
10 the parties.
11

12 DATED this 17th day of January, 2024, at Arlington, Washington.

13
14 By: s/ Scott E. Stafne
15 Scott E. Stafne, WSBA No. 6964
16 Stafne Law *Advocacy & Consulting*
17 239 North Olympic Avenue
18 Arlington, WA 98223
19 360.403.8700
20 *Attorney for Plaintiffs*

21
22 ¹ Of course, the most famous judicial “chambers” before this Court decided to compete was
23 the Star Chamber. More information about that “chambers” was last accessed on January 17,
24 2024 at: https://en.wikipedia.org/wiki/Star_Chamber . *Cf. Timbs v. Indiana*, 139 S. Ct. 682,
693-695 (2019); *Faretta v. California*, 422 U.S. 806, 821-22 (1975); *In re Gault*, 387 U.S. 1
(1967).

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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury under the laws of the State of Washington that a true and correct copy of the foregoing has been furnished electronically via the Court's CM/ECF system to all persons registered to receive electronic notice.

Dated this 17th day of January 2024.

By s/Justin Wood
Justin Wood, Paralegal

Honorable Tiffany M. Cartwright

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA**

CHURCH OF THE GARDENS, a
Washington Not-for-Profit
Corporation operating as a faith-based
religious organization; ALVIN
WHITE, in his individual capacity,

Plaintiffs,

v.

QUALITY LOAN SERVICES
CORPORATION OF
WASHINGTON; MTC FINANCIAL
INC. DBA TRUSTEE CORPS.;
DEUTSCHE BANK NATIONAL
TRUST COMPANY; LONG BEACH
MORTGAGE LOAN TRUST
2006-4; LONG BEACH
MORTGAGE LOAN TRUST
2006-5; and STATE OF
WASHINGTON, a State of the
United States.

Defendants.

Case No.: 3:23-cv-06193-SKV

**ORDER GRANTING PLAINTIFFS'
MOTION TO RESTORE COURT
RECORD BY REPLACING
PLEADING UNLAWFULLY
STRICKEN BY "CHAMBERS"**

THIS MATTER having come before the Court on Plaintiffs' motion to restore the Court Record and the Court having reviewed the following:

1. Motion to restore court record by replacing pleading unlawfully stricken by "Chambers";
2. Declaration of Scott E. Stafne in support of Plaintiffs' motion to restore the court record by replacing pleading unlawfully stricken by "Chambers".

And the Court being fully advised, and finding no issue of material fact, it is hereby ordered:

1. The motion is granted.

2. _____

3. _____

DATED this _____ day of _____, 2024.

Tiffany M. Cartwright
District Court Judge

PRESENTED BY:

s/ Scott E. Stafne
Scott E. Stafne, WSBA #6964
239 N. Olympic Ave.
Arlington, WA 98223
360.403.8700

The Honorable S. Kate Vaughan

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA**

CHURCH OF THE GARDEN, et al.,

Plaintiffs,

v.

QUALITY LOAN SERVICES, et al.,

Defendants.

NO. 3:23-cv-06193-SKV

DEFENDANT STATE OF
WASHINGTON'S MOTION
TO DISMISS FIRST AMENDED
COMPLAINT

NOTE ON MOTION CALENDAR
FEBRUARY 2, 2024

I. INTRODUCTION

This Court should dismiss the First Amended Complaint (Complaint) against the State of Washington, Dkt. No. 8. At the core of this dispute are the non-judicial foreclosures and sales of two properties owned by Plaintiff Alvin White, and the anticipated foreclosures and sales of three other properties owned by Mr. White. The State has nothing to do with the foreclosure actions—Plaintiffs do not plead otherwise. Instead, Plaintiffs have named the State in this action for the sole purpose of seeking a declaratory judgment on the meaning of the Washington Deeds of Trust Act and invalidating certain parts of the Act.

This case is only the latest attempt by Plaintiffs' counsel to invalidate the Deeds of Trust Act. The Court should dismiss the case against Defendant State of Washington. Plaintiffs' challenges to the constitutionality of the Deeds of Trust Act fail to state a claim for relief against the State because those claims lack factual or legal support. Plaintiffs allege no facts supporting

1 their claims for declaratory relief, as the Complaint instead predominantly focuses on baseless
2 theories about mortgage-backed securities, the fallout of the 2008 subprime mortgage crisis, and
3 various parties' attempts to profit from foreclosures and trustee's sales. And even if facts were
4 alleged here, Plaintiffs' theories are without legal merit. Accordingly, the State requests the
5 Court grant its motion and dismiss this case.

6 II. BACKGROUND

7 This case arises from five mortgages Mr. White took out on five fourplex properties in
8 Fife, Washington in 2006. Dkt. No. 8 ¶ 1.1. Those mortgages are held by Defendant Quality
9 Loan Services (QLS), Defendant MTC Financial, and Defendants Long Beach Mortgage Loan
10 Trust 2006-4 (Long Beach 2006-4) and 2006-5 (Long Beach 2006-5) (collectively, Defendant
11 Trusts). *Id.* at ¶¶ 1.3–1.4, 1.6–1.7. In May 2023, Mr. White was informed that Defendant QLS
12 intended to proceed with a non-judicial foreclosure and trustee's sale of some of the defaulted
13 properties. *Id.* at ¶ 1.3. The trustee sale was scheduled and held on January 5, 2024. *Id.* at ¶ 1.3;
14 Dkt. No. 1–2 at p. 573–581 (notices of trustee's sale)¹. Plaintiffs allege that QLS conducted the
15 trustee's sale at the direction of Defendant Deutsche Bank. Dkt. No. 8. at ¶ 1.5. Plaintiffs allege
16 that they fear that Defendant MTC Financial, at the direction of Defendant Deutsche Bank, might
17 also foreclose on the other properties, but do not allege that Mr. White has received notice of a
18 scheduled sale or any indication that a sale may be scheduled. *Id.* at ¶¶ 1.4–1.5.

19 Although the bases of Plaintiffs' claims are difficult to parse, it appears Plaintiffs allege
20 that the deeds of trust do not secure any of the promissory notes held by the Defendants because
21

22 ¹ The Court may take judicial notice of the documents filed by Defendant QLS in its Opposition to
23 Plaintiffs' Motion for a Temporary Restraining Order in state court because they were incorporated by reference
24 into the First Amended Complaint and are "matters of public record" that are not subject to reasonable dispute.
25 Fed. R. Evid. 201. Although Plaintiffs may dispute whether Defendant QLS had the legal authority to foreclose on
26 Mr. White's properties, they do not dispute that they did in fact receive notice indicating that Defendants believed
Mr. White's mortgages were in default and Quality Loan Services intended to foreclose. *See* Dkt. # 8 at ¶ 1.3.
Accordingly, these documents may be judicially noticed without converting this motion into a motion for summary
judgment. *See, e.g., United States v. Corinthian Colleges*, 655 F.3d 984, 999 (9th Cir. 2011) (taking judicial notice
of existence of certain reports because the complaint expressly referred to and relied on them, but not taking judicial
notice of facts contained in the reports that might reasonably be disputed in reviewing Rule 12(b)(6) dismissal).

1 his original lender cancelled the loans, and thus the notes are not enforceable by way of a
2 non-judicial foreclosure sale. *Id.* at ¶¶ 3.12, 3.30, 3.35, 3.38. Plaintiffs also allege that the original
3 paper notes signed by Mr. White were never transferred to the Defendant Trusts, and so none of
4 the Defendant Trusts have authority to foreclose on his properties. *Id.* at ¶¶ 3.26–3.30, 3.33.

5 In addition, Plaintiffs seek a declaratory judgment as to the constitutionality and meaning
6 of the Washington Deed of Trust Act, Wash. Rev. Code § 61.24.130 (“DTA”), in 2006 and
7 today. *See id.* at ¶¶ 3.99(C), (H), (I); 4.2, 4.7–4.8. It appears that Plaintiffs object to the DTA on
8 several theories: first, that its bond requirement violates the Washington Constitution, because it
9 purportedly infringes the superior court’s jurisdiction, prevents access to the courts, and
10 improperly favors other litigants over property owners; second, that amendments to the DTA
11 that post-date Mr. White’s mortgages violate the federal Contracts Clause by making it easier to
12 foreclose and sell defaulted properties; and finally that the bond requirement violates the
13 Fourteenth Amendment’s guarantees of due process and equal protection. Plaintiffs allege that
14 certain changes to the DTA that post-date Mr. White’s mortgages were made “so as to benefit
15 the State of Washington, government officials, and their wealthy allies.” *Id.* at ¶¶ 3.13–3.19. The
16 rest of the Complaint alleges (1) Plaintiffs’ grievances with this Court and the use of magistrate
17 judges, *Id.* at ¶¶ 2.6–2.16, (2) a high-level history of mortgage-backed securities, related record-
18 keeping practices, changes to Washington and federal law, and (3) the fallout of the 2008
19 subprime mortgage crisis. *Id.* at ¶¶ 3.40–3.98.

20 Specifically against the State, the Complaint explains that the State has been made a party

21 [T]o give that entity an opportunity to demonstrate in this action, if it can, that
22 the Constitutional and other judicial inquiries at issue here do not involve ‘proper
23 grounds’ to restrain the sale of White’s property pursuant to that version of RCW
24 61.24.130, which applies the pertinent promissory notes and deeds of trust that
25 Plaintiff Property Owner executed on February 24, 2006.

26 Dkt. No. 8 at ¶ 1.8 (*sic* throughout). None of the allegations involving the State connect to the
non-judicial foreclosures or trustee’s sales at issue in this case. For example, Plaintiffs allege

1 that the State amended portions of the Deeds of Trust Act “to authorize a statutory trustee to rely
2 on a declaration of perjury” from the beneficiary to institute a trustee’s sale, and that those
3 amendments were made “so as to benefit the State of Washington, its government officials, the
4 federal government, its government officials[,] and creditors claiming an interest in such
5 mortgage loans at the expense of Washington property owners[.]” *Id.* at ¶ 3.20; *see also id.* at ¶¶
6 3.60–61 (alleging the State amended the DTA to make deeds of trust mortgages enforceable
7 against homeowners “notwithstanding that such instruments were not enforceable pursuant to
8 the laws which were in effect when the pertinent instruments were signed”), ¶ 3.63 (alleging the
9 DTA was amended “to incentivize judges to exercise their judicial power in such a way as to
10 make subprime mortgages purportedly included in mortgage pools associated with mortgage
11 backed securities enforceable by way of foreclosure” and such exercise “would determine the
12 value of such judicial officers’ retirement fund investments after 2007”), ¶ 3.71 (similar).

13 Plaintiffs filed a complaint in the Pierce County Superior Court on December 15, 2023,
14 *see* Dkt. No. 1-2, and a motion to restrain the trustee’s sale scheduled for January 5, 2024, *see*
15 Dkt. No. 2-1 at p. 542. Defendant Deutsche Bank removed the case to this Court on the basis of
16 federal question jurisdiction and diversity jurisdiction on December 28, 2023. Dkt. No. 1.² On
17 January 8, 2024, Plaintiffs amended their Complaint, alleging claims for damages against the
18 Defendant Trusts and requesting an injunction restraining the other Defendant Trusts from
19 engaging in trustee’s sales. Dkt. No. 8. The allegations against the State remained the same,
20 although Plaintiffs now add that they intend to file a claim for damages against the State in a
21 different court.

22 III. ARGUMENT

23 A. Legal Standard

24 Federal Rule of Civil Procedure 12(b)(6) provides that the Court may dismiss a case for
25

26 ² Defendant Deutsche Bank argues in its Notice of Removal that the State was fraudulently joined to defeat diversity. Dkt. # 1 at p. 2–3. The State takes no position on whether it was fraudulently joined.

1 failure to state a claim. Dismissal under Fed. R. Civ. P. 12(b)(6) may be based on either the lack
2 of a cognizable legal theory or the absence of sufficient facts alleging such theory. *Davidson v.*
3 *Kimberly-Clark Corp.*, 889 F.3d 956, 965 (9th Cir. 2018). Although the Court accepts as true a
4 complaint's well-pleaded facts, those facts must "state a claim to relief that is plausible on its
5 face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). By contrast, the Court need not
6 accept as true legal conclusions or "threadbare recitals of the elements of a cause of action,
7 supported by mere conclusory statements" as to a defendant's liability. *Ashcroft v. Iqbal*, 556
8 U.S. 662, 678 (2009). A claim has facial plausibility "when the plaintiff pleads factual content
9 that allows the court to draw the reasonable inference that the defendant is liable for the
10 misconduct alleged." *Id.* "The plausibility standard is not akin to a 'probability requirement,' but
11 it asks for more than a sheer possibility that a defendant has acted unlawfully." *Id.* A court may
12 consider documents attached to a complaint, documents incorporated by reference in a
13 complaint, or matters of judicial notice without converting the motion into a motion for summary
14 judgment. *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003).

15 **B. Plaintiffs Fail to State a Claim for Relief Against the State**

16 The Court should dismiss the case against the State for failure to state a claim under
17 Fed. R. Civ. P. 12(b)(6). It appears that Plaintiffs named the State in this action solely to give it
18 an opportunity to defend the DTA against their request that it be invalidated. Dkt No. 8 ¶ 1.8.
19 Although Wash. Rev. Code § 7.24.110 requires that the State be given notice in cases seeking
20 declaratory relief challenging the constitutionality of a statute, the statute merely gives the State
21 the right to be heard, it does not make the State a proper defendant in every such case. *See Larson*
22 *v. Snohomish Cnty*, 20 Wn. App. 2d 243, 269, 499 P.3d 957 (2021) (affirming dismissal of the
23 State as a party); *cf. Fordyce v. City of Seattle*, 55 F.3d 436, 441 (9th Cir. 1995) (holding that
24 notice requirement did not require joinder of the State as a necessary party in federal court).
25 Plaintiffs must still allege actual claims against the State to hail it into court.

26 Here, this case involves a non-judicial foreclosure in which the State played no role. The

DTA governs non-judicial foreclosures of real property and “creates a method of mortgaging real property involving three parties: a grantor (borrower), a beneficiary (lender), and a trustee.” *Jackson v. Quality Loan Serv. Corp.*, 186 Wn. App. 838, 848, 347 P.3d 487 (2015) (citing *Bain v. Metro. Mortg. Grp., Inc.*, 175 Wn.2d 83, 92–93, 285 P.3d 34 (2012) and Wash. Rev. Code § 61.24.005). Relevant here, the DTA provides that a borrower may seek to restrain a trustee’s sale “on any proper legal or equitable ground,” provided he pay the clerk of court the sums that would be due to prevent the foreclosure as a bond to secure the injunction. Wash. Rev. Code § 61.24.130. The procedure set forth in Wash. Rev. Code § 61.24.130 is the only means by which a grantor may preclude a sale once foreclosure has begun by receipt of the notice of sale and foreclosure. *Cox v. Helenius*, 103 Wn.2d 383, 387–88, 693 P.2d 683 (1985). Further, courts have recognized the DTA was enacted to make the non-judicial foreclosure process efficient and inexpensive, to provide an adequate opportunity to prevent wrongful foreclosure, and promote the stability of land titles. *Jackson*, 186 Wn. App. at 848 (citing *Cox*, 103 Wn.2d at 387).

The Court should dismiss for failure to state a claim for two reasons. First, the Complaint does not satisfy Federal Rule of Civil Procedure Rule 8 because it lacks sufficient facts to support plausible claims against any Defendant, but especially against the State. And second, even if Plaintiffs alleged sufficient facts to support their claims, Plaintiffs’ constitutional arguments fail as a matter of law.

1. Plaintiffs Fail to Allege Sufficient Facts to Support Plausible Claims

Plaintiffs claim that the DTA violates various provisions of the Washington and United States Constitutions. All these arguments fail because the Complaint fails to allege facts to support a claim against State Defendants in violation of Fed. R. Civ. P. 8, which requires a “short and plain” statement of the claim showing that the pleader is entitled to relief. *See also Iqbal*, 556 U.S. at 678 (plaintiff must plead more than an “unadorned, the-defendant-unlawfully-harmed-me accusation to satisfy Rule 8 and survive a Rule 12(b) motion to dismiss”).

The Complaint does not contain well-pleaded factual allegations that would “nudge”

1 Plaintiffs’ claims against the State “across the line from conceivable to plausible.” *Twombly*, 550
2 U.S. at 570. Indeed, Plaintiffs do not allege the State was involved in the foreclosures or trustee’s
3 sales at issue here at all. Rather, it appears that Plaintiffs have included the State as a nominal
4 Defendant

5 [T]o give that entity an opportunity to demonstrate in this action, if it can, that
6 the Constitutional and other judicial inquiries at issue here do not involve ‘proper
7 grounds’ to restrain the sale of White’s property pursuant to that version of RCW
8 61.24.130, which applies the pertinent promissory notes and deeds of trust that
9 Plaintiff Property Owner executed on February 24, 2006.

10 Dkt. No. 8 at ¶ 1.8 (*sic* throughout).

11 This confusing and borderline unintelligible statement fails to allege any claims against
12 the State, nor do other references in the Complaint do so. The only intelligible facts Plaintiffs
13 allege is that Mr. White had five mortgages, the promissory notes reflecting those mortgages
14 were eventually transferred to Defendants, and that Defendant QLS held a trustee sale on some
15 of the defaulted properties. This has nothing to do with the State of Washington. Indeed, the rest
16 of the Complaint contains outlandish theories about mortgage-backed securities, related
17 recordkeeping policies, and various parties’ alleged profiteering from these schemes. The only
18 factual allegations that explicitly refer to the State engage in conjecture that the State amended
19 the DTA in order to benefit itself and its employees. Dkt. No. 8 at ¶¶ 3.2, 3.60–61, 3.63, 3.71.
20 But none of these allegations support plausible claims against the State, and so a declaratory
21 judgment is improper. *See Bisson v. Bank of Am., N.A.*, 919 F. Supp. 2d 1130, 1139–40 (W.D.
22 Wash. 2013) (noting that the court could not grant a declaratory judgment in the absence of a
23 properly pled cause of action that establishes a legal right to the declaration sought).

24 This is not the first time Plaintiffs’ counsel has been confronted with the requirements of
25 Fed. R. Civ. P. 8—indeed, this is only the latest in a long string of cases where courts have
26 dismissed lawsuits brought by Plaintiffs’ counsel for failure to comply with that rule. *See, e.g.,*
John v. Quality Loan Serv. Corp. of Washington., 4:20-cv-05008-SAB, 2020 WL 5797759, at

*3 (E.D. Wash. Aug. 26, 2020) (granting motion to dismiss in case challenging non-judicial foreclosure where “the Complaint contains no facts that would put Defendants on notice of what Plaintiff is really seeking or that would lead to the reasonable inference that Defendants were liable to Plaintiff for the alleged misconduct.”); *Cervantes Orchards & Vineyards, LLC v. Deere & Co.*, No. 1:14-cv-3125-RMP, 2015 WL 4210978, at *10 (E.D. Wash. July 10, 2015), *aff’d*, 731 Fed. Appx. 570 (9th Cir. 2017) (granting motion to dismiss where complaint failed to allege any facts supporting a plausible discrimination claim); *Mickelson v. Chase Home Fin. LLC*, No. C11-1445MJP, 2012 WL 1301251, at *5–6 (W.D. Wash. Apr. 16, 2012), *order clarified*, No. C11-1445MJP, 2012 WL 13028099 (W.D. Wash. June 6, 2012) (granting motion to dismiss where plaintiff failed to allege any specific conduct as to defendants that might constitute a CPA or unconscionability claim in case challenging non-judicial foreclosure). Therefore, the Court should dismiss on this basis alone because the Complaint lacks factual allegations suggesting plausible constitutional claims against the State.

2. The DTA does not violate the Washington Constitution

Even if Plaintiffs alleged sufficient facts, their claims fail as a matter of law. Plaintiffs argue that Wash. Rev. Code § 61.24.130 violates various provisions of the Washington Constitution because it prejudices the right of borrowers to restrain a non-judicial foreclosure and “no persons other than property owners” are restricted in their opportunities to seek judicial review. Dkt. No. 8 ¶¶ 4.6, 4.8.³ These arguments fail as a matter of law.

Plaintiffs first argue that the bond requirement violates article IV, section 6 of the Washington Constitution. Article IV, section 6 provides that “[t]he superior court shall have original jurisdiction in all cases at law which involve the title or possession of real property.” However, this provision does not prevent the legislature from establishing procedural requirements for the resolution of particular types of disputes. *See James v. Cnty of Kitsap*,

³ Plaintiffs allege a claim for violation of “Article V, section 6” of Washington’s Constitution, Dkt # 8 ¶ 4.6, but no such provision exists. The State assumes it is a typographical error and Plaintiffs intended to refer to Article IV, section 6 in this paragraph, as they do in other parts of the Complaint. *See* Dkt #8 ¶ 4.8.

1 154 Wn.2d 574, 587-88 (2005) (concluding procedural requirements of LUPA did not divest
2 superior court of original jurisdiction). Washington courts have previously upheld the
3 constitutionality of the DTA under this provision based on two variations of this argument, both
4 brought by Plaintiffs' counsel. *See, e.g., Jackson*, 186 Wn. App. at 847 n.8 (noting superior
5 court's constitutional grant of jurisdiction is preserved in specific portions of the DTA, including
6 Wash. Rev. Code § 61.24.130); *Larson*, 20 Wash. App. 2d at 284–85. But Plaintiffs offer no
7 authority to support the theory that requiring payment of a bond to secure an injunction violates
8 the superior court's jurisdiction. Washington courts require the payment of a bond to enjoin a
9 non-judicial foreclosure without comment on its legality. *See, e.g., Tandiana v. NovaStar*
10 *Mortg., Inc.*, No. C03-909-JLR, 2005 WL 2206890, at *3 (W.D. Wash. Sept. 2, 2005). Likewise,
11 courts have held that bond requirements in similar injunctive cases do not encroach on the
12 superior court's jurisdiction because such requirements are procedural, not jurisdictional. *Cf.*
13 *Appeal of Des Moines Sewer Dist., U.L.I.D. No. 29*, 97 Wn.2d 227, 230-31, 643 P.2d 436 (1982)
14 (statute requiring bond on appeal from decision of sewer commission did not restrict superior
15 court's jurisdiction). Plaintiffs cannot show that the bond required here divests the superior court
16 of its jurisdiction.

17 Plaintiffs' other claims likewise fail. Plaintiffs argue that the bond requirement violates
18 the Washington Constitution's guarantee that "[j]ustice in all cases shall be administered
19 openly." Wash. Const. Art. 1, § 10. But statutes and cases demonstrate "that access must be
20 exercised within the broader framework of the law as expressed in statutes, cases, and court
21 rules." *Doe v. Puget Sound Blood Center*, 117 Wn.2d 772, 782, 819 P.2d 370 (1991) (gathering
22 cases considering right of access in context of statutes and case law establishing statute of
23 limitations, elements of a cause of action, and recognizing certain causes of action).

24 Plaintiffs finally argue that the bond requirement violates the privileges and immunities
25 clause by requiring property owners, but not others, from paying a bond in order to enjoin a non-
26 judicial foreclosure sale. Article 1, section 12 of the Washington Constitution provides that no

1 law shall be passed giving to any class of citizens privileges or immunities which shall not be
2 equally available to all citizens. This challenge is subject to the highly deferential standard of
3 rationality review, because the DTA is economic legislation that does not involve fundamental
4 rights. *Brown v. Wash. State Dept. of Com.*, 184 Wn.2d 509, 546–47, 359 P.3d 771 (2015)
5 (reviewing challenge to Foreclosure Fairness Act amendments to the DTA). Plaintiffs’ argument
6 fails for two reasons.

7 First, Plaintiffs’ argument is flawed insofar it assumes that the law discriminates against
8 property owners in favor of all other types of litigants. The DTA specifically states that a
9 “borrower, grantor, any guarantor, or any person who has an interest in, lien, or claim of lien
10 against the property” may attempt to restrain a trustee’s sale. RCW 61.24.130(1). On its face,
11 then, the DTA does not privilege any group of litigants over property owners. Second, the
12 procedure for enjoining a non-judicial foreclosure under the DTA applies equally to all property
13 owners. All property owners seeking to enjoin a non-foreclosure sale are subject to the same
14 bond requirement, and so no impermissible favoritism is evidenced by the DTA. This does not
15 pose a privileges and immunities problem. *Cf. Madison v. State*, 161 Wn.2d 85, 97 (2007)
16 (finding that felon disenfranchisement scheme did not violate article I, section 12 of the
17 Washington Constitution because the same standard was applied evenly to all people convicted
18 of a felony seeking restoration of their voting rights). This claim should thus be dismissed.

19 3. The DTA does not violate the United States Constitution

20 Plaintiffs fare no better with their theories that the DTA violates the United States
21 Constitution. These claims, too, should be dismissed.

22 Plaintiffs first argue that the State violated the Contracts Clause by amending the DTA
23 “which changed the meaning” of Mr. White’s mortgage agreements, “so as to make those
24 agreements more likely to be enforceable by way of foreclosure.” Dkt No. 8 ¶ 3.99(C). The
25 Contracts Clause provides that “No State shall . . . pass any . . . Law impairing the Obligation
26 of Contracts.” U.S. Const. art I, § 10, cl. 1. The threshold issue in a Contracts Clause claim is

1 “whether the state law has ‘operated as a substantial impairment of a contractual relationship.’”
2 *Sveen v. Melin*, 584 U.S. ---, 138 S. Ct. 1815, 1821-22 (2018) (quoting *Allied Structural Steel*
3 *Co. v. Spannaus*, 438 U.S. 234, 244 (1978)). If the law is a substantial impairment, then “the
4 inquiry turns to the means and ends of the legislation.” *Id.* At that point, the law survives if it is
5 drawn in “an ‘appropriate’ and ‘reasonable’ way to advance ‘a significant and legitimate public
6 purpose.’” *Id.* (quoting *Energy Reserves Grp. v. Kansas Power & Light Co.*, 459 U.S. 400, 411–
7 12 (1983)). When the government is not party to the contract being impaired, “courts properly
8 defer to legislative judgment as to the necessity and reasonableness of a particular measure.”
9 *Energy Reserves*, 459 U.S. at 413.

10 Plaintiffs’ Contract Clause claim fails as a matter of law. The Court need not consider
11 whether Mr. White’s contracts were “substantially” impaired, because the DTA reflects
12 significant and legitimate public purposes. *See Snake River Valley Elec. Ass’n v. PacifiCorp*,
13 357 F.3d 1042, 1051 n.9 (9th Cir. 2004). Plaintiffs do not and cannot show that the DTA is an
14 unreasonable way to manage the non-judicial foreclosure process. *Cf. Apartment Assoc. of L.A.*
15 *Cnty, Inc. v. City of L.A.*, 10 F.4th 905, 914 (9th Cir. 2021) (upholding eviction moratorium
16 against Contracts Clause challenge because the policy was fairly tied to the goal of preventing
17 displacement from homes during a pandemic). Here, courts have recognized the important policy
18 considerations underlying the DTA: to make the non-judicial foreclosure process efficient and
19 inexpensive, to provide an adequate opportunity to prevent wrongful foreclosure, and promote
20 the stability of land titles. *Jackson*, 186 Wn. App. at 848 (citing *Cox*, 103 Wn.2d at 387).
21 Plaintiffs’ Complaint includes no allegations or arguments that contradict these public purposes.
22 Even if they did, Plaintiffs’ claim would still fail because the mere retroactive application of a
23 law to a contract does not on its own “severely impair” a contract. *Sveen*, 138 S. Ct. at 1822–23
24 (holding that Minnesota law that automatically removed ex-spouses as beneficiaries on life
25 insurance policies after divorce did not violate the Contracts Clause). Plaintiffs allege no facts
26 from which the Court could infer that application of the DTA as it exists today impairs Mr.

1 White's contracts with his mortgage lenders. Thus, the Contract Clause claim fails as a matter
2 of law.

3 Plaintiffs' arguments that the bond requirement violates the Fourteenth Amendment's
4 guarantees of due process and equal protection are likewise without merit. A State may not
5 deprive any person of life, liberty, or property without due process of law, nor deny to any person
6 equal protection of the laws. U.S. Const. amend. XIV, § 1. Both claims fails at the outset because
7 Plaintiffs fail to demonstrate state action, which is a fundamental aspect of a Fourteenth
8 Amendment claim. *Blum v. Yaretsky*, 457 U.S. 991, 1004 (1982) (no state action where a court
9 merely approves of or acquiesces in enforcement of a private contract). Indeed, Washington
10 courts have rejected due process challenges to prior iterations of the DTA for failure to
11 demonstrate state action, including challenges to the amendments that created the non-judicial
12 foreclosure process. *See Kennebec, Inc. v. Bank of the West*, 88 Wn.2d 718, 722–26, 565 P.2d
13 812 (1977) (concluding amendment to prior version of the DTA to permit non-judicial
14 foreclosures did not violate due process because it involved only private contracts, passive state
15 involvement, and no state action). On this basis alone the Court should dismiss Plaintiffs'
16 Fourteenth Amendment challenges.

17 However, even if state action was shown here, the Court should dismiss these claims as
18 a matter of law. The core of an equal protection claim is that a person has been treated differently
19 than others similarly situated. *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432 (1985). As
20 discussed above, all borrowers seeking to invoke the protection of Wash. Rev. Code § 61.24.130
21 are treated the same and must comply with the same requirements to enjoin a non-judicial
22 foreclosure sale. Even if similarly situated litigants were treated differently, "it is well settled
23 that equal protection challenges to economic legislation," like the DTA, "are evaluated under
24 rational basis review." *See, e.g., F.C.C. v. Beach Comm'ns, Inc.*, 508 U.S. 307, 313 (1993). For
25 the reasons discussed above, the DTA survives rational basis review because the bond
26 requirement is rationally related to the legitimate government interest in regulating the non-

1 judicial foreclosure process. *See Jackson*, 186 Wash. App. at 848 (discussing legislative
2 purposes of the DTA). The equal protection claim should be dismissed.

3 Moreover, Plaintiffs’ due process claims fail as a matter of law. The mere fact that
4 borrowers must pay a bond to secure an injunction does not implicate due process. *See Angelotti*
5 *Chiropractic, Inc. v. Baker*, 791 F.3d 1075, 1083 (9th Cir. 2015) (upholding dismissal of due
6 process challenge to statute requiring “activation” filing fees by medical providers seeking
7 payment for workers’ compensation-related liens and authorizing dismissal for non-payment).
8 In attempting to enjoin the trustee’s sales and to seek damages from the other Defendants here,
9 Plaintiffs have availed themselves of the courts, and thus must comply with the requirements
10 established by law for all borrowers. Thus, the DTA bond requirement is akin to the bond
11 required in conventional injunction scenarios, which does not violate due process. *See*
12 *Fed. R. Civ. P. 65(c)* (“The court may issue a preliminary injunction or . . . temporary restraining
13 order only if the movant gives security in an amount that the court considers proper to pay the
14 costs and damages sustained by any party found to have been wrongfully enjoined or
15 restrained.”); *cf. Angelotti Chiropractic*, at 1083–84 (summarizing cases where court rejected
16 due process challenges to filing fees) (citing *United States v. Kras*, 409 U.S. 434, 443–46 (1973)
17 (upholding bankruptcy filing fee) and *Ortwein v. Schwab*, 410 U.S. 656, 659 (1973) (upholding
18 filing fee for action challenging reduction in welfare payments). The due process claim should
19 therefore be dismissed.

20 IV. CONCLUSION

21 For the reasons discussed above, the State respectfully requests dismiss this because
22 Plaintiffs fail to state a claim upon which relief can be granted.
23
24
25
26

1 DATED this 11th day of January 2024.

2 ROBERT W. FERGUSON
3 Attorney General

4 /s/ Sarah E. Smith-Levy
5 SARAH E. SMITH-LEVY, WSBA #55770
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10 *Attorneys for Defendant State of Washington*

11 I certify that this memorandum contains 4,678
12 words, in compliance with the Local Civil Rules.
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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA**

CHURCH OF THE GARDENS, a
Washington Not-for-Profit
Corporation operating as a faith-based
religious organization; ALVIN
WHITE, in his individual capacity,

Plaintiffs,

v.

QUALITY LOAN SERVICES
CORPORATION OF WASHINGTON;
MTC FINANCIAL INC. DBA
TRUSTEE CORPS.; DEUTSCHE
BANK NATIONAL TRUST
COMPANY; LONG BEACH
MORTGAGE LOAN TRUST 2006-4;
LONG BEACH MORTGAGE LOAN
TRUST 2006-5; and STATE OF
WASHINGTON, a State of the United
States.

Defendants.

Case No.: 3:23-cv-06193-SKV

**PLAINTIFFS' NOTICE AND
OBJECTION TO ASSIGNMENT OF
MAGISTRATE JUDGE**

1 Church of the Gardens (hereafter “Church”) and Alvin White (hereafter
2 “Property Owner”) plaintiffs in the Washington State court proceeding which has
3 been removed to this United States District Court, by and through their attorney
4 Scott E. Stafne, hereby object to this case having been assigned to a magistrate
5 judge. Church of the Gardens and White demand this case be adjudicated by a
6 judicial officer who is a judge within the meaning of Article III. *See e.g. Wellness*
7 *Int’l Network, Ltd. v. Sharif*, 575 U.S. 665 (2015); *Nguyen v. United States*, 539
8 *U.S. 69 (2003)*; *Gomez v. United States*, 490 U.S. 858 (1989); *Commodity Futures*
9 *Trading Com v. Schor*, 478 U.S. 833 (1986).

11 If an appropriate Article III judicial judge, i.e. a judicial officer that holds
12 the office of judge during behaviour is not assigned to this case within seven days
13 Plaintiffs Church and Property Owner will file a motion to remand and also seek
14 whatever other judicial relief as may be appropriate against this Court and its
15 judicial officers for their oft repeated violations of litigants’ personal rights under
16 the Constitution to have cases and controversies adjudicated by Article III judges.

18 DATED this 4th day of January, 2024, at Arlington, Washington.

19 By: s/ Scott E. Stafne
20 Scott E. Stafne, WSBA No. 6964
21 Stafne Law Advocacy & Consulting
22 239 North Olympic Avenue
23 Arlington, WA 98223
24 360.403.8700
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury under the laws of the State of Washington that on January 4, 2024, that **PLAINTIFFS' NOTICE AND OBJECTION TO ASSIGNMENT OF MAGISTRATE JUDGE** was served upon opposing counsel through electronically filing this document with the Courts CM/ECF system upon the following parties:

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*Counsel for Deutsche Bank National
Trust Company*

Dated this 4th day of January 2024.

By s/Justin Wood
Justin Wood, Paralegal

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF WASHINGTON, AT TACOMA

CHURCH OF THE GARDENS, a Washington
Not-for-Profit Corporation operating as a faith-
based religious organization; ALVIN WHITE,
in his individual capacity,

Plaintiff,

v.

QUALITY LOAN SERVICES
CORPORATION OF WASHINGTON; MTC
FINANCIAL INC. DBA TRUSTEE CORPS.;
DEUTSCHE BANK NATIONAL TRUST
COMPANY; LONG BEACH MORTGAGE
LOAN TRUST 2006-4; LONG BEACH
MORTGAGE LOAN TRUST 2006-5; and
STATE OF WASHINGTON, a State of the
United States,

Defendants.

No. 3:23-cv-6193

NOTICE OF REMOVAL

TO: Clerk, United States District Court, Western District of Washington, at Tacoma;

AND TO: Plaintiffs

Defendant Deutsche Bank National Trust Company, as Trustee, in trust for registered
Holders of Long Beach Mortgage Loan Trust 2006-4, Asset-Backed Certificates, Series 2006-
4¹ (the "2006-4 Trust") and Defendant Deutsche Bank National Trust Company, as Trustee for

¹ Incorrectly named in the Complaint solely as "Long Beach Mortgage Loan Trust 2006-4."

1 Long Beach Mortgage Loan Trust 2006-5² (the “2006-5 Trust”) (collectively, the “Trusts”)
2 hereby remove this action, originally commenced in Pierce County Superior Court, to the
3 United States District Court, Western District of Washington, at Tacoma pursuant to 28 U.S.C.
4 §§§§1331, 1332, 1441 and 1446 and on the grounds set forth below.³

5 1. The Trusts are entitled to remove this action because there are federal questions
6 alleged in the Complaint.

7 2. The Trusts are entitled to remove this action based on diversity of citizenship,
8 and the amount in controversy, because the Defendants named in addition to the Trusts were
9 named solely to destroy diversity of citizenship.

10 FEDERAL QUESTION JURISDICTION

11 3. This Court has original jurisdiction of this civil action under 28 U.S.C. §1331
12 and the Trusts may remove this action to this Court pursuant to 28 U.S.C. §1441. In the
13 Complaint, Plaintiffs assert federal claims under or issues referencing the following: the Fifth
14 Amendment Takings Clause; the Contracts Clause of U.S. Constitution; and the Due Process
15 and Equal Protection Clauses of the Fourteenth Amendment.

16 4. “[F]ederal-question jurisdiction will lie over state-law claims that implicate
17 significant federal issues.” *Grable & Sons Metal Prods., Inc. v. Darue Eng’g & Mfg.*, 545 U.S.
18 308, 312, 2006-14 I.R.B. 697, 125 S.Ct. 2363 (2005). Plaintiffs seek declarations relating to the
19 above Clauses of the Amendments to the U.S. Constitution and of the U.S. Constitution. Thus,
20 the Court has federal question jurisdiction.

21 FRAUDULENT JOINDER

22 5. “Diversity removal requires complete diversity, meaning that each plaintiff must

23
24 ² Incorrectly named in the Complaint solely as “Long Beach Mortgage Loan Trust 2006-5.”

25 ³ The Trusts expressly preserve all Rule 12(h) objections. *See* Wright & Arthur R. Miller, *Federal Practice and*
26 *Procedure* §1395 (3d ed. 2004) *quoting* *Greenberg v. Giannini*, 140 F.2d 550, 553 (2d Cir. 1944) (“When a
defendant removes an action from a state court in which he has been sued, he consents to nothing and ‘waives’
nothing; he is exercising a privilege unconditionally conferred by statute, and, since the district court to which he
must remove it is fixed by law, he has no choice, without which there can be no ‘waiver.’”).

1 be of a different citizenship from each defendant.” *Grancare, LLC v. Thrower by & through*
2 *Mills*, 889 F.3d 543, 548 (9th Cir. 2018). “In determining whether there is complete diversity,
3 district courts may disregard the citizenship of a non-diverse defendant who has been
4 fraudulently joined.” *Id.* “Joinder of a non-diverse defendant is deemed fraudulent, ... ‘[i]f the
5 plaintiff fails to state a cause of action against a resident defendant, and the failure is obvious
6 according to the settled rules of the state.’” *Morris v. Princess Cruises, Inc.*, 236 F.3d 1061,
7 1067 (9th Cir. 2001).

8 6. In the Complaint, Plaintiffs seek declarations regarding five mortgage loans and
9 properties. For at least two of the five properties, Plaintiffs seek to retrain Trustee’s Sales.
10 Plaintiffs challenge whether the Trusts are the holders of the original promissory notes and
11 entitled to foreclose. The relief Plaintiffs seek and the bases therefore state only claims against
12 the Trusts. Plaintiffs fail to state a claim against the Washington foreclosure trustees and State
13 of Washington (the “State”). Plaintiffs joined the Washington entities and State solely to destroy
14 diversity of citizenship.

15 7. Given the above authority, the Court may disregard the Defendants named in
16 addition to the Trusts in determining whether complete diversity exists because the Washington
17 entities and State were fraudulently joined.

18 **DIVERSITY JURISDICTION**

19 8. Plaintiff Church of the Gardens is named as a Washington corporation.

20 9. Plaintiff Alvin White is a Washington resident.

21 10. Deutsche Bank National Trust Company’s headquarters is in California.

22 11. Under 28 U.S.C. §1332(a), complete diversity exists between each Plaintiff and
23 each Defendant properly named.

24 12. In actions seeking declaratory or injunctive relief, the amount in controversy is
25 measured by the value of the object of the litigation.” *Hunt v. Wash. State Apple Advert.*
26 *Comm’n*, 432 U.S. 333, 347, 97 S.Ct. 2434, 53 L.Ed.2d 383 (1977). In cases where plaintiffs

1 sought to permanently enjoin a foreclosure and quiet title to the property, the Ninth Circuit has
2 held that the amount in controversy is the value of the property. *See, e.g., Chapman v. Deutsche*
3 *Bank Nat'l Trust Co.*, 651 F.3d 1039, 1045 n.2 (9th Cir. 2011); *Garfinkle v. Wells Fargo Bank*,
4 483 F.2d 1074, 1076 (9th Cir. 1973).

5 13. Plaintiffs seek to restrain Trustee's Sales on at least two of the five properties:
6 2410 62nd Avenue East, Fife, Washington 98424; and 2460 62nd Avenue East, Fife,
7 Washington 98424. Based on the principal amounts of the two mortgage loans, \$382,500 and
8 \$333,000 respectively, the two properties' value totals well over the \$75,000 jurisdictional
9 minimum set forth in 28 U.S.C. §1332(a).

10 TIMELY REMOVAL

11 14. Plaintiffs filed the Complaint in Pierce County Superior Court on December 13,
12 2023. Plaintiffs have not effected service on the Trusts.

13 15. Since the thirty-day deadline for removal has not been triggered by service on
14 the Trusts, this Notice of Removal is timely. *See* 28 U.S.C. §1446(b).

15 REMAINING PROCEDURAL REQUIREMENTS

16 16. Under 28 U.S.C. §128(b), the United States District Court, Western District of
17 Washington is the proper Court for this action originally filed in Pierce County Superior Court.
18 Tacoma is the appropriate division or location.

19 17. Defendants that have appeared consent or do not object to removal. *See Proctor*
20 *v. Vishay Intertechnology Inc.*, 584 F.3d 1208, 1225 (9th Cir. 2009).

21 18. This action has not been removed previously.

22 19. Pursuant to 28 U.S.C. § 1446(a), copies of all documents, process, pleadings,
23 and orders filed in Pierce County Superior Court No. 23-2-11864-8 are attached as Exhibits A
24 - P to this Notice of Removal. The Trusts will separately file a Verification of State Court
25 Records and Proceedings pursuant to Rule 101(b).

26 20. Promptly after or concurrent with the filing of this Notice of Removal, the Trusts

1 will give written notice to Plaintiffs and will file a copy of this Notice of Removal with the
2 Clerk of the Pierce County Superior Court pursuant to 28 U.S.C. §1446(d).

3 21. The removal of this action terminates all potential proceedings in Pierce County
4 Superior Court. *See* 28 U.S.C. §1446(d).

5 WHEREFORE, the Trusts respectfully give notice that the above-entitled action is
6 removed from the Pierce County Superior Court to the United States District Court, Western
7 District of Washington, at Tacoma.

8 Dated: December 28, 2023

BUCHALTER

9
10 By: /s/ Midori R. Sagara

11 Midori R. Sagara, WSBA #39626
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14 *Attorneys for Defendant Deutsche Bank*
15 *National Trust Company, as Trustee, in trust*
16 *for registered Holders of Long Beach*
17 *Mortgage Loan Trust 2006-4, Asset-Backed*
18 *Certificates, Series 2006-4 and Defendant*
19 *Deutsche Bank National Trust Company, as*
20 *Trustee for Long Beach Mortgage Loan*
21 *Trust 2006-5*

CERTIFICATE OF SERVICE

I hereby certify that on December 28, 2023, I caused to be served a copy of the foregoing on the following person(s) in the manner indicated below at the following address(es):

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By: s/ Kristina Reger

Kristina Reger, Legal Assistant

kreger@buchalter.com

December 13 2023 2:23 PM

CONSTANCE R. WHITE
COUNTY CLERK
NO: 23-2-11864-8

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THE COUNTY OF PIERCE**

CHURCH OF THE GARDENS, a Washington
Not-for-Profit Corporation operating as a faith-based
religious organization; ALVIN WHITE, in his
individual capacity,

Plaintiff,

v.

QUALITY LOAN SERVICES CORPORATION OF
WASHINGTON; MTC FINANCIAL INC. DBA
TRUSTEE CORPS.; DEUTSCHE BANK
NATIONAL TRUST COMPANY; LONG BEACH
MORTGAGE LOAN TRUST 2006-4; LONG
BEACH MORTGAGE LOAN TRUST 2006-5; and
STATE OF WASHINGTON, a State of the United
States.

Defendants.

Case No.: _____

**COMPLAINT FOR DECLARATORY
RELIEF AND RESTRAINT OF
STATUTORY TRUSTEE SALE OF
REAL PROPERTY PURSUANT TO
RCW 61.24.130**

Complaint

STAFNE LAW Advocacy & Consulting
239 North Olympic Avenue
Arlington, WA 98223
360.403.8700

COMPLAINT

Plaintiffs, **Church of the Gardens** and **Alvin B. White**, by and through their counsel, Scott Erik Stafne of Stafne Law Advocacy and Consulting (a faith-based not-for-profit corporation affiliated with the Church of the Gardens, a Christian religious organization) for purposes of declaring the meaning of RCW 61.24.130 and also for purposes of restraining the nonjudicial sale of any of the five fourplexes purchased by Alvin White (hereafter “Property Owner”) on February 24, 2006, do hereby complain based on the following facts (which are hereby declared to be true and correct under the penalty of perjury) do hereby complain as follows:

1. PARTIES

1.1. Alvin B. White (hereinafter referred to as “Plaintiff” or “Plaintiff Property Owner”) is a resident of Washington State and the fee simple owner of the five below-described fourplex parcels located in Pierce County, Washington:

Address: 2410 62nd Avenue East, Fife, Washington 98424 Units A, B, C, D;
Legal Description: Lot 16 of Brownfield Plat, according to Plat recorded August 15, 1980, under Recording No. 8008150226, in Pierce County, Washington. Assessor’s Tax Parcel Number 271000-0160
 (This particular fourplex is hereafter referred to as “**Lot 16**”).

Address: 2420 62nd Avenue East, Fife, Washington 98424 Units A, B, C, D;
Legal Description: Lot 7 of Brownfield Plat, according to Plat recorded August 15, 1980, Under Recording No. 8008150226, in Pierce County, Washington. Assessor’s Tax Parcel Number: 271000-0070
 (This particular fourplex is hereafter referred to as “**Lot 7**”).

Address: 2450 62nd Avenue East, Fife, Washington 98424 Units A, B, C, D;
Legal Description: Lot 10 of Brownfield Plat, according to Plat recorded August 15, 1980, Under Recording No. 8008150226, in Pierce County, Washington. Assessor's Tax Parcel Number: 271000-0100
 (This particular fourplex is hereafter referred to as "**Lot 10**".)

Address: 2460 62nd Avenue East, Fife, Washington 98424 Units A, B, C, D;
Legal Description: Lot 11 of Brownfield Plat, according to Plat recorded August 15, 1980, under Recording No. 8008150226, in Pierce County, Washington. Assessor's Tax Parcel Number: 271000-0110.
 (This particular fourplex is hereafter referred to as "**Lot 11**".)

Address: 2470 62nd Avenue East, Fife, Washington 98424 Units A, B, C, D;
Legal Description: Lot 12 of Brownfield Plat, according to Plat recorded August 15, 1980, Under Recording No. 8008150226, in Pierce County, Washington. Assessor's Tax Parcel Number: 271000-0120
 (This particular fourplex is hereafter referred to as "**Lot 12**".)

1.2. Church of the Gardens (hereafter "Church" or "COTG") is a Washington not for profit corporation which is operating as a Christian religious organization for the purpose of achieving its spiritual and religious purposes as per its mission statement as that statement has been interpreted through COTG's Board of Directors. A copy of COTG's Mission Statement is attached hereto as **Exhibit 1.**

1.3. Defendant Quality Loan Services Corporation of Washington (hereafter "QLS Statutory Trustee") has notified Plaintiff Property Owner that it is acting as Washington's statutory trustee, *see* RCW 61.24.010, pursuant to the deed of trust security instruments applicable to **Lots 16 and 11**. Further, Defendant QLS Statutory Trustee has notified Plaintiff Property Owner that it

1 intends to sell Plaintiff Property Owner's **Lots 16 and 11** without his consent at
2 nonjudicial sales which have been scheduled to occur on January 5, 2024.

3 **1.4.** On information and belief Defendant MTC Financial Inc. dba Trustee
4 Corp. (hereinafter referred to "MTC Statutory Trustee") claims that it is acting as
5 Washington's statutory trustee pursuant to RCW 61.24.010 with regards to the
6 deed of trust security instruments applicable to **Lots 7, 10, and 12**. Defendant
7 MTC Statutory trustee recently provided Plaintiff Property Owner with a Notice
8 of Default with regards to **Lots 7 and 11**. Plaintiffs Church and Property Owner
9 fear MTC Trustee will likely soon also initiate a nonjudicial sale of **Lot 12**
10 pursuant to Washington's Deed of Trust Act.

12 **1.5.** Defendant Deutsche Bank National Trust Company (hereafter
13 "Deutsche Bank") purports to be the trustee for Defendant Long Beach Mortgage
14 Loan Trust 2006-4 and Defendant Long Beach Mortgage Loan Trust 2006-5.
15 Defendant Deutsche Bank also purports that at all material times, it has acted as
16 the trustee for the 2006-4 and 2006-5 trusts. Plaintiffs Church and Property
17 Owner assert that Defendant Deutsche Bank is likely not a necessary party to this
18 action, which is limited to obtaining relief against the QLS and MTC statutory
19 trustees pursuant to RCW 61.24.130. Plaintiffs have named Deutsche Bank as a
20 defendant here because Deutsche Bank intervened in a similar action the White's
21 filed pursuant to RCW 61.12.130 with the Superior Court of Whatcom County,
22 Washington.

1 **1.6.** Defendant Long Beach Mortgage Loan Trust 2006-4 claims to be the
2 assignee of the deed of trust security instrument applicable to **Lot 16**. Plaintiffs
3 Church and Property Owner do not know what type of entity, *if any*, Defendant
4 Long Beach Mortgage Trust 2006-4 is. Nor do Plaintiffs know if Defendant Long
5 Beach Mortgage Trust 2006-4 actually exists. On information and belief Plaintiffs
6 Church and Property Owner allege that Defendant Long Beach Mortgage Trust
7 2006-4 falsely claims to possess through agents or others the paper original Note
8 applicable to **Lot 16** signed by the Property Owner.
9

10 **1.7.** Defendant Long Beach Mortgage Loan Trust 2006-5 claims to be the
11 assignee of the deed of trust security instrument applicable to **Lots 16, 7, 10, 11,**
12 **and 12**. Plaintiffs Church and Property Owner do not know what type of entity, *if*
13 *any*, Defendant Long Beach Mortgage Trust 2006-5 is. Nor do Plaintiffs know if
14 Defendant Long Beach Mortgage Trust 2006-5 actually exists. On information and
15 belief Plaintiffs Church and Property Owner allege that Defendant Long Beach
16 Mortgage Trust 2006-4 falsely claims to possess through agents or others the
17 paper original Note applicable to **Lots 16, 7, 10, 11, and 12** signed by Property
18 Owner.
19

20 **1.8.** Defendant *State of Washington* is made a party hereto in order to
21 give that entity an opportunity to demonstrate in this action, if it can, that the
22 Constitutional and other judicial inquiries at issue here do not involve “proper
23 grounds” to restrain the sale of White’s property pursuant to that version of RCW
24

61.24.130, which applies the pertinent promissory notes and deeds of trust that Plaintiff Property Owner executed on February 24, 2006.

2. JURISDICTION

2.1. This Court has jurisdiction over the subject matter of this lawsuit, i.e. the meaning of RCW 61.24.130, pursuant to Wash. Const. Art. IV, section 6 and Chapter 7.24 RCW.

2.2. This Court has personal jurisdiction over the necessary parties.

2.3. The venue is proper before this Court because the fourplexes, *i.e.* **Lots 16, 7, 10, 11, and 12** are located within Pierce County, Washington. *See* RCW 4.12.020(2).

2.4. Plaintiff Church and Plaintiff Property Owner assert that to the extent Washington judges are not competent judicial officials to adjudicate this dispute because of bias pursuant to RCW 2.28.030(1) and/or the Fourteenth Amendment of the United States Constitution, *see infra.*, this complaint should be adjudicated by a pro tempore judge who has no pecuniary or other disqualifying interest in the outcome of this case. *See* Wash. Const. Art. IV, section 7. *See also infra.*

2.5. Plaintiffs allege that the legal standard for determining bias in this case is an objective one: “The court asks not whether the judge is actually, subjectively biased, but whether the average judge in his position is ‘likely’ to be neutral, or whether there is an unconstitutional “potential for bias.”

3. FACTS

a. Introduction and Facts Related to Restraint of Sale provisions of Washington's Deeds of Trust Act as they existed at the time the promissory notes and deed of trust security instruments were executed on February 24, 2006

3.1. This lawsuit has been carefully crafted by Plaintiffs Church and Property Owner to assert that under the facts Plaintiff Property Owner is entitled to restrain the nonjudicial sale of any of the fourplex real properties identified herein pursuant to the language of RCW 61.24.130 which was applicable law when Plaintiff Property Owner executed those agreements on February 24, 2006. At that time RCW 61.24.130 stated in pertinent part:

(1) Nothing contained in this chapter shall prejudice the right of the borrower, grantor, any guarantor, or any person who has an interest in, lien, or claim of lien against the property or some part thereof, to restrain, on any proper ground, a trustee's sale. The court shall require as a condition of granting the restraining order or injunction that the applicant pay to the clerk of the court the sums that would be due on the obligation secured by the deed of trust if the deed of trust was not being foreclosed:

(a) In the case of default in making the periodic payment of principal, interest, and reserves, such sums shall be the periodic payment of principal, interest, and reserves paid to the clerk of the court every thirty days.

* * *

In addition, the court may condition granting the restraining order or injunction upon the giving of security by the applicant, in such form and amount as the court deems proper, for the payment of such costs and damages, including attorneys' fees, as may be later found by the court to have been incurred or suffered by any party by reason of the restraining order or injunction. The court may consider, upon proper showing, the grantor's equity in the property in determining the amount of said security.

(2) No court may grant a restraining order or injunction to restrain a trustee's sale unless the person seeking the restraint gives five days notice to the trustee of the time when, place where, and the judge before whom the application for the restraining order or injunction is to be made. This notice shall include copies of all pleadings and related documents to be given to the judge. No judge may act upon such application unless it is accompanied by proof, evidenced by return of a sheriff, the sheriff's deputy, or by any person eighteen years of age or over who is competent to be a witness, that the notice has been served on the trustee.

3.2. Additionally, RCW 61.24.030(7)(j) stated in 2006 (the time the pertinent promissory note instruments and the associated deed of trust security instruments were executed) that "[i]t shall be requisite to a trustee's sale: ... (7)(j) That the borrower, grantor, and guarantor has recourse to the courts pursuant to RCW 61.24.130 to contest the default on any proper ground."

3.3. And RCW 61.24.040(1)(e) and (f) stated in 2006 that:

A deed of trust foreclosed under this chapter shall be foreclosed as follows:

(1) At least ninety days before the sale, the trustee shall:

(e) Cause a copy of the notice of sale described in RCW 61.24.040(f) to be posted in a conspicuous place on the property ...

(f) The Notice shall be in substantially the following form:

NOTICE OF TRUSTEE'S SALE

* * *

IX.

Anyone having any objection to the sale on any grounds whatsoever will be afforded an opportunity to be heard as to those objections if they bring a lawsuit to restrain the sale pursuant to RCW 61.24.130. Failure to bring such a lawsuit may result in a waiver of any proper grounds for invalidating the Trustee's sale. ...

3.4. And RCW 61.24.020(2) stated in 2006:

(2) In addition to providing the borrower and grantor the notice of sale described in RCW 61.24.040(1)(f), the trustee shall include with the copy of the notice which is mailed to the grantor a statement to the grantor in substantially the following form:

NOTICE OF FORECLOSURE
Pursuant to the Revised Code of Washington,
Chapter 61.24 RCW

The attached Notice of Trustee's Sale is a consequence of default(s) in the obligation to, the Beneficiary of your Deed of Trust and owner of the obligation secured thereby. Unless the default(s) is/are cured, your property will be sold at auction on the day of, . . .

* * *

You may contest this default by initiating court action in the Superior Court of the county in which the sale is to be held. In such action, you may raise any legitimate defenses you have to this default. A copy of your Deed of Trust and documents evidencing the obligation secured thereby are enclosed. You may wish to consult a lawyer. Legal action on your part may prevent or restrain the sale, but only if you persuade the court of the merits of your defense.

The court may grant a restraining order or injunction to restrain a trustee's sale pursuant to RCW 61.24.130 upon five days notice to the trustee of the time when, place where, and the judge before whom the application for the restraining order or injunction is to be made. This notice shall include copies of all pleadings and related documents to be given to the judge. Notice and other process may be served on the trustee at:

NAME:
ADDRESS:
TELEPHONE NUMBER:

If you do not reinstate the secured obligation and your Deed of Trust in the manner set forth above, or if you do not succeed in restraining the sale by court action, your property will be sold. The effect of such sale will be to deprive you and all those who hold by, through or under you of all interest in the property;

3.5. Plaintiffs Church and Property Owner also bring this declaratory judgment action premised on RCW 61.24.130 to obtain a judgment as to the

1 constitutional appropriateness of those parts of the above statute which require
 2 Property Owner to pay and continue paying the amount owed on these
 3 agreements prior to allowing him to present judicial inquiries to this Court for
 4 adjudication. Plaintiff Church and Property owner also request this Court to
 5 declare RCW 61.24.130(b) unconstitutional as well for the reasons stated *infra*.

6 **3.6.** In addition to the facts set forth herein this Introduction regarding
 7 those statutory provisions of RCW 61.24.130 which were in effect when the
 8 Property Owner executed the relevant promissory notes and associated deed of
 9 trust security instruments in 2006, Plaintiffs set forth below in **Part B** facts
 10 relating to the instant transactions which form the subject matter of this lawsuit
 11 to restrain these statutory trustees from selling Property Owner's properties; and
 12 set forth in **Part C** those historical facts pertaining to Plaintiff Property Owner's
 13 and Plaintiff Church's constitutional, statutory, and equitable grounds to restrain
 14 any statutory trustee sale of these properties until the judicial inquiries set forth
 15 below have been authoritatively and appropriately resolved through an exercise of
 16 judicial power by Washington's judicial branch of government.

18 ***B. Facts Related to Plaintiff Property Owner's Properties***

19 **3.7.** Plaintiff Property Owner purchased all five of these fourplexes, i.e.
 20 **Lots 16, 7, 10, 11, and 12**, at the same time from the same seller, i.e. *Carlson*
 21 *Diversified*, through the now defunct "Lender" known as Long Beach Mortgage
 22 Company (hereafter referred to as "Long Beach" or "Lender"). In this regard
 23 Plaintiff Property Owner alleges all of these fourplex transactions closed at the
 24

1 same time on February 24, 2006; during the same closing by way of separately
 2 executed paper promissory notes signed by Plaintiff Property Owner during that
 3 closing. Purported copies of these promissory notes which have been provided to
 4 him by defendants and others (which are not conceded as being copies of the
 5 original paper note actually signed by Property Owner as maker) are attached
 6 hereto as **Exhibit 2 (a)** (Parcel 16), **2 (b)** (Parcel 7), **2 (c)** (Parcel 10), **2 (d)** (Parcel
 7 11) and **2 (e)** (Parcel 12).

8 **3.8.** The promissory notes for the transactions related to **Lots 16, 7, 10,**
 9 **11, and 12** each state (and Plaintiff Property Owner) understood that “Lender
 10 may transfer this Note. Lender *or anyone who takes this Note by transfer and who*
 11 *is entitled to receive payments under this Note is called the ‘Note Holder.’*”
 12 (emphasis added)
 13

14 **3.9.** Plaintiff Property Owner and also Plaintiff Church assert that the
 15 above-quoted language of the Promissory Notes limits “Note Holders” to those
 16 “who take the original Note by transfer”.
 17

18 **3.10.** Plaintiffs further allege that the term “transfer” as it is used in the
 19 above referenced promissory notes is a term of art referencing the “transfer” of
 20 promissory note instruments pursuant to Washington’s version of the Uniform
 21 Commercial Code. In this regard, RCW 62A.3-203 stated on February 24, 2006
 22 (the date the Promissory Notes and Deeds of Trust were executed):

23 **Transfer of instrument; rights acquired by transfer.**
 24

1 (a) An instrument is transferred when it is delivered by a person
2 other than its issuer for the purpose of giving to the person receiving
3 delivery the right to enforce the instrument.

4 (b) Transfer of an instrument, whether or not the transfer is a
5 negotiation, vests in the transferee any right of the transferor to
6 enforce the instrument, including any right as a holder in due course,
7 but the transferee cannot acquire rights of a holder in due course by a
8 transfer, directly or indirectly, from a holder in due course if the
9 transferee engaged in fraud or illegality affecting the instrument.

10 (c) Unless otherwise agreed, if an instrument is transferred for
11 value and the transferee does not become a holder because of lack of
12 indorsement by the transferor, the transferee has a specifically
13 enforceable right to the unqualified indorsement of the transferor, but
14 negotiation of the instrument does not occur until the indorsement is
15 made.

16 (d) If a transferor purports to transfer less than the entire
17 instrument, negotiation of the instrument does not occur. The
18 transferee obtains no rights under this Article and has only the rights
19 of a partial assignee.

20 **3.11.** RCW 62A.9A-203 (relating to “secured transactions, sales of
21 accounts, contract rights and chattel paper”) stated at the time the promissory
22 notes and deed of trust security instruments were executed on February 24, 2006:

23 (a) **Attachment.** A security interest attaches to collateral when
24 it becomes enforceable against the debtor with respect to the
collateral, unless an agreement expressly postpones the time of
attachment.

(b) **Enforceability.** Except as otherwise provided in subsections
(c) through (i) of this section, a security interest is enforceable
against the debtor and third parties with respect to the
collateral *only* if:

(1) Value has been given;

(2) The debtor has rights in the collateral or the power to
transfer rights in the collateral to a secured party; and

(3) One of the following conditions is met:

(A) The debtor has authenticated a security agreement
that provides a description of the collateral ...;

(B) The collateral is not a certificated security and is in
the possession of the secured party under RCW 62A.9A-313
pursuant to the debtor's security agreement;

(C) The collateral is a certificated security in registered form and the security certificate has been delivered to the secured party under RCW 62A.8-301 pursuant to the debtor's security agreement; or

(D) The collateral is deposit accounts, electronic chattel paper, investment property, letter-of-credit rights, and the secured party has control under RCW 62A.9A-104, 62A.9A-105, 62A.9A-106, or 62A.9A-107 pursuant to the debtor's security agreement.

(Bolded and italicized emphasis supplied)

3.12. Exhibits 3(a)-(e), attached hereto, are copies of those deeds of trust applicable to **Lots 16, 7, 10, 11, and 12** which have been recorded with the Auditor of Pierce County, Washington. Plaintiff Church and Property Owner assert that these deeds of trust no longer secure any of the promissory notes marked as **Exhibits 2** and are not legally or equitably enforceable by way of a statutory trustee sale pursuant to Chapter 61.24 RCW (or likely by way of a judicial foreclosure for the reasons identified herein).

3.13. Both the Notes set forth in **Exhibits 2(a), (b), (c), (d), and (e)** and the deed of trust security instruments set forth in **Exhibits 3(a), (b), (c), (d) and (e)** incorporated “applicable law” into the terms of each Note and each security instrument. The word applicable means: “capable of being applied.” Plaintiff alleges this provision incorporated only that statutory law which existed at the time the contract was signed as that was the only statutory law which was capable of being applied.

3.14. The law applicable to promissory notes set forth in **Exhibits 2(a), (b), (c), (d), and (e)** and the deeds of trust set forth in **Exhibits 3(a), (b), (c), (d)**

1 **and (e)**, which were executed on February 24, 2006 by Plaintiff Property Owner,
 2 was not the same as exists today in 2023. Among those statutory provisions of
 3 Chapter 61.24 RCW that were not in effect in 2006 is RCW 61.24.127, which was
 4 not enacted until 2009 and then amended again in 2011. This statutory provision
 5 provides that the failure to bring a civil action to enjoin foreclosure pursuant to
 6 the terms of the statute constitutes a waiver of some claims but not others.
 7 Plaintiffs Property Owner and Church allege this provision was not “applicable
 8 law” within the meaning of the referenced agreements. Plaintiffs assert that the
 9 applicable law in 2006 did not incorporate RCW 61.24.127.
 10

11 **3.15.** Another example of statutory provisions that were not “applicable
 12 law” in 2006 are RCW 61.24.010(3) and (4). These provisions presently state that
 13 statutory trustees, like defendants QLS and MTC “(3) shall have no fiduciary
 14 obligation to the grantor or other persons having an interest in the property
 15 subject to the deed of trust” and “(4) [t]he trustee or successor trustee has a duty
 16 of good faith to the borrower, beneficiary, and grantor.”

17 **3.16.** Before the Deeds of Trust Act was amended in 2008 the Washington
 18 Supreme Court had held consistent with applicable Due Process precedents which
 19 controlled its exercise of judicial power that “the fiduciary duty imposed upon the
 20 trustee is exceedingly high.” *Cox v. Helenius*, 103 Wn.2d 383, 388-89, 693 P.2d 683,
 21 686 (1985). The Court also held that statutory trustees are required to act as
 22 “fiduciary for both the mortgagee and mortgagor and ... [to] act impartially
 23 between them.” In *Klem v. Wash. Mut.*, 176 Wn.2d 771(2013) the Supreme Court
 24

reiterated this point when it held: “In a nonjudicial foreclosure, the trustee undertakes the role of the judge as an impartial third party who owes a duty to both parties to ensure that the rights of both the beneficiary and the debtor are protected.” *Id.* at 774.

3.17. Plaintiffs Church and Property Owner assert that *Cox v. Helenius* is the “applicable law” which is incorporated into the promissory notes and deed of trust agreements that Property Owner executed on February 24, 2006. Further, as is discussed *infra.*, Plaintiffs Church and Property Owner also assert that the Supreme Court’s decision in *Cox* requiring that statutory trustees be neutral as between the parties is mandated by the Fourteenth Amendment to the United States Constitution and therefore the political branches of Washington State had no governmental authority to alter this due process requirement. *See infra.*

3.18. Another example of a statutory provision of the Deeds of Trust Act which has been amended since February 24, 2006, is RCW 61.24.030(7), which stated on such date that:

It shall be requisite to a trustee’s sale:

* * *

7. That at least thirty days before notice of sale shall be recorded, transmitted or served, written notice of default shall be transmitted by the beneficiary or trustee to the borrower and grantor at their last known addresses by both first class and either registered or certified mail, return receipt requested, and the beneficiary or trustee shall cause to be posted in a conspicuous place on the premises, a copy of the notice, or personally served on the borrower and grantor. This notice shall contain the following information:

1 (a) A description of the property which is then subject to the
2 deed 22 of trust;

3 (b) Each county in which the deed of trust is 25 recorded and
4 the document number given to the deed of trust upon 26
5 recording by each county auditor or recording officer;

6 (c) That the beneficiary has declared the borrower or grantor
7 to be in default, and a concise statement of the default alleged;

8 (d) An itemized account of the amount or amounts in arrears
9 if the default alleged is failure to make payments;

10 (e) An itemized account of all other specific charges, costs, or
11 fees that the borrower, grantor, or any guarantor is or may be
12 obliged to pay to reinstate the deed of trust before the recording
13 of the notice of sale;

14 (f) The total of (d) and (e) of this subsection, designated
15 clearly and conspicuously as the amount necessary to reinstate
16 the note and deed of trust before the recording of the notice of
17 sale;

18 (g) That failure to cure the alleged default within thirty days
19 of the date of mailing of the notice, or if personally served,
20 within thirty days of the date of personal service thereof, may
21 lead to recordation, transmittal, and publication of a notice of
22 sale, and that the property described in (a) of this subsection
23 may be sold at public auction at a date no less than one hundred
24 twenty days in the future;

(h) That the effect of the recordation, transmittal, and
publication of a notice of sale will be to (i) increase the costs and
fees and (ii) publicize the default and advertise the grantor's
property for sale;

(i) That the effect of the sale of the grantor's property by the
trustee will be to deprive the grantor of all their interest in the
property described in (a) of this subsection; and

(j) That the borrower, grantor and any guarantor has
recourse to the courts pursuant to RCW 61.24.130 to contest the
alleged default on any proper ground.

3.19. On February 24, 2006 nothing in RCW 61.24.030 or in any of the
Deeds of Trust Act 's other provisions purported to authorize a statutory trustee to
rely on a declaration of perjury by a beneficiary that it was the holder of the
promissory note as a basis for selling Property Owner's property. On information

1 and belief Plaintiff Church and Property Owner assert that the political branches
2 of Washington enacted these later provisions so as to allow lost and destroyed
3 notes to be foreclosed upon by statutory trustees so as to benefit the State of
4 Washington, government officials, and their wealthy allies.

5 **3.20.** Plaintiffs additionally allege that these agreements, i.e. the
6 Promissory Notes and the Deed of Trust security instruments are subject to the
7 mandates of the Contract Clause of Article 1, Section 10 of the United States
8 Constitution as that clause has been interpreted by the United States Supreme
9 Court.

10 **3.21.** Attached hereto as **Exhibit 4(a) - (e)** are true and correct copies of
11 the statutory warranty deeds confirming Plaintiff Property Owner's ownership of
12 each of these fourplexes, i.e. **Lots 16, 7, 10, 11, and 12.**

13 **3.22.** Defendants assert that sometimes after these separate transactions
14 relating to **Lots 16, 7, 10, 11, and 12** closed each original paper promissory note
15 signed by Plaintiff Property Owner was endorsed in blank by Jess Almanza, who
16 is identified on the purported endorsement as being a Vice President of the
17 Lender.

18 **3.23.** Plaintiff Church and Plaintiff Property Owner dispute that Almanza
19 endorsed these promissory notes for several reasons, including without limitation
20 among them (1) evidence that these promissory notes were lost or destroyed; (2)
21 the likelihood that the debt related to these mortgage loans was canceled; and (3)
22
23
24

1 Jeff Almanza's declaration that he never signed any such endorsements. A copy of
2 Almanza's declaration in this regard is attached hereto as **Exhibit 5**.

3 **3.24.** In preparing for this lawsuit to restrain the sale of Property Owner's
4 fourplexes, i.e. **Lots 16, 7, 11, 12, and 13**, by statutory trustees pursuant to
5 Washington's Deeds of Trust Act, Chapter 61.24 RCW, Plaintiff Church and
6 Property Owner retained the services of expert William Pataalo. A copy of William
7 Pataalo's initial unsigned report in this regard is attached hereto as **Exhibit 6**.
8 Based on this Report and other facts known to Plaintiff Property Owner and
9 Church, as well as their counsel, Plaintiffs assert that facts and evidence exist
10 that support the following allegations of this complaint set forth at ¶¶ 3.11-3.15,
11 *infra*.
12

13 **3.25.** On information and belief, Lender Long Beach was founded in 1979
14 and became a federally chartered thrift institution in 1990.

15 **3.26.** On information and belief, Lender admitted before it went out of
16 business that its intent was to transfer each of the transactions related to the
17 fourplexes described as **Lots 16, 7, 11, 12, and 13** into trusts known as Long
18 Beach Mortgage Trust 2006-4 and Long Beach Mortgage Trust 2006-5.

19 **3.27.** Based on information and belief, the Property Owner and Church
20 allege that the original paper Note Instruments signed by the Property Owner as
21 their maker were never transferred into either of the Defendant Trusts or any
22 other trust. Further, Plaintiffs allege Defendant Deutsche Bank's statements to
23
24

1 the contrary constitute lies and factual fabrications manufactured by Defendant
2 Deutsche Bank or its agents.

3 **3.28.** Based on information and belief, Plaintiff Property Owner and
4 Church allege that shortly after, i.e. within a year of the date the paper notes were
5 signed by White, those promissory notes were lost or destroyed, and as a result,
6 the promissory notes could only be enforced in Washington State by way of
7 compliance with RCW 62A.3-309.

8 **3.29.** On information and belief, Defendants (including all of them) cannot
9 demonstrate their compliance with RCW 62A.3-309 with regards to any of the
10 fourplexes, i.e. **Lots 16, 7, 11, 12, and 13**, for which the Property Owner seeks to
11 restrain a statutory trustee sale.

12 **3.30.** Plaintiffs assert this constitutes grounds to restrain Defendant QLS
13 Statutory Trustee from taking and selling Property Owner's property without his
14 consent before affording him judicial process. *See infra*.

15 **3.31.** Based on information and belief the purported 2009 assignments of
16 the interests of the Long Beach Mortgage Trusts in the fourplexes, i.e. **Lots 16, 7,**
17 **11, 12, and 13**, to Defendant Deutsche Bank National Trust Company had no
18 force and effect because those Defendant Trusts had no interest in these real
19 properties which could be transferred to Deutsche Bank.
20

21 **3.32.** Plaintiffs assert this constitutes another ground to restrain
22 Defendant QLS Statutory Trustee from taking and selling Property Owner's
23

1 property without his consent before providing him a judicial hearing and due
2 process of law. *See infra*.

3 **3.33.** On information and belief Plaintiff Property Owner and Church
4 allege that the 2009 assignments of the Deed of Trusts set forth in **Exhibit 6**, at
5 pages 11-13 of Paatalo's declaration see *infra*., are false and/or fraudulent because
6 (a) each purports to assert that the Defendant Trusts possess the original paper
7 promissory Note instrument signed in wet ink by Plaintiff Property Owner in
8 favor of Lender, but no such trusts were ever created or existed in 2009 when
9 these trusts purport to assign them; (b) Those persons executing these 2009
10 assignments knew that the original paper promissory note signed by Property
11 Owner in wet ink had been destroyed and/or lost at the time the assignments were
12 made and could only be enforced in Washington State pursuant to to RCW
13 62A.3-309; (c) the debt owed to Lender had been canceled pursuant to IRS
14 regulations; and (d) for such other reasons as will be proved at a trial in Property
15 Owner's defense to any judicial actions brought to enforce the promissory notes
16 and/or to foreclose on those deeds of trust security instruments which are at issue
17 in this case.
18

19 **3.34.** This case has been brought against Defendant statutory trustees,
20 Defendant Deutsche Bank, and Defendant Trusts for purposes of restraining them
21 from selling Property Owner's fourplexes in violation of A) the United States
22 Constitution; B) the Constitution of Washington State; C) the Washington statutes
23
24

1 identified herein; D) applicable equitable principles, and E) the terms of the
2 agreements Plaintiff Property Owner executed on February 24, 2006.

3 **3.35.** On information and belief, Lender Long Beach canceled the debt
4 owed by Property Owner to it when it assigned its interests in the mortgage loan
5 to Defendant Trusts. *See* IRS 1099A form instructions, which mandate that the
6 applicable transactions are subject to 1099A reporting: (1) when the loan
7 originates; (2) when the loan or line of credit is paid in full or partially satisfied;
8 (3) when a sale/transfer/assignment of the loan occurs; and (4) when the property
9 has been abandoned by the borrower. On information and belief such events have
10 occurred routinely since these agreements were executed by Plaintiff Property
11 Owner on February 24, 2006. On information and belief, evidence of such
12 transactions can be obtained through the MERS Registry, but MERS refuses to
13 disclose that information to persons or entities that are not MERS members.
14

15 **3.36.** On information and belief, Defendant Trusts' through Defendant
16 Deutsche Bank and its agents provided invoices to Property Owner which
17 demonstrate that Defendants are not treating the obligations they claim Property
18 Owner is required to perform as being related to the deed of trust agreements, i.e.

19 **Exhibit 3.** As proof of this Plaintiff Property Owner and Church have attached
20 hereto as **Exhibit 7** copies of the November 2023 invoices Defendants have
21 indicated are due by Property Owner to avoid foreclosure.
22

23 **3.37.** These invoices (**Exhibit 7**) do not reflect that the unpaid interest
24 (which has been accumulating since 2010) has been added to the mortgage

principal. This is not consistent with mortgage based accounting principles or Generally accepted accounting principles (GAAP) as set forth by the Financial Accounting Standards Board (FASB). Furthermore, these invoices attached hereto as **Exhibit 7** appear to demonstrate offsetting or “contra” balances; including a credit to Property Owner for what appears to be cancellation of debt income and then a debit against Property Owner for the same amount.

3.38. On information and belief Lender canceled the debt Plaintiff Property Owner owed to Lender shortly after the closings on February 24, 2006. On information and belief this debt was again canceled for some entities each time the loan or line of credit related to **Parcels 7 and 12** was paid in full or partially satisfied and also whenever a sale/transfer/assignment of those loans or credit transactions occurred.

3.39. Plaintiff Property Owner and Church have hired an accountant to further investigate this matter and to amend Property Owner’s tax returns so as to report the cancellation of debt income as may exist with regards to **Lots 16, 7, 11, 12, and 13**. Attached hereto as **Exhibit 8** is a copy of curriculum vitae of Maher Soliman, the accountant Plaintiffs have hired.

C. Historical Facts

3.40. In 1955, 1957, 1959, 1961, and 1963, banks and other lenders lobbied Washington’s legislature to enact a law that would allow for the enforcement of power of sale clauses in deeds of trust; which previously had not been allowed. *See* Gose, John A. "The Deed of Trust in Washington" 41 Wash. L. R. 94 at n. 1 (1966).

Gose suggests in this article (which article has previously been relied upon by Washington's appellate courts as authoritative for purposes of adjudicating the meaning of Chapter 61.24 RCW) that the eventual passage of Washington's Deeds of Trust Act by the political branches in 1965 was an accommodation to creditors. *Id.* at 95, note 7. Gose concludes the foregoing referenced article by setting forth a list of amendments that would make the statute better from creditors' perspectives. *Id.* at 104-107. The political branches of Washington State promptly acceded to these requests from creditors in 1975.

3.41. Among the provisions of the Deeds of Trust Act amended in 1975 was the original version of RCW 61.24.130, which mandated that:

Sec. 13. Nothing contained in this act shall prejudice the right of the grantor or his successor in interest to retrain, on any proper ground, a threatened sale by the trustee under a deed of trust.

3.42. The language now contained in RCW 61.24.130 includes language from amendments to that statutory provision which occurred on at least six occasions; including in 1975, 1981, 1987, 1998, 2008, and 2018.

3.43. Plaintiff Property Owner and Church allege that the 1998 version of this statute applies to the agreements at issue here (**Exhibits 2 and 3**) because this was the statutory law that was in effect on February 24, 2006, the day the agreements in question were executed.

3.44. Washington's Deed of Trust Act, has been amended on approximately 26 occasions, including amendments occurring in the following years: 1967, 1975,

1 1981, 1985, 1987, 1989, 1990, 1991, 1998, 2004, 2008, 2009, 2011, 2012, 2013,
2 2014, 2015, 2016, 2018, 2021, and 2023.

3 **3.45.** Plaintiffs Church and Plaintiff Property Owner assert that the law
4 that applies to the agreements at issue in this case is that which was in effect on
5 February 24, 2006, which was the day the agreements at issue here were signed
6 by Plaintiff Property Owner.

7 **3.46.** In 1993 the political branches of Washington State enacted RCW
8 62A.3-309 RCW, which is based on section 3-309 of the 1993 model of the Uniform
9 Commercial Code (UCC). This statute, *which is still in effect*, provides in pertinent
10 part:
11

12 Enforcement of lost, destroyed, or stolen instrument.

13 (a) A person not in possession of an instrument is entitled to
14 enforce the instrument if (i) the person was in possession of the
15 instrument and entitled to enforce it when loss of possession
16 occurred, (ii) the loss of possession was not the result of a
17 transfer by the person or a lawful seizure, and (iii) the person
18 cannot reasonably obtain possession of the instrument because
the instrument was destroyed, its whereabouts cannot be
determined, or it is in the wrongful possession of an unknown
person or a person that cannot be found or is not amenable to
service of process.

19 **3.47.** From the late 1990s through approximately 2009 it was a common
20 business practice for commercial banks, shadow banking entities, and securities
21 firms (hereinafter referred to collectively as "*Financial Institutions*") to convert
22 physical mortgage documents into an electronic format within 90 days of loan
23 closures, like the one occurring in this case on February 24, 2006. Once converted
24

1 into such electronic “originals” it was common practice for these *Financial*
 2 *Institutions* to destroy (and/or lose) the original paper promissory notes (actually
 3 signed in wet ink ink by mortgagors and endorsers) in favor of keeping the
 4 electronic copy “original.”¹

5 **3.48.** On information and belief, the reasons these *Financial Institutions*
 6 destroyed or lost the original paper notes included, but were not limited to 1) the
 7 cancellation of debt process established by the IRS as set forth above; 2)
 8 minimizing expenses attributed to archiving, indexing, and security of the paper
 9 original Notes, and 4) the fact that the process of securitization of such mortgage
 10 loans into a common pool required the frequent transfer of such loans between
 11 various entities.
 12

13 **3.49.** On information and belief, in June of 2004, the United States Office
 14 of the Comptroller of the Currency (hereafter referred to by its name or “OCC”)
 15 issued an advisory letter to the Chief Executive Officers of all National Banks,
 16 Federal Branches, and Agencies (which likely included Fannie Mae and Freddie
 17 Mac), Service Providers and Software Vendors, Department and Division Heads,
 18 and All Examining Personnel advising that these paper promissory notes signed
 19 by makers for mortgage loans should not be lost or destroyed. A copy of that OCC
 20 advisory letter is attached hereto as **Exhibit 9**.
 21
 22

23 ¹ To be clear Plaintiff Church and Property Owner allege that electronic copies of the Notes Plaintiff
 24 Property Owner signed in wet ink are not the same or the equivalent of paper notes that property
 owner actually signed as maker.

1 **3.50.** Among other things the OCC advisory letter advised; 1) that under
 2 the E-SIGN Act. 15 U.S.C. Sec. 7001, et seq. Banks were authorized to implement
 3 *electronic record retention systems* for loan file imaging, retention of paperless
 4 applications and online agreements, and the use of electronic payment systems; 2)
 5 that under the “*Interagency Guidelines and Standards for Safety and Soundness,*
 6 *Appendix A of 12 CFR Part 30,*” it is an unsafe and unsound practice if the bank
 7 fails to maintain loan documentation that, among other things, ensures that the
 8 bank’s claims against its borrowers are legally enforceable; 3) that the electronic
 9 record retention system authorized by the E-SIGN Act *specifically excluded checks*
 10 *and other negotiable instruments* governed by the Uniform Commercial Code; and
 11 4) that the E-Sign Act does not ensure admissibility of electronic records in
 12 litigation.
 13

14 **3.51.** Following the issuance of the OCC’s 2004 advisory letter (**Exhibit 9**)
 15 warning *Financial Institutions* that they should be keeping the paper original note
 16 instruments signed by makers, the *Financial Institutions* and their service
 17 industries continued to destroy and/or lose the paper original note instruments
 18 signed by makers. On information and belief, these *Financial Institutions’* conduct
 19 in this regard, including the conduct of Deutsche Bank, was for purposes of
 20 threatening government officials, including those of the United States and those of
 21 the State of Washington, with the prospect that the failure to enforce electronic
 22 copies of original paper notes, as if they were the original paper notes (as the law
 23 required), would likely cause the United States’ economy to collapse.
 24

1 **3.52.** On information and belief, government officials (including judicial
2 officials) were aware that *Financial Institutions* were continuing to destroy or lose
3 the original paper promissory notes and as a result of this conduct were putting
4 this Nation's economy at risk of failure.

5 **3.53.** On May 21, 2007, the United States Supreme Court changed the
6 federal rules of civil procedure through judicial decision making (as opposed to a
7 legislative rule-making process) in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544
8 (2007).

9 **3.54.** The primary holding in *Bell Atlantic Corp. v. Twombly* was that there
10 must be sufficient facts set forth in a complaint to state a claim to relief that is
11 plausible on its face in order for such complaint to avoid dismissal pursuant to a
12 Fed. R. Civ. Pro. 12(b)(6) motion to dismiss. This decision was challenged by courts
13 and commentators as being an inappropriate exercise of judicial power by the
14 United States Supreme Court.

15 **3.55.** In response to these criticisms by academics and state judicial
16 officers, among others, the Federal Judicial Center prepared a report in 2011
17 entitled "Motions to Dismiss for Failure to State a Claim after *Iqbal*." A copy of
18 that report is attached hereto as **Exhibit 10**.
19

20 **3.56.** The Executive Summary of **Exhibit 10** asserts among other things,
21 that:
22

23 Only in cases challenging mortgage loans on both federal and
24 state law grounds did we find an increase in the rate of grants of
 motions to dismiss without leave to amend. ...

Ex. 10, at p. vii. That increase in adverse decisions impacting homeowners (as opposed to all others according to **Exhibit 10**) was substantial as the Supreme Court's decision allowed federal courts to base dismissals of homeowners' complaints on the trial judges' perceptions as to whether debtors' claims against banks/creditors were plausible enough to be believed. On information and belief, this was in many instances unfair as Article III judicial officers frequently had interests in those banks that were arguing to these same adjudicators that the debtors' claims against them were not plausible.

3.57. The word "plausible" is defined by the Merriam Webster Online Dictionary² as meaning: "1: superficially fair, reasonable, or valuable but often deceptively so -- a *plausible* pretext; 2: superficially pleasing or persuasive -- a swindler ..., then a quack, then a smooth, plausible gentlemen -- Ralph Waldo Emerson; and 3: appearing worthy of belief -- the argument was both powerful and *plausible*."

3.58. Plaintiffs Property Owner and Church assert that the United States Supreme Court and Article III judicial branch of government have no more authority than the other branches of the federal government to enact rules or articulate law that result in the taking of real property for a public purpose without compensation in violation of the Fifth Amendment's takings clause.

² Accessible at:
<https://www.merriam-webster.com/dictionary/plausible#dictionary-entry-1>

1 **3.59.** During this same period of time that *Bell Atlantic Corp. v. Twombly*
2 was being considered and decided by the federal judicial branch of government,
3 i.e. circa 2006-2007, the political branches of the State of Washington enacted
4 legislation that aligned the pecuniary interests of Washington's judicial officers
5 with the pecuniary interests of the State of Washington, other state and municipal
6 government workers, and their wealthy private allies with regards to enforcing
7 mortgages which had been sold as mortgage backed securities.

8 **3.60.** On information and belief some Washington State government
9 officials, including members of the political branches of that state government,
10 were aware during this time period that the business practices of *Financial*
11 *Institutions*, including without limitation the destruction or loss of the original
12 promissory note signed by makers, threatened the economies of this Nation and
13 the State of Washington.

14 **3.61.** On information and belief several of these Washington State officials,
15 including members of all three branches of Washington's State government, began
16 taking steps during this period of time to enact changes in Washington's statutory
17 laws, which were designed to make real estate deeds of trust mortgages applicable
18 to real estate (and Property Owner's fourplexes) enforceable against homeowners
19 *notwithstanding that such instruments were not enforceable pursuant to the laws*
20 *which were in effect when the pertinent instruments (Exhibits 2 and 3) were*
21 *signed*, including but not limited to those previously referenced.
22
23
24

1 **3.62. Exhibit 11**³, attached hereto, is a copy of the Certificate of
 2 Enrollment of Substitute House Bill 2691 (which involved amendments to
 3 Washington Judges' Retirement Accounts) that were enacted and went into effect
 4 in 2006 and 2007.

5 **3.63. Exhibit 11** which was enacted as law on March 24, 2006, and went
 6 into effect on January 1, 2007, was enacted by the political branches of
 7 Washington's government in order to incentivize judges to exercise their judicial
 8 power in such a way as to make subprime mortgages purportedly included in
 9 mortgage pools associated with mortgage backed securities enforceable by way of
 10 foreclosure notwithstanding that these judicial inquiries were then poised for
 11 judicial consideration in Washington State and would determine the value of such
 12 judicial officers' retirement fund investments after 2007.

14 **3.64.** During the week of September 8, 2008, Lehman Brothers, an
 15 investment bank that was heavily involved in the trading of mortgage-backed
 16 securities under the pretext that they were loan agreements secured by
 17 mortgages, failed because of a lack of liquidity related to those mortgage backed
 18 securities. Investors and the federal government were concerned after Lehman
 19 Brothers collapse, that investment bank and securities business Merrill Lynch
 20 would also fail for the same or similar reasons.
 21
 22

23 ³ Last accessed on December 9, 2023 at:
 24 <https://lawfilesext.leg.wa.gov/biennium/2005-06/Pdf/Bills/Session%20Laws/House/2691-S.SL.pdf?cite=2006%20c%20189%20C2%A7%201>

1 **3.65.** On Sunday, September 14, 2008, Bank of America announced it was
2 in talks to purchase Merrill Lynch.

3 **3.66.** Congressional testimony by Bank of America CEO Kenneth Lewis, as
4 well as internal emails released by the United States House of Representatives
5 Oversight Committee, indicate that the merger referenced in the preceding
6 paragraph was transacted under pressure from federal officials, who said that
7 they would otherwise seek the replacement of Bank of America's management as a
8 condition of any government assistance. In March 2009, it was reported that in
9 2008, Merrill Lynch received billions of dollars from its insurance arrangements
10 with AIG, including \$6.8 billion from funds provided by the United States
11 government to bail out AIG.
12

13 **3.67.** The subprime mortgage crisis was a proximate cause for the political
14 branches of the United States government enacting Public Law 110-343,⁴ 122 Stat.
15 3765, on October 3, 2008. The formal title of that law is: "An Act To provide
16 authority for the Federal Government to purchase and insure certain types of
17 troubled assets for the purposes of providing stability to and preventing disruption
18 in the economy and financial system and protecting taxpayers, to amend the
19 Internal Revenue Code of 1986 to provide incentives for energy production and
20 conservation, to extend certain expiring provisions, to provide individual income
21 tax relief, and for other purposes."
22

23
24 ⁴ Accessible at:
<https://www.govinfo.gov/content/pkg/PLAW-110publ343/html/PLAW-110publ343.htm>

1 **3.68.** The first division of the above referenced Act created a \$700 billion
2 Troubled Asset Relief Program (TARP) pursuant to the Emergency Economic
3 Stabilization Act of 2008, which law is also known to the public as the Bank
4 Bailout Law of 2008.

5 **3.69.** In addition to the money received by it's new investment bank
6 subsidiary Merrill Lynch, commercial Bank of America also received \$45 billion
7 dollars in government funds for preferred stock and had \$118 billion dollars worth
8 of its assets guaranteed by the federal government.

9 **3.70.** Many of the commercial and investment banks in the *Financial*
10 *Industry* which were engaged in the securitization, sale, and transfer of mortgage
11 backed securities during this time period, including Defendant Deutsche Bank,
12 knew that such mortgages were not safe investments for the reasons stated *infra.*,
13 but still endorsed them as being safe so they could make outrageous profits selling
14 these unsafe investments to unsuspecting investors.

15 **3.71.** Commercial banks, shadow banking institutions, and securities
16 businesses all courted state governments' favor during this time period regarding
17 the money-making schemes previously described by selling only the most
18 creditworthy mortgage-backed securities, i.e., those least likely to default, to state
19 governments and their best customers, which included the retirement accounts of
20 Washington judges beginning in 2007.
21
22
23
24

3.72. *Exhibit 12*⁵ attached hereto is a copy of comments made to the Supreme Court of Florida on September 30, 2009, asserting that plaintiffs in foreclosure-related actions should not have to demonstrate they possess an original paper note signed by its maker. Plaintiff Property Owner and Plaintiff Church assert these comments set forth admissions that *Financial Institutions* continued routinely destroying the original paper promissory notes signed in wet ink by their makers in favor of keeping electronic “originals”. In this regard, the Florida Bankers Association told the Florida Supreme Court in 2009:

Introduction:

The Florida Bankers Association ("FBA") is one of Florida's oldest trade associations. Its membership is composed of more than 300 banks and financial institutions ranging in size from small community banks and thrifts, to medium sized banks operating in several parts of the state, to large regional financial institutions headquartered in Florida or outside the state. The FBA serves its constituents and the citizens of the state of Florida by serving as an industry resource to all branches and levels of government in addressing those issues which affect the delivery of financial services within this state.

* * *

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

⁵ Last Accessed on December 9, 2023 at:
[https://supremecourt.flcourts.gov/content/download/328731/file/09-1460_093009_Comments%20\(FBA\).pdf](https://supremecourt.flcourts.gov/content/download/328731/file/09-1460_093009_Comments%20(FBA).pdf)

1 *electronic data base.inept are maintained by a servicing*
 2 *agent in an electronic database.*

3 *The reason "many firms file lost note counts as a*
 4 *standard alternative pleading in the complaint" is*
 5 *because the physical document was deliberately*
 6 *eliminated to avoid confusion immediately upon its*
 7 *conversion to an electronic file. See State Street Bank and*
 8 *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.

9 (Bolded and italicized emphasis in supplied; other emphasis in original)

10 **3.73.** In 2008 the United States, through the United States Treasury,
 11 acquired those loans, including Plaintiff Property Owners loans, that likely were
 12 not enforceable pursuant to state laws which were then in effect. The United
 13 States acquisition of these loans was for a public purpose. The United States
 14 Treasury appointed Fannie Mae as its Financial Agent for purposes of collecting
 15 these loans. A copy of the Agreement between the U.S. Treasury and Fannie Mae
 16 evidencing this fact, i.e. that the government owned or assumed control over these
 17 loans, is attached hereto as **Exhibit 13**. It can also be accessed online at:

18 [https://home.treasury.gov/sites/default/files/initiatives/financial-stability/procure](https://home.treasury.gov/sites/default/files/initiatives/financial-stability/procurement/faa/Financial_Agency_Agreements/Fannie%20Mae%20FAA%20021809.pdf)
 19 [ment/faa/Financial_Agency_Agreements/Fannie%20Mae%20FAA%20021809.pdf](https://home.treasury.gov/sites/default/files/initiatives/financial-stability/procurement/faa/Financial_Agency_Agreements/Fannie%20Mae%20FAA%20021809.pdf)

20 **3.74.** In the fall of 2010, with the Troubled Asset Relief Program's (TARP)
 21 authority expiring, public media and other reports surfaced around the Nation
 22 that the *Financial Industry* servicing \$6.4 trillion in American mortgages may
 23 have bypassed steps and procedures necessary to foreclose on homes as a way of
 24

1 paying back the federal government. Employees or contractors of Bank of
 2 America, GMAC Mortgage, and Chase loan servicers testified that they signed,
 3 and in some cases backdated, thousands of documents claiming personal
 4 knowledge of facts about mortgages that they did not actually know to be true.

5 **3.75.** In the Congressional Oversight Panel’s November Report entitled
 6 “Examining the Consequences of Mortgage Irregularities for Financial Stability
 7 and Foreclosure Mitigation” (submitted pursuant to Section 125(b)(1) of Title 1 of
 8 the Emergency Economic Stabilization Act of 2008, Pub. L. No. 110-343,⁶ which is
 9 attached hereto as ***Exhibit 14***) the Congressional Panel sets forth an Executive
 10 Summary, which states, among other things:
 11

12 The worst-case scenario [regarding the subprime mortgage crisis
 13 as that crisis existed in November, 2010] is considerably
 14 grimmer. In this view, which has been articulated by academics
 15 and homeowner advocates, the “robo-signing” of affidavits served
 16 to cover up the fact that loan servicers cannot demonstrate the
 facts required to conduct a lawful foreclosure. In essence, banks
 may be unable to prove that they own the mortgage loans they
 claim to own.

17 *The risk stems from the possibility that the rapid*
 18 *growth of mortgage securitization outpaced the ability of*
 19 *the legal and financial system to track mortgage loan*
 20 *ownership. In earlier years, under the traditional*
 21 *mortgage model, a homeowner borrowed money from a*
 22 *single bank and then paid back the same bank. In the rare*
 23 *instances when a bank transferred its rights, the sale was*
 24 *recorded by hand in the borrower's county property office.*
Thus, the ownership of any individual mortgage could be
easily demonstrated.

Nowadays, a single mortgage loan may be sold
dozens of times between various banks across the country.

⁶ Last Accessed on December 9, 2023 at:
<https://www.govinfo.gov/content/pkg/CPRT-111JPRT61835/html/CPRT-111JPRT61835.htm>

1 *In the view of some market participants, the sheer speed of*
2 *the modern mortgage market has rendered obsolete the*
3 *traditional ink-and-paper recordation process, so the*
4 *financial industry developed an electronic transfer process*
5 *that bypasses county property offices. This electronic*
6 *process has, however, faced legal challenges that could, in*
7 *an extreme scenario, call into question the validity of 33*
8 *million mortgage loans.*

9 *Further, the financial industry now commonly*
10 *bundles the rights to thousands of individual loans into a*
11 *mortgage-backed security (MBS). The securitization*
12 *process is complicated and requires several properly*
13 *executed transfers. If at any point the required legal steps*
14 *are not followed to the letter, then the ownership of the*
15 *mortgage loan could fall into question. Homeowner*
16 *advocates have alleged that frequent "robo-signing" of*
17 *ownership affidavits may have concealed extensive*
18 *industry failures to document mortgage loan transfers*
19 *properly.*

20 *If documentation problems prove to be pervasive*
21 *and, more importantly, throw into doubt the ownership of*
22 *not only foreclosed properties but also pooled mortgages,*
23 *the consequences could be severe. Clear and uncontested*
24 *property rights are the foundation of the housing market.*
If these rights fall into question, that foundation could
collapse. Borrowers may be unable to determine whether
they are sending their monthly payments to the right
people. Judges may block any effort to foreclose, even in
cases where borrowers have failed to make regular
payments. Multiple banks may attempt to foreclose upon
the same property. Borrowers who have already suffered
foreclosure may seek to regain title to their homes and
force any new owners to move out. Would-be buyers and
sellers could find themselves in limbo, unable to know with
any certainty whether they can safely buy or sell a home. If
such problems were to arise on a large scale, the housing
market could experience even greater disruptions than
have already occurred, resulting in significant harm to
major financial institutions. For example, if a Wall Street
bank were to discover that, due to shoddily executed
paperwork, it still owns millions of defaulted mortgages
that it thought it sold off years ago, it could face billions
of dollars in unexpected losses.

1 *Documentation irregularities could also have major*
2 *effects on Treasury's main foreclosure prevention effort,*
3 *the Home Affordable Modification Program (HAMP). Some*
4 *servicers dealing with Treasury may have no legal right to*
5 *initiate foreclosures, which may call into question their*
6 *ability to grant modifications or to demand payments*
7 *from homeowners. The servicers' use of "robo-signing" may*
8 *also have affected determinations about individual loans;*
9 *servicers may have been more willing to foreclose if they*
10 *were not bearing the full costs of a properly executed*
11 *foreclosure. Treasury has so far not provided reports of*
12 *any investigation as to whether documentation problems*
13 *could undermine HAMP. It should engage in active efforts*
14 *to monitor the impact of foreclosure irregularities, and it*
15 *should report its findings to Congress and the public.*

16 *In addition to documentation concerns, another*
17 *problem has arisen with securitized mortgage loans that*
18 *could also threaten financial stability. Investors in*
19 *mortgage-backed securities typically demanded certain*
20 *assurances about the quality of the loans they purchased:*
21 *for instance, that the borrowers had certain minimum*
22 *credit ratings and income, or that their homes had*
23 *appraised for at least a minimum value. Allegations have*
24 *surfaced that banks may have misrepresented the quality*
of many loans sold for securitization. Banks found to have
provided misrepresentations could be required to
repurchase any affected mortgages. Because millions of
these mortgages are in default or foreclosure, the result
could be extensive capital losses if such repurchase risk is
not adequately reserved.

To put in perspective the potential problem, one
investor action alone could seek to force Bank of America
to repurchase and absorb partial losses on up to \$47
billion in troubled loans due to alleged misrepresentations
of loan quality. Bank of America currently has \$230 billion
in shareholders' equity, so if several similar-sized actions
—whether motivated by concerns about underwriting or
loan ownership— were to succeed, the company could suffer
disabling damage to its regulatory capital. It is possible
that widespread challenges along these lines could pose
risks to the very financial stability that the Troubled Asset
Relief Program was designed to protect. Treasury has
claimed that based on evidence to date, mortgage-related

problems currently pose no danger to the financial system, but in light of the extensive uncertainties in the market today, Treasury's assertions appear premature. Treasury should explain why it sees no danger. Bank regulators should also conduct new stress tests on Wall Street banks to measure their ability to deal with a potential crisis.

The Panel emphasizes that mortgage lenders and securitization servicers should not undertake to foreclose on any homeowner unless they are able to do so in full compliance with applicable laws and their contractual agreements with the homeowner.

The American financial system is in a precarious place. Treasury's authority to support the financial system through the Troubled Asset Relief Program has expired, and the resolution authority created by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 remains untested.

The 2009 stress tests that evaluated the health of the financial system looked only to the end of 2010, providing little assurance that banks could withstand sharp losses in the years to come. The housing market and the broader economy remain troubled and thus vulnerable to future shocks. In short, even as the government's response to the financial crisis is drawing to a close, severe threats remain that have the potential to damage financial stability.

(Bolded and italicized emphasis added) Congressional Oversight Report, pp. 1-3.

3.76. Plaintiffs Church and Property Owner allege that the November 2010 Oversight Report sets forth admissible historical evidence with regard to the pertinent law regarding secondary market securitizations, mortgage foreclosures, and those other matters discussed therein as such law existed in 2010.

3.77. Plaintiffs Church and Property Owners allege that the November 2010 Congressional Oversight report presents evidence from which a reasonable trier of fact could infer that government officials for the United States government

1 and Washington's state government (including judicial officials purporting to
 2 exercise judicial power) were aware that the *Financial Industry's* reckless
 3 practices prior to 2010, see November 2010 Congressional Oversight Report,
 4 threatened this Nation's economy and those officials' own well being.

5 **3.78.** The "Overview" Section of the November 2010 Oversight Report
 6 states:

7 *... GMAC Mortgage, a subsidiary of current TARP*
 8 *recipient Ally Financial, announced on September 24,*
 9 *2010 that it had identified irregularities in its foreclosure*
 10 *document procedures that raised questions about the*
 11 *validity of foreclosures on mortgages that it serviced.*
 12 *Similar revelations soon followed from Bank of America,*
 13 *a former TARP recipient, and others. Employees of these*
 14 *companies or their contractors have testified that they*
 15 *signed, and in some cases backdated, thousands of*
 16 *documents attesting to personal knowledge of facts about*
 17 *the mortgage and the property that they did not actually*
 18 *know to be true. Mortgage servicers also appeared to be*
 19 *cutting corners in other ways. According to these banks,*
 20 *their employees were having trouble keeping up with the*
 21 *crush of foreclosures, but additional training and*
 22 *employees would generally suffice to get the process in*
 23 *order again.*

24 *At present, the reach of these irregularities is*
unknown. The irregularities may be limited to paperwork
errors among certain servicers in certain states;
alternatively, they may call into question aspects of the
securitization process that pooled and sold interests in
innumerable mortgages during the housing boom.
Depending on their extent, the irregularities may affect
both Treasury's ongoing foreclosure programs and the
financial stability that Treasury, under the Emergency
Economic Stabilization Act of 2008 (EESA), was tasked
with restoring. Further, the mortgage market faces
ongoing risks related to the right of mortgage-backed
securities to force banks to repurchase any loans. Losses

1 *stemming from these repurchases would compound any*
 2 *risks associated with documentation irregularities.*

3 *Under EESA, the Congressional Oversight Panel*
 4 *is charged with reviewing the current state of the*
 5 *financial markets and the regulatory system. The Panel's*
 6 *oversight interest in foreclosure documentation*
 7 *irregularities stems from several distinct concerns:*

8 **If Severe Disruptions in the Housing Market Materialize,**
 9 **Financial Stability and Taxpayer Funds Could Be**
 10 **Imperiled.** If document irregularities prove to be pervasive and,
 11 more importantly, throw into question ownership of not only
 12 foreclosed properties but also pooled mortgages, the result could
 13 be significant harm to financial stability—the very stability that
 14 the TARP was designed to protect. In the worst case scenario, a
 15 clear chain of title—an essential element of a functioning
 16 housing market—may be difficult to establish for properties
 17 subject to mortgage loans that were pooled and securitized.
 18 Rating agencies are already cautious in their outlook for the
 19 banking sector, and further blows could have a significant effect.
 20 *The implications could also be dire for taxpayers' recovery*
 21 *of their TARP investments. Treasury still has \$66.8 billion*
 22 *invested in the banking sector generally, and as the Panel*
 23 *discussed in its July report, "Small Banks in the Capital*
 24 *Purchase Program," the prospects for repayment from*
smaller banks are still uncertain and dependent, in great
part, on a sector healthy enough to attract private
investment.⁷

HAMP May Rely on Uncertain Legal Authority and
Inaccurate Foreclosure Cost Estimates, Potentially
Posing a Risk to Foreclosure Mitigation Efforts. If
irregularities in the foreclosure process reflect deeper
failures to document properly changes of ownership as

⁷ This was note 1 of the November 2010 Congressional Oversight Report. This note states:

Taxpayers may also be at risk for losses related to Treasury's investment in AIG. The Maiden Lane II and Maiden Lane III vehicles, which the Federal Reserve Bank of New York (FRBNY) created to hold assets purchased from AIG, hold substantial amounts of residential mortgage-backed securities (RMBSs), most of which are either sub-prime or Alt-A mortgages originated during the housing boom. Treasury's ability to recover the funds it has put into AIG depends in significant part on FRBNY's ability to collect on these investments, and uncertainty associated with the investments could hinder that process.

1 *mortgage loans were securitized, then it is possible that*
 2 *Treasury is dealing with the wrong parties in the course of*
 3 *the Home Affordable Modification Program (HAMP). This*
 4 *could mean that borrowers either received or were denied*
 5 *modifications improperly. Some servicers dealing with*
 6 *Treasury may have no legal right to initiate foreclosures,*
 7 *which may call into question their ability to grant*
 8 *modifications or to demand payments from homeowners,*
 9 *whether they are part of a foreclosure mitigation program*
 10 *or otherwise. The servicers' tendency to cut corners may*
 11 *also have affected the determination to modify or foreclose*
 12 *upon individual loans. Because the net present value*
 13 *(NPV) model compares the present value of modification to*
 14 *a foreclosure, improper procedures that cut corners might*
 15 *have affected the foreclosure cost calculation and thus*
 16 *might have affected the outcome of the NPV test.*

17 **TARP-Recipient Banks May Have Failed to Meet Legal**
 18 **Obligations. *Many of the entities implicated in the recent***
 19 ***document irregularities, including Ally Financial, Bank***
 20 ***of America, and JPMorgan Chase, are current or former***
 21 ***TARP recipients.*** Ally Financial, notably, remains in TARP and
 22 is in possession of \$17.2 billion in taxpayer funds. Bank of
 23 America received funds not only from TARP's Capital Purchase
 24 Program (CPP) but also what Treasury deemed "exceptional
 assistance" from TARP's Targeted Investment Program (TIP).
 Some of the banks involved were also subject to the Supervisory
 Capital Assessment Program (SCAP), also known as the stress
 tests: Treasury's and the Board of Governors of the Federal
 Reserve's (Federal Reserve) efforts to determine the health of
 the largest banks under a variety of stressed scenarios.

The Congressional Oversight Panel will continue to
monitor Treasury's engagement with these ongoing events,
not only to protect the taxpayers' existing TARP
investments and to oversee its foreclosure mitigation
programs, but also to meet the Panel's statutory mandate
to "review the current state of the financial markets and
the regulatory system."

(Bolded emphasis in original. Bolded and italicized emphasis supplied)
 Congressional Oversight Report, pp. 4-5.

3.79. The Panel describes the background for their Oversight Report as:

*In the fall of 2010, a series of revelations about foreclosure documents irregularities hit the housing markets. The transfer of a property's title from the mortgagor (the homeowner) to the mortgagee (typically a bank or a trust) necessary for a successful foreclosure requires a series of steps established by state law.⁸ As further described below, depositions taken in a variety of cases in which homeowners were fighting foreclosure actions indicated that mortgage servicer employees — who were required to have personal knowledge of the matters to which they were attesting in their affidavits — were signing hundreds of these documents a day. Other documents appeared to have been backdated improperly and ineffectively or incorrectly notarized. **While these documentation irregularities may sound minor, they have the potential to throw the foreclosure system—and possibly the mortgage loan system and housing market itself—into turmoil. At a minimum, in certain cases, signers of affidavits appear to have signed documents attesting to information that they did not verify and without a notary present. If this is the extent of the irregularities, then the issue may be limited to these signers and the foreclosure proceedings they were involved in, and in many cases, the irregularities may potentially be remedied by reviewing the documents more thoroughly and then resubmitting them. If, however, the problem is related not simply to a limited number of foreclosure documents but also to irregularities in the***

⁸ This was note 2 of the November 10, 2010 Congressional Oversight Report. Note 2 states:

These steps depend on whether a state is a judicial foreclosure state or a non-judicial foreclosure state, as further described below in footnote 17.

Note 17 of the Report states:

Twenty-two states require judicial oversight of foreclosure proceedings. In these judicial foreclosure states the mortgage must establish its claim—show that the borrower is in default—before a judge. In non-judicial sales a foreclosure can proceed upon adequate and timely notice to the borrower, as defined by statute. In non-judicial states, a power of sale clause included in a deed of trust allows a trustee to conduct a non-judicial foreclosure. Non-judicial foreclosures can proceed more quickly since they do not require adjudication Mortgage Bankers Association, *Judicial Versus Non-Judicial Foreclosure* (Oct 26, 2010) (online at www.mbaa.org/files/ResourceCenter/ForeclosureProcess/JudicialVersusNon-JudicialForeclosure.pdf). Typically, states that rely on mortgages are judicial foreclosure states, while states that rely on deeds of trust are non-judicial foreclosure states. *Standard & Poor's, Structured Finance Research Week: How Will the Foreclosure Crisis Affect U.S Home Prices?* (Oct 21, 2010) (hereinafter "S&P on Foreclosure Crisis")

mortgage origination and pooling process, then the impact of the irregularities could be far broader, affecting a vast number of investors in the mortgage-backed securities (MBS) market, already completed foreclosures, and current homeowners. This latter scenario could result in extensive litigation, an extended freeze in the foreclosure market, and significant stress on bank balance sheets arising from the substantial repurchase liability that can arise from mistakes or misrepresentations in mortgage documents.⁹

(Bolded and italicized emphasis supplied) Congressional Oversight Report, pp. 5-6.

3.80. The Oversight Panel describes the state laws that were in effect at the time its November 2010 Report was prepared. In this regard the Report states:

As a threshold matter, a party seeking to enforce the rights associated with the mortgage must have standing in court, meaning that a party must have an interest in the property sufficient that a court will hear their claim and can provide them with relief. For a mortgage, "[a] mortgage may be enforced only by, or in behalf of, a person who is entitled to enforce the obligation the mortgage secures." Thus, the only party that may enforce the rights associated with the mortgage, with standing to take

⁹ This was note 3 of the November 10, 2010 Congressional Oversight Report. Note 3 states:

If mortgage documentation has errors or misrepresentations, buyers of the mortgage paper can "put-back" the mortgage to its originator and require them to repurchase the mortgage. For a more complete discussion of this possibility, see Sections D.1,b and D.2

Several analysts and experts have speculated on the potential for widespread impact. Morgan Stanley, *Housing Market Insights: Washington, We Have a Problem* (Oct 12, 2010); Amherst Mortgage Insight, *"The Affidavit Fiasco—Implications for Investors in Private Label Securities* (Oct 12, 2010); FBR Capital Markets, *Conference Call: Foreclosure Mania: Big Deal or Not?* (Oct. 15 (2010) ... In a conference call with investors, Jamie Dimon, CEO of JPMorgan Chase, speculated that the issue could either be a "blip" or a more extended problem with "a lot of consequences, most of which will be adverse on everybody." Cardiff Garcia, *JPM on Foreclosures, MERS*, Financial Times Alphaville Blog (Oct 13, 2010) online at at: ftalphaville.ft.com/blog/2010/10/13/69406ljpm-on-foreclosures-MERS/...hereinafter "JPM on Foreclosures, MERS" ("If you talk about three or four weeks it will be a blip in the housing market. If it went on for a long period of time, it will have a lot of consequences. most of which will be adverse on everybody.")

1 *action on a mortgage in a court, must be legally able to*
 2 *act on the mortgage. Accordingly, standing is critical for*
 3 *a successful foreclosure, because if the party bringing the*
 4 *foreclosure does not have standing to enforce the rights*
 5 *attached to the mortgage and the note, that party may not*
 6 *be able to take the property with clear title that can be*
 7 *passed on to another buyer. Thus, if prior transfers of the*
 8 *mortgage were unsuccessful or improper, subsequent*
 9 *transfers of the property, such as a foreclosure or even an*
 10 *ordinary sale, could be affected. Further, failure to*
 11 *foreclose properly—whether because the foreclosing party*
 12 *did not actually hold the mortgage and the note, or*
 13 *because robo-signing affected the homeowner's due*
 14 *process rights—means that the prior homeowner may be*
 15 *able to assert claims against a subsequent owner of the*
 16 *property. In this way, documentation irregularities can*
 17 *affect title to a property at a number of stages, ...*

(Emphasis Supplied) Congressional Oversight Report, pp. 10-11.

3.81. In the Report's next section, regarding "Potential Flaws in the
 Recording and Transfer of Mortgages," the Panel further describes the state laws
 applicable to mortgages in 2010 as follows:

i. Title

16 *The U.S. real property market depends on a seller's*
 17 *ability to convey "clear title": an assurance that the*
 18 *purchaser owns the property free of encumbrances or*
 19 *competing claims. Laws governing the transfer of real*
 20 *property in the United States were designed to create a*
 21 *public, transparent recordation system that supplies*
 22 *reliable information on ownership interests in property.*
 23 *Each of the 50 states has laws governing title to land*
 24 *within its legal boundaries. Every county in the country*
 maintains records of who owns land there, of transfers of
 ownership, and of related mortgages or deeds of trust.
 While each state's laws have unique features, their basic
 requirements are the same, consistent with the notion that
 the purpose of the recording system is to establish
 certainty regarding property ownership. In order to
 protect ownership interests, fully executed, original

(commonly referred to as "wet ink") documents must be recorded in a grantor/grantee index at a county recording office. In the case of a purchaser or transferee, a properly recorded deed describing both the property and the parties to the transfer establishes property ownership.

ii. Transfer

In a purchase of a home using a mortgage loan, required documents include (a) a promissory note establishing the mortgagor's personal liability, (b) a mortgage evidencing the security interest in the underlying collateral, and (c) if the mortgage is transferred, proper assignments of the mortgage and the note¹⁰. There are a number of ways for a mortgage

¹⁰ This is note 35 of the original November Oversight Report. This footnote to the Congressional Oversight Report provides:

There are two documents that need to be transferred as part of the securitization process—a promissory note and the security instrument (the mortgage or deed of trust.) The promissory note embodies the debt obligation, while the security instrument provides that if the debt is not repaid, the creditor may sell the designated collateral (the house). Both the note and the mortgage need to be properly transferred. Without the note, a mortgage is unenforceable, while without the mortgage, a note is simply an unsecured debt obligation, no different from credit card debt. *See* FBR Foreclosure Mania Conference Call, *supra* note 3. The rules for these transfers are generally governed by the Uniform Commercial Code (UCC), although one author states that the application of the UCC to the transfer of the note is not certain. *See* Dale A Whitman, *How Negotiability Has Fouled Up the Secondary Mortgage Market, and What to Do About It*, *Pepperdine Law Review*, Vol 37, at 758-759 (2010).

States adopt articles of and revisions to the UCC individually, and so there can be variation among states in the application of the UCC. This report does not attempt to identify all of the possible iterations. Rather, it describes general and common applications of the UCC to such transactions.

There are two methods by which a promissory note may be transferred. First, it may be transferred by "negotiation," the signing over of individual promissory notes through indorsement, in the same way that a check can be transferred via indorsement. *See* UCC §§3-201, 3-203. The pooling and servicing agreements (PSAs) for securitized loans generally contemplate transfer through negotiation. Typical language in PSAs requires the delivery to the securitization trust of the notes and the mortgages, indorsed in blank. Alternatively, a promissory note may be transferred by a sale contract, also governed by whether a state has adopted particular revisions to the UCC. In many states, in order for a transfer to take place under the relevant portion of the UCC, there are only three requirements: the buyer of the promissory note must give value, there must be an authenticated document of sale that describes the promissory note, and the seller must have rights in the promissory note being sold. UCC §9-203(a)-(b).

The first two requirements should be easily met in most securitizations; the transfer of the mortgage loans at each stage of the securitization involves the buyer

1 *originator to proceed upon entering into a loan secured by*
 2 *real property. They may keep the loan on their own books;*
 3 *these are so-called "whole loans." However, if the loan is*
 4 *sold in a secondary market-either as a whole loan or in a*
 5 *securitization process-the loan must be properly*
 6 *transferred to the purchaser. To be transferred properly,*
 7 *both the loan and accompanying documentation must be*
 8 *transferred to the purchaser, and the transfer must be*
 9 *recorded.*

10 *Perhaps more critically, parties are free to contract*
 11 *around the UCC. UCC §1-302. This raises the question of*
 12 *whether PSAs for MBS provide for a variance from the*
 13 *UCC by agreement of the parties. The PSA is the document*
 14 *that provides for the transfer of the mortgage and notes*
 15 *from the securitization sponsor to the depositor and*
 16 *thence to the trust. The PSA is also the document that*
 17 *creates the trust. The transfer from the originator to the*
 18 *sponsor is typically governed by a separate document,*
 19 *although sections of it may be incorporated by reference*
 20 *in the PSA.*

21 *If a PSA is considered a variation by agreement*
 22 *from the UCC, then there is a question of what the PSA*
 23 *itself requires to transfer the mortgage loans and whether*
 24 *those requirements have been met. In some cases, PSAs*
 25 *appear to require a complete chain of indorsements on the*
 26 *notes from originator up to the depositor, with a final*
 27 *indorsement in blank to the trust. A complete chain of*
 28 *indorsements, rather than a single indorsement in blank*
 29 *with the notes transferred thereafter as bearer paper, is*
 30 *important for establishing the "bankruptcy remoteness" of*

31 giving the seller value and a document of sale (a mortgage purchase and sale
 32 agreement or a PSA) that should include a schedule identifying the promissory notes
 33 involved. The third requirement, however, that the seller must have rights in the
 34 promissory note being sold, is more complicated, as it requires an unbroken chain of
 35 title back to the loan's originator. While the loan sale documents plus their schedules
 36 are evidence of such a chain of title, they cannot establish that the loan was not
 37 previously sold to another party.

38 Further, this discussion only, addresses the validity of transfers between
 39 sellers and buyers of mortgage loans. It does not address the enforceability of those
 40 loans against homeowners, which requires physical possession of the original note.
 41 Thus, for both securitized and nonsecuritized loans, it is necessary for a party to
 42 show that it is entitled to enforce the promissory note (and therefore generally that it
 43 is a holder of the physical original note) in order to complete a foreclosure
 44 successfully. ...

1 *the trust assets. A critical part of securitization is to*
 2 *establish that the trust's assets are bankruptcy remote,*
 3 *meaning that they could not be claimed by the bankruptcy*
 4 *estate of an upstream transferor of the assets. Without a*
 5 *complete chain of indorsements, it is difficult, if not*
 6 *impossible, to establish that the loans were in fact*
 7 *transferred from originator to sponsor to depositor to*
 8 *trust, rather than directly from originator or sponsor to*
 9 *the trust. If the transfer were directly from the originator*
 10 *or sponsor to the trust, the loans could possibly be claimed*
 11 *as part of the originator's or sponsor's bankruptcy estate.*
 12 *The questions about what the transfers required,*
 13 *therefore, involve both the question as to whether the*
 14 *required transfers actually happened, as well as whether,*
 15 *if they happened, they were legally sufficient.*

16 (Emphasis Supplied) Congressional Oversight Report, pp. 12-13.

17 **3.82.** The November 2010 Congressional Oversight Report stated:

18 Given the complexity of the legal issues, the numerous parties
 19 involved, and the relationships between many of them, it is
 20 likely that any litigation will be robust, costly, and lengthy.
 21 Nonetheless, it is possible that banks may see a financial
 22 advantage to delaying put-backs through litigation and other
 23 procedural hurdles, if only to slow the pace at which they must
 24 be completed and to keep the loans off of their books a little
 longer. In addition, as discussed above, conflicts of interest in
 the industry may further complicate an assessment of litigation
 risk: Servicers, trustees, sponsors, and originators are often
 affiliated with each other, meaning that each has a disincentive
 to proceed with an action against another lest it harm its own
 bottom line. *Moreover, there is the possibility that those*
who foresee favorable results from such litigation, and
who have the resources and stamina for complex
litigation (such as hedge funds), will purchase affected
assets with the intent to participate as plaintiffs,
intensifying the legal battle further. TARP recipients, of
course, were and are at the center of many of these
transactions, and predicting all of the possible litigation
to which they might be subject as a result of the
irregularities (known and suspected) is virtually
impossible. It is not unlikely that, on the heels of highly

publicized actions initiated by major financial institutions and the increasing likelihood that investors can meet the 25 percent threshold requirements for filing lawsuits, sophisticated institutional investors may become more interested in pursuing litigation or even in investing in MBS in order to position themselves for lawsuits. Some security holders, such as large endowments and pension plans, have fiduciary duties to their own investors that may lead them to try and enforce repurchase rights. In addition, if investors such as hedge funds that have the resources to support protracted litigation initiate lawsuits, that could intensify the legal battles that banks will face. If litigation based on significant document irregularities is successful, it may throw the large banks back into turmoil.

Similarly, Fannie Mae and Freddie Mac may become embroiled in the controversies. Fannie and Freddie have already been actively engaged in efforts to put-back nonconforming loans to the originators/sponsors of the loans they guarantee. But they may also find themselves on the other side, as targets of litigation. In addition to being embedded in the entire securitization process, they are part owners of MERS, which is becoming a litigation target. Both Fannie and Freddie have recently ceased allowing MERS to bring foreclosure actions. Further, Fannie and Freddie used at least one of the law firms implicated in the irregularities to handle foreclosures. Given that these two government-supported firms are perceived as the ultimate "deep pocket," it is likely that interested litigants will attempt to find a way to attach liability to them, which, if successful, could further affect the taxpayers.¹¹

(Bolded and Italicized Emphasis Supplied) Congressional Oversight Report, pp. 25-27.

¹¹ In this regard it is worth observing that in August of this year, i.e. 2023, the shareholders of Fannie Mae and Freddie Mac were awarded \$612,000,000 as damages for these GSEs' misconduct. See *National Mortgage Professional, Shareholders of Fannie Mae Awarded \$612 Million*. Last accessed on November 10, 2023 at: <https://nationalmortgageprofessional.com/news/shareholders-fannie-mae-freddie-mac-awarded-612-million>

1 **3.83.** The November 2010 Oversight Committee Report also discusses the
 2 following “additional considerations,” which include:

3 In addition to fraud claims, discussed further below, and
 4 claims arising from whether the loans in the pool met the
 5 underwriting standards required (which is primarily relevant to
 6 investors' rights of put-back and bank liability), the other
 7 primary concern arising out of document irregularities is the
 8 potential failure to convey clear title to the property and
 9 ownership of the mortgage and the note.

10 *There are two separate but interrelated forms of*
 11 *conveyance that may be implicated by documentation*
 12 *irregularities: conveyance of the mortgage and the note,*
 13 *and conveyance of the property securing the mortgage. The*
 14 *foreclosure documentation irregularities affect conveyance*
 15 *of the property: if the foreclosure was not done correctly,*
 16 *the bank or a subsequent buyer may not have clear title to*
 17 *the property. But these foreclosure irregularities may also*
 18 *be further compromised by a failure to convey the*
 19 *mortgage and the note properly earlier in the process. If,*
 20 *during the securitization process, required documentation*
 21 *was incomplete or improper, then ownership of the*
 22 *mortgage may not have been conveyed to the trust. This*
 23 *could have implications for the PSA—inasmuch as it*
 24 *would violate any requirement that the trust own the*
mortgages and the notes—as well as call into question the
holdings of the trust and the collateral underlying the
pools under common law, the UCC, and trust law. The trust
in this situation may be unable to enforce the lien through
foreclosure because only the owner of the mortgage and the
note has the right to foreclose. If the owner of the mortgage
is in dispute, no one may be able to foreclose until
ownership is clearly established.

If it is unclear who owns the mortgage, clear title to
the property itself cannot be conveyed. If, for example, the
trust were to enforce the lien and foreclose on the
property, a buyer could not be sure that the purchase of
the foreclosed house was proper if the trust did not have
the right to foreclose on the house in the first place.
Similarly, if the house is sold, but it is unclear who owns
the mortgage and the note and, thus, the debt is not
properly discharged and the lien released, a subsequent

1 *buyer may find that there are other claimants to the*
 2 *property. In this way, the consequences of foreclosure*
 3 *documentation irregularities converge with the*
 4 *consequences of securitization documentation*
 5 *irregularities: in either situation, a subsequent buyer or*
 6 *lender may have unclear rights in the property.*

7 These irregularities may have significant bearing on
 8 many of the participants in the mortgage securitization process:

9 • **Parties to Whom a Mortgage and Note Is**
 10 **Transferred—***If a lien was not "perfected"—according to*
 11 *appropriate procedures—participants in the transfer*
 12 *process may no longer have a first-lien interest in the*
 13 *property and may be unable to enforce that against*
 14 *third-parties (and, where the property has little value,*
 15 *particularly in non-recourse jurisdictions, may not be*
 16 *able to recover any money). Similarly, if the notes and*
 17 *mortgages were not properly transferred, then the party*
 18 *that can enforce the rights attached to the note and the*
 19 *mortgage—right to receive payment and right to foreclose,*
 20 *among others—may not be readily identifiable. If a trust*
 21 *does not have proper ownership to the notes and the*
 22 *mortgage, it is unclear what assets are actually in the*
 23 *trust, if any.*

24 • **Sponsors, Servicers, and Trustees—**Failure to follow
 representations and warranties found in PSAs can lead to the
 removal of servicers or trustees and trigger indemnification
 rights between the parties. Failure to record mortgages can
 result in the trust losing its first-Lien priority on the property.
Failure to transfer mortgages and notes properly to the
trust can affect the holdings of the trust. If transfers were
not done correctly in the first place and cannot be
corrected, there is a profound implication for mortgage
securitizations: it would mean that the improperly
transferred loans are not trust assets and MBS are in fact
not backed by some or all of the mortgages that are
supposed to be backing them. This would mean that the
trusts would have litigation claims against the
securitization sponsors for refunds of the value given by
the trusts to the sponsors (or depositors) as part of the
securitization transaction. If successful, in the most
extreme scenario this would mean that MBS trusts (and
thus MBS investors) could receive complete recoveries on

1 *all improperly transferred mortgages, thereby shifting the*
 2 *losses to the securitization sponsors. Successful put-backs*
 3 *to these entities would require them to hold those loans on*
 4 *their books. Even if the mortgage loans are still valid,*
 5 *enforceable obligations, the sponsors would (if regulated*
 6 *for capital adequacy) be required to hold capital against*
 7 *the mortgage loans, and might have to raise capital. If*
 8 *these banks were unable to raise capital, it might, again,*
 9 *subject them to risks of insolvency and threaten the*
 10 *system.*

11 • **Borrowers/homeowners**—*Borrowers may have*
 12 *several available causes of action. They may seek to*
 13 *reclaim foreclosed properties that have been resold. They*
 14 *may also refuse to pay the trustee or servicer on the*
 15 *grounds that these parties do not own or legitimately act*
 16 *on behalf of the owner of the mortgage or the note. In*
 17 *addition, they may defend themselves against foreclosure*
 18 *proceedings on the claim that robo-signing irregularities*
 19 *deprived them of due process.*

20 • **Later Purchasers**—*Potential home-buyers may be*
 21 *concerned that they are unable to determine definitively*
 22 *whether the home they wish to purchase was actually*
 23 *conveyed with clear title, and may be unwilling to rely on*
 24 *title insurance to protect them. Financial institutions that*
may have been interested in buying mortgages or
mortgage securities may worry that the current holder of
the mortgage did not actually receive the loan through a
proper transfer.

• **Investors**—*Originators of mortgages destined for*
mortgage securities execute mortgage loan purchase
agreements, incorporated into PSAs, that, as mentioned earlier,
make representations and warranties the breach of which can
result in put-back rights requiring that the mortgage originator
repurchase defective mortgages. MBS investors may assert
claims regarding issues that arose during the origination and
securitization process. For instance, they may assert that
violations of underwriting standards or faulty appraisals were
misrepresentations and material omissions that violate
representations and warranties and may, in some cases where
the necessary elements are established, raise fraud claims. They
may also raise issues about the validity of the REMIC, the
bankruptcy-remote, tax-exempt conduit that is central to the
*mortgage securitization process. **A potential investor claim is***

1 *that mortgage origination violations and title defects*
 2 *prevented a "true sale" of the mortgages, consistent with*
 3 *Internal Revenue Service (IRS) regulations and as*
 4 *required by the New York State trust law, invalidating the*
 5 *REMIC. Some commentators believe that inquiries by*
 6 *investors could uncover untimely attempts to cure the*
 7 *problem by substituting complying property more than 90*
 8 *days after formation of the REMIC, a prohibited*
 9 *transaction that could cause loss of REMIC status,*
 10 *resulting in the loss of pass-through taxation status and*
 11 *taxation of income to the trust and to the investor. Loss of*
 12 *REMIC status would provide substantial grounds for*
 13 *widespread put-backs. Moreover, this type of litigation*
 14 *could be extremely lucrative for the lawyers representing*
 15 *the investors. It may be expected that, for this type of*
 16 *action, the investors' counsel would have strong incentives*
 17 *to litigate forcefully.*

18 • **Title Insurance Companies**—In the United States,
 19 purchasers of real property (i.e., land and/or buildings) typically
 20 purchase title insurance, which provides a payment to the
 21 purchaser if a defect in the title or undisclosed lien is discovered
 22 after the sale of the property is complete. Given the potential
 23 legal issues discussed in this section, title insurance companies
 24 could face an increase in claims in the near future. The threat of
 such issues may also lead insurers to require additional
 documentation before issuing a policy, increasing the costs
 associated with buying property.

• **Junior Lien Holders**—Second and third liens are not as
 commonly securitized as first liens; therefore, their holders may
 not face the same direct risk as first lien holders. Junior lien
 holders may, however, face an indirect risk if the rights of the
 first lien holder cannot be properly established. *If the property*
securing the lien is sold, all senior liens must be paid
first. If the senior liens cannot be paid off because it is
impossible to determine who holds those liens, the junior
lien holder may not be able to claim any of the proceeds of
the sale until the identity of the senior lien holder is
settled. On the other hand, document irregularities may
offer a windfall for some junior liens. If the first mortgage
has not been perfected, the first lien holder loses its
priority over any other, perfected liens. Therefore, if a
second lien was properly recorded, it could take priority
over a first lien that was not properly recorded. The

majority of second liens, however, were completed using the same system as first liens and therefore face the same potential issues. Moreover, many mortgages that were created during the housing boom were created with an 80 percent/20 percent "piggy-back" structure in which a first and second lien were created simultaneously and using the same system. If neither lien was perfected, there may be a question as to which would take priority over the other.

• **Local Actions—*Despite the state attorneys' general national approach to investigating document irregularities, there may be separate state initiatives. Under traditional mortgage recording practices, each time a mortgage is transferred from a seller to a buyer, the transfer must be recorded and a fee paid to the local government. Although each fee is not large—typically around \$30—the fees for the rapid transfers inherent in the mortgage securitization process could easily add up to hundreds of dollars per securitization. The MERS system was intended in part to bypass these fees. Local jurisdictions, deprived of mortgage recording tax revenue, may file lawsuits against originators, servicers, and MERS.***

The primary private litigation in this area is likely to come from investors in MBS. These investors are often institutional investors, a group that has the resources and expertise to pursue such claims. A major obstacle to investor lawsuits seeking put-backs has been a provision in PSAs that limits private investor action in the case of breaches of representations and warranties to certificate holders with some minimum percentage of voting rights, often 25 percent. Investors also suffer from a collective-action problem in trying to achieve these thresholds, not least because they do not know who the other investors are in a particular deal, and many investors are reluctant to share information about their holdings. Furthermore, ***the interests of junior and senior tranche holders may not be aligned.***

When investors do achieve the collective-action threshold, it is only the first step in a complicated process. For example, if the trustee declines to declare the servicer in default, then investors can either bring suit against the trustee to force it to remove the servicer, attempt to remove the trustee (which often requires a 51 percent voting threshold), or remove the servicer directly (with a

two-thirds voting threshold). It bears emphasis that the collective-action thresholds required vary from deal to deal. Two recent investor lawsuits started with a view to enforce put-back provisions resulted in dismissals based on the plaintiffs' failure to adhere to 25-percent threshold requirements. The practical effect of such decisions is that the hurdle of meeting this relatively high threshold of certificate holders can limit investors' ability to examine the documents that would support their claims.

Recently, however, investors are beginning to take collective action, suggesting that the 25-percent threshold may not be an enormous burden for organized investors. A registry created by RMBS Clearing House is providing a confidential data bank whose purpose is to identify and organize certificate holders into groups that can meet threshold requirements. Using the registry data, a lawsuit has been initiated against JPMorgan Chase and the Federal Deposit Insurance Corporation (FDIC), both of which have assumed liabilities of failed bank Washington Mutual, seeking to enforce put-backs and document disclosure. Recently, an investor group composed of eight institutional investors, including the Federal Reserve Bank of New York (FRBNY), representing more than 25 percent of the voting rights in certain Countrywide MBSs, made a request of securitization trustee Bank of New York to initiate an investigation of the offerings originated by Countrywide prior to its acquisition by Bank of America. After Bank of New York refused to act, the group petitioned Bank of America directly in an effort to review the loan files in the pool. Some believe that the difficulty faced by investors in gaining access to the loan files that support their claims of contractual breaches and the cost of auditing them will make widespread litigation economically unrealistic. Even as put-back demands from investors are appearing, unless the investors can review loan documents, they lack the information to know what level of put-backs should be occurring. Moreover, at least one bank CEO has stated that his bank will challenge any determination that underwriting standards were not met on a loan-by-loan basis, creating further hurdles. At present, it is unclear what litigation risk these proceedings are likely to pose for the banks. There is good reason to assume, however, that the litigation will attract

1 *sophisticated parties interested in the deep pockets of the*
2 *sponsors.*

3 *Given the complexity of the legal issues, the*
4 *numerous parties involved, and the relationships between*
5 *many of them, it is likely that any litigation will be robust,*
6 *costly, and lengthy. Nonetheless, it is possible that banks*
7 *may see a financial advantage to delaying put-backs*
8 *through litigation and other procedural hurdles, if only to*
9 *slow the pace at which they must be completed and to keep*
10 *the loans off of their books a little longer. In addition, as*
11 *discussed above, conflicts of interest in the industry may*
12 *further complicate an assessment of litigation risk:*
13 *Servicers, trustees, sponsors, and originators are often*
14 *affiliated with each other, meaning that each has a*
15 *disincentive to proceed with an action against another*
16 *lest it harm its own bottom line. Moreover, there is the*
17 *possibility that those who foresee favorable results from*
18 *such litigation, and who have the resources and stamina*
19 *for complex litigation (such as hedge funds), will*
20 *purchase affected assets with the intent to participate as*
21 *plaintiffs, intensifying the legal battle further. TARP*
22 *recipients, of course, were and are at the center of many of*
23 *these transactions, and predicting all of the possible*
24 *litigation to which they might be subject as a result of the*
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 lawsuits, sophisticated institutional investors may become
 more interested in pursuing litigation or even in
 investing in MBS in order to position themselves for
 lawsuits.¹⁰⁰ Some security holders, such as large
 endowments and pension plans, have fiduciary duties to
 their own investors that may lead them to try and enforce
 repurchase rights. In addition, if investors such as hedge
 funds that have the resources to support protracted
 litigation initiate lawsuits, that could intensify the legal
 battles that banks will face. If litigation based on
 significant document irregularities is successful, it may
 throw the large banks back into turmoil.

Similarly, Fannie Mae and Freddie Mac may become
 embroiled in the controversies. Fannie and Freddie have

1 *already been actively engaged in efforts to put-back*
2 *nonconforming loans to the originators/sponsors of the*
3 *loans they guarantee. But they may also find themselves*
4 *on the other side, as targets of litigation. In addition to*
5 *being embedded in the entire securitization process, they*
6 *are part owners of MERS, which is becoming a litigation*
7 *target. Both Fannie and Freddie have recently ceased*
8 *allowing MERS to bring foreclosure actions. Further,*
9 *Fannie and Freddie used at least one of the law firms*
10 *implicated in the irregularities to handle foreclosures.*
11 *Given that these two government-supported firms are*
12 *perceived as the ultimate "deep pocket," it is likely that*
13 *interested litigants will attempt to find a way to attach*
14 *liability to them, which, if successful, could further affect*
15 *the taxpayers.*

3. Additional Considerations

16 The participants described above are by no means the
17 only parties affected by these issues. Lenders may be reluctant
18 to make new loans on homes that could have title issues.
19 Investors may likewise be reluctant to invest in mortgages and
20 MBS that may be affected. Uncertainty about the actions that
21 federal and state governments may take to address the
22 documentation issues, how these actions will affect investment
23 returns, and concerns that these problems may be widespread in
24 the mortgage industry may also discourage investors. *Until*
there is more clarity on the legal issues surrounding title
to affected properties, as well as on the extent of any title
transfer issues, it may also become more difficult or
expensive to get title insurance, an essential part of any
real estate transaction. In addition, put-backs of
mortgages, damages from lawsuits, and claims against
title companies, mortgage servicers, and MBS pooling and
securitization firms have the potential to drive these firms
out of business. Should these and other companies that
provide services to the mortgage market either decide to
exit the market or go bankrupt, and no other companies
opt to take their place in the current environment, the
housing market would likely suffer. Even the mere
possibility of such losses in the future could have a
chilling effect on the risk tolerance of these firms, and
could dim the housing market expectations of prospective
home buyers and mortgage investors, further reducing
housing demand and raising the cost of mortgages.

1 *More generally, however, and as noted below, the*
2 *efficient functioning of the housing market is highly*
3 *dependent on the existence of clear property rights and a*
4 *level of trust that various market participants have in*
5 *each other and in the integrity of the market system. If the*
6 *current foreclosure irregularities prove to be widespread,*
7 *they have the potential to undermine trust in the*
8 *legitimacy of many foreclosures and hence in the legality*
9 *of title on many foreclosed properties. In that case, it is*
10 *possible that buyers will avoid purchasing properties in*
11 *foreclosure proceedings because they cannot be sure that*
12 *they are purchasing a clean title. Protections in the law,*
13 *such as those for a bona-fide purchaser for value, may not*
14 *ease their anxiety if they are concerned that they will*
15 *become embroiled in litigation when prior owners appeal*
16 *foreclosure rulings. These concerns would be likely to*
17 *continue until the situation is resolved, or at least until*
18 *the legal issues surrounding title to foreclosed properties*
19 *have been clarified. Those buyers who remain will likely*
20 *face less competition and will offer very low bids. Even*
21 *foreclosed homes that have already been sold are at risk,*
22 *since homes sold before these documentation issues came*
23 *to light cannot be assumed to have a legally provable*
24 *chain of title. These homes will therefore likely be difficult*
 to resell, except at low prices that attract risk-tolerant
 buyers.

(Bolded emphasis is original; bolded and italicized emphasis added) 2010
Congressional Oversight Report, pp. 19-28.

3.84. The November 2010 Congressional Oversight Report has a section
entitled “Court Cases and Litigation”. This section states:

E. Court Cases and Litigation

The foreclosure documentation irregularities
unquestionably show a system riddled with errors. But the
question arises: Were they merely sloppy mistakes, or were
they fraudulent? Differing answers to this question may
not affect certain remedies available to aggrieved
parties-put-backs, for example, are available for both
mistakes and for fraud-but would affect potential

damages in a lawsuit. It is important to note that the various parties who may be able to bring lawsuits may choose different causes of action for very similar sets of facts depending on standing and a host of other factors. For example, on the same facts, an investor may try to pursue a civil suit alleging violations of representations and warranties relating to underwriting standards in a PSA instead of pursuing a securities fraud case where the burden of proof would be higher. Put another way, plaintiffs will pursue as many or as few causes of action as they believe serve their purpose, and one case does not necessarily preclude another.

(Bolded Emphasis in Original; Bolded and Italicized Emphasis has been Added) Congressional Oversight Report, pp. 28-29.

3.85. The 2010 Congressional Oversight Report then describes several of the potential causes of action that existed with regard to the facts described in the report relating to, among other things, the Financial Industry's loss and/or destruction of original paper wet ink notes and additional robo-signing misconduct. See 2010 Oversight Report, at pp. 29-42. The subsections of this report set forth the facts and law related to various judicial inquiries that existed or appeared to exist in 2010. These judicial inquiries which the Committee recognized included: 1) Fraud Claims; 2) Existing and Pending Claims under Various Fraud Theories; 3) Other Potential Claims; 4) Other State Legal Steps; and 5) Other Possible Implications: Potential "Front-end" Fraud and Documentation Irregularities.

3.86. In the "Other State Legal Steps" section of the 2010 Congressional Oversight Report the Panel observes:

In addition to the Ohio lawsuit described above and the ongoing joint investigation, some other state officials have taken concrete steps to address the foreclosure irregularities, including but not limited to:

- In **New York**, the court system now requires that those initiating residential foreclosure actions must file a new affirmation to certify that an appropriate employee has personally reviewed their documents and papers filed in the case and confirmed both the factual accuracy of these court filings and the accuracy of the notarizations contained therein.
- In **California**, a non-judicial foreclosure state, the attorney general sent a letter to JPMorgan Chase demanding that the firm stop all foreclosures unless it could demonstrate that all foreclosures had been conducted in accordance with California law. The attorney general also called on all other lenders to halt foreclosures unless they can demonstrate compliance with California law.
- In **Arizona**, which is also a non-judicial foreclosure state, the attorney general sent letters on October 7, 2010 to several services implicated in the robo-signing scandals to demand a description of their practices and any remedial actions taken to address potential paperwork irregularities. The attorney general wrote that if any employees or agents used any of the questionable practices in connection with conducting a trustee's sale or a foreclosure in Arizona, such use would likely constitute a violation of the Arizona Consumer Fraud Act, and the attorney general would have to take appropriate action.
- In **Ohio**, in addition to his lawsuit against GMAC, the attorney general filed an *amicus curiae* brief in an individual foreclosure case asking the court to consider evidence that GMAC committed fraud that tainted the entire judicial process and to consider sanctioning GMAC. The attorney general also sent a letter to 133 Ohio judges asking them for information on any cases involving the robo-signer Xee Moua. In addition, he asked Wells Fargo Bank to vacate any foreclosure judgments in Ohio based on documents that were signed by robo-signers and to stop the sales of repossessed properties.
- In **The District of Columbia**, Attorney General Peter Nickles announced on October 27, 2010 that foreclosures cannot proceed in the District of Columbia unless a

mortgage deed and all assignments of the deed are recorded in public land records, and that foreclosures relying on MERS would not satisfy the requirement. MERS responded the next day by issuing a statement that their procedures conform to the laws of the District of Columbia and encouraged their members to contact them if they experience problems with their foreclosures.

- In **Connecticut**, the attorney general started investigating GMAC/Ally and demanded that the company halt all foreclosures. He also asked the company to provide specific information relating to its foreclosure practices. ***In addition, the attorney general asked the state Judicial Department on October 1, 2010 to freeze all home foreclosures for 60 days to allow time to institute measures to assure the integrity of document filings. The Judicial Department refused this request.***

(Bolded Emphasis in Original.) Congressional Oversight Report, pp. 36-37.

3.87. The 2010 Congressional Oversight Report also contains a section entitled “Other Possible Implication: Potential ‘Front End’ Fraud and Documentation Irregularities,” which states:

Until the full scope of the problem is determined, it will be difficult to assess whether banks, servicers, or borrowers knew of the irregularities in the market. However, there are several signs that the problem was at least partially foreseeable. For example, numerous systems had been developed to circumvent the slow, paper based property system in the United States. MERS, discussed in more detail above, represented an attempt to add speed and simplification to the property registration process, which in turn would allow property to be transferred more quickly and easily. MERS arose in reaction to a clash: during the boom, originations and securitizations moved extremely quickly. But the property law system that governed the underlying collateral moves slowly, and is heavily dependent on a variety of steps memorialized on paper and thus inefficient at processing enormous lending volume. While systems like MERS appeared to allow the housing market to accelerate, the

1 *legal standards underpinning the market did not change*
2 *substantially. In some respects, the irregularities and the*
3 *mounting legal problems in the mortgage system seem to*
4 *be the consequence of the banks asking the property law*
5 *system to do something that it may be largely unequipped*
6 *to do: process millions of foreclosures within a relatively*
7 *short period of time. The Panel emphasizes that mortgage*
8 *lenders and securitization services should not undertake*
9 *to foreclose on any homeowner unless they are able to do*
10 *so in full compliance with applicable laws and their*
11 *contractual agreements with the homeowner. If legal*
12 *uncertainty remains, foreclosure should cease with*
13 *respect to that homeowner until all matters are objectively*
14 *resolved and vetted through competent counsel in each*
15 *applicable jurisdiction. Satisfaction of applicable legal*
16 *standards and legal certainty is in the best interests of*
17 *homeowners as well as creditors and will enable all*
18 *concerned parties to exercise properly their legal and*
19 *contractual rights and remedies.*

20 *This combination of factors—a demand for speed,*
21 *the use of systems designed to streamline a legal regime*
22 *that was viewed as out-of-date, and a slow, localized legal*
23 *system—may have substantially increased the likelihood*
24 *that documentation would be insufficient. As discussed*
25 *above, some authorities are taking direct aim at MERS*
26 *and the validity of its processes. Coupled with business*
27 *pressure exerted on law firms and contractors to process*
28 *rapidly foreclosure documents, the system had clear risks*
29 *of encouraging corner-cutting and creating substantial*
30 *legal difficulties. Furthermore, even if these problems*
31 *were not foreseeable from the vantage point of the housing*
32 *boom, the downturn in the housing market and the*
33 *foreclosure crisis made them much more likely. In 2008*
34 *and 2009, a vast amount of attention was given to the*
35 *difficulty of determining liability in the securitization*
36 *market because of problems with documentation and*
37 *transparency. At this time, servicers could have had notice*
38 *of the types of documentation problems that could affect*
39 *the transfer of mortgage ownership. In some cases, even*
40 *when servicers were explicitly made aware of the shoddy*
41 *documentation, they did little to correct the problem. One*
42 *judge determined that "[r]ather than being an isolated or*
43 *inadvertent instance of misconduct . . . GMAC has persisted*

1 *in its unlawful document signing practices" even after it*
 2 *was ordered to correct its practices.*

3 *Some observers argue that current irregularities*
 4 *were not only foreseeable, but that they mask a range of*
 5 *potential irregularities at the stage in which the*
 6 *mortgages were originated and pooled. According to that*
 7 *view, current practices simply added to and magnified*
 8 *problems with the prior practices. The legal consequences*
 9 *of foreclosure irregularities will be magnified if the*
 10 *problems also plagued originations: after all, foreclosures*
 11 *are still a relatively limited portion of the market. If all*
securitizations or performing whole loans were to be
affected, the consequences could be significantly greater.
At this point, answers as to what exactly is the source of
the problems at the front end and how severe the
consequences may be going forward depend to a large
degree on who is evaluating the problem. The Panel
describes below the perspectives of various stakeholders in
the residential mortgage market.

12 *a. Academics and Advocates for Homeowners*

13 *Many lawyers and stakeholders who have worked*
 14 *with borrowers and servicers on a regular basis over the*
 15 *past few years, primarily in bankruptcy and foreclosure*
 16 *cases, maintain that documentation problems, including*
 17 *potentially fraudulent practices, have been pervasive and*
 18 *apparent. These actors, including academics who study*
 19 *the topic, argue that bankruptcy and foreclosure*
 20 *procedures have been revealing major deficiencies in*
 21 *mortgage servicing and documentation for quite some*
 22 *time. Professor Katherine M. Porter, a professor of law*
 23 *who testified at the Panel's most recent hearing, wrote:*
 24 *"The robo-signing scandal should not have been a surprise*
to anyone; these problems were being raised in litigation
for years now. Similarly, I released a study in 2007—three
years ago—that showed that mortgage companies who
filed claims to be paid in bankruptcy cases of homeowners
did not attach a copy of the note to 40% of their claims."
According to this view, the servicing process was severely
flawed, and "servicers falsify court documents not just to
save time and money, but because they simply have not
kept the accurate records of ownership, payments, and
escrow accounts that would enable them to proceed
legally." In 2008—2009 over 1,700 lost note affidavits were

1 *filed in Broward County, Florida alone. These affidavits*
 2 *claim that the original note has been lost or destroyed and*
 3 *cannot be produced in court. It is important to recognize,*
 4 *however, that a lost note affidavit may not actually mean*
 5 *that the note has been lost. In her written testimony to the*
 6 *Panel, Professor Katherine Porter points out that her*
 7 *study of lost notes in bankruptcies "does not prove . .*
 8 *whether the mortgage companies have a copy of the note*
 9 *and refused to produce it to stymie the consumers' rights*
 10 *or to cut costs, whether the mortgage companies or their*
 11 *predecessors in a securitization lost the note, or whether*
 12 *someone other than the mortgage company is the*
 13 *holder/bearer of the note."*

14 *If the lawyers' and advocates' assertions of*
 15 *widespread irregularities are correct, it could mean that*
 16 *potentially millions of shoddily documented mortgages*
 17 *have been pooled improperly into securitization trusts.*
 18 *Lawyers are using a lack of standing by the servicers due*
 19 *to ineffective conveyance of ownership of the mortgage as*
 20 *a defense in foreclosure cases. Some of these lawyers*
 21 *argue that the disconnect between what was happening*
 22 *on the "street level," i.e., with the origination and*
 23 *documentation of mortgages, and the transfer*
 24 *requirements in the PSAs, is so huge that no credence can*
be given to the banks' argument that the issues are merely
technical. However, commentators who believe that the
problem is widespread also believe that investors in these
securitization pools, rather than homeowners, may be the
best placed to pursue the cases on a larger scale
successfully.

b. Servicers and Banks

18 *Since the foreclosure irregularities have surfaced,*
 19 *the banks involved have maintained that the problems are*
 20 *largely procedural and technical in nature. Banks have*
 21 *temporarily suspended foreclosures in judicial foreclosure*
 22 *states in particular and looked into their practices, but*
 23 *they state that they do not view these problems as*
 24 *fundamental either in the foreclosure area or in the*
origination and pooling of mortgages. The CEO of Bank of
America, Brian Moynihan, noted in the company's most
recent earnings call that Bank of America has resumed
foreclosures, but "it's going to take us three or five weeks
to get through and actually get all the judicial states

1 *taken care of. The teams reviewing data have not found*
 2 *information which was inaccurate, would affect the frame*
 3 *factors of the foreclosure; i.e., the customer's delinquency,*
 4 *etcetera.” He focused on the faulty affidavits and argued*
 5 *that “[they fixed the affidavit signing problem or will be*
 6 *fixed in very short order.” Many of the other large banks*
 7 *have issued statements in the same vein. Most of these*
 8 *banks have either not commented on the issues around the*
 9 *transfer of ownership of the mortgage or maintain that*
 10 *alleged ownership transfer problems are without merit or*
 11 *exaggerated.*

12 (Bolded Emphasis in Original. Bolded and Italicized Emphasis Provided)
 13 November 2010 Congressional Oversight Report, pp. 38-41.

14 3.88. Section F of the November 2010 Congressional Oversight Report is
 15 titled “Assessing the Potential Impact of Bank Balance Sheets”. Section a., thereof
 16 is titled “Leading Market Participants” and states in pertinent part:

17 *Troubled mortgages were largely originated in 2005-2007,*
 18 *when underwriting standards were most suspect,*
 19 *particularly for subprime, Alt-A and other loans to*
 20 *low-credit or poorly documented borrowers.* Figure 4 below
 21 outlines the largest mortgage originators during this period,
 22 ranked by volume and market share.

23 Figure 4 (shown below)

FIGURE 4: LARGEST U.S. MORTGAGE ORIGINATORS, 2005–2007 ²⁰¹

[Dollars in billions]

Company	Volume	Market Share (Percent)
Bank of America	1,880	22.1
Countrywide Financial	1,362	16.0
Bank of America Mortgage & Affiliates	518	6.1
Wells Fargo	1,324	15.5
Wells Fargo Home Mortgage	1,062	12.4
Wachovia Corporation	262	3.1
JPMorgan Chase	1,151	13.5
Chase Home Finance	566	6.6
Washington Mutual	584	6.9
Citigroup	506	5.9
Top Four Aggregate	4,861	57.0
Total Mortgage Originations (2005–2007)	8,530	

²⁰¹ Inside Mortgage Finance.

The four largest banks accounted for approximately 60 percent of all loan originations between 2005 and 2007. Totals for Bank of America, Wells Fargo, JPMorgan Chase, and Citigroup include volumes originated by companies that these firms subsequently acquired. As Figure 4 indicates, a significant portion of Bank of America's mortgage loan portfolio is comprised of loans assumed upon its acquisition of Countrywide Financial. Similarly, JPMorgan Chase more than doubled its mortgage loan portfolio with its acquisition of Washington Mutual.

Figure 5, below, details the largest originators of both Alt-A and subprime loans between 2005 and 2007. The five leading originators of Alt-A and subprime loans represented approximately 56 percent and 34 percent, respectively, of aggregate issuance volume for these loan types. Alt-A and subprime loans represented approximately 30 percent of all mortgages originated from 2005 to 2007.

Figure 5 (shown below)

FIGURE 5: LEADING ORIGINATORS OF SUBPRIME AND ALT-A LOANS, 2005–2007 ²⁰²

[Dollars in billions]

Company	Volume	Market Share (Percent)
ALT-A ORIGINATIONS		
Countrywide Financial (Bank of America)	172	16.2
IndyMac	145	13.6
JPMorgan Chase	102	9.6
Washington Mutual	40	3.8
EMC Mortgage	38	3.5
Chase Home Financial	25	2.3
GMAC	98	9.2
GMAC-RFC	77	7.3
GMAC Residential Holding	21	1.9

FIGURE 5: LEADING ORIGINATORS OF SUBPRIME AND ALT-A LOANS, 2005–2007 ²⁰²—Continued

[Dollars in billions]

Company	Volume	Market Share (Percent)
Lehman Brothers ²⁰³	79	7.4
Top Five Aggregate	596	56.0
Total Alt-A Originations (2005–2007)	1,065	
SUBPRIME ORIGINATIONS		
Ameriquest Mortgage	112	7.7
New Century	109	7.5
Countrywide Financial (Bank of America)	102	7.0
JPMorgan Chase	99	6.8
Washington Mutual	66	4.5
Chase Home Finance	33	2.3
Option One Mortgage	80	5.5
Top Five Aggregate	502	34.4
Total Subprime Origination (2005–2007)	1,458	

²⁰² Inside Mortgage Finance.²⁰³ Includes Alt-A originations from Lehman Brothers subsidiary, Aurora Loan Services, LLC.

As shown in Figure 6, below, the five leading underwriters (pro forma for acquisitions) of non-agency MBS between 2005 and 2007 accounted for 58 percent of the total underwriting volume for the period. It is of note that the three firms with the largest underwriting volumes during this period, Lehman Brothers, Bear Stearns, and Countrywide Securities, have either failed or been acquired by another company.

FIGURE 6: LEADING UNDERWRITERS OF NON-AGENCY MORTGAGE-BACKED SECURITIES, 2005–2007 ²⁰⁴

[Dollars in billions]

Company	Volume	Market Share (Percent)
<i>JPMorgan Chase</i>	593	19.5
JPMorgan Chase	143	4.7
Bear Stearns	298	9.8
Washington Mutual	152	5.0
<i>Bank of America</i>	371	12.2
Merrill Lynch	94	3.1
Countrywide Securities	277	9.1
Lehman Brothers	322	10.6
RBS Greenwich Capital	273	9.0
Credit Suisse	203	6.7
Top Five Aggregate	1,762	58.0
Total Underwriting Volume (2005–2007)	3,044	

²⁰⁴ Inside Mortgage Finance.

(Bolded Emphasis is Original; Bolded and Italicized Emphasis is Supplied)
November 2010 Congressional Oversight Report, pp. 46-47.

3.89. On March 12, 2012, the United States of America and the fifty States of the United States (including the State of Washington) brought a complaint against Bank of America Corporation; Bank of America, N.A.; BAC Home Loans Servicing, LP f/k/s Countrywide Home Loans Servicing, LP; Countrywide Home Loans Inc.; Countrywide Financial Corporation, Countrywide Bank, FSB; Citigroup Inc., Citibank, N.A., Citimortgage, Inc.; J.P. Morgan Chase & Company; JPMorgan Chase Bank, N.A.; Residential Capital, LLC; Ally Financial, Inc.; GMAC Mortgage, LLC; GMAC Residential Funding Co. LLC; Wells Fargo & Co. LLC; and Wells Fargo Bank N.A. in the United States District Court for the District of Columbia. A copy of that complaint is available online at:

1 [https://churchofthegardens.org/pdf/archive/2012.03.12_-_USA_v_Bank_of_America](https://churchofthegardens.org/pdf/archive/2012.03.12_-_USA_v_Bank_of_America_-_USDC_Complaint.pdf)
 2 [_-_USDC_Complaint.pdf](https://churchofthegardens.org/pdf/archive/2012.03.12_-_USA_v_Bank_of_America_-_USDC_Complaint.pdf)

3 **3.90.** The introduction to this Complaint states:

4 2. As described in the allegations below, Defendants' misconduct
 5 resulted in the issuance of improper mortgages, premature and
 6 unauthorized foreclosures, violation of service members' and
 7 other homeowners' rights and protections, the use of false and
 8 deceptive affidavits and other documents, and the waste and
 abuse of taxpayer funds. Each of the allegations regarding
 Defendants contained herein applies to instances in which one
 or more, and in some cases all, of the Defendants engaged in the
 conduct alleged.

9 **3.91.** Less than a month later, on April 4, 2012, the United States of
 10 America and the fifty States of the United States (including the State of
 11 Washington) entered into a consent judgment with Bank of America Corporation;
 12 Bank of America, N.A.; BAC Home Loans Servicing, LP f/k/a Countrywide Home
 13 Loans Servicing, LP; Countrywide Home Loans Inc.; Countrywide Financial
 14 Corporation, Countrywide Bank, FSB, and Countrywide Mortgage Ventures, LLC
 15 for \$2,382,415.075. A copy of that consent judgment is available online at:

16 [https://churchofthegardens.org/pdf/archive/2012.04.04_-_Consent_Judgment_in_](https://churchofthegardens.org/pdf/archive/2012.04.04_-_Consent_Judgment_in_US_v_Bank_of_America.pdf)
 17 [US_v_Bank_of_America.pdf](https://churchofthegardens.org/pdf/archive/2012.04.04_-_Consent_Judgment_in_US_v_Bank_of_America.pdf)

18 **3.92.** Less than a month later after the complaint in *United States of*
 19 *America, et al. v. Bank of America, et al*, was filed on March 12, 2012, the United
 20 States of America and the fifty States of the United States (including the State of
 21 Washington) entered into a consent judgment on April 4, 2012, with Defendants
 22 Citigroup Inc., Citibank, N.A., and CitiMortgage, Inc. for \$413,041,577. A copy
 23 this consent judgment is available at:
 24

1 [https://churchofthegardens.org/pdf/archive/2012.04.04_-_US_v_Bank_of_America_](https://churchofthegardens.org/pdf/archive/2012.04.04_-_US_v_Bank_of_America_-_Consent_Judgment_-_CitiMortgage.pdf)
 2 [_Consent_Judgment_-_CitiMortgage.pdf](https://churchofthegardens.org/pdf/archive/2012.04.04_-_US_v_Bank_of_America_-_Consent_Judgment_-_CitiMortgage.pdf)

3 **3.93.** Less than a month later after the complaint in *United States of*
 4 *America, et al. v. Bank of America, et al*, was filed on March 12, 2012, the United
 5 States of America and the fifty States of the United States (including the State of
 6 Washington) entered into a consent judgment on April 4, 2012 with Defendants
 7 J.P. Morgan Chase & Company and J.P. Morgan Chase Bank \$1,121,188,661. A
 8 copy of this consent judgment is available at:

9 [https://churchofthegardens.org/pdf/archive/2012.04.04_-_US_v_Bank_of_America_](https://churchofthegardens.org/pdf/archive/2012.04.04_-_US_v_Bank_of_America_-_Consent_Judgment_-_JPMorgan_Chase.pdf)
 10 [_Consent_Judgment_-_JPMorgan_Chase.pdf](https://churchofthegardens.org/pdf/archive/2012.04.04_-_US_v_Bank_of_America_-_Consent_Judgment_-_JPMorgan_Chase.pdf)

11 **3.94.** Less than a month later after the complaint in *United States of*
 12 *America, et al. v. Bank of America, et al*, was filed on March 12, 2012, the United
 13 States of America and the fifty States of the United States (including the State of
 14 Washington) entered into a consent judgment on April 4, 2012, with Defendants
 15 Residential Capital, LLC; Ally Financial, Inc. and GMAC Mortgage LLC for
 16 \$109,628,425. A copy of this consent judgment is available at:

17 [https://churchofthegardens.org/pdf/archive/2012.04.04_-_US_v_Bank_of_America_](https://churchofthegardens.org/pdf/archive/2012.04.04_-_US_v_Bank_of_America_-_Consent_Judgment_-_GMAC_-_Ally_-_RC.pdf)
 18 [_Consent_Judgment_-_GMAC_-_Ally_-_RC.pdf](https://churchofthegardens.org/pdf/archive/2012.04.04_-_US_v_Bank_of_America_-_Consent_Judgment_-_GMAC_-_Ally_-_RC.pdf)

19 **3.95.** Less than a month later after the complaint in *United States of*
 20 *America, et al. v. Bank of America, et al*, was filed on March 12, 2012, the United
 21 States of America and the fifty States of the United States (including the State of
 22 Washington) entered into a consent judgment on April 4, 2012, with Defendants
 23
 24

1 Wells Fargo & Company and Wells Fargo Bank, N.A. for \$1,005,233,716. A copy of
2 this consent judgment is available at:

3 [https://churchofthegardens.org/pdf/archive/2012.04.04_-_US_v_Bank_of_America_](https://churchofthegardens.org/pdf/archive/2012.04.04_-_US_v_Bank_of_America_-_Consent_Judgment_-_Wells_Fargo.pdf)
4 [-_Consent_Judgment_-_Wells_Fargo.pdf](https://churchofthegardens.org/pdf/archive/2012.04.04_-_US_v_Bank_of_America_-_Consent_Judgment_-_Wells_Fargo.pdf)

5 **3.96.** On information and belief based on the date the complaint for the
6 above referenced case was filed, i.e. March 12, 2012, and the time it was settled
7 with all defendants, (April 4, 2012), and the magnitude of the consent judgments,
8 Plaintiffs Church and Property Owner allege that the parties -- or their
9 representatives -- had worked out the terms of these consent judgments prior to
10 the time this case was filed. Further, Plaintiffs Property Owner and Church allege
11 that these consent judgments reflect at least in part payment for misconduct
12 which was perpetrated on homeowners by those Defendants identified above and
13 which was acquiesced to by the governments of the United States and Washington
14 State, which governments have profited economically from the misconduct of these
15 defendants against Washington's real property owners, including Plaintiff
16 Property Owner.
17

18 **3.97.** Other examples of settlements obtained by government agencies
19 prior to 2012 which related to this same misconduct by others in the same or
20 similar position to the defendants identified above include but are not limited to
21 the following *Financial Institutions*, including mortgage servicers and liquidators:
22

23 A) On April 13, 2011 a News Release published by the OCC
24 titled, OCC Takes Enforcement Action Against Eight Servicers for

1 Unsafe and Unsound Foreclosure Practices. The eight servicers, all of
 2 which signed Consent Orders, included Bank of America, Citibank,
 3 HSBC, JPMorgan Chase, MetLife Bank, PNC, U.S. Bank, and Wells
 4 Fargo. The two service providers are Lender Processing Services (LPS)
 5 and its subsidiaries DocX, LLC, and LPD Default Solutions, Inc.; and
 6 MERSCORP and its wholly owned subsidiary, Mortgage Electronic
 7 Registration Systems, Inc. (MERS).

8
 9 B) On April 13, 2011, the United States Office Comptroller of
 10 Currency (“OCC”) issued a Consent Order against JPMorgan Chase
 11 Bank, N.A.; JPMorgan Chase neither admitted nor denied the findings
 12 of the Office of Comptroller of Currency, however, the OCC findings
 13 included the following:

14 (a) The Bank is among the largest servicers of residential
 15 mortgages in the United States, and services a portfolio of
 16 6,300,000 residential mortgage loans. During the recent housing
 17 crisis, a substantially large number of residential mortgage loans
 18 serviced by the Bank became delinquent and resulted in foreclosure
 19 actions. The Bank’s foreclosure inventory grew substantially from
 20 2008 through 2010.

21 (b) In connection with certain foreclosures of loans in its
 22 residential mortgage servicing portfolio, the Bank:

23 (i) *filed or caused to be filed in state and federal courts*
 24 *affidavits executed by its employees or employees of*
third-party service providers making various
assertions, such as ownership of the mortgage note and
mortgage, the amount of the principal and interest due,
and the fees and expenses chargeable to the borrower, in
which the affiant represented that the assertions in the

affidavit were made based on personal knowledge or based on a review by the affiant of the relevant books and records, when, in many cases, they were not based on such personal knowledge or review of the relevant books and records;

(ii) filed or caused to be filed in state and federal courts, or in local land records offices, numerous affidavits or other mortgage-related documents that were not properly notarized, including those not signed or affirmed in the presence of a notary;

(iii) litigated foreclosure proceedings and initiated non-judicial foreclosure proceedings without always ensuring that either the promissory note or the mortgage document were properly endorsed or assigned and, if necessary, in the possession of the appropriate party at the appropriate time;

(iv) failed to devote sufficient financial, staffing and managerial resources to ensure proper administration of its foreclosure processes;

(v) failed to devote to its foreclosure processes adequate oversight, internal controls, policies, and procedures, compliance risk management, internal audit, third party management, and training;

(vi) failed to sufficiently oversee outside counsel and other third-party providers handling foreclosure-related services.

(c) By reason of the conduct set forth above, the Bank engaged in unsafe or unsound banking practices.

(Emphasis Supplied) Last accessed on December 12, 2023 at:

<https://www.occ.gov/news-issuances/news-releases/2011/nr-occ-2011-47e.pdf>

B.) On April 13, 2011, the United States Office Comptroller of Currency (“OCC”), the BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM (“FRS”), the FEDERAL DEPOSIT INSURANCE

1 CORPORATION ("FDIC"), and the OFFICE OF THRIFT
 2 SUPERVISION issued a Consent Order against Lender Processing
 3 Services, Inc. and its subsidiaries LPS Default Solutions, Inc., and
 4 DocX, LLC. The findings of this Consent order in relevant part are as
 5 follows:

6 **a)** WHEREAS, LPS's default management services are used by
 7 Examined Servicers to manage defaulted loans and facilitate
 8 completing foreclosures, including related bankruptcy proceedings,
 9 by outsourcing certain business processes necessary to take a loan
 10 and the underlying property through the default, foreclosure and
 11 disposition process, including related bankruptcy processes. The
 12 default management services that LPS provides to Examined
 13 Servicers include document support services.

14 **b)** *WHEREAS, Examined Servicers and outside*
 15 *foreclosure attorneys may contract to use an LPS software*
 16 *product called "LPS Desktop" designed to improve process*
 17 *management, including processes related to document*
 18 *preparation. Examined servicers who contract to use LPS*
 19 *Desktop may also contract for LPS's default management*
 20 *services;*

21 **c)** *WHEREAS, prior to February 2010, the default*
 22 *management services LPS provided to certain Examined*
 23 *Servicers also included executing documents on behalf of*
 24 *such Examined Servicers (including on behalf of Mortgage*
Electronic Registration Systems, Inc. for Examined
Servicers);

d) *WHEREAS, to facilitate the document execution*
services, certain Examined Servicers appointed LPS as an
agent of that Examined Servicer, or one or more LPS
employees as agents or officers of that Examined Servicer, to
execute certain documents on behalf of that Examined
Servicer. In their capacity as agent or officer of an
Examined Servicer, LPS and its employees serving as agents
or officers of Examined Servicers were institution-affiliated

1 *parties, as defined in sections 3(u) and 8(b)(3) of the Federal*
 2 *Deposit Insurance Act, as amended (the “FDI Act”) (12*
 3 *U.S.C. §§ 1813(u) and 1818(b)(3)), of the Examined Servicer;*

4 *e) WHEREAS, in providing document execution services*
 5 *to Examined Servicers, including services that facilitated*
 6 *completing foreclosures, LPS and its employees allegedly:*

7 *i) Executed numerous affidavits and similar sworn*
 8 *statements (collectively, “Affidavits”) making various*
 9 *assertions, such as the ownership of the mortgage note*
 10 *and mortgage (or deed of trust), the amount of*
 11 *principal and interest due, and the fees and expenses*
 12 *chargeable to the borrower, in which the affiant*
 13 *represented that the assertions in the Affidavit were*
 14 *made based on personal knowledge or based on a*
 15 *review by the affiant of the relevant books and records,*
 16 *when, in many cases, they were not based on such*
 17 *knowledge or review. LPS executed these Affidavits on*
 18 *behalf of Examined Servicers knowing they would be*
 19 *filed in state courts and in connection with bankruptcy*
 20 *proceedings in federal courts;*

21 *ii) Executed assignments of mortgages containing*
 22 *inaccurate information pertaining to matters*
 23 *including the identity and location of the assignee and*
 24 *beneficiary and the effective date of the assignment.*
LPS recorded or caused to be recorded these
assignments of mortgages in local land record offices,
or executed them on behalf of Examined Servicers
knowing they would be filed in state courts or in
connection with bankruptcy proceedings in federal
courts;

iii) Executed Affidavits, assignments of mortgages, and
other mortgage-related documents (collectively,
“Mortgage Documents”) on behalf of Examined
Servicers without authority to execute the Mortgage
Documents, specifically without having been duly
appointed as an agent or officer of the Examined

Servicers to execute documents on behalf of the Examined Servicers;

iv) *Recorded or caused to be recorded in local land records offices numerous Mortgage Documents that were not properly notarized, including those not signed or affirmed in the presence of a notary, or knew that such Mortgage Documents would be filed in state and federal courts;*

v) Failed to respond in a sufficient and timely manner to the increased level of foreclosures by increasing financial, staffing, and managerial resources to ensure that LPS adequately handled the document execution services that LPS provided to Examined Servicers; and

vi) *Failed to have adequate internal controls, policies and procedures, compliance, risk management, internal audit, and oversight of the document execution services that LPS provided to Examined Servicers;*

f) *WHEREAS, the practices set forth above allegedly constitute unsafe and unsound banking practices;*

(Emphasis Supplied) Last accessed on December 12, 2023 at:

<https://www.occ.gov/news-issuances/news-releases/2011/nr-occ-2011-47e.pdf>

C. On February 15, 2013, the United States Department of Justice issued a press release informing the public that on November 20, 2012, Lorraine Brown, former CEO of DocX LLC, a subsidiary of Lender Processing Services Inc., pleaded guilty to a felony charge involving conspiracy to commit mail and wire fraud. The February 15, 2013 United States DOJ press release stated in relevant part:

Lender Processing Services Inc. (LPS), a publicly traded mortgage servicing company based in Jacksonville, Fla., has agreed to pay \$35 million in criminal penalties and forfeiture to address its participation in a six-year scheme to prepare and file more than 1 million fraudulently signed and notarized mortgage-related documents with property recorders' offices throughout the United States. The settlement,

1 *which follows a felony guilty plea from the chief executive*
2 *officer of wholly owned LPS subsidiary DocX LLC, was*
3 *announced today by Assistant Attorney General Lanny A.*
4 *Breuer of the Justice Department's Criminal Division and U.S.*
5 *Attorney for the Middle District of Florida Robert E. O'Neill.*

6 *The non-prosecution agreement, which LPS entered*
7 *into today with the U.S. Department of Justice and the*
8 *U.S. Attorney's Office for the Middle District of Florida,*
9 *requires the company to make the payment and meet a*
10 *series of other conditions.*

11 *Lorraine Brown, the former CEO of DocX LLC,*
12 *pleaded guilty on Nov. 20, 2012, in federal court in*
13 *Jacksonville to conspiracy to commit mail and wire fraud.*
14 *During her guilty plea, Brown admitted to her leadership*
15 *role in the scheme.*

16 *LPS has taken a number of remedial actions to*
17 *address the misconduct at DocX. Among other things, LPS*
18 *has wound down all of DocX's operations, re-executed and*
19 *re-filed mortgage assignments as appropriate and*
20 *terminated Brown and others. LPS has also demonstrated*
21 *changes in its compliance, training and overall approach*
22 *to ensuring its adherence to the law, and has retained an*
23 *independent consultant to review and report on LPS's*
24 *document execution practices; assess related operational,*
compliance, legal and reputational risks; and establish a
plan for reimbursing any financial injuries to mortgage
servicers or borrowers.

According to the statement of facts accompanying
the agreement, before its wind-down, DocX was in the
business of assisting residential mortgage servicers with
creating and executing mortgage-related documents to be
filed with property recorders' offices throughout the
United States. Employees of DocX, at the direction of
Brown and others, falsified signatures on the documents.
Through this scheme and unbeknownst to the clients,
Brown and subordinates at DocX directed authorized
signers to allow other, unauthorized personnel to sign and

1 *to have documents notarized as if they were executed by*
 2 *authorized signers. These signing practices were used at*
 3 *DocX from at least March 2003 until late 2009, and were*
 4 *implemented to increase profits.*

5 *Also to increase profits, Brown hired temporary*
 6 *workers to sign as authorized signers. These temporary*
 7 *employees would sign mortgage-related documents at a*
 8 *much lower cost and without the quality controls*
 9 *represented to clients. These documents were then falsely*
 10 *notarized by employees at DocX, allowing the fraud*
 11 *scheme to remain undetected.*

12 *After these documents were falsely signed and*
 13 *fraudulently notarized, Brown authorized DocX employees*
 14 *to file and record them with local county property records*
 15 *offices across the country. Many of these documents –*
 16 *particularly mortgage assignments, lost note affidavits*
 17 *and lost assignment affidavits – were later relied upon in*
 18 *court proceedings, including property foreclosures and*
 19 *federal bankruptcy actions.*

20 *In entering into the non-prosecution agreement with*
 21 *LPS, the Justice Department took several factors into*
 22 *consideration. Soon after discovering the misconduct at*
 23 *DocX, LPS conducted a thorough internal investigation,*
 24 *reported all of its findings to the government, cooperated*
with the government's investigation and effectively
remediated any problems it discovered. The government's
investigation also revealed that Brown and others at
DocX took various steps to actively conceal the misconduct
from detection, including from LPS senior management
and auditors. . .

(Emphasis Supplied) Last accessed on December 12, 2023 at:

[https://www.justice.gov/opa/pr/florida-based-lender-processing-services-inc-pay-35-million-agreement-resolve-criminal-fraud#:~:text=\(LPS\)%2C%20a%20publicly%20traded,mortgage%2Drelated%20documents%20with%20property](https://www.justice.gov/opa/pr/florida-based-lender-processing-services-inc-pay-35-million-agreement-resolve-criminal-fraud#:~:text=(LPS)%2C%20a%20publicly%20traded,mortgage%2Drelated%20documents%20with%20property)

1 D. On January 24th, 2017, the Board of Governors of the Federal
 2 Reserve System, the Federal Deposit Insurance Corporation, and the
 3 United States Office Comptroller of Currency (“OCC”) entered an
 4 Amendment of Consent Order and Consent Order for Civil Money
 5 Penalty Assessment against Servicelink Holdings, LLC, as successor to
 6 Lender Processing Services, Inc., DOCX, LLC, and LPS Default
 7 Solutions, Inc.; this amended consent order provided in relevant part.

8
 9 *WHEREAS, on April 13, 2011, Lender Processing Services,*
 10 *Inc., Jacksonville, Florida (“LPS”), DocX, LLC, Alpharetta,*
 11 *Georgia (“DocX”), and LPS Default Solutions, Inc., Mendota*
 12 *Heights, Minnesota (“LPS Default Solutions”) (collectively,*
 13 *“LPS”) consented to the issuance of a Cease-and-Desist Order*
 14 *(the “2011 Consent Order”), in recognition of the common*
 15 *goal of the Board of Governors of the Federal Reserve System*
 16 *(“Board of Governors”), the Federal Deposit Insurance*
 17 *Corporation (“FDIC”), the Office of the Comptroller of the*
 18 *Currency (“OCC”) (collectively, the “Agencies”), the Office of*
 19 *Thrift Supervision (“OTS”) and LPS, to ensure that LPS*
 20 *operates in a safe and sound manner and in compliance with*
 21 *all applicable Legal Requirements (as defined in the 2011*
 22 *Consent Order);*

23 *WHEREAS, prior to January 3, 2014, LPS provided default*
 24 *management services, including but not limited to services*
related to foreclosure, to financial institution clients,
including depository institutions regularly examined by, or
subsidiaries or affiliates of depository institutions subject to
examination by, the Agencies (“Examined Servicers”);

WHEREAS, the 2011 Consent Order alleged that LPS and
its employees engaged in unsafe or unsound practices in
providing default management services to Examined
Servicers that occurred prior to the time that ServiceLink
Holdings, LLC (“ServiceLink”) assumed the LPS default

1 *management subsidiaries and affiliates, including DocX and*
 2 *LPS Default Solutions, that are subject to the 2011 Consent*
 3 *Order, and for which the Agencies assert the assessment of a*
 4 *civil money penalty is warranted;*

5 *WHEREAS, paragraph 2 of the 2011 Consent Order*
 6 *required LPS to retain an independent consultant to conduct*
 7 *a review of the document execution services that LPS*
 8 *provided to Examined Servicers at any time between January*
 9 *1, 2008 and December 31, 2010, including those services used*
 10 *in judicial and non-judicial foreclosures and related*
 11 *bankruptcy proceedings, the purposes of which were set forth*
 12 *in paragraphs 2(b) and (c) of the 2011 Consent Order (the*
 13 *“Document Execution Review”);*

14 *WHEREAS, on January 3, 2014, as a result of a corporate*
 15 *acquisition and reorganization, ServiceLink assumed the*
 16 *LPS default management subsidiaries and affiliates,*
 17 *including DocX and LPS Default Solutions, that are subject*
 18 *to the 2011 Consent Order;*

19 *WHEREAS, as of January 3, 2014, ServiceLink became*
 20 *subject to the 2011 Consent Order as a successor to LPS*
 21 *pursuant to paragraph 13 of the 2011 Consent Order; . . .*

22 *Paragraphs 2 and 3 of the 2011 Consent Order and their*
 23 *accompanying heading are stricken, and replaced with the*
 24 *following:*

“Civil Money Penalty”

The Board of Governors, the FDIC, and the OCC hereby
assess ServiceLink Holdings, LLC (“ServiceLink”) as a
successor to LPS, a civil money penalty in the amount of
\$65,000,000, to be paid by Fedwire transfer of immediately
available funds to the Federal Reserve Bank of Richmond,
ABA No. 05 1000033, beneficiary, Board of Governors of the
Federal Reserve System, as an agent for the Agencies, for the
purpose of collecting the civil money penalty assessment.
This civil money penalty is a penalty paid to a government
agency for a violation of law for purposes of 26 U.S.C. § 162(f)
and 26 C.F.R. § 1.162-21.

The Board of Governors or the Federal Reserve Bank of Richmond on behalf of the Agencies shall remit the funds for the civil money penalty assessment to the United States Treasury, pursuant to section 8(i) of the Federal Deposit Insurance Act (12 U.S.C. 1818(i)).”

(Emphasis Supplied) Last accessed on December 12, 2023 at:

<https://www.federalreserve.gov/newsevents/pressreleases/files/enf20170124a1.pdf>

3.98. Plaintiffs Property Owner and Church allege that those consent judgments referenced in ¶ 3.96 reflect at least in part payment for misconduct which was perpetrated on homeowners by the Defendants named in those consent orders and which was acquiesced in by the United States government, which as a result has unfairly profited from the Financial Industry’s misconduct against property owners, like Plaintiff Property Owner. Further, Plaintiffs Church and Property Owner assert that under these circumstances Article III courts and courts in the State of Washington are precluded from taking Plaintiff property Owner’s fourplexes and awarding those fourplexes to other private parties without compensation by the Takings Clause of the Fifth Amendment to the United States Constitution.

3.99. Based on the foregoing referenced evidence and factual allegations, Plaintiff Church and Property Owner assert that the following judicial inquiries based on the United States Constitution and Washington’s Constitution are, without limitation, appropriate for adjudication by this Court pursuant to the first sentence of RCW 61.24.130, which states: Nothing contained in this chapter shall prejudice the right of the borrower, grantor, any guarantor, or any person who has

1 an interest in, lien, or claim of lien against the property or some part thereof, to
2 restrain, on any proper legal or equitable ground, a trustee's sale:

3 A. Whether the political branches of the United States government
4 enacted laws and/or engaged actions which have forced homeowners and
5 property owners to bear the burden of the cost for the United States having
6 to bail out of the Financial Institutions in violation of the Takings Clause of
7 the United States Constitution?

8 B. Whether the judicial branch of the United States government
9 engaged in inappropriate and unconstitutional legislative decision-making
10 through the exercise of judicial power in violation of the Takings Clause of
11 the Fifth Amendment when the Supreme Court altered Fed. R. Civ. Pro
12 12(b)(6) in such a way as to make only property owners claims against the
13 *Financial Industry* less viable?
14

15 C. Whether the State of Washington violated the Contracts Clause of
16 the United States Constitution by enacting laws and policies which changed
17 the meaning of the agreements Property Owner executed on February 24,
18 2006 so as to make those agreements more likely to be enforceable by way
19 of foreclosure?
20

21 D. Whether the Due Process Clause of the Fourteenth Amendment to
22 United States Constitution requires defendant statutory trustees QLS and
23 MTC to be neutral -- and appear to be neutral -- as between Property
24 Owner and Defendants Deutsche Bank and Defendant Long Beach trusts?

1 E. Whether the Due Process Clause of the Fourteenth Amendment to
2 the United States Constitution requires the judicial officer adjudicating this
3 case for the Superior Court of Pierce County, Washington to be neutral --
4 and appear to be neutral -- as between Plaintiffs and Defendants?

5 F. Whether Washington's judges' neutrality -- and/or appearance of
6 neutrality -- has been compromised by Washington's political branches
7 enactment of changes in the judges' retirement program in 2006 which
8 incentivized -- or appear to incentivize -- judges' decision-making in favor of
9 the enforceability of mortgage backed securities?

10 G. Whether Article IV, Section 7 of Washington's Constitution, which
11 states: "... case in the superior court may be tried by a judge, pro tempore,
12 who must be a member of the bar, agreed upon in writing by the parties
13 litigant, or their attorneys of record, approved by the court and sworn to try
14 the case" contemplates that the ancient "rule of necessity" applies where
15 judges have been purposely compromised by the political branches giving
16 them economic incentives to decide cases against property owners in order
17 to benefit Washington State, themselves and their wealthy allies?

18 H. Whether the following part of RCW 61.24.130(1)(a) which states:
19 "The court shall require as a condition of granting the restraining order or
20 injunction that the applicant pay to the clerk of the court the sums that
21 would be due on the obligation secured by the deed of trust if the deed of
22 trust was not being foreclosed: [i]n the case of default in making the
23
24

1 periodic payment of principal, interest, and reserves, such sums shall be the
 2 periodic payment of principal, interest, and reserves paid to the clerk of the
 3 court every thirty days” violates the Equal Protection and Due Process
 4 Clauses of Fourteenth Amendment to the United States Constitution by
 5 restricting Plaintiff Property Owners right to access the original jurisdiction
 6 of this Court without having to pay special fees, which are not required to
 7 be paid by anyone other than property owners?

8 I. Whether the following part of RCW 61.24.130(1)(a) which states:
 9 “The court shall require as a condition of granting the restraining order or
 10 injunction that the applicant pay to the clerk of the court the sums that
 11 would be due on the obligation secured by the deed of trust if the deed of
 12 trust was not being foreclosed: [i]n the case of default in making the
 13 periodic payment of principal, interest, and reserves, such sums shall be the
 14 periodic payment of principal, interest, and reserves paid to the clerk of the
 15 court every thirty days” violates Wash. Const. Art. I, section 10, and Art. IV,
 16 Section 6 by restricting Plaintiff Property Owners right to access the
 17 original jurisdiction of this Court without having to pay special fees, which
 18 are not required to be paid by anyone other than property owners?
 19

20 **3.100.** Based on the foregoing referenced evidence and factual allegations
 21 Plaintiff Church and Property Owner assert that the following judicial inquiries
 22 based on federal statutory and regulatory law are, without limitation, appropriate
 23 for adjudication by this Court pursuant to RCW 61.24.130:
 24

1 A. Whether Defendant QLS and MTC statutory trustees are state
2 officers subject to liability pursuant to 42 U.S.C. §1983?¹²

3 B. Whether Plaintiff Property Owner's debt related to the promissory
4 notes at issue herein has been canceled by Lender or any "Note Holder"
5 and, if so, what the consequences of Property Owner's payment of the taxes
6 on this cancellation of debt income have with regard to the enforcing of the
7 associated mortgage liens by way of foreclosures?

8 **3.101.** Based on the foregoing referenced evidence and factual allegations
9 Plaintiff Church and Property Owner assert that judicial inquiries based on state
10 law are, without limitation, are also appropriate for adjudication by this Court
11 pursuant to RCW 61.24.130. Such judicial inquiries include:
12

13 A. What is the meaning of the phrase "applicable law" as it
14 appears in the pertinent promissory notes and deeds of trust
15 executed by Plaintiff Property Owner on February 24, 2006?
16
17
18

19 ¹² 42 U.S.C. § 1983 provides:

20 Every person who, under color of any statute, ordinance, regulation, custom, or
21 usage, of any State or Territory or the District of Columbia, subjects, or causes to be
22 subjected, any citizen of the United States or other person within the jurisdiction
23 thereof to the deprivation of any rights, privileges, or immunities secured by the
24 Constitution and laws, shall be liable to the party injured in an action at law, suit in
equity, or other proper proceeding for redress, except that in any action brought
against a judicial officer for an act or omission taken in such officer's judicial
capacity, injunctive relief shall not be granted unless a declaratory decree was
violated or declaratory relief was unavailable. For the purposes of this section, any
Act of Congress applicable exclusively to the District of Columbia shall be considered
to be a statute of the District of Columbia.

1 B. Have Defendants proved on a more likely than not basis that
2 they possess the original paper promissory notes signed by Plaintiff
3 Property Owner on February 24, 2006?

4 C. If Defendants cannot prove on a more likely than not basis
5 that they possess the original paper note signed by Plaintiff Property
6 Owner have Defendants Deutsche Bank and Defendants Long Beach
7 Trusts proved their standing as “Note Holders”, as that term is
8 defined in the pertinent promissory notes, i.e. **Exhibits 2(a), (b), (c),**
9 **(d) and (e)**?

10 D. If Defendants cannot prove on a more likely than not basis
11 that Defendant Deutsche Bank or Defendants Trusts or their agents
12 possess the original paper notes signed by Plaintiff Property Owner
13 have they proved their statutory standing to enforce those lost and/or
14 destroyed promissory notes pursuant to RCW 62A.3-309, which has
15 been continuously in effect 1993?

16 E. If Defendants cannot prove on a more likely than not basis
17 that Defendant Deutsche Bank or Defendants Trusts or their agents
18 possess the original paper notes signed by Plaintiff Property Owner
19 can Defendant Trustees non judicially sell Plaintiff Property Owner’s
20 fourplexes without adjudicating the propriety of their doing so under
21 the Deed of Trust Act?
22
23
24

1 F. What versions of Washington's Deed of Trust Act apply to the
2 agreements Plaintiff Property Owner executed on February 24, 2006?

3 G. What versions of Washington's Uniform Commercial Code
4 apply to the agreements Plaintiff Property Owner executed on
5 February 24, 2006?

6 H. Have Defendants proved on a more likely than not basis that
7 they are entitled to foreclose on Plaintiff Property Owner's fourplexes
8 based on the statutory law applicable to those February 24, 2006
9 agreements?
10

11 **3.102.** Plaintiffs Church and Property Owner also assert that equitable
12 considerations also make this case one to which this Court should apply equitable
13 principles in order to determine what is just under the facts applicable to this
14 case. In regards to such equitable considerations Plaintiffs Church and Property
15 Owner assert:

16 A. Courts of the United States, including courts of Washington,
17 have traditionally recognized a distinction between law and equity
18 jurisdictions.
19

20 B. Equity defines a set of legal principles, in Washington and
21 other jurisdictions that follow the English common law tradition,
22 which supplement the strict rules of law where application of such
23 rules would operate too harshly. The rules of equity are applied under
24 these circumstances to achieve "natural justice."

1 C. Courts of equity deciding issues of contract have discretion to
2 determine the form of relief based on the circumstances of each
3 individual case. In equity, relief should serve the ends of justice, and
4 should be withheld if it appears likely to produce hardship or
5 injustice to either party.

6 D. The equity system continues to perform its core function,
7 which is to complement and supplement the common law, in
8 accordance with morally accepted notions of justice and fairness.

9 E. Washington courts embrace a long and robust tradition of
10 applying the doctrine of equity. In *Klem v. Wash. Mut. Bank*, 176
11 Wn.2d 771 (2013), a case involving, among others, a statutory trustee
12 non judicially selling real property pursuant to the terms of
13 Washington's Deeds of Trust Act the Supreme Court of Washington
14 observed:
15

16 The power to sell another person's property, often the
17 family home itself, is a tremendous power to vest in
18 anyone's hands. The legislature has allowed that power to
19 be placed in the hands of a private trustee, rather than a
20 state officer, but common law and equity requires that
21 trustee to be evenhanded to both sides and to strictly
22 follow the law.

23 F. The Washington Supreme Court has held that the political
24 branches of government cannot pass laws intended to eliminate or
frustrate the equitable power of courts as it is set forth in

1 Washington's Constitution. *See e.g. Blanchard v. Golden Age Brewing*
 2 *Co.*, 188 Wash. 396, 63 P.2d 397 (1936).

3 G. The U.S. Supreme Court has concluded that courts have wide
 4 discretion to fashion relief in cases of equity. *See e.g. Willard v.*
 5 *Tayloe*, 75 U.S. 557 (1869). In that case the Court concluded that
 6 "relief is not a matter of absolute right to either party; it is a matter
 7 resting in the discretion of the court, to be exercised upon a
 8 consideration of all the circumstances of each particular case."
 9

10 H. In addition to helping to shape the relief which should be
 11 provided in equity, equity can also be the foundation for various types
 12 of causes of action, including without limitation those relating to uses
 13 of land, unconscionability, trust law, corporate law, wills and probate,
 14 adoptions, fraud, etc.

15 **3.103.** Based on the foregoing referenced evidence and factual allegations
 16 and the following set forth equitable principles, Plaintiff Church and Property
 17 Owner assert that the following judicial inquiries based on equity are, without
 18 limitation, appropriate for adjudication by this Court pursuant to a judicial
 19 foreclosure which will be required if this Court restrains the trustee sales
 20 pursuant to RCW 61.24.130, which are currently scheduled to occur on January 5,
 21 2024:

22 A. The foreclosure of the deeds of trust under the circumstances
 23 alleged herein would unjustly enrich the Defendants.
 24

1 B. The equitable doctrine of laches bars foreclosure of the deeds of
2 trust under the circumstances alleged herein.

3 C. The equitable doctrine of waiver bars foreclosure of the deeds
4 of trust under the circumstances alleged herein.

5 D. The equitable doctrine of estoppel bars foreclosure of the deeds
6 of trust under the circumstances alleged herein.

7 E. Under the facts and circumstances alleged herein the
8 enforcement of the deeds of trust by way of foreclosure is
9 procedurally and substantively unconscionable.
10

11 **3.104.** Plaintiffs Church and Property Owner allege that it is likely that the
12 foregoing facts and those likely to be discovered pursuant a judicial foreclosure
13 will pose additional judicial inquiries that this Court will need to resolve in
14 adjudicative judicial foreclosure proceedings involving the exercise of judicial
15 power.

16 4. CAUSES OF ACTION

17 *Declaratory Judgment Causes of Action to Restrain Trustee Sales*

18 **4.1.** Plaintiffs Church and Property Owner seek declaratory judgments
19 regarding the meaning of the language of RCW 61.24.130 on February 24, 2006.
20 The language of this statutory provision at issue here on February 24, 2006 is set
21 forth in ¶ 3.1, supra.

22 **4.2.** If this Court does not find that the 2006 version of RCW 61.24.130 is
23 the applicable statutory law, the Plaintiffs Church and Property Owner also seek a
24

1 declaratory judgment as to the meaning of the present version of RCW 61.24.130.

2 The present version of RCW 61.24.130 states in pertinent part:

3 (1) Nothing contained in this chapter shall prejudice the right of the
4 borrower, grantor, any guarantor, or any person who has an interest in,
5 lien, or claim of lien against the property or some part thereof, to
6 restrain, on any proper legal or equitable ground, a trustee's sale. The
7 court shall require as a condition of granting the restraining order or
8 injunction that the applicant pay to the clerk of the court the sums
9 that would be due on the obligation secured by the deed of trust if the
10 deed of trust was not being foreclosed:

11 (a) In the case of default in making the periodic payment of
12 principal, interest, and reserves, such sums shall be the periodic
13 payment of principal, interest, and reserves paid to the clerk of
14 the court every thirty days.

15 * * *

16 In addition, the court may condition granting the restraining
17 order or injunction upon the giving of security by the applicant,
18 in such form and amount as the court deems proper, for the
19 payment of such costs and damages, including attorneys' fees, as
20 may be later found by the court to have been incurred or
21 suffered by any party by reason of the restraining order or
22 injunction. The court may consider, upon proper showing, the
23 grantor's equity in the property in determining the amount of
24 said security.

(2) No court may grant a restraining order or injunction to restrain a
trustee's sale unless the person seeking the restraint gives five days
notice to the trustee of the time when, place where, and the judge
before whom the application for the restraining order or injunction is
to be made. This notice shall include copies of all pleadings and related
documents to be given to the judge. No judge may act upon such
application unless it is accompanied by proof, evidenced by return of a
sheriff, the sheriff's deputy, or by any person eighteen years of age or
over who is competent to be a witness, that the notice has been served
on the trustee.

1 **4.3.** Plaintiffs Church and Property Owner assert:

2 (a) In the case of default in making the periodic payment of
3 principal, interest, and reserves, such sums shall be the
4 periodic payment of principal, interest, and reserves paid to
5 the clerk of the court every thirty days.

6 * * *

7 In addition, the court may condition granting the restraining order or
8 injunction upon the giving of security by the applicant, in such form
9 and amount as the court deems proper, for the payment of such costs
10 and damages, including attorneys' fees, as may be later found by the
11 court to have been incurred or suffered by any party by reason of the
12 restraining order or injunction. The court may consider, upon proper
13 showing, the grantor's equity in the property in determining the
14 amount of said security.

15 (2) No court may grant a restraining order or injunction to restrain a
16 trustee's sale unless the person seeking the restraint gives five days
17 notice to the trustee of the time when, place where, and the judge
18 before whom the application for the restraining order or injunction is
19 to be made. This notice shall include copies of all pleadings and related
20 documents to be given to the judge. No judge may act upon such
21 application unless it is accompanied by proof, evidenced by return of a
22 sheriff, the sheriff's deputy, or by any person eighteen years of age or
23 over who is competent to be a witness, that the notice has been served
24 on the trustee.

18 **4.4.** Plaintiffs Church and Property Owner assert that the first sentence
19 of both provisions means precisely what is stated in those first sentences; namely
20 that nothing contained in the Deed of Trust Act, Chapter 61.24 RCW shall
21 prejudice the right of the borrower to restrain, on any proper grounds -- legal
22 (including constitution) or equitable -- a trustee's sale of real property involving
23 judicial inquiries which should be resolved by way of an exercise of judicial power.

1 **4.5.** Plaintiffs Church and Property Owner assert based on the facts
2 asserted in Part III of this complaint that Plaintiff Property Owner has set forth
3 judicial inquiries which demonstrate that there are proper grounds not to have the
4 statutory trustees who are being paid by Defendant Deutsche Bank and/or
5 Defendant Long Beach Trusts to sell Property Owner's fourplexes without
6 considering those judicial inquiries he has set forth pursuant to a judicial
7 foreclosure action, in which a neutral judge considers these judicial powers
8 pursuant to a legitimate exercise of judicial power.
9

10 **4.6.** Plaintiffs Church and Property Owner assert that such a result is
11 mandated by numerous constitutional provisions including without limitation
12 Article V, section 6 of Washington's Constitution and the Fourteenth Amendment
13 to the United States Constitution..

14 **4.7.** Additionally, Plaintiffs Church and Property Owner also seek a
15 declaratory judgment that the language of RCW 61.24.130 which posits that
16 Property Owner must make payments to the Court within 5 days of the scheduled
17 trustee sale in order to obtain an adjudication of the judicial inquiries he seeks to
18 raise pursuant to this Court's original jurisdiction violates the Due Process and
19 Equal Protection Clauses of the United States Constitution because no persons
20 other than property owners are similarly restricted in their opportunities to resort
21 to the exercise of judicial power within the original jurisdiction of the Court for
22 purposes of resolving disputes between them and others.
23
24

1 **4.8.** Plaintiffs Church and Property Owner also seek a declaratory
 2 judgment that the language of RCW 61.24.130 which posits that Property Owner
 3 must make payments to the Court with 5 days of the scheduled trustee sale in
 4 order to obtain an adjudication of the judicial inquiries he seeks to raise pursuant
 5 to this Court's original jurisdiction violates the access to justice and special
 6 privileges and immunities clause and the limitation on this Court's jurisdiction
 7 established by Art. IV, section 6 of Washington's Constitution because no persons
 8 other than property owners are similarly restricted in their opportunities to resort
 9 to the exercise of judicial power within the original jurisdiction of the Court for
 10 purposes of resolving disputes between them and others.
 11

12 ***Causes of Action to Restrain Trustee Sales***

13 **4.9.** Plaintiffs Church and Property Owner assert this Court should
 14 enjoin the sale of Property Owner's fourplexes pursuant to the first sentence of
 15 RCW 61.24.130 because proper grounds for doing so exist.

16 **4.10.** Plaintiffs Church and Property Owner assert this Court restraint of
 17 Defendant statutory (not impartial) trustees should not be premised on conditions
 18 which are not imposed on other litigants with regard to litigating judicial inquiries
 19 within this Court's original jurisdiction. Further, that allowing the non judicial
 20 sale of Plaintiff's properties should be restrained until the matters posed by this
 21 complaint have been appropriately resolved by appropriate judicial inquiries
 22 involving application of law to those facts which this Court finds to exist in this
 23 case.
 24

WHEREFORE, Plaintiffs Church and Property Owners respectfully
request this Court;

(1) Restrain, preliminarily enjoin, and permanently enjoin statutory trustee Quality Loan Services Corp. of Washington from engaging in any sale of Property Owners' Real Property pursuant to RCW 61.24.130;

(2) Award attorney fees to Plaintiffs;

(3) For such other relief as may be appropriate under the circumstances of this case.

DATED this 13th day of December, 2023, in Arlington, Washington.

I declare under the penalty of perjury that the foregoing verified complaint is true and correct to the best of my information and belief.

By: s/ Scott E. Stafne
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 Arlington, WA 98223
 360.403.8700
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Attorney for Plaintiff's

I also declare under the penalty of perjury that the foregoing is true and correct to the best of my information and belief.

By: /s/ Alvin B. White

Alvin B. White