9-12-2017

PHH Mortgage v. Nickerson Clerk's Record Dckt. 45146

In the
SUPREME COURT
of the
STATE OF IDAHO

PHH MORTGAGE,

Plaintiff-Third Party Defendant-Counterdefendant-Respondent,

v.

CHARLES NICKERSON and DONNA NICKERSON,

Defendant-Counterclaimant-Third Party Complainant-Appellant,

v.

COLDWELL BANKER MORTGAGE, a d/b/a of PHH MORTGAGE, and JPMORGAN CHASE BANK, N.A.,

Third Party Defendants-Respondents

Appealed from the District Court of the Second Judicial District of the State of Idaho, in and for Clearwater County

Honorable GREGORY FITZMAURICE, District Judge

ELISA S. MAGNUSON
Attorney for Plaintiffs-Respondents

BENJAMIN C. RITCHIE
Attorney for Third Party Defendants-Respondents

PRO SE
Attorney for Defendants-Appellants

Date	Code	User		Judge
10/6/2015	DCHH	CHRISTY	Hearing result for Motion to Stay scheduled on 10/06/2015 02:45 PM: District Court Hearing Hel Court Reporter: Keith Evans Number of Transcript Pages for hearing estimated: LESS THAN 100 Set Up Meet Me	Gregory FitzMaurice
	CMIN	CHRISTY	Hearing result for Motion to Stay scheduled on 10/06/2015 02:45 PM: Court Minutes Set Up Meet Me	Gregory FitzMaurice
	ADVS	CHRISTY	Hearing result for Motion to Stay scheduled on 10/06/2015 02:45 PM: Case Taken Under Advisement Set Up Meet Me	Gregory FitzMaurice
10/15/2015	ORDR	CHRISTY	Order Granting Stay	Gregory FitzMaurice
4/27/2016	OPIN	BARBIE	2016 Opinion No. 51, Filed By The Supreme Court April 27, 2016	Gregory FitzMaurice
5/18/2016	PETN	BARBIE	Petition For Rehearing - Filed By Nickerson's, Filed By The Supreme Court 5/18/16	Gregory FitzMaurice
7/19/2016	ORDR	BARBIE	Order Denying Petition For Rehearing	Gregory FitzMaurice
7/22/2016	REMT	BARBIE	Remittitur	Gregory FitzMaurice
2/28/2017	AFFD	KPROFFITT	Affidavit and Application in Support of Issuance of: (1) Writ of Execution on Judgment of Foreclosure; And (2) Order of Sale on Foreclosure	Gregory FitzMaurice
	MOTN	KPROFFITT	Motion to Set Aside Stay and For Issuance of: (1) Writ of Execution on Judgment of Foreclosure; And (2) Order of Sale Foreclosure	Gregory FitzMaurice
4/11/2017		CHRISTY	Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: Nickerson, Donna Receipt number: 0001129 Dated: 4/11/2017 Amount: $8.00 (Cash)	Gregory FitzMaurice
		CHRISTY	Miscellaneous Payment: Fax Fee Paid by: Nickerson, Donna Receipt number: 0001129 Dated: 4/11/2017 Amount: $1.00 (Cash)	Gregory FitzMaurice
	MISC	BARBIE	Response In Opposition To Motion To Set Aside Stay And Issuance Of Writ Of Execution And Order Of Sale	Gregory FitzMaurice
	MOTN	BARBIE	Motion For Sanctions	Gregory FitzMaurice
	MOTN	BARBIE	Motion To Quash Execution And Judgment	Gregory FitzMaurice
4/13/2017	ORDR	CHRISTY	Order Denying Motion to Quash Execution and Judgment and Motion for Sanctions	Gregory FitzMaurice
	ORDR	CHRISTY	Order Lifting Stay	Gregory FitzMaurice
	ORDR	CHRISTY	Order of Sale and Decree of Foreclosure	Gregory FitzMaurice
	SCAN	CHRISTY	Scanned: 4/18/2017	Gregory FitzMaurice

Second Judicial District Court - Clearwater County

ROA Report

Case: CV-2011-0000028 Current Judge: Gregory FitzMaurice

PHH Mortgage vs. Charles Nickerson, etal.

Date	Code	User		Judge
4/13/2017	CDIS	CHRISTY	Civil Disposition entered for: Coldwell Banker Mortgage,, Defendant; J.P. Morgan Chase Bank, N.A., Defendant; Knowlton & Miles Pllc,, Defendant; Nickerson, Charles, Defendant; Nickerson, Donna, Defendant; Wells Fargo Bank, N.A., Defendant; PHH Mortgage,, Plaintiff. Filing date: 4/13/2017	Gregory FitzMaurice
4/25/2017		CHRISTY	Miscellaneous Payment: Writs Of Execution Paid by: Aldridge Pite LLP Receipt number: 0001354 Dated: 5/3/2017 Amount: $2.00 (Cashiers Check)	Gregory FitzMaurice
	WRIT	CHRISTY	Writ of Execution on Judgment Foreclosure	Gregory FitzMaurice
4/27/2017	MOTN	KJOHNSON	Motion To Vacate Or Amend Order Of Sale And Decree Of Foreclosure	Gregory FitzMaurice
	MOTN	KJOHNSON	Motion To Reconsider Order Denying Motion To Quash Execution And Judgment And Motion For Sanctions	Gregory FitzMaurice
5/16/2017	ORDR	BARBIE	Order Denying Motion To Vacate Or Amend Order Of Sale And Decree Of Foreclosure	Gregory FitzMaurice
	ORDR	BARBIE	Order Denying Motion To Reconsider Order Denying Motion To Quash Execution And Judgment	Gregory FitzMaurice
5/25/2017		SMCCOLLUM	Filing: L4 - Appeal, Civil appeal or cross-appeal to Supreme Court Paid by: Lorene Wright Receipt number: 0001599 Dated: 5/25/2017 Amount: $129.00 (Cash) For: Nickerson, Charles (defendant) and Nickerson, Donna (defendant)	Gregory FitzMaurice
	NOTC	SMCCOLLUM	Notice Of Issues	Gregory FitzMaurice
	NOTA	SMCCOLLUM	NOTICE OF APPEAL	Gregory FitzMaurice
	APSC	BARBIE	Appealed To The Supreme Court	Gregory FitzMaurice
6/5/2017	CCOA	BARBIE	Clerk's Certificate Of Appeal	Gregory FitzMaurice
6/19/2017	ORDR	BARBIE	Order Conditionally Dismissing Appeal	Gregory FitzMaurice
6/21/2017	MISC	BARBIE	Notice of Change of Address and Substitution of Counsel - Filed by the Supreme Court 6/21/17	Gregory FitzMaurice
	APER	BARBIE	Defendant: J.P. Morgan Chase Bank, N.A. Appearance Benjamin C Ritchie	Gregory FitzMaurice
6/28/2017	BNDC	ALUSTIG	Bond Posted - Cash (Receipt 1953 Dated 6/28/2017 for 100.00)	Gregory FitzMaurice
7/6/2017	ORDR	BARBIE	Order To Withdraw Conditional Dismissal And Augment Prior Appeal	Gregory FitzMaurice

FILED 4/11/2017 AT 8:11 a.m. OROFINO, IDAHO
BY BD

CHARLES NICKERSON AND DONNA NICKERSON
3165 Neff Rd
Orofino, ID 83544

Defendants Pro Se

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CLEARWATER

PHH MORTGAGE, Plaintiff/Counter-Defendant, vs. CHARLES NICKERSON and DONNA NICKERSON, husband and wife; KNOWLTON & MILES PLLC; WELLS FARGO BANK, N.A., AND JOHN DOES I thru X Defendant, COLDWELL BANKER MORTGAGE, a/d/b/a of PHH MORTGAGE, and JPMORGAN CHASE BANK, N.A. Third Party-Defendants.	Case No.: CV 2011-28 **RESPONSE IN OPPOSITION TO MOTION TO SET ASIDE STAY AND ISSUANCE OF WRIT OF EXECUTION AND ORDER OF SALE**

COMES NOW, Defendants, Charles and Donna Nickerson, request PHH's Motion to Set Aside Stay and Issuance of Writ and Order of Sale be denied. As this Court has found previously, proceeding with a premature execution of judgment perpetuates unnecessary and unwarranted additional harm and damage against our family, our reputation, and the security of our property. It also places Clearwater County and the world at large at unnecessary risk and jeopardy.

> As a general rule, a person who causes a writ of execution to issue upon judgment which is later vacated is liable for the damages caused by the wrongful execution. 3D Am. Jur. 2d, Executions, Etc. § 525 Persons liable; officers and assistants

This is especially true in light of the extraordinary circumstances that have surrounded this case in regards to the denial of equal access to justice for our family, the evidences of fraud and

misrepresentations that have been presented, and the abuse of process suffered. Further, the facts and true merits of this case support that the final resolution of this case will require the quashing of any execution of judgment against us and demand a complete reversal of judgment in favor of PHH or Chase. It is therefore inappropriate to move forward with an improper execution based on irregular and fraudulent premises. The appeal is still ongoing as we have an unopposed Objection to Costs and Fees and Motion for Sanctions before the Supreme Court requesting Chase be sanctioned in accordance with I.R.C.P. 11(c) and I.A.R. 11.2(a) for "signing and certifying documents to the Court 'that to the best of the signer's knowledge, information, and belief after reasonable inquiry it is well grounded in fact.' The admissions, interrogatories, briefs and affidavits of Chase presented to the Supreme Court in the record contain statements that are false, not supported by any evidence and conflict with the facts the Court deemed to be undisputed and relied upon to rule against us." See *Objection to Costs and Fees and Motion for Sanctions* submitted to this Court in conjunction with our Motion for Sanctions and Motion to Quash Execution and Judgment. By affirming District Court Judge Griffin, the Supreme Court has, in effect and by judgment, found Chase lied. Chase obtained summary judgment in its favor by fraud, and thus, it must be vacated and cannot be relied upon. Because PHH committed fraud in conjunction with Chase, PHH's case is jeopardized, their standing is fatally flawed, and thus, their entire complaint is based upon false premises. Genuine issues of material facts remain that must be resolved prior to judgment being rendered in favor of PHH and in order to prevent future claims and forthcoming litigation. Therefore, justice and judicial economy require the stay remain in force pending the resolution of the appeal.

In addition to the facts and argument submitted below, we request the Court to consider the facts and argument contained in our Motion for Sanctions and Motion to Quash Execution and Judgment submitted in conjunction with this response.

ARGUMENT

As detailed in our argument regarding our motion to stay and incorporated herein, there are numerous inconsistencies, contradictions and falsehoods District Court Judge Griffin relied upon and perpetrated that, as a matter of law, require the summary judgments in favor of PHH and Chase to be reversed. Our due process and right to a defense has been violated and obstructed by the willful and malicious actions and inactions of PHH, Chase, and those acting on their behalf. Therefore, prior to executing the false and fraudulently obtained judgment and in order to avoid future claims, suffering, and damages, we request this Court recognize PHH and

Chase must, at a minimum, provide irrefutable proof and documentation regarding the following genuine issues of material fact.

1. The true chain of title and holder of the note. Chase, throughout this litigation, has declared they never owned the note (R. 109 – *Charles Nickerson's and Donna Nickerson's Amended Answer, Counterclaim, Third Party Complaint and Demand for Jury Trial* – p. 3, L. 11; R. p. 128 – *JPMorgan Chase Bank, NA's Answer to Third Party Complaint* – p. 3; R. pp. 747-751, 759, 760 – *JPMorgan Chase Bank's Answers and Responses to Defendants Charles and Donna Nickerson's First set of Interrogatories and Requests for Production*, pp. 2-6, 14, 15). PHH claims Coldwell Banker Mortgage initiated the note, sold it to Fannie Mae in 2002 and Fannie Mae transferred it back to PHH in 2010 (R. 882 – *Plaintiff's Response to Defendant Nickersons' First Set of Interrogatories and Requests for Production* – p. 2). Judge Griffin found, contradicting and disputing his own undisputed facts, Coldwell Banker Mortgage initiated the note, sold it to Chase in 2007 and Chase sold it to PHH in 2010. The facts the Nickersons presented through documentation provided by Chase and Fannie Mae demonstrate Coldwell Banker Mortgage sold the note to Fannie Mae in 2002, Fannie Mae sold the note to Chase in 2009 (R. 1112, 1139-1140 – *Affidavit of Charles Nickerson in Support of Motion for Summary Judgment* – Exhibits 6 and 9) and that as of January 2014 Chase had the note in their possession and was the investor on the loan (R. 1232 – *Notice of Supplemental Evidence* – Exhibit A). Only the holder of the note has the authority to foreclose, and based on the evidence before the Court, PHH was not the holder of the Note when they initiated this action in 2011. Further, the copies of the notes PHH and Chase provided are different (SAR. 30 – *Motion for Relief from Judgment* – p.10, L. 23-31). Therefore, this Court must recognize PHH and Chase have not proven with admissible evidence that PHH held the note when they filed this complaint, their complaint must be dismissed with prejudice, and they must be held accountable for fraud and liable for the significant and substantial abuse, suffering and damages inflicted upon our family, our ranch, our reputation, and our entire financial portfolio. Allowing them to proceed with this wrongful foreclosure endorses their malicious actions, encourages their mortgage fraud and abusive debt collection practices, and demonstrates willful and malicious negligence and abuse in these proceedings.

2. Default and default amount. PHH prevented our performance by refusing to accept our payments, refusing to validate their claimed default amount even after we provided proof of payments made, failing to provide proper and accurate notifications, and pushing foreclosure

based on an inaccurate and non-existent default amount. State and federal laws governing mortgages and debt collection require PHH and Chase to provide a strict accounting, using the account records submitted in evidence, in order to prove default and accurately prove the claimed default. PHH should have been and must be required to prove up the exact default which they originally claimed and relied on. Anything else is an admission their records were and are inaccurate, cannot be relied upon, constitutes a breach of contract, implicates fraud, and prevents any lawful execution of judgment against any alleged or existing debt. PHH now claims and the Supreme Court affirmed we allegedly missed 9 payments which contradict PHH's previous claims of 13 and 14 missed payments and, in effect, voids their complaint. In addition, PHH did not reduce the principal amount allegedly owed ($261,170.62) when they reduced the number of payments missed (R. 561 – *Affidavit in Support of Summary Judgment* – p. 2; R. 1037, 1038 – *Second Affidavit of Ronald E. Casperite in Support of PHH's Second Motion for Summary Judgment* – p. 2-3). Obviously, if additional payments are applied to the account the principal amount must be reduced. Further, according to the account records submitted by Chase, the principal balance on the account went to $0.00 in November 2009 and went negative, -$1,186.90, at the time servicing allegedly transferred in February 2010 (R. 441-453 – *Affidavit of Jon A. Stenquist in Support of Chase's Motion for Summary Judgment* – Exhibit F.). There is extreme discrepancy between what Chase claims as the principal balance and what PHH claims, and according to Chase's account records, the records PHH relied upon to claim default, we paid off the loan in November 2009 and were due a refund in January 2010. Therefore, based on the inaccurate evidence in the record, PHH has fatally failed to provide a strict accounting of their claimed default amount and principal balance which was required by law to be verified by the appropriate Chase personnel with personal knowledge of this account (I.R.C.P. 56; 12 C.F.R § 24.38; R. 1419-1423 – *Charles Nickerson's and Donna Nickerson's Amended Answer, Counterclaim, Third Party Complaint and Demand for Jury Trial* – pp. 29-33, Eighth Affirmative Defense). Failure to provide an accurate default dismisses PHH's complaint. Failing to require an accurate default prevents genuine issues of material fact from being justly litigated in this action, dissolves and thwarts our rights to find relief and final resolution based on the merits in this action, and forces future claims and actions for justice to be pursued.

3. Notice of Default and opportunity to cure. It is critical the alleged default be accurate because it changes the circumstances and basis for the complaint. By contract the note holder must provide notice of default and opportunity to cure. If the default amount changes, as it

has in this case, then the notice of default is invalidated or void, but the contractual obligation to provide notice is not erased. Codified and common law clearly establish accuracy in record keeping is necessary for collection enforcement. Therefore, since PHH has fatally failed to establish an accurate default amount, PHH's complaint must be dismissed as we were never served with a proper and accurate notice of default or provided with an opportunity to cure any alleged default. The difference in the amount, over $11,000.00, could have undoubtedly made a difference in the contractual right and option to cure. Furthermore, we questioned the alleged default amount and the existence of any default whatsoever at that time, provided proof of payments, and requested PHH provide an accounting of our payments. Under RESPA, PHH was required by 12 U.S.C. § 2605(e)(2)(B) "after conducting an investigation, provide the borrower with a written explanation or clarification." PHH refused to conduct any investigation and refused to provide us with a written explanation or clarification regarding the disputed default (R. 1419-1423 – *Charles Nickerson's and Donna Nickerson's Amended Answer, Counterclaim, Third Party Complaint and Demand for Jury Trial* – pp. 29-33, Eighth Affirmative Defense). As a result, PHH is in violation of RESPA and their complaint should now be considered moot because it is not accurate and the provisions in the contract regarding notice of default have not been satisfied. Therefore, PHH has no right or cause of action.

The responsibility of this Court and the Idaho judicial system is to ensure equal access to justice is available to both parties. We have been denied this right from the outset of this case due to the fraudulent representation of PHH, Chase and their attorneys of record. As the record shows, the fraud against us, this property, this Court, Clearwater County, and the World at Large extends back to the closing table (SAR. 36-38 – *Motion for Relief from Judgment* – p. 16, L. 14 – p. 18, L. 11). In addition to the 3 points above, we have included a condensed review of this horrific nightmare as summarized in our brief in support of rehearing submitted to the Supreme Court to aid this Court in determining how substantially PHH and Chase's actions and inactions have adversely affected the judgments rendered in this case and the ability of the Supreme Court to find and offer any relief to us because of the record created by Judge Griffin (See Exhibit 1). We also direct the Court's attention to our Motion for Relief from Judgment or Order dated October 3, 2014. This document was filed in the District Court record to find justice and immediate relief from the ongoing assault on our family in Clearwater County. It too demonstrates the extreme prejudice we have experienced.

CONCLUSION

This Court issued a stay for good cause. PHH's case has significant genuine issues of material fact. These issues have not gone away. If anything, PHH's position lost any and all potential merit when the Supreme Court, based on their ruling, declared Chase lied. However, due to the biased, sabotaged and prejudiced record produced by Judge Griffin ("The Nickersons submitted additional documents and statements after the hearing...The court will not consider those documents..."), the Supreme Court did not consider documents in which Chase claims to be the holder of the note, have the note in its possession, and to be the investor on the loan. Further, the Supreme Court did not address the assignment of error regarding the ignoring of these documents. Thus, the prejudiced record thwarted a remand at the Supreme Court level. This victimization of our family without cause or right has gone on long enough. Therefore, we call on this Court to stay execution and allow this litigation to proceed on its merits so justice may have the opportunity to remedy the prejudice and injustice suffered; Chase and PHH can be required to admit the truths of this matter; and PHH, Chase and their accomplices can be held accountable for this malicious and unwarranted assault on our family. This District Court has the power and obligation to watch over its judgments and to ensure justice, not injustice, is served within its jurisdictions.

Wherefore, we request PHH's motion to set aside stay and for issuance of writ and order of sale be denied and that the stay against execution of judgment remain in full force for all of the same reasons it was originally granted and so justice may be served. Chase and PHH must irrefutably prove the chain of title, the default and the claimed default amount and our Objection to Costs and Fees and Motion for Sanctions must be resolved completely prior to any lawful execution of judgment in their favor. A premature execution of judgment irreparably prejudices and damages our rights in this matter, further slanders and defames our character and financial reputation, and increases the exposure and liability for the opposing parties and those involved in enforcing the execution of judgment.

Oral argument requested.

DATED this 11th day of April, 2017

CHARLES NICKERSON

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 11th day of April, 2017, I caused to be served a true and correct copy of the RESPONSE IN OPPOSITION TO MOTION TO SET ASIDE STAY AND ISSUANCE OF WRIT OF EXECUTION AND ORDER OF SALE by the method indicated below, and addressed to the following:

Elisa Sue Magnuson
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Fax (619)590-1385

(x) U.S. Mail
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Jon A. Stenquist
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(x) U.S. Mail
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Charles Nickerson

**Please note: Mr. Stenquist and Ms. Magnuson already have copies of the documents listed below and in the interest of saving resources we are not serving them again.

- Objection to Costs and Fees and Motion for Sanctions
- Affidavit of Charles Nickerson in Support of Objection to Costs and Fees and Motion for Sanctions
- Brief in Support of Petition for Rehearing

EXHIBIT 1

IN THE SUPREME COURT OF THE STATE OF IDAHO

PHH MORTGAGE,

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Counterdefendant-Respondent,

v.

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Defendant-Counterclaimant-Third
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and

COLDWELL BANKER MORTGAGE, a d/b/a of PHH MORTGAGE and JP MORGAN CHASE BANK, NA,

Third Party Defendants-Respondents.

APPELLANT'S BRIEF IN SUPPORT OF PETITION FOR REHEARING

Appeal from the District Court of the Second Judicial District for Clearwater County.

Supreme Court Docket No. 42163-2014
Clearwater County No. 2011-28

Honorable Michael J. Griffin, District Judge, presiding.

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Orofino, ID 83544
Appellants-Pro Se

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For Respondents – PHH Mortgage and
Coldwell Banker Mortgage

Jon A. Stenquist
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PO Box 51505
Idaho Falls, ID 83405
For Respondent – JP Morgan Chase Bank, NA

IN THE SUPREME COURT OF THE STATE OF IDAHO

PHH MORTGAGE,

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Counterdefendant-Respondent,

v.

CHARLES NICKERSON and DONNA NICKERSON

Defendant-Counterclaimant-Third
Party Complainant-Appellant,

and

COLDWELL BANKER MORTGAGE, a d/b/a of PHH MORTGAGE and JP MORGAN CHASE BANK, NA,

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For Respondent – JP Morgan Chase Bank, NA

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COMES NOW, Charles and Donna Nickerson, Appellants, submit the following Brief to this Idaho Supreme Court in Support of our Petition for Rehearing.

> "There may always be exceptional cases or particular circumstances which will prompt a reviewing or appellate court, where injustice might otherwise result, to consider questions of law which were neither pressed nor passed upon by the court or administrative agency below. See *Blair* v. *Oesterlein Machine Co.,* 275 U.S. 220, 225.
>
> Rules of practice and procedure are devised to promote the ends of justice, not to defeat them. A rigid and undeviating judicially declared practice under which courts of review would invariably and under all circumstances decline to consider all questions which had not previously been specifically urged would be out of harmony with this policy. Orderly rules of procedure do not require sacrifice of the rules of fundamental justice.
> ...
> while recognizing the desirability and existence of a general practice under which appellate courts confine themselves to the issues raised below, nevertheless do not lose sight of the fact that such appellate practice should not be applied where the obvious result would be a plain miscarriage of justice." *Hormel v. Helvering*, 312 US 552 at 557, 558 (1941)
>
> "To begin, it is a well-established general rule that an appellate court will not consider an issue raised for the first time on appeal. (citations omitted). This rule is not an absolute bar to raising new issues on appeal; the general rule is disregarded when we think it necessary to remedy an obvious injustice. See *Thomas E. Hoar, Inc. v. Sara Lee Corp.*, 900 F.2d 522, 527 (2d Cir.), cert. denied, 498 U.S. 846, 111 S.Ct. 132, 112 L.Ed.2d 100 (1990). We will also sometimes entertain arguments not raised in the trial court if the elements of the claim were fully set forth and there is no need for additional fact finding. See *Vintero Corp. v. Corporacion Venezolana de Fomento*, 675 F.2d 513, 515 (2d Cir.1982). Entertaining issues raised for the first time on appeal is discretionary with the panel hearing the appeal." *Greene v. US*, 13 F. 3d 577 (2nd Cir. 1994).

Injustice has occurred.

PHH abused the Idaho judicial foreclosure action procedure to wrongfully and maliciously steal our family and ministry ranch in Clearwater County without cause or right. Crimes against real property, mortgage fraud, and financial frauds occurred without consequence because Idaho Second Judicial District Judge Michael Griffin refused to hear, consider or allow existing material evidence and facts that irrefutably dismiss PHH and Chase's complaint, allegations, and defenses to stand or be entered in the record. Judge Griffin overlooked, misapplied, and failed to consider statutes, decisions, and principles directly controlling this foreclosure action and the truth of the matter surrounding it. Consequently, PHH has derived unlawful benefit from foreclosing on this property and we have been systematically denied our

rights to properly present a defense and state our claims. Therefore, by law, the final judgment rendered is not based on the merits of this case. Rather, the judgment is rooted in lies and fraud; erroneously ignores issues that irrefutably defeat summary judgment in favor of PHH or Chase; unjustly cloaks material facts and questions that dismiss their claims with prejudice; and catastrophically evades its lawful, moral and ethical obligation to ensure equal access and consequence to justice.

Not only has our ranch and its equity been stolen in this unjust decision, but our good name and perfect credit has been stolen, corrupted, and destroyed by the willful actions of Chase and PHH. *A good name is rather to be chosen than great riches.* For this reason, the law protects one's good name and justice demands truth is what must govern the affairs of those found within its jurisdiction.

Justitia nemini neganda est - Justice is to be denied to no one

Omnis indemnatus pro innoxis legibus habetur - Every uncondemned person is held by the law as innocent.

Quisquis przesumitur bonus; et semper in dubiis pro reo respondendum – Everyone is presumed good; and in doubtful cases the resolution should be ever for the accused.

Justitia non novit patremnec matrem; solam. Veritatem spectat justitia. – Justice knows not father nor mother; justice looks at truth alone.

> "All men are by nature free and equal, and have certain inalienable rights, among which are enjoying and defending life and liberty; acquiring, possessing, and protecting property; pursuing happiness and securing safety." Constitution of the State of Idaho, Article 1 Declaration of Rights. Section 1. Inalienable Rights of Man.

On April 27, 2016, this Supreme Court affirmed the summary judgments rendered in a judicial foreclosure action by Judge Michael Griffin of the Second Judicial District of the State of Idaho, Clearwater County. We disagree and dissent. Written opinion to follow.

Perhaps the most serious financial conviction rendered against a financial portfolio and a good name is foreclosure. Foreclosure is the felony of the financial world where the confiscation of a convicted person's land and goods is the penalty. This most serious offense constitutes the mortgagor has failed, committed a crime, and brands the mortgagor a financial criminal.

Foreclosure is the ultimate consequence of default without legal excuse, to keep one's word or to fulfill and perform promises made in a contract. Default is "by its derivation, a failure. Specifically, the omission or failure to perform a legal duty, to observe a promise or

discharge an obligation, or to perform an agreement. The term also embraces the idea of dishonesty and of wrongful act, or an act or omission discreditable to one's profession." Black's Law.

It is well settled a foreclosure conviction mars your record and changes your life forever. The financial felon is no longer presumed trustworthy to pay or do the right thing. The consequences are far reaching, making financial recovery very difficult, if not near to impossible. In times past, debtors who failed to pay were proclaimed rebels or outlaws in public places. Today they are proclaimed financial lepers in public records.

As Idaho litigants, we have been condemned and branded unjustly; and unlawfully deprived of our rights to defend against our false accusers and to find relief against a vicious assault on our persons, the ownership of our ranch, our financial reputations, and our financial portfolio. We have been deprived opportunity to be heard or for evidence of our innocence to be considered. Default is not proven. The right of our accuser to bring this complaint against us or to suffer injury does not exist and is not established.

> *Nemo debet rem suam sine facto aut defectu suo amittere* - No man ought to lose his property without his own act or default.
>
> *Nemo punitur sine injuria, facto, seu defalta* - No one is punished unless for some wrong, act, or default.

Per Black's Law Dictionary, deprive is "to take. The term has this meaning in a constitutional provision that no person shall be 'deprived of his property' without due process of law, and denotes a taking altogether, a seizure, a direct appropriation, dispossession of the owner."

> Karlin noted, "Rights were owned by the people, as individual, and never dichotomized into personal and property. The principle established by the Magna Carta and thus basic to the common law and later to the Constitution was the identification of liberty and property. Ownership of property was evidence of liberty. In solemn ceremony, it was there decreed that neither the King nor government could take property except *per legem terrae*. The reach was not procedural but substantive. Coke in his writings used the phrase interchangeably with "due process of law;" and, in this form, the concept was included in the fifth amendment of the United States Constitution. Life, liberty and property comprised an invulnerable trilogy…"
>
> *per legem terrae* - by the law of the land; by due process of the law

Amendment V of the Constitution grants the right of due process to us when it creates a number of rights relevant to both criminal and civil legal proceedings and issues surrounding this

litigation in particularity. It forbids against double jeopardy. Creating double indemnity for us by not requiring the genuine issue of ownership of the note be proven violates this right.

Jus non patitur ut idem bis solvatur - The law does not permit that the same thing be twice paid.

Amendment V protects against self-incrimination. We have penned journals to demonstrate our passionate desire to tell our story to the Court. We have hid nothing for we are innocent and have done nothing wrong. Allowing depositions to be relied upon in the presence of our attorney's admissions we had no knowledge of them, when they do not in any way reflect the statements and admissions made by us, and when the only undisputed issue surrounding the truthfulness or veracity of their presentation is that we were present the day the depositions were allegedly taken, defies and mocks these rights. Failing to strike the depositions, ensure equal access to justice by requiring all attorneys to comply with the rules of procedure, and refusing to suppress without providing law or reason for us to refute, violates these rights. Repeatedly allowing opposing counsel to reference them to forge a self-incrimination that is not rooted in reality, truth or lawful discovery is fraudulent and violates this right. Despite any prejudices against us, or misrepresentations presented by opposing counsel, Amendment V guarantees our rights to fair and just proceedings and that we will not "be deprived of life, liberty or property, without due process of law."

Further, Amendment XIV of the Constitution states, "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Black's Law states, "The essential elements of 'due process of law' are notice and opportunity to be heard and to defend in orderly proceeding adapted to nature of case, and the guarantee or due process requires that every man have protection of day in court and benefit of general law. Daniel Webster defined this phrase to mean a law which hears before it condemns, which proceeds on inquiry and renders judgment only after trial."

This injustice demonstrates the inadequacy of the Idaho judicial system to protect innocent homeowners, is of great precedent potential, and of grave public concern.

The State of Idaho has not been and is not immune to the mortgage crisis that has plagued and is plaguing our country. The Idaho and United States Constitutions consider the right of homeowners inalienable. Thus, the right of due process is in place to protect these rights.

A law which hears before it condemns.

Chase admitted to owning our note and mortgage verbally (to us and third parties) and in writing. (R. 1232) Judge Griffin was aware we had witness testimony and physical evidence that PHH did not own our note. He prevented us from entering either in the record prior to the Summary Judgment hearing, promised to allow us to enter it afterward, then decided to base his ruling on only the evidence he had received prior to the hearing.

R. 1325-1329. Nickersons' *Memorandum in Support of Motion to Reconsider Judgment*

"The Nickersons filed a motion for continuance on the hearing for summary judgment, motion to strike, motion to take judicial notice and motion to amend to conform to evidence on February 5th informing the Court and opposing counsel they were not ready to proceed with the hearing because they had not received the opposing counsel's response and unexpected three additional motions in a timely enough manner to respond, being constrained by natural forces beyond their control. Because opposing counsel filed three additional and unexpected motions with their response that were to be addressed at the hearing, the Nickersons felt they needed more time to research, respond and prepare their defenses. The Court did not acknowledge or respond to the Nickersons request for continuance until the Court denied that motion at the start of the hearing on February 11th. The Nickersons had prepared responses but were waiting for a decision on the continuance before filing them. During the hearing, the Court ordered that only Charles or Donna Nickerson could address the court on each motion. As previously stated, the Nickersons clearly communicated to the court they were not ready and were certainly unaware of the Court's restriction to only let one of them speak on a specific point so they did not have opportunity to prepare their arguments accordingly. The Nickersons have not been able to find this rule anywhere in the Idaho code so they do not know how they could have known of this restriction prior to the hearing. Further, this created undue prejudice against the Nickersons to deny their Continuance, prevent the Nickersons from expanding the factual record of the case prior to judgment, and then grant judgment based on the absence of those facts. It created undue prejudice and confusion to state the Nickersons could send in their responses and even provide the address to send them to, then subsequently refuse to consider them, and grant judgment for the Plaintiff. It created undue prejudice to receive supplemental evidence of such importance that it refutes the Plaintiff has any ownership of the Nickerson loan whatsoever and the case must be dismissed, ignore it because the Court did not approve of the way it was presented, not provide the Nickersons the opportunity or any instructions to remedy their presentation, and then grant judgment in favor of PHH.

For the Court to rule against the Nickersons based on lack of evidence when the evidence was in the Court's chambers and in the record is an extreme injustice and is denying the Nickersons their right to due process. Obviously, the Nickersons were of the impression and should have believed these documents were accepted and being considered by the Court. There were no objections by the Plaintiff to their submission, the Court requested and provided instruction on how to send them, and the Nickersons were unaware of any other process or procedure to submit these documents.

"***'The fundamental requisite of due process of law is the opportunity to be heard.' *Grannis v. Ordean*, 234 U.S. 385, 394, 34 S.Ct. 779, 783, 58 L.Ed. 1363, [1368]. This right to be heard has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to appear or default, acquiesce or contest.

******

'An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. (Citations). The notice must be of such nature as reasonably to convey the required information,***and it must afford a reasonable time for those interested to make their appearance. (Citations)' 339 U.S. 306, 70 S.Ct. at page 657, 94 L.Ed. at page 873." *Roos v. Belcher*, 79 Idaho 473, 321 P.2d 210 (1958).

The Nickersons contend, since the Court requested the documents, the Nickersons had no reason to believe the Court was not considering those documents; and thus, the Nickersons had no cause to file a motion to reconsider. There was no order entered or judgment passed until now and the Nickersons have now filed a motion to reconsider.

The Nickersons also contend, since the Court did not inform or provide notice to the Nickersons that the documents and evidence would not be considered, by entering judgment, the Court denied the Nickersons rights to protect and keep their property and of due process guaranteed by the Constitution of Idaho Art. 1 §§ 1 and 13. Therefore, the Nickersons respectfully request the Court to reconsider and set aside judgment and provide the Nickersons with their constitutional rights to own and protect their property and to due process.

***

In accordance with I.R.C.P. 56(e) the Nickersons filed a Notice of Supplemental Evidence which included a supplemental affidavit introducing new evidence. I.R.C.P. 56(e) states, "The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits." However, the Court was silent on this affidavit. If the Court objected to the form, timing or substance of this affidavit then the Court should have notified the Nickersons and given the Nickersons an opportunity to correct any objections particularly in light of the importance of the evidence, and justice being served and the seriousness of the issue at stake. The evidence presented in this affidavit irrefutably denied and denies the Plaintiff had standing to bring the complaint before the Court. This evidence demonstrates PHH does not own the Nickersons loan or hold the Nickersons Note or have beneficial interest in the Nickersons Mortgage. This evidence clearly demonstrates and confirms PHH's entire case was based on fraud. Furthermore, on the opposite end, this Court failed to require PHH to produce the original note and mortgage despite the Nickersons numerous requests to PHH going back as far as early 2010. This court has broken long standing precedents and requirements by not forcing and compelling PHH to produce the original note and mortgage and has created a serious double liability for the Nickersons because PHH does not hold the Nickersons Note and Mortgage. Plaintiff must produce original note not copy otherwise maker may face double liability. *McKay v. Capital Res. Co., Ltd.* 940

S.W.2d 869 (Ark. 1997). "From the maker's standpoint, therefore, it becomes essential to establish that the person who demands payment of a negotiable note, or to whom payment is made, is the duly qualified holder. Otherwise, the obligor is exposed to the risk of double payment, or at least to the expense of litigation incurred to prevent duplicative satisfaction of the instrument. These risks provide makers with a recognizable interest in demanding proof of chain of title. Consequently, plaintiffs here, as makers of the notes, may properly press defendant to establish its holder status." *Kemp v. Countrywide Home Loans, Inc.*, 440 B.R. 624 (2010). Therefore, PHH must be required to produce the original note and mortgage and prove they were in possession of them prior to filing this lawsuit in order to prove standing. Since, according to the evidence, PHH cannot produce the original note nor prove they had it prior to filing their complaint, the judgment must be immediately vacated and judgment in favor of the Nickersons must be granted."

Judge Griffin's act of ignoring our evidence violates one of the very foundations of due process – a law which hears before it condemns. This act – refusing to hear our supplemental evidence in which Chase claims to be the real party in interest – violates the US and Idaho constitutions and has quashed the admission of Chase that this entire action is a fraud. Think about this for a minute. Let this sink in. Chase has admitted this entire action is a fraud. This evidence and admission has never been addressed or refuted by PHH or Chase and therefore should legally be deemed well taken. Neither has answered to this evidence. Additionally, circumstantial evidence and reasonable inference establish probable and presumptive evidence that create genuine issues of material fact that PHH does not have standing to bring this complaint. It is time for the Idaho Supreme Court to uphold the law and require Chase and PHH to admit the truth – PHH does not have standing to foreclose on us. Idaho law confirms this fact and this Court must not ignore Idaho law or our right to due process. See Appellant's Brief p. 27 ¶ c. Therefore, since the evidence clearly shows PHH does not hold or own our Note and neither Chase nor PHH refute the evidence, justice and truth demand this Supreme Court retract its opinion, rule in our favor, dismiss PHH's complaint with prejudice and allow us to pursue our counterclaims.

Further, affirming a judge's decision that is clearly the result of ignoring evidence sets a dangerous precedent against Idahoans and goes against the fundamentals of Justice – the fair treatment of people (Black's Law Dictionary). Justice does not allow the door to be closed on the evidence. Even the Idaho Rules of Civil Procedure Rule 59(a) and 60(b) promote justice by allowing newly discovered evidence to be presented. We presented the evidence of Chase's claim to own and hold our note prior to judgment being rendered and demonstrated why the evidence was not available in time for the summary judgment hearing.

R. 1227-1229. Nickersons' *Notice of Supplemental Evidence*

"This evidence was discovered through a Qualified Written Request (QWR) requested under RESPA, 12 U.S.C. § 2605(e), and a true and correct copy is attached as Exhibit A. Because this letter was sent to an alternate address on the account, the Nickersons were delayed in receiving it and therefore in presenting this evidence to the Court. Regardless, this letter irrefutably proves PHH does not have possession or ownership of the Nickersons Note and Mortgage, and judicially denies PHH's rights and standing to bring a complaint for foreclosure or any other action before this or any other court. Therefore, the Nickersons request the Court consider the evidence presented and rule accordingly.

In Exhibit A, Chase states, "We are not required to produce **the original note which will remain in our possession** in accordance with applicable record retention requirements...The **investor** for this loan is **JPMorgan Chase Bank, National Association.**" (emphasis added) This evidence contradicts and invalidates all previous assertions, answers, statements, arguments and representations presented to the Court by Chase and PHH that have been provided and used to attempt to establish standing, compliance with discovery, motions, and right to action. PHH and Chase have previously unequivocally claimed Chase did not own the Note, that Chase was only the servicer and that PHH allegedly received ownership via a transfer through a web of contradictory assertions. (See Nickerson Memorandum for Summary Judgment).

These misrepresentations were presented to the Court freely, willingly, intentionally and purposefully, and further demonstrate the malicious and outrageous pattern of fraud, deception unlawful acts, misrepresentation, reckless and unconscionable mortgage and foreclosure abuse and fraud PHH, Chase and Just Law have perpetrated against the Nickersons, their family, their property, this Court and the world at large. By now irrevocably claiming to be the Note holder and investor on the Nickersons Mortgage, Chase proves PHH does not have possession of the original Note and Mortgage, has no standing to bring or enforce this action, has not suffered loss, and has illegally attempted to create and forge illegal ownership. PHH's total lack of legal standing to present a claim can be summed up by the following legal phrases and legal maxims that have been passed down throughout the history of law:

fraus ominia vitiates – fraud vitiates everything
ex dolo malo non oritur action - No right of action can have its origin in fraud
ex dolo malo actio non oritur - A right of action cannot arise out of fraud
allegans contraria non est audiendus – One making contradictory statements is not to be heard

For summary judgment, movant must provide original note with proper certification. Sherer v. Bench 549 S.W.2d 57 (Tex. App. 1977) Plaintiff must produce original note not copy otherwise maker may face double liability. McKay v. Capital Res. Co., Ltd. 940 S.W.2d 869 (Ark. 1997). "It is also well settled that in moving for summary judgment in an action to foreclose a mortgage, a plaintiff establishes its case as a matter of law through the production of the mortgage, the unpaid note, and the evidence of default." *Rebuplic National Bank of New York v. Zito* ,280 A.D.2d 657 (2001) 721 N.Y.S.2d 244.

Since PHH cannot produce the original note because Chase has it in their possession and claims ownership of it, PHH does not have standing to bring this

complaint or enforce this action nor do they have a cause of action upon which relief may be granted. I.C. § 6-101 Proceedings in foreclosure, states " (2) The provisions of this section must be construed in order to permit a secured creditor to realize upon collateral for a debt or other obligation agreed upon by the debtor and creditor." PHH does not have ownership nor possession of the Note (the debt) and thus, is not a secured creditor. Therefore, as a matter of the laws of the State of Idaho, the Constitution of the United States Article 3, common law , public policy, and longstanding and established legal principles, the Nickersons humbly request the Court consider this evidence, dismiss and deny PHH's complaint and summary judgment with prejudice, and grant summary judgment in favor of the Nickersons."

This was ignored by the District Court so we presented it again in our Rule 60(b) motion and it was ignored once again. Now this Court has ignored it as well. Chase, PHH and their counsels of record have lied to the District Court and now this Court. Justice demands our evidence be heard. In addition to this letter, testimony of verbal admissions made to us and third parties needs to be heard. Anything less is an extreme abuse of the judicial authority granted to this Supreme Court and an extreme violation of our rights to due process – a law which hears before it condemns.

Foreclosure is a harsh remedy and should not be treated lightly. Genuine issues of material fact exist that defeat Summary Judgment in favor of PHH or Chase.

PHH's complaint of default is inaccurate. The complaint claims 13 missed payments, but now PHH has changed their testimony to claim there are only 9 missing payments. Chase claimed we were current in January 2010, but has since changed their claims to 11 missed payments. Based on fact and law, no default exists. Justice demands a complaint of default to be accurate. Justice demands evidence that can refute any existence of default to be heard.

PHH does not own our note and mortgage and did not when this Complaint was filed. Chase claims to be the real party in interest, but has testified they were the Servicer only. Idaho laws and federal regulations have been violated. Judge Griffin relied on our evidence regarding ownership for findings and rulings, but ignored the evidence in the record in regards to final judgment. Judge Griffin then failed to provide rulings we could reference so they could be reversed.

There are other genuine issues that demonstrate error in summary judgment that are already in the record and that will be addressed with a rehearing. See Addendum.

Foreclosure affects thousands of Idahoans. This Supreme Court cannot ignore the evidence, fraud, and violations committed. Consider the widespread devastation such a precedent could set. Unchecked mortgage fraud has wreaked havoc on some innocent Idaho

homeowners. Justice has and is being trampled upon and it is the obligation of this Supreme Court to defend it.

A law which proceeds on inquiry.

Material facts and witness testimony demonstrate PHH does not own our loan, dispute any evidence of a default, and invalidate any claims of injury by PHH and Chase. PHH and Chase have fatally failed to refute our facts and impeach these testimonies so these facts and testimonies become presumptive facts. Due process requires discovery be conducted to resolve genuine issues of material fact before rendering judgment. Instead, Judge Griffin stated opinions such as "There was no contract between Chase and the Nickersons that has been presented to the court" to help Chase avoid discovery, then in contradiction stated, "Chase assigned the note [contract] to PHH in 2010" to help show a chain of title so PHH could foreclose. Judge Griffin then called a letter from Fannie Mae hearsay when it rendered the assignment to PHH invalid, but later referred to its contents as undisputed fact, as did this Supreme Court. These are but two examples of the myriad of contradictions and inconsistencies developed and presented by PHH, Chase, the District Court and now this Supreme Court. All of these errors could have been avoided if the District Court understood and upheld "a law which proceeds on inquiry" instead of ignoring the evidence and arguments we presented. The District Court should have compelled Chase and PHH to provide the discovery we requested instead of quashing due process of law. We have been severely prejudiced in this appeal because of the District Court's denial of our right to due process and this Supreme Court has erred in affirming this denial.

A law which renders judgment only after trial.

A trial must include due process of law. Summary judgment is not appropriate unless there are no genuine issues of material fact present. No evidence submitted by PHH and relied upon for Summary Judgment would be admissible at trial.

It is an assignment of error to award Summary Judgment to PHH when PHH never established standing. At the first summary judgment, Judge Griffin recognized there was no assignment to Chase in the record that proved they had beneficial interest and asked Kipp Manwaring, PHH's counsel, if it mattered that no assignment to Chase existed in the record. Inconceivably, Kipp Manwarring falsely stated it did not matter because the assignment from Chase to PHH gave PHH beneficial interest. However, Chase has to have something to give

something. This material fact is in dispute based on Chase's own admissions. At that time, Chase had denied ever owning the Note (R. 747-751, 759, 760), and the Court had determined Chase was the Servicer and not in contract with us (R. 689). Chase had no beneficial interest to give. Any beneficial interest Chase allegedly gave to PHH in the assignment presented had to be and must be firmly established if it is to be relied upon to grant PHH standing.

quod ab initio non valet in tractu temporis non convalescet – That which is bad in its commencement improves not by lapse of time.

It is an assignment of error to ignore default records proven inaccurate and ignore the errors in Chase's record keeping and PHH's regurgitation of it when they establish genuine issues of material fact. Mr. Mitchell spoke with bank employees who provided solid testimony regarding the abusive debt collection experienced by us, detailed how their attempts to help us were maliciously thwarted by Chase and PHH, and validated prevention of performance. Ron Casperite's, PHH's only witness, testimony was impeached, invalidated, and did not comply with Rule 56 as he did not and could not have had personal knowledge of our interactions with Chase, but the Judge accepted his testimony as fact anyway. As a matter of record, there is no proof anyone by the name of Ron Casperite even signed this affidavit as no notary attested to the signature on the affidavit.

Judge Griffin held his own trial with he, the judge, as his own jury. Frankly, if we had been given the opportunity to pick our jurors as in a normal trial, we would have immediately disqualified Judge Griffin as a juror for obvious lack of knowledge regarding mortgage lending and personal prejudice toward this case. Whether or not the judge has previous experience with people paying or not paying their bills or any prejudices regarding collection practices is irrelevant to this litigation. PHH must be required to prove they owned our note, we defaulted, and they have been injured. The Court failed to require them to prove this. Chase had the burden of proving our allegations regarding their abusive debt collection practices were false, that they and PHH were not misrepresenting who owned the note, and that they were innocent of fraud. The Court failed to require them to produce evidence, mandated to be readily available at their disposal, which irrefutably proves our claims. PHH nor Chase have ever answered the letter from Chase claiming they own the property. PHH has never answered to the invalid assignment in the record. Look at the chain of title…it is a popcorn record, popping wherever it needs to go for the argument being presented. Neither PHH nor Chase has been challenged on the fact their default amounts disagree. We have been denied due process of law. We have been denied a true trial.

Judge Griffin determined what evidence he wanted to hear and allow to be entered in the record so he could render the judgment he wanted to render. This is not justice. This is bought and paid for injustice, extreme ignorance of judicial responsibility, or organized crime exhibiting its power in this State. We apologize for bluntly stating our honest opinions; however, the severity of consequence we are unjustly experiencing and the finality of your decision at the State level compels us to be forthright.

This violates our right to due process. The State of Idaho has violated Amendment V and XIV of the United States Constitution and the Idaho Constitution by affirming this decision. Courts in Idaho cannot ignore the truths of matters and manipulate laws and rules randomly to create decisions with no reversible errors that support judgments they want to render. This Supreme Court is in error to simply affirm the lower Court decision and not consider the laws in place to protect the public. Yes, some laws are subject to interpretation and a trial court is granted discretion to apply those laws to cases in front of them. However, allowing a Judge to ignore evidence and prejudicially fail to require counsels to follow Rules of Civil Procedure and obey the laws of the land defies the very definition of discretion and defiles his oath of office. This denies due process of law, violates the United States and Idaho Constitutions, and is beyond the authority of this Court and this State to uphold.

> *The law cannot be bent by favor, not broken by power, nor corrupted by money; for not only if it be overthrown, but even if it be neglected or carelessly preserved, there is nothing secure in what anyone may think he has, or will inherit from his father, or yet may leave to his children.* Cicero, Pro CAECINA 73

This Petition for Rehearing is hereby submitted as a whole and in its entirety to protect our rights to a defense, to ensure our rights to equal access to justice, and so this Court may address issues of grave public concern. Our Objection to Costs and Fees and Motion for Sanctions along with all other documents submitted to this Supreme Court should be considered in conjunction with this Petition for Rehearing and incorporated herein in order to facilitate brevity in presenting our meritorious reasons and needs for a rehearing.

Petition For Rehearing Table of Contents

Assignment of Error 1: The intentional prevention of performance and abusive debt collection practices of PHH, Chase and their accomplices has irreversibly impeached their rights to cause of action and claims to injury, and unjustly denied our rights to a defense and relief.

> *"Prevention doctrine is a common-law principle of contract law which says that a contracting party has an implied duty not to do anything that prevents the other party from performing its obligation. A party who prevents performance of a contract may not complain of such nonperformance." www.definitions.uslegal.com. The Nickersons assert PHH prevented the Nickersons from performing by, 1) refusing to verify the alleged default by claiming they did not have the account records, 2) refusing to allow the Nickersons to dispute and cure any alleged default, and 3) intentionally blocking the*

Nickersons' efforts to make payments. Because of the foregoing actions, PHH excused the Nickersons from performance and entitled the Nickersons to all benefits of full performance. Therefore, since PHH prevented performance and reprobata pecunia leberat solventem – money refused releases the debtor, PHH has no basis for a complaint and their complaint must be dismissed. (Twelfth Affirmative Defense, Amended Answer, Counterclaim and Third Party Complaint).

Black's Law Dictionary defines prevent as "to hinder, frustrate, prohibit, impede, or preclude; to obstruct; to intercept. To stop or intercept the approach, access, or performance of a thing."

We were prevented from performance.

Verified first amended answer, counterclaim and third-party complaint.
R. 109 ¶ 8 – When the Note and Mortgage was transferred to Chase the Nickersons immediately began having accounting problems with their account.

R. 109 ¶ 9 – Nickersons would receive notices of failure to provide insurance followed by notices that Chase had made a mistake, etc. Nickersons had contact with Chase employees who stated from the computer records regarding the Nickersons' account that it showed they were being billed twice a month instead of monthly.

R. 109 ¶ 12 – Nickersons made numerous requests for information about their account, including but not limited to statements but never received anything.

R. 109 ¶13 – During this time the Chase employees that Nickersons had contact with were rude, offensive and threatening.

R. 111 ¶ 32 – Since February of 2010, Nickersons have not been given the opportunity to make monthly payments on the Note and Mortgage.

R. 111 ¶ 33 – Wells Fargo and another entity have told both Coldwell and PHH that the Nickersons want to pay on the Note and Mortgage. Both Coldwell and PHH has refused to contact and work with the Nickersons.

R. 112 ¶ 38 – Nickersons have communicated to PHH's attorney in June or July of 2010 that they wanted to pay and resolve this but were ignored.

R. 112 ¶ 39 – As set forth above, Nickersons have always been willing and able to pay the obligations under the Note. Coldwell, Chase, and PHH have failed to act in good faith in this matter and refused to cooperate with and work with the Nickersons in resolving a matter that was created by the accounting errors and notice errors by Coldwell, Chase, and PHH.

Affidavit of Charles Nickerson in support of motion for Summary Judgment

R. 1085, 1086 – after months of us disputing the default and PHH refusing payments, on May 25, 2010, Coldwell Banker sent a letter to the Nickersons referring our mortgage to an attorney to start the foreclosure process…In January of 2010, the Nickersons were in good standing with Chase.

Affidavit in support of motions to reconsider

R. 1290-1292 ¶¶ 6-24

6. Despite numerous requests, I was denied payment receipts, account statements, escrow analysis and written confirmation of changes made to account history due to misapplied payments, force placed insurance, payments placed in suspense accounts, double charges removed, and other such Chase record and bookkeeping error documentation.

7. The principal balance on the detailed transaction history (account history) provided by Brandie S. Watkins (Affidavit of Brandie S. Watkins, Exhibit F) shows a balance of $0 in November 2009 and a negative balance of $-1,186.90 on January 21, 2010.

8. Chase's detailed transaction history principal balance shows the Nickersons were due a refund of $1,186.90 as of January 21, 2010.

9. Since the principal balance on Chase's account history is $0 in November of 2009, then as of November 2009 according to Chase, there is no more debt owed on this loan.

10. If there is no more debt owed on a loan, then the loan cannot be in default.

11. If all payments are made, then the loan cannot be in default.

12. I made all payments I was allowed to make, knew to make or was instructed to make by Chase and to Chase, and was current and in good standing with Chase in January 2010.

13. A Chase employee named Kim who we trusted and believed told us our account was in current and in good standing as of January 2010.

14. A Wells Fargo employee named Heather reviewed a credit report in January 2010 and told us Chase represented and reported that we were current on this account. We relied on these representations.

15. According to Chase's account history, we were not in default as of January 21, 2010.

16. Upon the alleged transfer of servicing from Chase to PHH, PHH immediately claimed a default of 14 missed payments.

17. My wife and I disputed the default and requested PHH to provide the account records. PHH refused to research the disputed default and claimed they did not have the account records. On July 3, 2012, PHH stated, in response to the Nickersons request for admissions, "PHH is unaware of any payments made or not made by the Nickersons to Chase."

18. Since, in February of 2010, PHH, by their own admission, was unaware of any payments made or not made by the Nickersons to Chase, then PHH could not claim a default.

19. PHH would not, did not and has not allowed me or my wife to make any payments since February 2010.

20. PHH would not and did not provide me with any proof of default/

21. PHH blatantly refused to accept payments, refused to research and provide proof of the alleged default, and blocked all efforts and attempts we made to resolve the disputed default.

22. As of November 2013, PHH claims the Nickersons missed 9 monthly payments which contradicts PHH's claim of 14 missed monthly payments in February 2010. This is an $11,000 difference and is basis for PHH's claims to be dismissed because the Nickersons were never presented with the default amount nor given the opportunity to cure it.

23. The proof of default PHH provided in November 2013 was a part of the Second Affidavit of Ronald E. Casperite.

24. The Second Affidavit of Ronald E. Casperite is missing the notary's signature and thus, is not properly notarized which according to the Washington Supreme Court constitutes a criminal act, Klem v. Washington Mut. Bank, 295 P.3d 179, 176 Wash. 2d 771 (2013).. Therefore, the Second Affidavit of Ronald E. Casperite should be thrown out and stricken from the record. (See Second Affidavit of Ronald E. Casperite)

R. 1419. *Charles Nickerson's and Donna Nickerson's Amended Answer, Counterclaim, Third Party Complaint and Demand for Jury Trial*

PHH relies and their case is fatally dependent on and upon an affidavit of Ron Casperite. Ron Casperite, working as an Account Analyst on behalf of PHH, provided these records as true and correct based on his personal knowledge. Ron Casperite exhibited culpable negligence, contradicted himself and swore to having personal knowledge regarding information on the Nickersons account which he cannot possibly or plausibly have any personal knowledge to or of. Ron Casperite began working for PHH in February 2010. This is the same month PHH started, or at least revealed, this assault on the Nickersons. Ron Casperite worked in banking and mortgage lending at a New Jersey bank for at least or around twenty years. Ron Casperite has worked, represented or provided testimony on behalf of other companies such as HSBC Bank N.A. as a hired to perform witness. Ron Casperite was given records that he presumably viewed on his computer screen that could or could not have been altered, edited, corrected, or fabricated. Ron Casperite did not have personal knowledge of the authenticity, validity, truthfulness, accuracy, or origination of these records. Ron Casperite cannot swear whether these records were fabricated or altered by others, who had access and opportunity, with the intent to swindle the Nickersons and commit fraud on the Court. Ron Casperite has committed perjury. Ron Casperite has proven his records are inaccurate, invalid and unreliable. Ron Casperite is not a credible witness and his affidavits are inadmissible as evidence.

SAR 47. Charles Nickerson's *Affidavit in Support of Motion for Relief from Judgment*

I presented evidence to the Court prior to judgment being rendered that the Second Affidavit of Ronald E. Casperite was invalidly notarized. See Nickersons Objection to Second Affidavit of Ronald E. Casperite filed on March 24, 2014. In addition, the Court, on its own initiative should have noticed this affidavit was improperly notarized and in keeping with the Court's duties and responsibilities to "...be faithful to the law and maintain professional competence in it." Idaho Judicial Canon

3B(2), should have disregarded this affidavit and sanctioned PHH and Just Law for submitting documents that embody a criminal act.

SAR 54. Exhibit 4 attached to this affidavit is a true and correct copy of a letter from James Zombeck, Notary Unit Supervisor for the State of New Jersey Department of Treasury. In this letter Mr. Zombeck states the notarization of the Second Affidavit of Ronald E. Casperite is invalid. This new evidence was obtained after the Court chose to ignore and disregard the evidence, laws and case law the Nickersons presented proving the notarization was invalid. *Mr. Zombeck's letter can be found at* SAR 63.

Witness testimonies, account notations, taped conversations and solid material evidence supports our claims of prevention of performance and the abusive debt collection practices of PHH, Chase and their accomplices. Witness testimony and authority collected and reviewed by legal representation confirms our integrity, commitment to our obligations, and sound financial decisions caused us to be victimized by Chase and PHH's abusive debt collection practices. In our answers to PHH's second set of discovery requests we provided a list of witnesses that had specific knowledge of our interactions with Chase and PHH and provided details of what these witnesses could attest to. Additional witnesses and details regarding testimonies was provided to Mr. Mitchell but was not entered in the record. Times, numbers, third party witnesses who could corroborate and testify to taped conversations, and other such information was also provided as applicable, but not entered in the record.

R. 286-289, 490-493. Nickersons' answers to interrogatories and requests for production.

"Heather, Wells Fargo: Heather knows everything about what has happened and she recommended numerous times for the Nickersons to get an attorney. Heather told the Nickersons that Chase reported that everything was OK in January 2010. Heather is expected to testify that both Chase and PHH broke federal regulations by not working out a solution/resolution with the Nickersons. She is also expected to testify about the relationship between the Nickersons and Wells Fargo and the status of the Nickersons' second mortgage.

Jody, Wells Fargo: Jody knows everything about what has happened.

Theresa, Wells Fargo: Theresa knows everything about what has happened.

Kim, Chase: Kim knows all of the accounting issues on Chase's side. She is expected to testify with regards to how hard the Nickersons worked to settle this issue. Kim repeatedly told the Nickersons that there was a problem with their records. Kim made numerous research requests. Kim also made numerous document requests for the Nickersons to get receive statements, account histories, etc. Kim told the Nickersons that it appeared they were being billed two times monthly. In January 2010, Kim told the Nickersons that they were in good standing with Chase.

Erika, Chase: On December 15, 2010, Erika told the Nickersons that they were not in foreclosure and that everything was OK. Nickersons asked that this conversation be recorded.

Ann, Chase: On May 13, 2010, the Nickersons called and spoke with Ann for the first time. Ann already knew the Nickersons' because Kim (referenced above) told Ann the Nickerson's situation. Ann facilitated acquiring the Nickersons' account history. Nickersons asked that this conversation be recorded. [Note: this is the same account history provided by Chase's witness Brandi Watkins which this Court affirms is inaccurate.]

Yara, Chase: The Nickersons spoke with this Chase employee on January 12, 2009. Nickersons asked that this conversation be recorded.

Resa, Chase: The Nickersons spoke with this Chase employee on January 15, 2009. Nickersons asked that this conversation be recorded.

Jamie, Chase: The Nickersons spoke with this Chase employee on February 5, 2009. Nickersons asked that this conversation be recorded.

Maribel, Chase: The Nickersons spoke with this Chase employee on March 9, 2009. Nickersons asked that this conversation be recorded.

Veronica, Chase: The Nickersons spoke with this Chase employee on April 23, 2009. Nickersons asked that this conversation be recorded.

Earl, Chase: The Nickersons spoke with this Chase employee on April 30, 2009. Nickersons asked that this conversation be recorded.

Michelle, Chase: The Nickersons spoke with this Chase employee on June 1, 2009. Nickersons asked that this conversation be recorded.

McKayla, Chase: The Nickersons spoke with this Chase employee on September 2, 2009. Nickersons asked that this conversation be recorded.

Greg, Chase: The Nickersons spoke with this Chase employee on November 11, 2009. Nickersons asked that this conversation be recorded.

Bridget, Chase: The Nickersons spoke with this Chase employee on November 11, 2009. Nickersons asked that this conversation be recorded.

Izzy, Chase: The Nickersons spoke with this Chase employee on December 11, 2009. Nickersons asked that this conversation be recorded.

Thomas, Chase: The Nickersons spoke with this Chase employee and requested the conversation be recorded.

Kyle, Chase: The Nickersons spoke with this Chase employee and requested the conversation be recorded.

Shannon, Chase: The Nickersons spoke with this Chase employee and requested the conversation be recorded.

Andrei, Chase: The Nickersons spoke with this Chase employee and requested the conversation be recorded.

Linda, Chase: The Nickersons spoke with this Chase employee and requested the conversation be recorded.

Dominic, PHH: The Nickersons spoke with this PHH employee on March 11, 2010.

Richard, PHH: The Nickersons spoke with this PHH employee on March 11, 2010 by calling (888)418-0364.

Bill, PHH: The Nickersons spoke with this PHH employee on March 22, 2010.

Michael, Customer Service, PHH: The Nickersons spoke with this PHH employee on April 23, 2010 by calling (856) 917-0050.

Lindsey, PHH: The Nickersons spoke with this PHH employee on May 13, 2010 by calling (800)330-0423. Lindsey informed the Nickersons that all they could do to obtain an account history was to call Chase.

Kelly, PHH: The Nickersons spoke with this PHH employee on May 19, 2010.

Dominic, Coldwell Banker: The Nickersons spoke with this Coldwell Banker employee. Did original loan and Nickersons discussed with him trying to straighten things out after PHH repurchased loan.

Albert Ernacchio, Coldwell Banker: A title company employee at closing communicated with this Coldwell Banker employee.

Bradon Howell, Just Law: Mr. Howell informed the Nickersons of the default amount. The Nickersons' told him that they disputed that default amount. The Nickersons told Mr. Howell (a) that Chase/PHH were fraudulently attempting to take their property, (b) that their last payment was made on January 21, 2010, and (c) that they were denied the opportunity to make any payments after that January date. The Nickersons also told him that they wanted to work out a resolution with his client and bring the account into good standing. The Nickersons clearly stated to Mr. Howell that they wanted to keep the property and explained that they had the financial resources to do so. The Nickersons expressed how damaging Mr. Howell's client's proceedings were to their credit rating

and that it was creating extreme financial hardship for them. The Nickersons pointed out their parcel was a 50 acre parcel and a non-judicial foreclosure was not appropriate. Mr. Howell state he would speak with Jason Rammell and get back to them. Mr. Howell, spoke with Mr. Rammell and then informed the Nickersons that Mr. Rammell would be going forward with the non-judicial foreclosure.

Jason Rammell [PHH's first attorney of record]: The Nickersons requested to speak with Mr. Rammell. Bradon Howell stated that he relayed the Nickerson's information to Mr. Rammell, but Mr. Rammell said they were hired to foreclose and were going forward with the foreclosure.

Pete Elliot, Genworth Financial (PMI Insurance Provider): The Nickersons spoke with this Genworth Financial customer service employee. Aware of entire situation.

Michael, Genworth Financial (PMI Insurance Provider): The Nickersons spoke with this Genworth Financial customer service employee. Aware of entire situation."

R. 742. *Plaintiff's Response to Defendant Nickersons' Request for Admissions*

REQUEST FOR ADMISSION NO. 13. Admit the Nickersons made payments to Chase in November 2009, December 2009, and January 2010.

RESPONSE: PHH is unaware of any payments made or not made by the Nickersons to Chase. In that regard this request is denied.

The testimonies of these and other witnesses will comprehensively attest to all claims made by us and provide proof and evidence of prevention of performance, false claims of abandonment, threats of unlawful eviction, malicious attempts to break down our relationships with other creditors, validation of our perfect credit history, forensic analysis of our chain of title, and other such claims. These testimonies will prove PHH has no beneficial interest in our Note, no default occurred, no injury has or could be suffered by PHH, and we have suffered severe, significant and substantial damages. *Testimony is evidence that a competent witness under oath or affirmation gives at trial or in an affidavit or deposition.* Black's Law. Verbal motions were made to present witnesses to expand the factual record of the case. Mr. Mitchell heard the testimony of many of our witnesses. We were denied our right to present a defense so we submit the existence of our witness testimony as evidence to refute all rights and claims of PHH and Chase.

Blacks Law states, *To perform an obligation or contract* is *to execute, fulfill, or accomplish it according to its terms* and qualifies performance as *the fulfillment or accomplishment of a promise, contract, or other obligation according to its terms*. Montana Code Annotated (MCA) § 28-1-1302. **Effect when performance prevented by creditor.** "If the

performance of an obligation is prevented by the creditor, the debtor is entitled to all the benefits that the debtor would have obtained if the obligation had been performed by both parties."

Failure to perform if prevented negates obligation of the debtor and claims of injury for the creditor.

Abusive debt collection

15 U.S.C. § 1692d Harassment or Abuse

"A debt collector may not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

(1) The use or threat of use of violence or other criminal means to harm the physical person, reputation, or property of any person.

(2) The use of obscene or profane language or language the natural consequence of which is to abuse the hearer or reader.

(3) Causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse or harass any person at the called number."

PHH and Chase barred us from access to our account records. This violates:

12 C.F.R. § 1024.38 which requires servicers to "(iii) Provide a borrower with accurate and timely information and documents in response to the borrower's requests for information with respect to the borrower's mortgage loan."

PHH refused to research its claim of default in violation of:

12 C.F.R. § 1024.35. "(e) Response to notice of error. (1) Investigation and response requirements. (i) In general. Except as provided in paragraphs (f) and (g) of this section, a servicer must respond to a notice of error by either: (A) Correcting the error or errors identified by the borrower and providing the borrower with a written notification of the correction, the effective date of the correction, and contact information, including a telephone number, for further assistance; or (B) Conducting a reasonable investigation and providing the borrower with a written notification that includes a statement that the servicer has determined that no error occurred, a statement of the reason or reasons for this determination, a statement of the borrower's right to request documents relied upon by the servicer in reaching its determination, information regarding how the borrower can request such documents, and contact information, including a telephone number, for further assistance."

As demonstrated above, PHH's and Chase's refusal to provide records and research disputed errors violates federal law. PHH refused to respond to the Nickersons notice of error. PHH refused to take any corrective action. PHH refused to even conduct an investigation. PHH has admitted they did not have any of Chase's account records. If you do not have the account

records, you cannot claim a default, because you have no proof, evidence, foundation or basis to claim default. PHH's and Chase's failure to provide mandated documentation circumvented our ability to review our account records for errors and fraud, and creates impossibility in providing physical discovery without access to those records. One cannot produce what one does not have. Reasonable inference creates a material fact - PHH and Chase intentionally failed to provide required documentation in order to prevent us from successfully creating a paper trail that would indict them and generate extreme exposure for their actions.

PHH and Chase failed to provide mandated receipts for payments according to the terms of the alleged contract and according to I.C. § 9-1502 "Whoever pays money, or delivers an instrument or property, is entitled to a receipt therefor from the person to whom the payment or delivery is made and may demand a proper signature to such receipt as a condition of the payment or delivery." Chase refused our demands. The District Court erred by ignoring this and recognizing how destructively it impacted our ability to defend against their claims.

> R. 1522. *Charles Nickerson's and Donna Nickerson's Amended Answer, Counterclaim, Third Party Complaint and Demand for Jury Trial*
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> a. Chase refused to provide statements and research discrepancies. 12 C.F.R. § 1026.41 Periodic statements for residential mortgage loans requires servicers to provide statements. Numerous conversations took place with Chase employees asking them to and demanding they provide statements to the Nickersons so they could confirm the payments they were making were being credited correctly. The Nickersons would call in a payment or pay in person at a local branch and receive a confirmation number. Then they would call back to make sure the payment was accepted and get a Chase employee who would state they did not see the payment made so the Nickersons would provide the confirmation number for the payment that was just made. At times, the Chase employee would state "that is not a Chase confirmation number" and act rudely when questioned. The Nickersons would then end the conversation call back, or stop by a branch. Sometimes this process would go on three or more times before they finally spoke with a Chase employee who could confirm the payment had been made. This was extremely time consuming, vexing, frustrating and annoying for the Nickersons and only had to be done because Chase would not send statements or provide receipts to the Nickersons. This is further traumatizing and becomes even more inconceivable and outrageous when Chase and PHH have 1) maliciously and falsely claimed default 2) tried to transfer the federally regulated burden of record keeping that belongs to the lender to rest upon the Nickersons, 3) concealed, hid, destroyed and prevented the Nickersons access to any records on their account, 4) fraudulently crafted records to reflect the records they thought the Nickersons could produce or had access to, 5) petition the court to alter, edit and change these "true and correct" records multiple times to reflect the irrefutable "oops" proofs they did not yet know the Nickersons had, and 6) so far seemingly and effectually get away with it.

The records presented have been altered and are not a true reflection of the account records. Though the burden of record keeping clearly rests with PHH and Chase, we produced receipts of payments and other account records in order to stop PHH's non-judicial foreclosure and compel them to work with Chase to get the records straightened out. We sent Just Law our records in good faith based on unfulfilled promises of returning all originals to us after copies were made. Even in light of proving the inaccuracy of the records and impeaching the testimony provided, we were denied opportunity to conduct further discovery or have the Court consider the evidence discovered. Conducting discovery of our account records, notations and testimony defeats the summary judgments rendered and irrefutably supports every claim we have made. Due process requires the evidence be heard. R. 1419.

PHH and Chase refused to provide printouts of our account which we repeatedly requested in writing, telephonically, in person, and through third parties. We did not receive requested documentation of record keeping errors, their subsequent corrections, proof of payments made and other account documentation needed for our personal records even though customer service representatives and bank employees repeatedly requested these items be mailed to us for documentation purposes. Notations of each occurrence were made on our account and read back to us and other third parties at our request to verify the accuracy of the record being created and requests being made. Tape recordings of these conversations were created.

> R. 1421-1422, 1489, 1524. *Charles Nickerson's and Donna Nickerson's Amended Answer, Counterclaim, Third Party Complaint and Demand for Jury Trial*
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> 121. By law the mortgage servicer is required to save and store all communication between themselves and the mortgagor. The Nickersons insisted all conversations between the Nickersons and PHH and, or, Chase be tape recorded. The Nickersons were assured all conversations were being taped. The representatives even paused at times to "turn on the recording." At all times they promised the conversation was being taped. No taped conversations have been provided. The Nickersons also insisted notations be made on the accounts. No records of our countless and extremely detailed conversations have been provided. These notations were read back to the Nickersons at the end of conversations at the request of the Nickersons. Both Chase and PHH have either broken the law by destroying evidence or are refusing to provide the requested communications records because they further incriminate them. There is no question as to the existence of the records. Since Chase refused to provide receipts, statements, transaction records, error corrections and other documentation for the Nickersons as required by law, the records recorded by Chase are necessary for the Nickersons to be able to have due process of law. Record retention is their rightful, legal and regulated responsibility (12 C.F.R. § 1024.38). They have failed to perform it. Therefore, the Nickersons should have the benefits of full performance under the law.

R. 1489

54. On all of these calls, the Nickersons asked the Chase employee to make notes on the account and tape the conversation so a complete record of what was going on could be referenced later because Chase was not sending statements. The Nickersons requested Chase employees read their notations and requested them to add to the notations as needed to create a complete record. The Chase employees stated they would send a confirmation and or a copy of the changes made, but none were ever forthcoming. The Chase employees stated they would tape the call and at times asked the Nickersons to hold a minute while they started the recording. The Nickersons never once agreed to speak to a Chase employee without the conversation being taped. The Nickersons were told the tapes were being stored by a third party entity and would be available to the Nickersons if needed at a later date.

R. 1524

c. The Nickersons required all phone conversations with Chase to be taped. During these numerous, frustrating and time consuming conversations the Nickersons always asked and insisted as a prerequisite to speaking with the Chase employees that they tape the conversations so there would be an irrefutable record of the calls and their content. The Nickersons refused to speak with the representatives, until the representatives confirmed the conversations were being taped. The Nickersons believed every conversation would be and was notated according to Federal Banking guidelines. According to the representations made by the Chase employees, every conversation with the Nickersons was taped. At times when the Nickersons would make a request to record the conversation, the Chase employee would say hold, on and then indicate the recording had been started. The Nickersons requested these recordings or transcripts of these recordings be provided but Chase refused even after the Nickersons provided dates of when some of these conversations took place and the name of the Chase employees who took the calls.

d. In addition to insisting calls be taped, the Nickersons requested notations be made to the account with each call for documentation of the call and what had been discussed. The Nickersons then requested Chase read those notations back to make sure they were accurate and complete. Other Chase employees read previous employees notations on the account on numerous occasions.

From February 2010 to present, Chase has barred us access to bank employees intimately familiar with our accounts who 1) have personal knowledge of the record keeping nightmares we experienced, 2) have personally researched and proven false and inaccurate all claims of default or missed payments, 3) have worked with numerous other departments to find moneys hidden in "unusual" suspense accounts, 4) have correctly applied those moneys according to the terms of the loan, 5) have validated excessive moneys were being held in escrow accounts that could be applied to future payments, 6) have determined suspicious activity was plaguing the veracity and authenticity of our account records, and 7) have admitted to us and other third parties that our account along with a batch of others were being intentionally tampered with. Further, these

witnesses agreed and have offered testimony to corroborate and confirm they made notations to our accounts and read notations on our accounts that dispute any finding of default and to confirm all conversations with us were required to be taped. If Chase and PHH are telling the truth, they should not object to providing the notations and taped conversations, nor should they avoid answering whether or not PHH owns the loan. Justice and due process require them too.

When PHH became involved with our loan in February 2010, PHH barred us from performance. PHH has stated "PHH is unaware of any payments made or not made by the Nickersons to Chase." (R. 742) They used this admission to avoid allowing discovery that refutes the existence of any default whatsoever. Their admission prevents PHH from claiming any injury caused by the Nickersons.

> R. 1406-1407. *Charles Nickerson's and Donna Nickerson's Amended Answer, Counterclaim, Third Party Complaint and Demand for Jury Trial*
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> 55. Showing that the Plaintiff suffered an injury and that it was caused by the Defendants is a necessary component to establishing a cause of action upon which relief may be granted. PHH, has not, can not, and never will be able to establish any alleged or actual injuries suffered by PHH or other principals could possibly or plausibly be the result of any alleged action or non-action of the Nickersons.
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> 56. Failure to establish an injury caused by the Nickersons is fatal to PHH's complaint.
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> 57. Based on prevention of performance, condition precedent, breach of any alleged contract by interference with performance, impotentia excusat legem - impossibility is an excuse in the law, and nemo tenetur ad impossibile - no one is required to do what is impossible, any alleged or sustained injuries, damages or losses are caused by, and are therefore the direct and sole responsibility of and liability of PHH and the other principals and not the Nickersons. 1) The Nickersons have made every regular periodic payment they were allowed to make. 2) The Nickersons understood, believed and were told their account was current and in good standing. 3) The Nickersons communicated they wanted to keep their property and demonstrated they had the financial wherewithal to do so. 4) PHH took over servicing the loan and belligerently refused to accept any further payments. 5) PHH prevented and prohibited the Nickersons from establishing or curing any alleged default. 6) PHH failed to provide the Nickersons with an opportunity to reinstate the loan. 7) PHH prevented and prohibited the Nickersons from refinancing or satisfying the loan. 8) PHH and Chase prevented the Nickersons from selling the property and satisfying the loan. 9) Any alleged default and subsequent injuries were solely and categorically caused by the direct and indirect actions and inactions of PHH and the other principals conspiring with them. As a result of these and other outrageous actions, along with intentional and malicious prevention of performance, PHH's own actions bar their right to claim injury, and they have no way to establish a cause of action upon which relief may be granted.
>
> 58. Therefore, because, among other issues, 1) PHH is not the Note holder and has no interest in the Note, 2) PHH claims beneficial interest in the wrong instrument, 3) PHH claims to be the assignee of an instrument that assigns interest to another party, 4)

PHH is attempting to foreclose on the wrong property, and 5) PHH does not have nor can they ever have any injury, PHH fails to state a cause of action upon which relief may be granted and PHH's claim must be dismissed.

At no time did PHH comply with notice of default, service or process, notice or hearing requirements as required in the alleged contract. We were denied opportunity to challenge this genuine issue of material fact.

Public record from 2007 to present alone corroborates the habitual abusive debt collection practices suffered by us and details the convictions of PHH, Chase and their accomplices in mortgage fraud and abuse. Our perfect payment history, types of credit secured, length of perfect and strong credit history, income to debt ratios, and new credit eligibility combined with the expert witness testimonies presented to our attorney and refused to be heard by the District Court (despite written and verbal requests) regarding our banking activities prior to Chase becoming involved with our loan corroborate our innocence and victimization. These irrefutable facts require any reasonable person to acknowledge and recognize we were prevented from performance and victimized by abusive debt collection and to consider how that fatally affects all claims of default or injury.

allegans contraria non est audiendus - one making contradictory statements is not to be heard

Affirming the decision of the District Court is a judicial admission this Court has determined PHH and Chase have both lied to this Court, to the District Court, and to the World At Large, as they lied to us in 2010 and have continued to persist in doing since. Their willful and intentional lies and misrepresentations prevented our performance, formed the foundation for their false claims of default, impeaches their testimony, and defeats their complaint.

In January 2010, Chase accepted payment from us and confirmed we were current and in good standing. In February 2010, PHH erroneously claimed a default of 14 payments and claimed we were in default from January 2009. PHH would not accept a payment unless we cured the entire claimed default amount. We challenged the existence of a default, but PHH refused to review, research or consider any of Chase's records or speak to Chase employees most familiar with the account. They made false reports to credit bureaus and our personal creditors. They prevented performance. They created long term consequences that sabotaged our financial portfolio. However, now PHH has testified, via an inadmissible affidavit that was not properly notarized and contradicts the witness' prior testimony in which he claimed we missed 13 payments, that we only missed 9 payments. SAR 54, 63, 77-83.

R. 1237-1238. *Objection to Second Affidavit of Ronald E. Casperite*

In accordance with common law and the maxim, ***fraus ominia vitiates*** – fraud vitiates everything, the Nickersons object to the Second Affidavit of Ronald E. Casperite because it contains notary fraud. The notary seal is affixed to the affidavit but the notary did not sign the affidavit. It is the Nickersons hope and prayer this Court is as equally frustrated and appalled as they are at this blatant disregard and disrespect of the notary's oath to fulfill their duties and concurs with the Supreme Court of Washington in viewing this act as a crime. "A signed notarization is the ultimate assurance upon which the whole world is entitled to rely that the proper person signed a document on the stated day and place. Local, interstate, and international transactions involving individuals, banks, and corporations proceed smoothly because all may rely upon the sanctity of the notary's seal…'The proper functioning of the legal system depends on the honesty of notaries who are entrusted to verify the signing of legally significant documents.'…a false notarization is a crime and undermines the integrity of our institutions upon which all must rely upon the faithful fulfillment of the notary's oath." *Klem v. Washington Mut. Bank*, 295 P.3d 179, 176 Wash. 2d 771 (2013). Therefore, the Nickersons request the court to ignore the second affidavit of Ronald E. Casperite and consider any appropriate disciplinary action and or sanctions to be assessed on the Plaintiff or Plaintiff's counsel for submitting a document that embodies a criminal act. Furthermore, since the Plaintiff bases their motion for summary judgment upon Mr. Casperite's affidavit, their motion for summary judgment must be denied.

R. 1291. Charles Nickerson's *Affidavit in Support of Motions to Reconsider*

24. The Second Affidavit of Ronald E. Casperite is missing the notary's signature and thus, is not properly notarized which according to the Washington Supreme Court constitutes a criminal act, *Klem v. Washington Mut. Bank*, 295 P.3d 179, 176 Wash. 2d 771 (2013).. Therefore, the *Second Affidavit of Ronald E. Casperite* should be thrown out and stricken from the record. (See *Second Affidavit of Ronald E. Casperite*)

SAR 31-32. Nickersons' *Motion for Relief from Judgment*

In response to the Nickersons inquiry regarding the validity of the notarization on the Second Affidavit of Ronald E. Casperite, James Zombeck, Notary Unit Supervisor for the State of New Jersey Department of Treasury, stated in a letter (See *Affidavit of Charles Nickerson in Support of Motion for Relief from Judgment,* Exhibit 4), "Upon review of the SECOND AFFIDAVIT OF RONALD E. CASPERITE that you provided, it is apparent that the notarization is invalid. It lacks the signature of the Notary Public." Mr. Zombeck then referenced NJSAS 52:7-19 which states, "Each notary public, **in addition to subscribing his autograph signature** to any jurat upon the administration of any oath or the taking of any acknowledgment or proof, shall affix thereto his name in such a manner and by such means, including, but not limited to, printing, typing, or impressing by seal or mechanical stamp, as will enable the Secretary of State easily to read said name." (emphasis added). Clearly, the State of New Jersey considers the notarization on this affidavit to be invalid. Therefore, Idaho and this Court should as well, and thus, the judgment in favor of PHH must be reversed because PHH has no affidavit or other evidence to rely upon to support its motion for summary judgment, and the Nickersons must be granted relief from judgment.

Logically and according to common law, PHH should be required to prove the default amounts they claimed back in 2010 and 2011 when they filed their complaint or the complaint should be deemed moot.

R. 1412. *Charles Nickerson's and Donna Nickerson's Amended Answer, Counterclaim, Third Party Complaint and Demand for Jury Trial*

> "Educational note in pro se litigants terms: Proving the default was $1 off in the payment records or escrow accounts is enough to invalidate and prove the records presented are unreliable, untrustworthy, unlawful and unenforceable. These errors are not moot, irrelevant, insignificant, inadmissible or legally able to be glossed over. The irrefutable fact is these errors and all malicious and negligent intentions surrounding them and their origination are quite serious, civilly, criminally, morally and ethically. An "as a matter of law" statement that is appropriate here, is errors in records, especially when dealing with escrow, send people to jail. The law does not think nor can justice rule that falsifying or altering account records is a joke. This becomes especially true in light of the proof the errors are intentional, malicious and serve to gain substantial unjust enrichment. May it please the Court to note that the factual basis for this is Basic Accounting 101, no conclusory or "no foundation to have an opinion" kind of stuff. Any reasonably intelligent person who has ever sat through a principles of accounting class, even at junior high education level, read an accounting for Dummies book or listened to a professor lecture on the importance of accurate record keeping knows, when dealing with financial accountability, if the record is not accurate, it is not a viable record. Debt must be proven, not claimed. (i.e. This includes ownership of the debt.) Default must be proven, not claimed. (i.e. It has to be accurate.) The burden and responsibility of record keeping belongs to PHH and Chase. As alleged servicers and/or those having alleged beneficial interest in the Nickerson accounts, they had and have contractual obligations, federal responsibilities, and civil liabilities to maintain resolute, truthful and reliable records. They irrefutably did not do this. Their responsibility and liability for failing to do so becomes even greater 1) when their errors were and are so glaring and present criminal activity, 2) their incompetence and unprofessional conduct created severe problems and damages for the Nickersons, and 3) they belligerently and repetitively refused and are refusing to provide the Nickersons with mandated statements, receipts, account documentation, etc. The bottom line, pun intended, is PHH and Chase have admitted to being $11,644.75 off, in error, wrong, whatever you want to call it. That means, dollar for dollar, they have already admitted, and a true review of the Nickerson's accounts will demand even more admissions, they erred over 11,000 times. That is 11,644 ¾ times to be exact. Penny for penny which is more fair, since that is how the Nickerson family has earned the money these crooks have lost, stolen and cannot account for, the fact is based on their own records, PHH and Chase have erred over a million times. That is 1,164,475 times to be exact. Further, the account records PHH and Chase are relying on actually show a negative balance. Technically, this means the Nickersons are due a refund. Clearly, PHH and Chase have problems and need new record keepers, financial counseling and to write the Nickersons a check for all damages caused by their actions and inactions. The reality of the situation bars the Plaintiff's complaint. Further, the

reality of the situation convicts and bars their co-conspirators from any present defenses or further complaints against the Nickersons. Case Dismissed."

To allow an alleged creditor to send a demand letter with an inaccurate default, refuse further payments based on that inaccurate default, file a complaint based on that demand letter claiming it to fulfill federal notification requirements, and then, after their demand amount and facts are proven to be false, simply claim a new demand amount and proceed with the complaint defies fundamental reason. Producing accurate records to demonstrate true obligation or default is required to comply with fair debt collection per the Fair Debt Collection Practices Act. Disputed default must be validated based on federal lending laws, the FDCPA, and rights granted by the alleged contract in this case.

R. 1517. *Charles Nickerson's and Donna Nickerson's Amended Answer, Counterclaim, Third Party Complaint and Demand for Jury Trial*

12 C.F.R. § 1024.35. "(e) Response to notice of error. (1) Investigation and response requirements. (i) In general. Except as provided in paragraphs (f) and (g) of this section, a servicer must respond to a notice of error by either: (A) Correcting the error or errors identified by the borrower and providing the borrower with a written notification of the correction, the effective date of the correction, and contact information, including a telephone number, for further assistance; or (B) Conducting a reasonable investigation and providing the borrower with a written notification that includes a statement that the servicer has determined that no error occurred, a statement of the reason or reasons for this determination, a statement of the borrower's right to request documents relied upon by the servicer in reaching its determination, information regarding how the borrower can request such documents, and contact information, including a telephone number, for further assistance." PHH refused to respond to the Nickersons notice of error. PHH refused to take any corrective action. PHH refused to even conduct an investigation. PHH claimed they did not have any of Chase's account records. If you do not have the account records, you can not claim a default, because you have no proof, evidence, foundation or basis.

Therefore any and all notifications and collection attempts allegedly made were false, inaccurate and invalid. The condition precedent of notification was not met. Therefore, per Black's Law, the legal requirement of notice for judicial foreclosure has not been met.

Additionally, the demand letter submitted does not qualify according to the alleged mortgage. The mortgage requires the lender to send the demand letter and at the time the alleged demand letter was sent PHH was a servicer not the lender.

R. 1417, 1514-1515. *Charles Nickerson's and Donna Nickerson's Amended Answer, Counterclaim, Third Party Complaint and Demand for Jury Trial*

99. The Nickersons assert the Note and Mortgage presented by the Plaintiff requires PHH to provide a notice of any breach to the Nickersons, and allow a reasonable

period of time for them to have the opportunity to remedy any such breach prior to the initiation of any legal proceedings.

100. PHH has failed to provide such notice.

101. In section 20 of the Mortgage presented by the Plaintiff (Complaint Exhibit A) the second paragraph states. "Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action."

102. After PHH allegedly became the lender on June 9, 2010, no notice of breach was sent to the Nickersons as required by the alleged contract.

103. As a matter of record, PHH has never provided any proper notice of breach to the Nickersons.

104. Therefore, because PHH did not provide any such required notice of breach, PHH is in breach of any alleged contract and has no right to action.

R. 1514-1515

184. The Nickersons have not been served a true and accurate Notice of Default.

185. PHH has never served the Nickersons proper notice.

186. PHH breached the alleged contract by not providing notice of breach. The Note and Mortgage presented by PHH requires the lender (creditor) not the "loan servicer" to provide a notice of any breach to the Nickersons, and allow a reasonable period of time for them to have the opportunity to remedy any such breach prior to the initiation of any legal proceedings. PHH has failed to provide such notice. In section 20 of the mortgage presented by the Plaintiff (Complaint Exhibit A) the second paragraph states. "Neither borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action." After PHH allegedly became the lender on June 9, 2010, no notice of breach was sent to the Nickersons as required by the alleged contract. PHH is unquestionably in breach of contract.

187. PHH also breached section 22 of the contract presented by not providing a notice of default. Section 22 states, "Lender shall give notice to Borrower prior to acceleration." Again, PHH as the alleged Lender must provide notice. PHH, by their own admission, did not become the alleged lender until June 9, 2010. PHH, as the alleged lender, did not provide notice to the Nickersons prior to acceleration and are in breach of contract.

Incidentally, according to the evidence PHH is still not the lender. Therefore the required notifications per the alleged mortgage were not and have not been properly served. Condition precedent has not been met. Case dismissed. The inability of PHH to rely upon the demand letter is further compounded by the fact we informed PHH they were wrong at the time of the demand letter being relied upon, but PHH totally ignored us even after we proved PHH was wrong (R. 901 – Communication from us to PHH documenting some of the payments we made to Chase in 2009. PHH's erroneous complaint states we are in default from January 2009.) and PHH did not have a record or knowledge of any payments made or not made by us to Chase. Further, Chase had admitted this default letter was in error in 2009 and we had been told to disregard it. Numerous other faulty letters were also sent that we were told were computer generated in error. No default letter has ever been provided to us that was not retracted by Chase and that has not been proven inaccurate. No accurate default letter was ever provided to us at any time by PHH. PHH admitted this in their response to admissions (R. 1417, 1514-1515)

This is but one of the blatant examples where the Court has overlooked, misapplied, and failed to consider statutes, decisions, and principles directly controlling this foreclosure action and the truth of the matter surrounding it. Judgitis, as defined by Black's Law, not the facts of the matter, allowed a false default amount to meet the claim qualifications in an improperly sworn to document by a paid for non-employee witness claiming personal knowledge who does not, did not and could not legally have the ability to testify with personal knowledge of our accounts. Judge Griffin then allowed PHH to radically alter their previous claim of default.

R. 1385. *Memorandum in Support of Motion to Reconsider Chase's and PHH's Summary Judgments*

> b. PHH has alleged different default amounts for this time period:
> i. Located in Exhibit D (Affidavit of John Mitchell, 1/22/13, Exhibit D) is a copy of PHH's Notice of Intention to Foreclose dated February 12, 2010. This notice claims the Nickersons were 14 months past due with a total default amount of $32,605.66 with $0.00 in late fees
> ii. In an affidavit in support of PHH's second attempt for summary judgment PHH now claims 9 months past due which would be $20,960.91.
> This is a difference of $11,644.75. This difference constitutes significant and substantial accounting errors which should not be glossed over and cannot be ignored. This substantial difference makes a huge difference on whether or not one could pay it if there had been a legitimate default, and any reasonable person could conclude the errors were intentional to ensure the Nickersons could not cure it. Further, this default amount voids all previous notices as well as PHH's complaint, and requires PHH by contract to provide new notices and by law to withdraw their complaint. Even further, at that time,

the Nickersons disputed the default, challenged the accuracy of the records, and proved payments had been made and transactions had occurred, but PHH refused to provide proof of the default or even research the Nickerson's disputes which created an impossibility for the Nickersons to cure it. In fact, PHH claimed it did not have any of Chase's account records. If you do not have the account records, how can you claim a default? As a matter of law, you cannot.

Providing an accurate accounting is essential to claiming the default remedy provided for in the alleged contract, and thus, refusing to and being unable to provide an accurate accounting because of the lack of integrity and accuracy of the account record is a breach of good faith and breach of contract.

The injustice in this is compounded by our not being informed of these rulings nor being given opportunity to defend against the judgments. When presented with a request to expand the factual record of the case, Griffin directed us to wait for a status hearing to address these issues. When the status hearing converted to a summary judgment proceeding, Griffin prejudicially ignored our request for extension despite multiple requests. He then denied the request minutes before the Motion For Summary Judgment hearing. The clerk explained AGAIN we had supplemental evidence that defeated their claims and proved no standing existed which we wanted to file prior to the hearing. His response was we were proceeding with the hearing, but we could go ahead and send our information in and he would consider it. This decision procedurally prevented opportunity to expand the factual record of the case prior to the summary judgment hearing. (R. 1176) Griffin gave us permission to send in our supplemental evidence that defeated their claims and proved no standing existed. We did. He refused to consider it. This redefines access to justice. Clearly Griffin conducted the litigation in this case and created a record to support a foregone judgment. Our previous attorney can testify this was his experience in trying this case. He stated, "It appears the level of fraud and cover up is not limited to Chase and PHH!!!! Other entities engaged facilitated and profited in this fraudulent activity." R. 1319.

It is axiomatic to state a claimed default amount proven inaccurate constitutes grounds for dismissal. This is glaringly true when PHH and Chase claimed different default amounts. Chase claims we missed 11 payments and PHH obtained a summary judgment ruling based on a claim of 9 missed payments. Both entities allegedly used the same Chase data to back up their contradictory claims. PHH has admitted they do not have any knowledge about this other than what Chase provided during this action. How can PHH disagree with Chase? Judge Griffin's response to all attempts to find justice were, "your only course of action is the Supreme Court. You will not find any relief in my court room." He is right. We did not.

This Supreme Court must look at the evidence. Judge Griffin refused to. We have been denied our right to due process. The complaint was allowed to proceed without PHH proving ownership. The decision was based on instructions received from Kipp Manwaring of Just Law when Mr. Manwaring lied to Judge Griffin by stating he did not have to prove the chain of title.

The inaccurate default amount fatally defeated PHH's complaint, dismissed their claims, and demanded the Court compel Chase to answer discovery. PHH proceeded with their fraudulent foreclosure scheme even though fact and law required the Court dismiss it with prejudice. PHH should have been required to file a new claim based on the newly claimed default amount since 1) the proceedings to that point were tried on false pretenses, 2) PHH provided a judicial admission we were never properly notified of their "newly corrected" alleged default amount, and 3) we were never provided the opportunity to cure the "new" alleged default amount prior to them taking foreclosure action.

Instead of recognizing PHH and Chase's inaccurate record keeping raised genuine issues of fact regarding the existence of any default and that we should be permitted to refute any default claimed at trial, the Court blindly accepted their claims, corrected claims, and lack of admissible evidence as fact and relied upon it accordingly.

R. 1073-1076. *Memorandum in Opposition to Plaintiff's Second Motion for Summary Judgment*

Whether or not the Nickersons were in default in January of 2010.

The Nickersons assert, contend, and maintain that they were in good standing with the note as of January of 2010. The basis for this belief is a representation from a Chase employee named Kim and a representation by Wells Fargo Bank, N.A. that Chase had represented in a credit report the Nickersons were current and in good standing as of January of 2010. See *Amended Answer and Counterclaim* ¶ 20 and 21. Additionally, after a thorough review of Chase's Detailed Transaction History (*Affidavit of Brandie S. Watkins*, Exhibit F and incorporated here by reference "Exhibit F") it is clear there is no default and can be no default based upon their transaction history. The principal balance on the last entry in the history is $-1,186.90 which indicates an overpayment of principal of $1,186.90. If there is no principal balance owed, there can be no default. Furthermore, the escrow balance is $0.00 meaning all escrow obligations have been satisfied. Therefore, the Detailed Transaction History (Exhibit F) confirms the representation made by Chase employee Kim that the Nickersons were in good standing. In fact, according to the Detailed Transaction History provided by Chase (Exhibit F), as of January 21, 2010, the Nickersons had satisfied the obligations of the note and were due a refund of $1,186.90.

Even with this glaring evidence, PHH still contends the Nickersons are in default. They now base their claim for default on the *Second Affidavit of Ronald E Casperite,* Exhibit C and incorporated here by reference "Exhibit C" and the *Affidavit of Chase Employee in Support of Second Motion for Summary Judgment,* Exhibit A. The Nickersons object to Exhibit C based on the rules of best evidence. Clearly, Chase's Detailed Transaction History Exhibit F is the best evidence because it comes from the entity who was servicing the loan and maintaining the account history and overrules any conjectures and extrapolations made by a third party. However, for the case of argument we will compare Exhibit C to Exhibit F.

First, Mr. Casperite totally disregards the principal balance Chase has on their records and creates his own. See below.

- Review the Exhibit C Principal Balance column Transaction Dates 7/21/2009 thru the second entry on 10/3/2009. There is nothing there. However, a careful review of Exhibit F for these dates show a Principal Balance of $391.52.
- The next entry on Exhibit C Transaction Date 10/3/2009 has a Principal Balance of $261,170.62 and on Exhibit F it is $0.00.
- The next entry on Exhibit C that has an entry for a Principal Balance is Transaction Date 11/11/2009 with a balance of $261,170.62. Even though a payment was credited on that date with a principal amount of $391.52 which would normally reduce the Principal Balance, Mr. Casperite did not credit the $391.52 against his Principal Balance of $261,170.62. Exhibit F also shows a payment was credited on 11/11/2009 with a principal amount of $391.52 which brought the Principal Balance to $0.00.
- The next entry on Exhibit C that has an entry for a Principal Balance is Transaction Date 12/11/2009 with a balance of $260,777.05. Exhibit F Principal Balance is $-393.57.
- The next entry on Exhibit C that has an entry for a Principal Balance is Transaction Date 1/13/2010 with a balance of $260,381.42. Exhibit F Principal Balance is $-789.20.
- The last entry on Exhibit C that has an entry for a Principal Balance prior to the transfer of the loan to PHH is Transaction Date 1/21/2010 with a balance of $259,983.72. Exhibit F Principal Balance is $-1,186.90.

Below is a summary table demonstrating a side by side comparison of the above narrative.

Transaction Date	PHH's Interpretation – Exhibit C Principal Balance	Chase's Transaction History - Exhibit F Principal Balance
7/21-10/3/2009	Blank	$391.52
10/3/2009	$261,170.62	$0.00
11/11/2009	$261,170.62	$0.00
12/11/2009	$260,777.05	$-393.57

1/13/2010	$260,381.42	$-789.20
1/21/2010	$259,983.72	$-1,186.90

Next, Mr. Casperite disregards his own illustrative principal balances and claims "upon PHH's receipt from Chase of the Nickerson's loan, the principal balance was $261,170.62." (*Second Affidavit of Ronald E. Casperite*). According to Mr. Casperite's illustrative loan history, Exhibit C, the principal balance at the time of the transfer should have been $259,983.72. Mr. Casperite is either contradicting his own affidavit in regards to the principal balance at the time of transfer or he made a mistake on Exhibit C or both. Clearly, he has cast doubt on PHH's claimed default amount of $340,339.84 as of December 1, 2013 (*Memorandum in Support of PHH's Second Motion for Summary Judgment*).

Additionally, Exhibit C sheds no new light or contradiction of payments made or not made. It simply copies over the transaction data as listed on Exhibit F.

Lastly, neither Exhibit C nor Exhibit F account for the Nickersons $4,549.04 payment that was made in July of 2009 and is reflected on the escrow statement. (*Affidavit of John Mitchell,* Dated 10/31/2012, Exhibits A and B).

As for the *Affidavit of Chase Employee in Support of Second Motion for Summary Judgment,* Exhibit A, Chase's own Detailed Transaction History (Exhibit F) contradicts the data contained in this letter because the principal balance at the time of this letter was $0.00 (Ref # 83, Transaction Date 12/2/2009). Therefore, there was no default at that time because the obligations under the note were already satisfied. Additionally, the question must be asked, Why is this letter just now showing up? Chase was requested to provide all correspondence as a part of the discovery process. The *Affidavit of Chase Employee in Support of Second Motion for Summary Judgment,* Exhibit A was not included in any discovery Chase provided. Therefore, there is serious doubt as to the validity or originality of these letters and whether they are admissible evidence.

R. 1343, 1350. *Memorandum in Support of Motion to Reconsider Judgment*

The Court states, "PHH relies upon…an affidavit of Brandie S. Watkins." This affidavit contradicts the second affidavit of Ron Casperite. Mr. Casperite testified after a review of the detailed transaction history provided by Brandie S. Watkins, with her first affidavit, the Nickersons missed a total 9 monthly payments during the time Chase serviced the Nickersons loan. However, in the exhibit provided by Ms. Watkins in her second affidavit, Chase claims the Nickersons had missed 12 monthly payments. Obviously, there is a problem with Chase's account history. The Nickersons contend – one making contradictory statements cannot be heard. Both Chase and PHH have made numerous contradictory and misleading statements throughout these proceedings. As a result neither Chase nor PHH can or should be heard.

R. 1350.

In addition, PHH has never provided any proof their alleged default amount is correct. The account history provided by Chase employee Brandie S. Watkins shows a principal balance of $0 in November 2009 and $-1186.90 on January 21, 2010. This does not validate or confirm PHH's principal balance claims, but, in fact, contradicts and

refutes those claims. PHH cannot be permitted to fabricate a principal balance. Since the evidence PHH has provided contradicts and refutes their principal balance claims, judgment must be vacated and judgment in favor of the Nickersons must be granted.

R. 1467. *Charles Nickerson's and Donna Nickerson's Amended Answer, Counterclaim, Third Party Complaint and Demand for Jury Trial*

298. In paragraph 10 of the second affidavit of Ron Casperite, Mr. Casperite states, "From November 2007 through December 2009 the Nickersons were obligated to pay 26 monthly payments. During that time period the Nickersons only made 17 monthly payments. The Nickersons failed to make 9 monthly payments causing their loan to go into default." As of December 2009, the total amount for 9 missed payments is $20,960.91. However, in the affidavit of Chase employee in support of summary judgment, Brandie S. Watkins presents, in letters dated December 7, 2009, a conflicting amount of $28,368.84 of which $27,514.84 was due to missed payments. This contradictory evidence, at a minimum, clearly and deeply demonstrates the total lack of integrity, credibility and reliability of Chase's and PHH's account records and history.

Though we assert there was no default and true discovery will support our claims, any reasonable person is compelled to agree the accuracy of default is critical in being able to determine a borrower's ability to cure any alleged default. The consequence of default in this case is foreclosure. The severity of this judgment destructively impacts our financial portfolio and name perpetually as it does for any mortgagor accused of default. The system has been inadequate to protect us from this fraudulent theft of our property. This Supreme Court must address this.

Any reasonable person is also compelled to agree a demand letter allegedly mailed a year earlier by another entity with a different default amount cannot fulfill required notification of default.

R. 742. *Plaintiff's Response to Defendant Nickersons' Request for Admissions*

REQUEST FOR ADMISSION NO. 13. Admit the Nickersons made payments to Chase in November 2009, December 2009, and January 2010.

RESPONSE: PHH is unaware of any payments made or not made by the Nickersons to Chase. In that regard this request is denied.

This is prevention of performance in the extreme. PHH has judicially admitted they would not accept any payments from us unless we cured the entire alleged default. (R. 314 ¶9, R. 1012) Now PHH admits their claimed default amount was wrong proving we were right in asserting their default amount was inaccurate and needed to be researched. This Supreme Court has also affirmed we were right to contest PHH's alleged default. PHH blatantly and arrogantly prevented any performance by us by belligerently refusing to prove or even research their claim of default in 2010. To emphasize, this is a claim they themselves have now admitted was wrong.

This Court has affirmed Chase's and PHH's account records are inaccurate and that PHH's claimed default amount was wrong. Allowing the District Court decision to stand creates severe injustice, especially when we have irrefutably been denied the right to fully and properly defend ourselves against these false claims. Chase and PHH have withheld the account notations, communication records and taped conversations we requested in discovery. Those records, and rights to access to them, belong to us, are their responsibility to maintain, and validate our claims. The fact and truth of the matter is we were current and making our payments to Chase. Among others, this statement is supported by direct testimony that was presented in our verified pleadings (R. 110, ¶¶ 19-21).

> "On January 22, 2010, the Nickersons made a monthly payment with a confirmation number of 24262170. This payment was coordinated with [Chase representative] Kim.
>
> In January of 2010, Nickersons were told by [Chase representative] Kim their account was in good standing.
>
> Nickersons were also told by Wells Fargo Bank, N.A. that Chase had represented in a credit report the Nickersons were current and in good standings as of January of 2010."

And was supported by our testimony provided in our affidavit in support of our motion for summary judgment .

R. 1086-1087

> "In January 2010, the Nickersons were in good standing with Chase."

And was reaffirmed in our affidavit in support of our motions to reconsider.

R. 1290-1291.

> "12. I made all payments I was allowed to make, knew to make or was instructed to make by Chase and to Chase, and was current and in good standing with Chase in January 2010.
>
> 13. A Chase employee named Kim who we trusted and believed told us our account was in current and in good standing as of January 2010.
>
> 14. A Wells Fargo employee named Heather reviewed a credit report in January 2010 and told us Chase represented and reported that we were current on this account. We relied on these representations.
>
> 15. According to Chase's account history, we were not in default as of January 21, 2010."

And verified interrogatory responses.

R. 284

> REQUEST FOR ADMISSION NO. 18: Admit that you have never received any written documentation excusing your payment performance required under the Note
>
> RESPONSE:

Admit but conditionally. Nickersons were told by JPMorgan employee Kim that account was in good standing in January of 2010. Nickersons were also previously told by JPMorgan employees that they did not have to make payments. Nickersons also contacted PHH and attempted to make payments but PHH would not accept payments from the Nickersons.

R. 291

ANSWER: On January 21, 2010, Kim with Chase, told the Nickersons that their account was in good standing with Chase.

ANSWER: There was never a time the Nickersons did NOT tender a payment. The only time payment was not made was when a Chase or PHH employee refused the tendered payment. The payment issues have already been stated. Since 2010 the Nickersons did not tender a payment to PHH because PHH would not accept payments from the Nickersons.

R. 305

ANSWER: On January 21, 2010, Kim with Chase, told the Nickersons that their account was in good standing with Chase.

ANSWER: There was never a time the Nickersons did NOT tender a payment. The only time payment was not made was when a Chase or PHH employee refused the tendered payment. The payment issues have already been stated. Since 2010 the Nickersons did not tender a payment to PHH because PHH would not accept payments from the Nickersons.

In light of our direct testimony of the fact we were making our payments to Chase and that we were current and in good standing with Chase; in light of the fact PHH admitted they did not know if we had even missed any payments; in light of the fact PHH has admitted prevention of performance; and in concurrence with the summary judgment standard cited below; summary judgment in favor of PHH should not have been granted and must be reversed on appeal.

> "On a motion for summary judgment, the Court does not weigh evidence or determine truthfulness of allegations; instead, it determines the existence of genuine issues of material fact... Direct testimony of the non-movant must be believed... (citations omitted)." *Sparks v. ALLSTATE MEDICAL EQUIPMENT, INC.*, Case No. 1:14CV00166EJLCWD. (D. Idaho, 2015).

This is not a foreclosure case where the borrowers stopped making their payments nor is it a case where the borrower no longer had the wherewithal to make their payments nor is it a case where the loan amount exceeded the property value so the borrower quit making payments. This is a case of organized crime, lending theft, and mortgage fraud. The fact is we were current and making our payments to Chase. (SEE ABOVE) The fact is PHH erroneously claimed default, a default that this Court affirms was wrong, and PHH prevented us from making any further payments to steal the substantial equity built up in our property and commit other such unlawful acts. The fact is PHH refused to validate the alleged default amount, admitted during

these proceedings that it did not know if we had missed any payments, and now admits their alleged default amount is wrong. The default in this case is the thousands stolen from our escrow and hidden suspense accounts have not been returned to us.

R. 1379. *Memorandum in Support of Motion to Reconsider Chase's and PHH's Summary Judgments*

> "d. Chase mishandles escrow funds and accounting. The escrow balance appearing on Exhibit F on Tran Date of 7/21/2009 of $3,391.90 does not match the Escrow balance $935.27 reported on Exhibit 6 for that time period nor do the escrow balances line up from that time thru 1/21/2010. Additionally, a closer look at Exhibit 6 reveals a discrepancy in the Escrow Balance on that document alone. The Loan Summary at the top of the page reflects an ending Escrow Balance of negative $3,613.77 - while the Actual Activity column has an ending Escrow Balance of positive $1,503.90. This is a difference of over $5,000.00. Where did all of that money go?
>
> e. On 11/21/2009 Chase disburses a $2,870.00 payment from escrow for forced placed homeowners insurance when proof of insurance was already provided. (Affidavit of John C. Mitchell, Dated January 22, 2013, Exhibit C Nick0002 and Nick0007)
>
> f. Chase did not reimburse the Nickersons for the forced placed homeowners insurance when the insurance was cancelled on 2/11/2010, effective 2/05/2010 and cancelled again on 2/24/2010 with an effective date of 9/16/2009 (Affidavit of John C. Mitchell, Dated January 22, 2013, Exhibit C Nick0018 and Nick0019). Where did the $2,870.00 go? It was not returned to the Nickersons."

The fact is PHH prevented our performance and their complaint must be dismissed with prejudice. We did not default. We made and were making our payments. PHH and their accomplices prevented performance to steal our equity.

The intentional prevention of performance and abusive debt collection practices of PHH, Chase and their accomplices has irreversibly impeached their rights to cause of action and claims to injury, and unjustly denied our rights to a defense and relief.

Assignment of Error 2: The admitted misconduct and negligence of our former counsel and the timing in which we became aware of his actions and inactions irreversibly prejudiced our ability to overcome the District Court's prejudices and unjust rulings, the procedural handicaps of the incomplete record, our opportunity to compel PHH and Chase to provide discovery necessary to defeat summary judgment, and now our ability to secure justice at the appeal level.

This error stems from the fact this Court did not address the assignment of error we set forth on page 43 of our brief. **Did the District Court err by refusing to acknowledge and**

consider appellants prejudice due to issues surrounding their attorney's negligent misrepresentation and undisclosed withdrawal?

We have been denied the right to defend ourselves. Mr. Mitchell agreed to compel Chase to fully answer their questions and requests for production, to specifically require Chase to provide all of the account notations and communication records, and to provide access to the witnesses we requested to depose. He provided the dates and the names of customer service personnel we had spoken with to Chase and PHH in our discovery responses and there was no ethical or lawful reason why Chase could not cooperate and easily provide the account notations and communication records requested. This is especially true since Mr. Stenquist claimed to have access to Chase's records. R. 330. Mr. Stenquist claims, "I have access to my client's files in this matter..." Our answers were provided in a timely manner in accordance with our attorney's instructions. PHH and Chase repeatedly refused to cooperate and provide witnesses for us to depose, which we had been repeatedly requesting since the claim was first filed. Mr. Mitchell told us he filed a motion to compel discovery and that it was denied. It was our understanding and agreement at the time set for the depositions Chase and PHH were finally being required and had agreed to provide their representatives for us to depose prior to our depositions being taken so we could prove there was no default and reference records they were bringing with them that they had failed to provide to us previously. The federally mandated records requested prove all payments were made and are foundationally necessary to our defense. The depositions were originally scheduled near the end of August 2012, but PHH had not yet responded to our interrogatories and requests for production, so the depositions were rescheduled for October 3, 2012. At that time PHH had still not provided their discovery responses which were 90 days late as of October 3rd. The record shows they were provided on October 18, 2012, and they were not even verified. When we arrived in Idaho for our depositions we found out neither Chase nor PHH had representatives present we could also depose and neither had brought the promised documentation so we requested the depositions be cancelled until they were compelled to honor their prior agreements. Mr. Mitchell coerced us into going forward with the depositions by assuring us telling our story to the Judge could end our nightmare and informing us we had no choice but to go forward. Because of the extreme abuse experienced (threatening phone calls, contact with other creditors and business associates to discredit us and create problems with their relationships with us, sabotaging employment opportunities, etc. (R. 285, 299, 1224, 1380-1381, 1560-1562), we understood the District Court

had specifically ordered we did not have to provide any personal information in response to questions we felt might put us, our family, our livelihood, or our credit at risk of further abuse. Therefore, when such questions were asked, we consulted with Mr. Mitchell to make sure we were not in error to refuse to answer the question, and then clearly and articulately communicated for the record why we were not comfortable answering questions of personal nature that did not have any bearing on this litigation. We were told these responses were being recorded. We asked if we could tape them as well but were told it was not allowed. "Just tell our story" was the instructions we received from Mr. Mitchell. Clearly we stated we wanted to keep our property, we had the wherewithal to keep our property, and we intended to fight to keep our property. Repeatedly we stated we did not default, both PHH and Chase knew the truth, and we wanted them to cease and desist from this fraudulent action. Again, we were told the depositions were being taped so we thought our answers were being completely recorded. Unfortunately, that was not what happened. (R. 1819-1825). After the failed attempt at providing depositions or finally getting to tell our story to the Judge, we never really knew the true status of our case because it was negligently kept from us. We were told no depositions were prepared and had no reason to doubt what we were told. We did not know PHH had provided any discovery responses. We did not know a summary judgment process had taken place and our counterclaims and third-party complaint were dismissed. Mr. Mitchell told us everything was ok, to be patient and let him do his job, and that our case was in appeal. We did not get to provide any affidavits or testimony to defend ourselves or prosecute our claims. Bank employees and other third parties who provided testimony to Mr. Mitchell that refutes the existence of default, confirms prevention of performance, and corroborates our claims of abusive debt collection and fraud did not get the opportunity to be heard. We had no idea Mr. Mitchell had withdrawn as our attorney until August 2013. (See R. 997-998 where Mr. Mitchell's boss confirms we had no idea Mr. Mitchell had withdrawn.) Incidentally, we found out Mr. Mitchell had withdrawn the day after Mr. Mitchell represented to the Attorney General's office and other public officials he was representing us and our case was in appeal. Regarding this Mr. Mitchell stated:

> "...during my representation of the Nickersons I did not know what to do and not knowing what to do led [me] to being dishonest with myself and others, notably the Nickersons.
>
> I did not keep the Nickersons informed about the status of their case after their depositions were taken, did not tell them about a summary judgment motion, the

summary judgment decision, told them an appeal had been filed when it had not and withdrew from the case without telling them.

...

The Nickersons deserve to have the underlying complaint and their counterclaims decided on the merits of the case and not have their life affected because they put their faith in an attorney who did not have the mental and emotional capabilities to give them adequate representation.

The Nickersons have uncovered countless irregularities and falsities in their case which if presented properly to a Court should be a defense to the foreclosure claim and support their counterclaims.

During my representation of the Nickersons I talked with several governmental agencies about wrongful foreclosure in general and the Nickersons' case in specific. I talked with the FBI agents in Lewiston and the Attorney General's office in Boise. I gave the FBI a fairly thick binder identifying specific incidents of misconduct on the part of the plaintiffs with supporting documentation that this type of conduct had been done extensively before. Off the top of my head I cannot remember the specifics but I seem to recall notary fraud. To the best of my recollection I remember interest and thinking that one of these agencies would take the case on and investigate but ultimately these agencies declined. I also filed online complaints with one or two federal agencies but do not remember if they took any action.

The Nickersons' case was not decided on the merits and really no meaningful discovery was ever answered by the Plaintiffs. There is no prejudice to the Plaintiffs in allowing the Nickersons to have discovery done properly and have the underlying case and their counterclaims decided on the facts of the case and not have the case decided because of an incompetent mentally unfit at the time attorney who did not know how to handle the mess that he created. I believe all the Nickersons want is the chance to put on their defense and their proof of their counterclaims."

See affidavit of John Mitchell (SAR 69, 70).

Immediately upon finding out Mr. Mitchell had withdrawn from the case we were forced to file an appearance *pro se*. R. 1000. We filed this appearance *pro se* with the understanding from Mr. Mitchell that he would approach the Court in due time to properly represent our case. At that time, we found out our case was not in appeal so we spoke with the District Court clerks to inform the Court we wanted Chase and PHH to be compelled to provide answers to our original discovery requests, we wanted the opportunity to depose witnesses, and we wanted the opportunity to amend our answer and claims based upon the discovery and proof of fraud we had found in the limited discovery PHH and Chase had provided. We were instructed by the Court to wait for a status conference. Judge Griffin communicated he would schedule a status conference

and all of those issues would be addressed at that time. In deference to his authority, we waited to move forward.

Judge Griffin scheduled the status conference for December 17, 2013 (R. 1007). At that time, PHH filed their second motion for summary judgment abruptly turning the waited for status conference into a summary judgment hearing. Our verbal and written requests were ignored and we were forced without representation to defend their motion without knowing the status of the case, what the actual factual record looked like, or having the opportunity to obtain additional discovery and submit existing discovery previously provided to Mr. Mitchell but which he had apparently not put before the Court. We were severely and irrecoverably prejudiced by Mr. Mitchell's prior actions and inactions, by Judge Griffin's refusal to allow the factual record to be expanded, and by not being given the opportunity to obtain additional discovery. In effect and reality, we were systematically denied the right to defend ourselves. That denial has continued to this day, because, as a result of the incomplete record, now this Supreme Court has refused to consider the evidence in the record; has refused to consider the additional discovery we were able to obtain through our own efforts; has refused to consider the statutes and case law we presented in our briefs; has refused to see and consider the misconduct, deception and fraud perpetrated by Chase, PHH and their counsels; and has refused to see how severely we were prejudiced by Mr. Mitchell's negligence, misrepresentation and his difficulty navigating the legal system in Judge Griffin's courtroom.

As we stated in our Appellant Brief, this Court has held, "It is said that, where it appears that a judgment was taken against appellant through the negligence of an attorney who had been employed by such party, nothing is left to the discretion of the court, and the judgment must be set aside." *Pierce v. Vialpando,* 78 Idaho 274, 301 P.2d 1099 (1956). The record demonstrates and our attorney has admitted a judgment was taken against us because of his negligence. We have been denied our rights to present a defense. The judgment must be set aside. We pray this Court recognize the extreme precedent potential of allowing PHH and Chase to prevail in their fraudulent attack on our financial portfolio and their malicious theft of our ranch and the grave public concern and imminent threat this creates. We plead with you to exert reasonable and conscientious judicial effort to ensure justice is found in this case. At the very least, we implore you to set aside the judgments and remand this case back in its entirety to the District Court as the law requires. In the interest of justice, we implore you to dismiss PHH and Chase's complaint, claims and defenses with prejudice and hold them accountable for their vicious and

unprovoked assaults on our persons and our property. Read our Amended Answers and Counterclaim. Do not allow injustice to continue. In the interest of justice, read it!

> Professional neglect involves "indifference and a consistent failure to perform those obligations that a lawyer has assumed, or a conscious disregard for the responsibilities a lawyer owes to a client." *Iowa Supreme Ct. Bd. of Prof'l Ethics & Conduct v. Kennedy,* 684 N.W.2d 256, 25960 (Iowa 2004).
>
> Misrepresenting the status of a matter to a client typically warrants a more severe sanction. *Iowa Supreme Ct. Bd. of Prof'l Ethics & Conduct v. Walters,* 646 N.W.2d 111, 114 (Iowa 2002). Further, we have said more severe discipline is needed when the attorney's actions caused harm to his or her clients or to third parties. *Iowa Supreme Ct. Bd. of Prof'l Ethics & Conduct v. Jay,* 606 N.W.2d 1, 4 (Iowa 2000). *IA S. CT. BD. OF PROF'L ETHICS v. Honken*, 688 NW 2d 812

Assignment of Error 3: The misconduct, fraud on the Court, continuous violations of the rules, and failure of opposing counsels, PHH and Chase to fulfill mandated ethical responsibilities by presenting false and conflicting evidence, briefs, affidavits, and memorandums have denied our equal access to justice, thwarted our ability to conduct discovery, and resulted in unjust summary judgments in favor of PHH and Chase. The actions and inactions of opposing counsels have denied and prevented our rights to a defense and opportunity to find relief.

PHH and Chase have persisted in presenting lies and false representations to prevent us throughout this litigation process. These lies have been incorporated into their appellate briefs. In fact, in our 300+ page amended pleadings we document over 100 contradictions, misrepresentations and falsehoods PHH has submitted in this action. (R 1454-1475) Chase has their own record as well. (R. 1527-1537)

In the following argument we focus our discussion on the facts regarding the transfers and assignments of our note that have been proven to be false and demonstrate even Chase does not agree with the facts as presented by the Court.

Justice Horton mentioned the term *shenanigans* in reference to Chase and PHH in oral argument. Microsoft Encarta defines shenanigan as a questionable act: something that is deceitful, underhanded, or otherwise questionable. We have provided numerous examples of these shenanigans in the record and PHH and Chase have continued this practice in their briefs. One of the most fatal and glaring is the fact that Chase claims we missed 11 payments during the time Chase was servicing the Note and PHH claims we missed 9 payments and this Court has

affirmed based on PHH's claims we only missed 9 payments while Chase was servicing the Note. All claims are based on Chase's account records. Testimony, account records, account notations and taped conversations refute the existence of any default. Among other issues such as misrepresentation and fraud, it is a breach of contract and a genuine issue of material fact when the entity claiming default's account records are proven inaccurate. PHH admits their account records were inaccurate at the time they set the exact default amount and refused to accept payments or validate that amount back in February of 2010, and this Court has affirmed that admission.

That is not the only discrepancy or contradiction between Chase's and PHH's claims. Notice the difference between the facts regarding the transfer of our note as detailed by this Court, Chase, PHH and the evidence:

First, the validity and lawful integrity surrounding a Note executed on this property on or about October 4, 2002, in favor of Coldwell Banker Mortgage is a material issue in question. The chain of title that follows this alleged Note is broken, corrupted, and contaminated concealing any and all truth regarding ownership, beneficial interest and right to action. Forensic analysis demonstrates multiple simultaneous chains. Our expert witness can testify this invalidates any valid claims to action by PHH. Based on the documents used to claim ownership in this litigation, PHH has no beneficial interest as no one with beneficial interest has ever assigned it to them. Further, in 2002, Coldwell Banker Mortgage was neither a part of nor a subsidiary of PHH Mortgage. Therefore, no claims of beneficial interest or rights to claim associated with any existing relationship they might have with Coldwell Banker Mortgage currently has any bearing whatsoever on beneficial interest Coldwell Banker Mortgage may or may not have legally acquired in 2002 in regards to this property. Research and documentation was provided to Mr. Mitchell to refute any claims of beneficial interest by PHH being received from Coldwell Banker.

Next, this Court states the note was assigned to Fannie Mae in December 2002. Neither PHH nor Chase affirm that fact and the only evidence in the record regarding Fannie Mae receiving the note in December 2002 is a letter from Fannie Mae addressed to us which we submitted during the summary judgment process (R. 1112) to show fraud regarding the chain of title presented and impeach Chase's claims of being the servicer only to avert discovery. The District Court ruled this letter as hearsay and refused to consider it. (R. 1243) Yet the District Court and now this Court accept its contents as fact and rely upon it in judgment. (R. 1248 and

Supreme Court Opinion dated 4/27/16) Not allowing this evidence to stand in establishing issues that defeat summary judgment yet relying on it to supplement incomplete records and settle contradictory accounts presented by PHH and Chase is unjust. Given the threats this behavior creates for the integrity of Idaho property records and for Idaho homeowners, and the habitual record of such fraudulent behavior by these entities readily available in public record, any reasonable person would see the need to require further investigation to protect the welfare of the general public.

Next, this Court claims J.P. Morgan Chase acquired the note in November 2007. This refutes findings of fact in the first summary judgment. (R. 692) However, Chase denies this fact in its answer (R. 128) and in its interrogatory responses claiming it was only a servicer and that it never owned the note (R. 747-751, 759, 760) and stated in their brief before this Court that PHH repurchased the note from **Freddie Mac** in February 2010 (Chase's Brief p. 3). The letter from Fannie Mae, which the District Court relied upon for its facts, states Fannie Mae terminated its interest in the note in December of 2009. This evidence impeaches the evidence this Court relied on to state Chase acquired the note in 2007 and proves there is a contradiction of facts and statements as to when or if Chase ever received the note. If Chase never received the note, obviously it could not assign it to PHH. Therefore, by reasonable inference any person can conclude PHH never lawfully received the note and PHH's claims must be dismissed. The circumstantial evidence surrounding the fabrication of the false assignments would also lead any reasonable person to recognize fraud.

Next, this Court claims Chase assigned the note to PHH in June 2010. Chase denied ever receiving the note and represented to the Court that PHH repurchased the note from **Freddie Mac**. (R. 537 – "In February 2010, PHH repurchased the Note from Freddie Mac…") However, we presented evidence to the Court via letters from Fannie Mae and Chase that Chase purchased the note from Fannie Mae in December 2009. The letter from Fannie Mae is the same letter the District Court refused to hear and stated was hearsay, but later relied upon in its judgment. In addition, we submitted another letter from Chase dated January 10, 2014, in which Chase claimed to be the possessor and investor (owner and holder) of our note. This letter was provided to the District Court via a supplemental affidavit in accordance with I.R.C.P. 56 almost a month prior to its entry of judgment and was not refuted by PHH. PHH objected that it was not submitted with an affidavit, but it was.

R. 1235. *Response to Plaintiff's Objection to Notice of Supplemental Evidence*

> The Plaintiff is attempting to distract the Court by fallaciously objecting to the Nickersons Notice of Supplemental Evidence. Black's Law Dictionary (2nd edition) defines affidavit as "A written or printed declaration or statement of facts, made voluntarily, and confirmed by oath or affirmation of the party making it, taken before an officer having authority to administer such oath. An affidavit is written declaration under oath, made without notice to the adverse party." Page 4 of the Nickersons notice of supplemental evidence is clearly and unequivocally an affidavit. Therefore, the Plaintiff's objection should be overruled and the Court should consider the evidence presented in making a ruling on summary judgment.

PHH never objected to the evidence nor did they refute it, so it is in the record and deemed admitted. It is an assignment of error for the Court to just simply ignore it. (R. 1227-1232)

It is also an assignment of error for this Court to now ignore it because of unfair procedural technicalities. R. 1247 – "The Nickersons submitted additional documents and statements after the hearing on motions for summary judgment. The court will not consider those documents as they were not filed timely, and the Nickersons did not file a motion to reconsider." We were never served the Court's order denying our motion to continue so we were unaware of anything to reconsider or the need to ask for a reconsideration until the District Court served us the memorandum and order granting summary judgment to PHH at which time we filed for reconsideration. The Court entered this order in the record post the hearing and did not serve or notify us that it had been done. Note there is no certificate of service on the order. Reasonable inference on the issues surrounding our entering this information in the record implicates extreme abuse of power and discretion (R.1178).

All hearings we attended were handled telephonically. We were never provided minutes of those hearings per I.R.C.P. 7(d)(4) "The court may hold the hearing…by a telephone conference… The court shall cause minutes thereof to be prepared, filed in the action and served upon all parties to the action." Anytime we asked for any document in the record, we had to pay $1 per page. We were told we had to request the minutes from the transcriptionist and pay their fee, which would have proven to be a very costly option for us.

In addition, as stated earlier, additional evidence was available that defeats all claims of Chase and PHH. Account notations, communication records, witnesses and federally mandated records we requested from the very start prove all claims. Opposing counsels know the truth, have admitted the truth, but are concealing it from the Court, and are guilty of fraud on the Court.

Concealment becomes a fraud where it is effected by misleading and deceptive talk, acts, or conduct, where it is accompanied by misrepresentations, or where, in addition to a party's silence, there is any statement, word, or act on his part which tends affirmatively to a suppression of the truth. Such conduct is designated active concealment. Equitable Life Ins. Co. of Iowa v Halsey, Stuart & Co., C.C.A.111., 112 F.2d 302, 309.

Under our system of government the process of adjudication is surrounded by safeguards evolved from centuries of experience. These safeguards are not designed merely to lend formality and decorum to the trial of causes. They are predicated on the assumption that to secure for any controversy a truly formed and dispassionate decision is a difficult thing, requiring for its achievement a special summoning and organization of human effort and the adoption of measures to exclude the biases and prejudgments that have free play outside the courtroom. All of this goes for naught if the man with an unpopular cause is unable to find a competent lawyer courageous enough to represent him. His chance to have his day in court loses much of its meaning if his case is handicapped from the outset by the very kind of prejudgment our rules of evidence and procedure are intended to prevent. Professional Responsibility: Report of the Joint Conference, 44 A.B.A.J. 1159, 1216 (1958) Black's Law Dictionary 4th Edition

We truly do not understand how this Court or any court can simply ignore the evidence and factual issues of this case.

> "In *T.W. Elec. Serv., Inc. v. Pacific Elec. Contractors Ass'n*, 809 F.2d 626 (9th Cir. 1987), we explained that, "at summary judgment, the judge must view the evidence in the light most favorable to the nonmoving party: if direct evidence produced by the moving party conflicts with direct evidence produced by the nonmoving party, the judge must assume the truth of the evidence set forth by the nonmoving party with respect to that fact." Id. at 63031(citations omitted)." *Leslie v. Grupo ICA*, 198 F. 3d 1152 (9th Cir. 1999)

According to the case cited above, this Court cannot ignore the direct evidence presented. In fact, in regards to summary judgment the Court is required to assume the evidence we presented that PHH does not own or hold our note is true and summary judgment must be denied. (R. 1232) Further, there is so much deception from Chase and PHH regarding the handling of our account, the transfers of our note, assignments that could not have logistically occurred, and the obsession with foreclosing, that this Court should not have affirmed the District Court. Doing so simply affirms the errors of fact and law of the District Court and condones the fraudulent actions and inactions of opposing counsel, PHH and Chase. Their

blatant misconduct, fraud on the Court, continuous violations of the rules, and failure to fulfill mandated ethical responsibilities by presenting false and conflicting evidence, briefs, affidavits, and memorandums have denied our equal access to justice, thwarted our ability to conduct discovery, and resulted in unjust summary judgments in favor of PHH and Chase. These actions and inactions have denied and prevented our rights to a defense and our opportunity to find relief.

Assignments of Error 4: Our rights to due process were denied by not considering or addressing how severely illegal acts such as the non-judicial foreclosure created impasse for us in defending our property rights.

There are errors regarding not considering or addressing illegal acts committed by PHH and Just Law. These acts, among other severe, significant and substantial injuries, specifically 1) created extreme prejudice that prevented us from defending our rights; 2) inflicted malicious financial destruction upon us without legal foundation, cause or right; 3) negatively impacted our credit, livelihood and ability to maintain our livelihood; and 4) constructed procedural technicalities and insurmountable procedural roadblocks that have defeated our rights to obtain relief judicially.

The illegal non-judicial foreclosure attempt which commenced in February 2010 breached the alleged contract, defied any alleged agreements, and ignored codified lending rules governing this property. This 50 acre agricultural property could only be secured with a mortgage and not a Deed of Trust. I.C. § 45-1502 states parcels over 40 acres cannot be secured by a deed of trust. Our claims support compliance with this restriction and a faxed acknowledgment from Coldwell Banker at closing proves Coldwell recognized this code, agreed to abide by its limitations, and committed to honor the verbal agreements previously made with us (R. 1539-1543).

Extensive witness testimony from those involved in this transaction from property search to closing can testify a mortgage is the only instrument we ever considered regarding ANY loans on ANY of the hundreds of properties visited and thousands reviewed in our search for property.

Jason Rammel and Bradon Howell of Just Law in Idaho Falls admitted we had a mortgage and admitted the size and use of this property supported this limitation. However, they maliciously pursued the non-judicial foreclosure anyway (R. 493, 922, 1556-1560). This non-judicial foreclosure attempt was based on fabricated default claims created solely by grotesque

prevention of performance. A very rudimentary investigation demands any reasonable person to suspect the existence of fraud. Further investigation proves it.

As stated and restated in this brief, PHH's claim of default in February 2010 was false, and this Court has affirmed its inaccuracy. However, there is more to this story that must be considered to reveal intent. Upon receipt of PHH's notice of intention to foreclose dated February 12, 2010, (R. 119) and Coldwell Banker's welcome letter (R. 118) and notice of intention to foreclose (R. 120), we contacted Coldwell Banker to let them know we were excited to be with them again because our previous experience with Coldwell Banker was mostly positive and our experience with Chase's account servicing was nothing short of a nightmare. We informed Coldwell Banker the alleged default was an error created by Chase's poor recording keeping. Coldwell Banker indicated we should not have received any letters from them, they could not help us, and that we must contact PHH. Notice the different contact numbers for PHH and Coldwell on their respective letters.

We then contacted PHH, and told them the alleged default was wrong. We assured them we did make our payments to Chase in 2009, and that our last payment was made in January 2010. We told there was some history of Chase losing our payments, but that the payments had been found in various places. Chase told us they had fixed the errors in their system, and that we were showing current.

PHH refused to validate the alleged default and told us they did not have any account records from Chase. They said we had to get Chase to provide our records to them in order to prove no default and straighten out our account status. PHH would not accept any payments until we paid the full amount of the alleged default (R. 561). We contacted Chase but Chase said all account records were transferred to PHH. We contacted PHH again and they stated, "We don't have any account records from Chase." Thus, PHH claimed default when they did not have access to any account records and prevented performance when they had no physical evidence to validate the existence of any default whatsoever. We provided PHH with payment records that proved the alleged default was inaccurate but PHH ignored us (R. 901).

PHH started this foreclosure process in February 2010. According to the facts presented by the Court, PHH's alleged interest in our note or mortgage was created with an assignment from Chase to PHH that was recorded in the Clearwater County land records in June 2010 (R. 928). Material issues surrounding this assignment prove it is fraudulent. Among other issues, Chase claimed they never owned our note and mortgage to thwart discovery. Chase cannot

assign what Chase does not have. Then, in contradiction of all previous assertions, Chase claimed in response to a Qualified Written Request (QWR) on January 10, 2014, that they still owned our note and mortgage. Either way, Chase certainly does not believe it assigned our note and mortgage to PHH in June 2010. Therefore, this finding is an error of fact.

In addition, the body of the assignment references Just Law as the substitute trustee. This is impossible because PHH did not have any alleged authority to assign Just Law as substitute trustee until after PHH allegedly received the authority to appoint Just Law as substitute trustee as a result of the assignment. Reasonable inference can conclude Just Law fabricated this assignment in order to perform an illegal non-judicial foreclosure on our mortgage. Shortly after this assignment Just Law, as substitute trustee, filed a Notice of Default which contained the same erroneous alleged default that PHH claimed in February 2010 (R. 925, 926).

This non-judicial foreclosure attempt was illegal because, as stated previously, our property is 50 acres in size and according to I.C. § 45-1502 parcels over 40 acres cannot be secured by a Deed of Trust. We signed a Mortgage not a Deed of Trust. As a matter of fact and law, there is no Trustee for a Mortgage. The entire non-judicial foreclosure process created a great deal of prejudice in this action because we provided our evidence that we did not default to Bradon Howell of Just Law in an attempt to halt the non-judicial foreclosure. Just Law then ignored it and pushed forward with a sale date. Even though Just Law had our contact information, and had been previously informed how detrimental this entire situation was to our testimony and livelihood, the non-judicial and the sale were posted in the paper. No attempt to contact us was made. The non-judicial sale could have gone uncontested if a neighbor had not informed us of it. This unlawful and unethical behavior should be of grave concern to all Idaho landowners in light of the finality placed upon a non-judicial foreclosure sale in Idaho.

After we were informed of the sale, we contacted Just Law again to stop the sale. Our objections fell on deaf ears. It was not until after Mr. Mitchell informed Just Law of their liability if they proceeded with a non-judicial foreclosure on our mortgaged property that they stopped this illegal action. Subsequently, even though they had evidence in hand that irrefutably proved PHH's alleged default was wrong, PHH and Just Law pushed forward with this frivolous and fraudulent judicial action. Incidentally, even though PHH and Just Law had our contact information and our attorney's contact information, the judicial action was also posted in the paper. This willful abuse of the system and their attorney oaths created extreme prejudice, demonstrates malice, and caused substantial, severe and significant injury for us. They knew and

know the truth but have chosen to stand on their lies. They have utilized legal chicanery and procedural manipulation to place every roadblock in our path they can in order to steal our property and prevent us from obtaining justice. Justice demands these roadblocks be removed so a judgment can be rendered based on the truth of this matter.

PHH has now admitted their alleged default was wrong. Therefore, their testimony is impeached. Witnesses who testify to falsehoods are impeached because *one that makes contradictory statements is not to be heard.* Justice must rule with truth.

PHH must be required to reveal the other material facts they are concealing so justice may be served. We pray this Court dismiss PHH's complaint, require PHH to provide proof of ownership, and require PHH and Chase to provide the account and communication records they are bound to keep so the truth of this matter might be found and they might be held accountable for their actions. We have the right to defend ourselves. To bind the truth in this matter imprisons justice and renders the ownership of all Idaho land volatile and inconsequential based on the whims and greedy wishes of big banks doing business in Idaho. Justice demands a remand and for appropriate relief to be awarded.

Not considering or addressing the extreme prejudice, financial destruction, negative impact, and seemingly insurmountable justice roadblock created for the Nickersons with Just Law and PHH's illegal non-judicial foreclosure attempt of an over 50 acre agricultural property secured with a mortgage based on fabricated default claims is an assignment of error that must be corrected.

Assignment of Error 5: Our rights to representation and to defend ourselves were denied by all summary judgment proceedings.

There are errors regarding issues relating to summary judgment including but not limited to prevention of performance, attorney negligence, fraud, ownership and transfer of ownership of our note, alleged default, contradictory account records, notations and striking of evidence. This Petition For Rehearing is necessary so these errors may be reviewed and corrected.

We thought by appealing summary judgment and all interlocutory orders, the entire record was in appeal. Having you review everything was our intention and what we believed we requested and addressed in the limited space of our brief. The enormity of injustice and errors in the record and the lack of space to address them should not be allowed to be used to circumvent justice. We have been denied our rights to a defense and opportunity to present our claims

because of procedural technicalities regarding page limitations, having the time and resources to properly present our claims and defenses, and because of having to dig through the muck of corruption and misrepresentation that plagues the record in this case. We hereby incorporate the record in its entirety and the truth presented to it in defense of our need for a rehearing.

We specifically incorporate our Reply Brief In Support of Summary Judgment and Notice of Supplemental Evidence herein in support of why a rehearing is necessary to secure justice. These documents rightfully belong in the record and are required in order for this case to be determined based on the merits of the case. The Notice of Supplemental Evidence defeats the first and second summary judgments. If Chase owns the Note, PHH had no right to bring this action and the findings of the Court surrounding the first summary judgment are invalid and cannot stand. Further, this proves our claims of fraud and misconduct of opposing counsels. The Notice of Supplemental Evidence also establishes a contract existed with Chase which reopens our counterclaim. It also proves no contract existed with PHH, which dismisses their complaint and denies their rights to claims. Judge Griffin willfully and intentionally delayed and prevented this evidence from being in the record. Reasonable inference concludes his objective was not to consider the truth of the matter in rendering his decision regarding this litigation. Our Reply Brief In Support of Summary Judgment provides meritorious reasons why summary judgment could not be awarded in favor of PHH, and why, if summary judgment were awarded, law and fact required it to be awarded in our favor.

The District Court erred in refusing to consider these documents. The Notice of Supplemental Evidence was ignored in error. The significance of its bearing on this case required the Court to consider and address it. The Reply Brief In Support Of Motion For Summary Judgment was denied based on timeliness created directly and indirectly by Judge Griffin himself. This Supreme Court cannot allow the prejudice of a District Court Judge to violate our rights to due process. It is important to note that both of these documents were in Judge Griffin's chambers prior to his rendering judgment. The option to consider these documents was at his disposal and discretion. Therefore, this Court has the discretion and responsibility to consider them in their *de novo* review, with a fresh look and no prejudice or bias, in order for this judgment to be based on the true and complete merits of the case presented to the District Court.

We specifically incorporate our Response and Opposition To Plaintiff's Motion To Strike herein in support of our Affidavit Of Charles Nickerson In Support Of Summary Judgment. Throwing out evidence that is before the Court which irrefutably defeats summary judgment in

favor of PHH and Chase, and proves Fraud on the Court, then rendering summary judgment in favor of PHH and affirming summary judgment in favor of Chase based on lack of evidence or testimony is an abuse of discretion and demonstrates error in judgment, to say the least. Finding the truth of the matter is supposed to be the responsibility of the jury, not the judge. The judge is to determine if issues of material fact exist. The evidence presented established genuine issues of material fact that defeat summary judgment in favor of PHH and Chase. Actually, the evidence presented dismissed all claims of both entities and established fraud, misconduct, and other such violations. The Court overreached its authority by striking evidence that proved genuine issues existed. It was an error and abuse of discretion and authority to proceed with summary judgment by ignoring the truth of the matter. Refusing to consider or respond to our Response and Opposition To Plaintiff's Motion To Strike is an error that allowed PHH's Motion To Strike to be deemed well taken and thereby granted. We hereby incorporate the fact we oppose and opposed PHH's Motion To Strike and have appealed this decision before this Supreme Court. The District Court ignored our opposition. By striking our Affidavit of Charles Nickerson In Support of Summary Judgment and ignoring our Response and Opposition To Plaintiff's Motion To Strike, Judge Griffin procedurally denied our right to a defense and circumvented our rights to due process of law.

We hereby incorporate the Memorandum In Support of Motion To Reconsider Judgment, specifically pages 1325 – 1329, in support of why this Supreme Court should consider and allow these documents to carry the weight of securing justice as was intended in their preparation and creation. Chase fatally failed to refute the evidence presented in these documents in their Appellate Brief. Chase simply relied upon their ability to navigate, or manipulate, the judicial process to prevent this Court from considering evidence that defeats their claims and defenses and proves they are guilty of active concealment and thereby Fraud on the Court.

We hereby incorporate our Memorandum In Support of Motion To Reconsider Order Granting Plaintiff's Motion To Strike in support of why Judge Griffin erred in striking our Affidavit Of Charles Nickerson In Support of Summary Judgment (R. 1358 – 1372). The majority of the argument PHH used to strike this testimony is based on or gets its foundation from assignments of error by the District Court in previous findings that this evidence refutes. Legal chicanery in all its glory - The Three Step Approach On How To Win A Wrongful Lawsuit For Dummies - Step 1: Lie to create a false record. Step 2: When or if the truth is discovered and presented, claim it is irrelevant and inadmissible based on the erroneous findings

you conned the Court into making earlier in Step 1. Step 3: Win the case without the truth of the matter or merits ever being considered. The question becomes, who are the dummies? The crooks getting away with stealing our land out from under us or those who have remained law abiding citizens with faith the system and the truth will set us free. The answer remains to be seen.

In response to this Court's apparent refusal to consider our evidence submitted during the summary judgment process and in response to the District Court's mistreating of our evidence we submit the following authority:

> "In *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986), the Supreme Court explained ... that "[c]redibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge, whether he is ruling on a motion for summary judgment or for a directed verdict. The evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor." Id. at 255, 106 S.Ct. 2505."
> ...
> "In *T.W. Elec. Serv., Inc. v. Pacific Elec. Contractors Ass'n*, 809 F.2d 626 (9th Cir. 1987), we explained that, "at summary judgment, the judge must view the evidence in the light most favorable to the nonmoving party: if direct evidence produced by the moving party conflicts with direct evidence produced by the nonmoving party, the judge must assume the truth of the evidence set forth by the nonmoving party with respect to that fact." *Id.* at 63031(citations omitted). We specifically rejected the notion that a court could disregard direct evidence on the ground that no reasonable jury would believe it." *Leslie v. Grupo ICA*, 198 F. 3d 1152 (9th Cir. 1999)

We have provided direct testimony both in our verified amended answer and third-party complaint and in our affidavit in support of summary judgment that Chase and Wells Fargo Bank, N.A. indicated we were current and in good standing when PHH took over the account and claimed default; that Chase's account records were in error; that PHH's default amount was incorrect; that PHH refused to validate its default amount; and that PHH refused to accept our payments (R. 109-112, 1085, 1086). According to the summary judgment standard set forth above in *Grupo* and *Sparks*, the District Court was to believe our testimony and was to assume it was true. PHH has admitted our testimony was true regarding the alleged default because they have admitted the alleged default was incorrect. PHH has also admitted they refused to accept our payments. Therefore, since the legal standard requires the court to believe our testimony and assume it is true and especially since PHH has admitted it is true, summary judgment in favor of PHH is in error and must be reversed.

Additional errors regarding summary judgment are presented below.

A. This Court has erred in its findings of fact regarding PHH's standing specifically regarding whether PHH is the entity entitled to enforce the Nickersons' note. The Court simply stated, "The Nickersons' assertion that PHH has not provided any evidence of a valid claim of ownership of the debt lacks support in the record." This Court also stated, "Although the Nickersons did present the affidavit of Mr. Nickerson, the district court struck the majority of its contents and the Nickersons have not challenged that order on appeal." We challenged e v e r y t h i n g. We built our case around the evidence we presented during the summary judgment process. We anticipated this Court to perform a *de novo* review of this evidence on appeal. We provided the affidavit to expand the factual record of the case and ignoring it is an abuse of discretion. The limited amount of space in our brief made it difficult to individually address the errors the District Court made in its order striking portions of our affidavit. However, since it is a subsidiary issue to the Summary Judgment, this all inclusive evidence is presented on appeal.

The District Court struck our claims of fraud because it struck our evidence supporting those claims. According to the standards for summary judgment, it is not the judge's role to weigh the evidence.

> "In *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986), the Supreme Court explained ... that "[c]redibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge, whether he is ruling on a motion for summary judgment or for a directed verdict. The evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor." Id. at 255, 106 S.Ct. 2505." *Leslie v. Grupo ICA*, 198 F. 3d 1152 (9th Cir. 1999)

> "On a motion for summary judgment, the Court does not weigh evidence or determine truthfulness of allegations; instead, it determines the existence of genuine issues of material fact... Direct testimony of the non-movant must be believed... (citations omitted)." *Sparks v. ALLSTATE MEDICAL EQUIPMENT, INC.*, Case No. 1:14CV00166EJLCWD. (D. Idaho, 2015).

The District Court ruled the letter from Fannie Mae (R. 1112) stating they owned our loan from December 27, 2002, until December 3, 2009, was hearsay and irrelevant but relied upon this evidence as fact when it stated Coldwell Banker assigned the note to Fannie Mae in December 2002 demonstrating it was neither hearsay nor irrelevant. The letter from Fannie Mae is clearly a hearsay exception according to I.R.E. 803(24) and relevant according to I.R.E. 401.

"Other exceptions. A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence."
I.R.E. 401 "'Relevant Evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."

Furthermore, this letter confirms PHH's claims that Coldwell sold the note to Fannie Mae (evidence of a material fact) and is relevant to PHH's lack of proof of chain of possession of the note. This letter is neither hearsay nor irrelevant. This letter confirms (A) evidence of a material fact – Coldwell sold the loan to Fannie Mae, (B) it is more probative on the point than any other evidence we could procure because Fannie Mae is not a party to this litigation so the only way for us to gather the evidence was to send a request to Fannie Mae to which Fannie Mae sent this letter in response, and (C) justice will clearly best be served by allowing this letter into evidence. This letter is direct evidence that confirms realities regarding PHH's illegitimate claim to our note and the conspiracy from the beginning. This letter is direct evidence that has not been refuted by any evidence submitted by PHH. Note: PHH claims Coldwell sold the note to Fannie Mae, and then claims Coldwell assigned it to Chase in 2007.

This letter is evidence of fraud and the intent to defraud on the part of Coldwell from the beginning by Coldwell knowingly and illegally selling, without our knowledge or consent, our over 50 acre agricultural property ineligible for purchase, due to federal rules by Fannie Mae, to Fannie Mae.

Note this letter says Fannie Mae and not Freddie Mac as Chase persists in saying. Forensic analysis of our Note can shed light on why Chase persists in saying Freddie Mac in lieu of Fannie Mae. Proving duplicated and multiple entities have exchanged ownership with Chase's knowledge demonstrates motive for Chase to foreclose /cause foreclosure in order to fix the violations. It also provides motive as to why Chase and PHH refused to allow us or third parties who approached them on our behalf to pay off the loan with other available resources in order to end this nightmare. It also corroborates fraud is why Chase and PHH blocked the sale of the property. As the preliminary title search demonstrated, they had no way to satisfy or release the loan for our secured buyer. Allowing us to sell the property to end their assault on our financial portfolio exposed them to too much liability, civil and criminal. We have offered expert witness

testimony of forensic analysts who can provide testimony regarding the true happenings and occurrences surrounding any alleged Note on this property. Genuine issues exist that not only defeat Summary Judgment, but implicate these entities in criminal wrongdoing.

The District Court struck the Notice of New Creditor letter from Chase dated December 22, 2009 (R. 1139, 1140). The District Court ruled this letter was irrelevant. (R. 1244) However, this letter is evidence to the material fact Chase obtained the Nickersons note on December 3, 2009, which contradicts the fact accepted by the Court that Chase acquired the note in November 2007, impeaches the statements made by Chase that they never owned our note and that PHH repurchased the note from Freddie Mac. Therefore, this ruling is in error. This evidence is relevant and must be considered in the determination of this case. Chase refused to provide answers and production based on their claims they were only the servicer. (R. 747-751) For some unknown and undisclosed legal reason, the Judge determined their being the Servicer waived their requirement to produce discovery. This contradicts federal mortgage lending and collection laws, guidelines and requirements regarding obligations of Servicers. If the District Court had required Chase to provide account records, notations, information from the research department, taped conversations and witness testimony from the employees who worked with us, this case would have been dismissed long ago and relief would have been granted to our family. Third party witnesses have been presented to corroborate the conversations took place and attest to the contents of the conversations.

The District Court struck the testimony of Charles Nickerson in his affidavit (R. 1086-1088) where he states, "Conspicuously absent from the record is a Notice of New Creditor letter from PHH. We never received a notice from PHH stating that they own the loan which confirms the evidence that PHH does not own the loan." The District Court stated this argument is irrelevant. This is an error of fact and finding. It is not irrelevant for PHH to have to prove they are the real party in interest regarding their complaint. This is particularly true when all of the evidence demonstrates PHH does not own the note!

Ownership is an essential element that must be proven in a foreclosure case. The District Court erred in weighing the evidence of whether or not PHH had beneficial interest or right to foreclose in the presence of genuine issues and a lack of evidence in the record to support their claims at the first summary judgment hearing. This error in judgment established the foundation for all future findings and rulings. If reversed, PHH's claims have no merit and must be dismissed. PHH has fatally failed to establish ownership. Therefore, there is no foundational

basis for PHH to prevail in Summary Judgment. Further, by reversing this error, our claims against Chase can be reopened and they must answer for Fraud on the Court. This evidence and testimony cannot be ignored. Federal law requires PHH to provide this notice of new creditor. Chase affirmed this requirement in the notice they provided to the Nickersons.

> "We are sending you this **Notice** in accordance with the requirements of the "Helping Families Save Their Homes Act of 2009." Your mortgage loan (referenced above) has been sold or transferred to JPMorgan Chase Bank, N.A. ("Chase"). Chase is the New Creditor of your loan.
> ...
> Any investor or creditor that purchases your loan is required under federal law to give you written notice." R. 1139, 1140

PHH has never complied with their obligation to notify us of becoming our New Creditor. Charles Nickersons' testimony that PHH did not send this Notice, the fact that federal law required PHH to send this Notice and the fact that it is absent from the record provides reasonable inference that the reason PHH did not send this Notice is because PHH does not own our loan. This material fact coupled with the QWR response from PHH in which PHH does not claim ownership and QWR response from Chase dated January 10, 2014, in which Chase states they have our note in their possession and that they are the investor on the loan provides more than reasonable inference of the undisputed fact that PHH does not own our note.

Additional rebuttal to the District Court's striking of our evidence can be found in our Memorandum In Support Of Our Motion To Reconsider Order Granting Plaintiff's Motion To Strike which is in the record, R. 1358-1372. We specifically incorporate this document herein in support of our Petition For Rehearing.

Contrary to this Court's Opinion, we did submit an additional affidavit in response to PHH's motion for summary judgment. On March 7, 2014, we submitted our Notice of Supplemental Evidence (R. 1227-1232) which introduced a letter dated January 10, 2014, from Chase in which Chase states they possess our note and that they are the investor on our loan. This evidence was not refuted by PHH and the District Court simply ignored it because it was presented, because of the Court's direct actions and inactions, after the summary judgment hearing. On appeal we assigned an error to this action, Appellant's Brief, p. 30, but this Court did not address this error in its opinion. We contend this supplemental evidence is a part of the summary judgment process and must not simply be ignored. PHH had the chance to produce evidence or affidavit denying this evidence, but chose not to. Therefore, it is judicially admitted

and according to *Leslie* and *Sparks*, this Court must retract its opinion and reverse the order granting summary judgment to PHH. Any reasonable mind can only conclude that PHH does not own or possess our note and mortgage, or at a minimum, there is a genuine issue of material fact regarding PHH's possession and ownership of our note that must be addressed.

Further, on March 26, 2014, prior to judgment being issued, we submitted an Objection to Second Affidavit of Ronald E. Casperite (R. 1237-1238). Mr. Casperite's affidavit did not contain the notary's signature which invalidates the affidavit in its entirety and leaves PHH with no facts or evidence to base its second motion for summary judgment upon. The District Court ignored this objection not addressing the fact Mr. Casperite's affidavit contains notary fraud even when we presented evidence from James Zombeck, Notary Unit Supervisor for the State of New Jersey Department of Treasury, which states, "Upon review of the SECOND AFFIDAVIT OF RONALD E. CASPERITE that you provided, it is apparent that the notarization is invalid. It lacks the signature of the Notary Public." (SAR 63) This Supreme Court has ignored the illegality of this affidavit as well because it ignored the assignments of error presented in our Appellant's Brief, p. 30 and p. 32, regarding the District Court's refusal to acknowledge and consider the evidence presented to it after the hearing, but prior to judgment being rendered. This evidence impeached PHH's claim to own our note and invalidated PHH's affidavit in support of their motion for summary judgment. Therefore, this Court has erred by not addressing the assignments of error we presented on pp. 30 and 32 of our brief and must reconsider its Opinion.

Our right to provide a defense and assert our claims can only be preserved with a *de novo* review of summary judgment and all issues and errors surrounding it.

Apparently, based on the contents of Justice Horton's Opinion, this Court has not performed a *de novo* review of summary judgment. Black's Law Dictionary 4th edition defines *de novo* as "anew; afresh; a second time". Therefore, in order to perform a *de novo* review of summary judgment, everything included, especially the evidence, in the summary judgment process must be looked at anew, afresh, a second time. Justice must see what was presented, not just what Judge Griffin allowed to be entered. Judge Griffin's bias and prejudice against us and this case sabotaged the record and condition of the record. Truth and fact were imprisoned behind a cloak of injustice (R. 1179-1206).

Black's Law Dictionary 10th edition defines *appeal de novo* as "an appeal in which the appellate court uses the trial court's record but reviews the evidence and law without deference to the trial court's rulings." Accordingly, the facts surrounding PHH's lack of standing and their false claim of default must be examined in light of all the evidence in the record at the time judgment was rendered. It also must consider the request to expand the evidence that was before the Court prior to judgment. When viewed in this light, there can be no doubt the Court has erred regarding PHH's standing to enforce our note.

This Court has stated the following facts regarding the transfers of ownership regarding our Note.

Statement: Coldwell Banker Mortgage was the initial holder of the note in October 2002.

We challenge whether or not a legal note was presented or signed and whether Coldwell Banker Mortgage has ever lawfully held a note on our property. R. 1444-1448, 1539-1543. Categorically, the terms, authenticity and transferability to PHH is in question.

Statement: Coldwell assigned the note to Fannie Mae in December 2002.

Contradictions:

a) This fact is disputed by Chase.

b) PHH has stated they "believe" the note was transferred to Fannie Mae. "PHH believes that note was transferred to the Federal Home Mortgage Association, (Fannie Mae), which in turn, had JP Morgan Chase service the note…Fannie Mae assigned the note back to PHH as the originating lender." (R. 882, first answer). PHH is not the originating lender and there is no evidence in the record to support any claims of a transfer of ownership from Fannie Mae to PHH.

c) Chase stated the note was immediately sold to Freddie Mac (R. 536 ¶3). Unless Chase is admitting our note was sold twice to save this Court and us time and money proving it, this admission does not agree with the findings of the District Court or this Supreme Court, which creates a genuine issue of material fact that must be resolved. Not only does the law not permit the same thing to be paid twice, but this is also an admission of Fraud of the Court regarding the true chain of title by Chase,

PHH or both. With this admission in the record, it is an assignment of error for the District Court to weigh the evidence regarding chain of title to determine their own findings. This violates the standards of Summary Judgment and is in error.

d) The District Court used the only evidence of this fact in the record, which happened to be provided by the Nickersons, a letter from Fannie Mae which stated Fannie Mae obtained the note in December 2002 (R. 1112). We presented this evidence to prove a genuine issue of material fact existed that precludes summary judgment in favor of PHH. The District Court used this evidence even though he had ruled it to be hearsay. (R. 1243).

e) No record of this assignment is recorded in the county records.

Statement: J.P. Morgan Chase acquired the note in November 2007.

Contradictions:

a) This fact is disputed by the evidence, Chase, PHH and Fannie Mae.

b) PHH contends Chase never acquired the note but that the note was assigned back to PHH by Fannie Mae via the allonges on the note (R. 882, first answer) However, there are no allonges on the note provided with the complaint (R. 40-45). This contention appears to be a fabrication of fact by opposing counsels as Chase and Fannie Mae have both disagreed with this.

c) Chase, by their attorney of record, maintains that it never owned the note and that it was only a servicer (R. 747-751, 759-760). This assertion by Chase is contrary to 1) the New Creditor letter provided by Chase R. 1139-1140, 2) Fannie Mae R. 1112, and 3) Chase's QWR response R. 1232.

d) Chase, in paragraph 6 of their answer to our Third Party Complaint allegation that Coldwell assigned the Note and Mortgage to Chase on or about November 20, 2007, states, "JPMorgan admits that the Nickersons' Note and Mortgage were assigned by Coldwell, but lacks sufficient information to form a belief as to the parties and dates of assignment(s) and therefore denies the remaining allegations of Paragraph 7 of the

Complaint." In its answer, Chase denied receiving the note via this alleged assignment (R. 128).

e) Coldwell Banker Mortgage claims it assigned the note to Chase and recorded that false assignment in the county records even though the evidence, PHH and Fannie Mae claim Fannie Mae had the note and did not assign it to Chase at that time.

Statement: J.P. Morgan Chase assigned the note to PHH in June 2010.

Contradictions:

a) This fact is disputed by the evidence, Chase and PHH.

b) As stated above, PHH claims the note was assigned back to them by Fannie Mae. R. 882.

c) Chase claims PHH repurchased the note from Freddie Mac. R. 537 ¶9. Respondent Chase's Brief, p. 3. "In February 2010, PHH repurchased the Note from Freddie Mac…"

d) Chase claims they were only a servicer of the note. R. 747-751, 759-760.

e) Chase claims to still own and hold the note. R. 1232.

As this Court can see from the record, the facts regarding the transfer of the note are disputed by the evidence, Chase, PHH, and us. Further, it is important to note that Chase and PHH do not agree with each other, the court or the evidence and that Chase and PHH do not have a problem presenting false information and testimony to the Court nor do they have a problem with recording false information and omitting filing information in the county records. Chase's and PHH's pattern of deception (shenanigans as Justice Horton labels it) started at the conception of this case and has continued throughout the appeal process. It is extremely eye opening to realize Chase claims they never owned the note. In Chase's answers to our interrogatories and requests for production Chase denied they ever owned our note and claimed to be a servicer only 8 times.

1) "…JPMorgan further objects to this interrogatory as it mischaracterizes the facts, contending that JPMorgan purchased the Nickersons' note, whereas, JPMorgan was servicer of the note and not a purchaser." PAGE 2, ANSWER NO. 1

2) "…JPMorgan objects to this interrogatory because it mischaracterizes the facts, contending that JPMorgan purchased the Nickersons' note, whereas,

JPMorgan was servicer of the note and not a purchaser." PAGE 3, ANSWER NO. 2

3) "...JPMorgan, as a servicer of the loan, did not "sell" the Nickersons' note." PAGE 3, ANSWER NO. 3
4) "...JPMorgan did not purchase, own or sell the Nickersons' note and merely acted as a servicer of the loan." PAGE 3, ANSWER NO. 4
5) "...JPMorgan further objects to this interrogatory as it mischaracterizes the facts, contending that JPMorgan was the owner of the note, in a position to determine to foreclose or not to foreclose, when in fact, JPMorgan was a servicer of the note." PAGE 4, ANSWER NO. 7
6) "...As a servicer for the Nickersons' loan, JPMorgan is not aware of the information exchanged in the transfer/sale of the note between buyer and seller." PAGE 5, ANSWER NO. 9
7) "...when in fact, JPMorgan was merely a servicer of the note." PAGES 5-6 ANSWER NO. 10
8) "...JPMorgan did not purchase the Note, but was merely a servicer of the Note." PAGE 14, RESPONSE NO. 11

Thus, Chase claims they never assigned the note to PHH thereby stating the assignments recorded in the country records are fraudulent and cannot be relied upon by PHH, this Court or the world at large (R. 747-751, 759, 760).

This Supreme Court must now do a legitimate *de novo* review and consider the evidence we presented during summary judgment and supplemented weeks prior to the order on summary judgment. We provided a letter from Fannie Mae in which Fannie Mae states they purchased our loan on December 27, 2002, and terminated their interest in the loan on December 3, 2009 (R. 1112). The District Court determined part of this evidence was an undisputed fact when it stated Coldwell Banker Mortgage assigned the note to Fannie Mae in December 2002. Since the evidence demonstrates Fannie Mae owned the note until December 3, 2009, the assignment of the note recorded by Coldwell in 2007 is impeached and is a false record of assignment and is fraudulent evidence that cannot be relied upon. In addition, Chase sent a federally mandated Notice of New Creditor letter to the Nickersons in which Chase claims they purchased the note on December 3, 2009, the exact same day Fannie Mae terminated their interest (R. 1139-1140). This is solid, concrete irrefutable evidence that Chase has averted

discovery and lied to the Court by claiming it never owned our note and that PHH has lied to the Court by claiming it received the note directly from Fannie Mae.

There are two banking and mortgage entities that apparently do not have a problem with lying and presenting false evidence. Please, Supreme Court, open your eyes and see the truth. Stop PHH, Chase and their accomplices from victimizing innocent families like ours and doing whatever they want with no regard for the laws in place. On January 10, 2014, Chase replied to our qualified written request stating "We are not required to produce the original note which will remain in our possession…The investor for this loan is JP Morgan Chase Bank, National Association."(R. 1232). This letter removes all doubt that Chase and PHH have lied to this Court and have misrepresented the facts and unequivocally renders PHH's complaint moot because PHH, by law, cannot enforce what it does not hold and own. See Appellant's Brief p. 27. The record and evidence before the District Court and now this Court clearly demonstrates PHH and Chase have lied to the Courts. This Court must also realize that neither PHH nor Chase have presented any affidavits or argument to refute these facts and that these facts were present in the record prior to summary judgment. At this point, since PHH's evidence, affidavits and claims have been impeached and PHH has fatally failed to show they hold or own our note or have any beneficial interest in our property whatsoever, by law, PHH's complaint must be dismissed and summary judgment in our favor must be granted.

> "Because Movants failed to establish possession and an ownership interest in the notes, they are not shown to be the real party in interest, and they lack standing to bring the motions." *In re Wilhelm*, 407 B.R. 392, 398 (Bankr. D. Idaho 2009).
>
> "plaintiff presented no evidence of having possessed the underlying note prior to filing the complaint. If plaintiff did not have the note when it filed the original complaint, it lacked standing to do so, and it could not obtain standing by filing an amended complaint." *Deutsche Bank Nat. v. Mitchell*, 422 N.J. Super. 214, 27 A.3d 1229 (2011).
>
> "U.S. Bank was required to show that at the time the complaint was filed it possessed the original note either made payable to bearer with a blank endorsement or made payable to order with an endorsement specifically to U.S. Bank. See *Bank of N.Y. v. Raftogianis*, 418 N.J.Super 323, 13 A.3d 435, 439-40 (2010) (reciting requirements for bank to demonstrate that it was holder of the note at time complaint was filed)." *US Bank Natl. Ass'n v. Kimball*, 2011 VT 81, 27 A.3d 1087 (2011).

> "Appellee must demonstrate it is a person entitled to enforce the note. It must provide evidence it has possession of the note either by being a holder or a nonholder in possession who has the rights of a holder...Evidence establishing when Appellee became a person entitled to enforce the note must show Appellee was a person entitled to enforce the note prior to filing its cause of action for foreclosure." *Deutsche Bank Nat. Trust v. Brumbaugh*, 2012 OK 3, 270 P.3d 151 (2012).
>
> "The real party in interest in foreclosure actions is the current holder of the note and mortgage...if the note is payable to an identified person, negotiation requires transfer of possession of the instrument and endorsement by the holder." *Bank of Am., NA v. Miller*, 194 Ohio App. 3d 307 (2011).

The evidence shows PHH does not hold or own our note. Therefore, PHH is not the real party in interest and their complaint must be dismissed.

B. The default amount claimed in the notice of default does not match the default PHH now claims and this Court claims as correct. It is axiomatic that in order for a creditor to demand payment and file a complaint, the creditor must be able to prove the amount claimed is 100% accurate. PHH has only proven their demand amount was inaccurate and their complaint based upon that amount is illegitimate. Thus, since PHH and this Court have determined the default amount originally claimed was and is not accurate; PHH's case must be dismissed because the new alleged default irreversibly alters the circumstances and facts PHH's complaint is based upon. PHH's original notice of default and subsequent complaint claims we had not made any payments since January 2009 and that we were 14 payments ($32,605.66) in arrears. However, PHH and this Court have now stated we were only 9 payments ($20,960.91) in arrears for a difference of 5 payments or $11,644.75 and have acknowledged we made our January 2010 payment. In addition, both PHH and this Court acknowledge that since February 2010 PHH refused to accept any payments from us thereby preventing our performance (R. 561) and even though we disputed the alleged default amount at that time and proved to PHH that we had just made a payment to Chase in January 2010, PHH still refused to research the disputed default and prevented performance. We have stated and testimony from Chase employees, records and taped conversations validate we were not in default. Further, we tried to make our regular monthly payments to PHH and Chase. During this time, we pled with PHH to research the disputed default. However, PHH refused to research the disputed default stating we had to contact Chase directly and work it out with them. PHH prevented any performance by refusing to accept our payments, failing to provide proper and accurate notification, and pushing foreclosure based on an inaccurate and non-existent default amount.

Since, according to PHH and this Court, the default is not the same as what is contained in the notice of default, blackmail demand, or complaint, PHH is admitting and this Court has affirmed that PHH has not acted in good faith because PHH refused to and did not validate the disputed default amount. Rather, PHH tried to non-judicially foreclose, and when stopped, pushed an illegitimate foreclosure knowing we were pleading with them to work out this situation caused by the inaccurate records (this Court has affirmed Chase's and PHH's records were inaccurate) of Chase and PHH. Further, PHH has admitted and this Court has affirmed PHH has breached the contract by not providing an accurate notice of default. Even further, PHH admits and this Court acknowledges that PHH prevented our performance by refusing to research the disputed default, refusing to accept performance and refusing to acknowledge our testimony and that of Chase employees that refute the existence of any default.

In addition, since this Court has affirmed PHH's position, this Court is stating Chase has lied to the Court. As stated previously, Chase claimed we missed 11 payments but this Court has ruled we only missed 9 payments. Also, this Court is stating Chase's account record is inaccurate because the account record submitted by Chase reflects a different account balance than what PHH has claimed. This Court, in reality, has affirmed what we have claimed since the beginning, "Coldwell, Chase, and PHH have failed to act in good faith in this matter and refused to cooperate with and work with the Nickersons in resolving a matter that was caused by the accounting errors and notice errors by Coldwell, Chase, and PHH." (Answer and Counterclaim, R. 112). Therefore, this Court should be reversing all summary judgment decisions of the lower court because it has affirmed what the Nickersons have claimed since the day Chase told them they could not access their records.

Reasonable inference would suggest Chase realized they had messed up the Nickersons' account and created extreme exposure for their abusive debt collection practices when the Nickersons requested a payoff figure in January 2010.

Assignment of Error 6: Our rights to a defense and opportunity to present our claims were comprehensively denied by the District Court.

There are extenuating circumstances that prevent timeliness alone from being the determiner of justice. Issues of life require procedures implemented to create order and prevent prejudice from circumventing the purpose for which they were created. There are errors regarding the Court dismissing the Nickersons' motions for reconsideration based on timeliness

alone without reviewing the evidence and whether this dismissal follows the intent of the Idaho Rules of Civil Procedure and the standards for a de novo review. No prejudice against PHH existed. We committed the alleged timeliness error based on the rules of civil procedure and instructions received directly by the Court and other legal professionals, but the Court still chose to strictly enforced this alleged deadline. This demonstrated extreme prejudice toward us when opposing counsels have been granted extreme leniency and latitude throughout the litigation that has resulted in adverse and prejudicial rulings against us. A rehearing will allow us to address specific instances.

In regards to our motions for reconsideration, this Supreme Court simply ruled the motions were not timely based on the rulings of the District Court, and thus, ignored the basic tenants of the rules and our appellate argument. According to I.R.C.P. 1(a) "These rules shall be liberally construed to secure the just, speedy and inexpensive determination of every action and proceeding."

> "In addressing the effect of noncompliance with procedural statutes and rules, the Court in *Stoner v. Turner*, 73 Idaho 177, 121, 247 P.2d 469, 471 (1952), said:
>
> The object of statutes and rules regulating procedure in the courts is to promote the administration of justice. Those statutes and rules which fix the time within which procedural rights are to be asserted are intended to expedite the disposition of causes to the end that justice will not be denied by inexcusable and unnecessary delay. But, except as to those which are mandatory or jurisdictional, procedural regulations should not be so applied as to defeat their primary purpose, that is, the disposition of causes upon their substantial merits without delay or prejudice."
>
> ...
>
> "A 'determination' of an action within the meaning of Rule 1 is meant to be a determination of the controversy on the merits – not a termination on a procedural technicality which serves litigants not at all. A determination entails a finding of the facts and an application of the law in order to resolve the legal rights of litigants who hope to resolve their differences in the courts. The 'liberal construction' of the rules required by Rule 1, while it cannot alter compliance which is mandatory or jurisdictional, will ordinarily preclude dismissal of an appeal for that which is but technical noncompliance. This will be especially so where no prejudice is shown by any delay which may have been occasioned...Sound judicial discretion properly exercised will reflect the judicial policy of this State developed over many years by case law, and lying within the spirit of liberality mandated by Rule 1." *Bunn v. Bunn*, 99 Idaho 710, 587 P.2d 1245 (1978).

Neither the District Court nor this Court has claimed the time limits imposed by Rule 11(a)(2)(B) are mandatory or jurisdictional nor did they claim the alleged delay would prejudice PHH and Chase. This Court implies we have asked for special treatment because we are pro se.

We have not asked nor are we asking for special treatment. We submit nor have been given it. We are simply asking the Court to do what it is mandated to do by the rules and case law presented. We are only asking for fair treatment.

This strict adherence to this deadline in the presence of material issues that present weighty evidence that affects the outcome of this case is not in balance with the leniency and favor the District Court has granted to PHH:

First, the District Court waived PHH's responsibility to demonstrate Chase had beneficial interest in the loan and had interest they could assign to PHH via assignment. No transfer of beneficial interest to Chase was in the record at the first summary judgment. Judge Griffin questioned this fatal flaw in the chain of title, but erred in not recognizing it as a genuine issue that prevented summary judgment. This error in judgment defeats standing for PHH to bring this complaint, reopens our rights of claim against Chase, and grotesquely violates our rights to due process and the standards of judicial foreclosure. Chase has actively concealed beneficial interest in our property during this litigation. Chase has denied ever receiving ownership. To impeach PHH's claim of ownership, we acquired and provided a QWR completed by Chase that claimed Chase owns and holds the Note. This should have dismissed PHH's complaint, defeated both summary judgments, and caused Chase and PHH to be held accountable for fraud. We corroborated this evidence with a letter from Fannie Mae. Even though none of this evidence has been refuted by Chase or PHH, the District Court erroneously ignored this evidence, relied on an assignment it knew is not supported by fact and law, and granted summary judgment to both PHH and Chase.

Secondly, the District Court allowed PHH to submit an affidavit that contains notary fraud from an affiant who could not have had personal knowledge nor the competency required to testify the Nickersons missed payments to Chase. The District Court then used the contradictory evidence presented in that affidavit to rule against us. This affidavit has been proven inaccurate and inadmissible, but has been allowed to stand and be relied upon for summary judgment. Whereas, our affidavit that irrefutably defeats summary judgment was struck because Judge Griffin refused to allow it in the record in order to create a record that supported summary judgment in favor of PHH.

Thirdly, the District Court simply ignored the supplemental evidence and affidavit we submitted which presented genuine issue of material fact regarding whether PHH could be the

real party in interest in a foreclosure action against us. This error resulted in summary judgment against us.

Fourthly, the District Court granted PHH's motion to amend judgment when it was presented 41 days after judgment when the rules specifically state amended judgments have to be presented within 14 days of judgment. Ignoring this deadline, then enforcing a deadline only missed because of confusion regarding service by mail, especially when the confusion was created by instructions received from the Court and only amounted to 3 days, demonstrates extreme prejudice.

Lastly, the District Court allowed opposing counsel to enter depositions 9 days after the alleged taking of them that violated all rules regarding the taking, preparation and filing of depositions I.R.C.P. 30(e), 30(f)(1)(A), 30(f)(3), 30(f)(4)(B), but refused to consider the Nickersons Motion To Suppress and Strike Depositions without providing a reason for the denial. As stated previously, the depositions are inaccurate, incomplete, and completely alter and misrepresent answers provided. Opposing counsel has been erroneously allowed to repeatedly rely on these depositions to correct fatal flaws and establish a prima facie case that is non-existent in truth and reality. This is an error of judgment that must be reversed.

The depositions and the issues allegedly being relied upon by them are in dispute and on appeal, for appeal, both summary judgments and all rulings or orders that relied upon them directly or indirectly. The depositions are inadmissible and invalidated. Opposing counsel relying upon them is illegal. Opposing has made claims based on these depositions that we comprehensively refute. At a bare minimum, we did not verify signatures on the Deed of Trust; did not admit we agreed to the Terms of the Note presented or understood the contents thereof; did not admit we have no documentation to prove payments have been timely made; have provided phone numbers of calls initiated by us and by Chase even though the account record notations reflect those numbers (included names and times where applicable); did not admit we have no evidence to prove Chase damaged our credit or extensive proof of the damage to our credit history from 2008 to 2012; did not refuse to bring information - all documentation to be referenced at the depositions was agreed to be provided by Chase; did present evidence of breech of covenant of good faith and fair dealing and other federal guidelines to our attorney for this Court and other entities; did provide exhaustive details regarding Chase's abusive debt collection practices; did not admit to the existence of any default whatsoever or that we missed any payments; did not acknowledge or admit proper notification was ever received; did not agree we

signed the alleged Note; did not admit we do not have evidence to present our claims; and did not admit we have no evidence other than personal testimony. Certainly the volumes we have written dispel these wacko assertions. Questions not answered that were asked were explained and our refusal to answer was directed and supported by our attorney. These depositions took place under false pretenses and with false assurances. We did not provide right for any testimony provided the day of the depositions to be edited or presented in part. We required a tape of the proceedings be made because we did not trust opposing counsel and did not want what has happened to happen. We wanted an audio recording that could be referenced if they tried to twist testimony provided. Therefore, no testimony claimed is valid, lawful or admissible. As a matter of record, we are very comfortable the answers provided at the alleged depositions in no way implicate us of fault or wrongdoing. Both of us told the truth and there is no error against us to be found in the truth of this matter. Our request to strike depositions is not a case of Chase or PHH tricked us and we made some crazy, accidental "admission" to guilt that is being used to prosecute us or something like that. We said nothing wrong because we have done nothing wrong. When taken in context, every answer provided supports our claims and defeats theirs. The issue is the depositions presented are not admissible and are illegal. Even if they did not violate the rules and procedures created to preserve their truthfulness and veracity, the answers presented do not reflect the answers given. This is an error in judgment. Allowing opposing counsel to correct fatal flaws with misrepresented and inadmissible evidence has caused summary judgment and other adverse rulings to be granted against us. This denies us due process of law and our rights to a defense.

Not only are the depositions being used to correct fatal flaws in this appellate process, but they were relied on to prevail in the first summary judgment. The first summary judgment was then relied upon for all subsequent adverse rulings and to establish precedent for the second summary judgment. The depositions and the issues allegedly being relied upon by them are in dispute and being appealed for both summary judgments and all interlocutory orders. The depositions were unlawfully taken, prepared and entered in the record. It is a vicious assignment of error and a draconian injustice to allow the depositions to remain in the record or for PHH and Chase to be allowed to rely upon depositions that our attorney and we have testified were taken improperly to render judgment.

Further, allowing Chase to violate I.R.C.P. 30(f)(4)(B) and submit the entire unverified deposition transcript creates undue prejudice and violates our rights. We request a rehearing so these errors may be corrected.

Clearly, the District Court treated all our motions with prejudice. We simply misunderstood the deadline based on directives provided by court officials and filed our motions accordingly 3 days after the judgment because we were served the judgment by mail and Rule 6 provides for 3 extra days when served by mail. We faxed our motions to the District Court and they were received by the District Court's fax server prior to 5pm on April 21, 2014, but the court clerk admitted she did not stamp and file the fax until the following morning April 22, 2014. Neither this Court nor the District Court has determined the alleged delay in any way prejudiced PHH or Chase and both Courts have ignored the merits of the reconsiderations and the rulings in *Bunn*. This Court, according to the case law it cited, is required to perform a *de novo* review of our motions for reconsideration and according to the *Bunn* case we cited, timeliness alone is not to be used as the determining factor. Therefore, since this Court did not consider *Bunn* and evaluate the merits of our motions to reconsider, this Court has erred and must now evaluate our motions to reconsider based upon the merits of those motions.

Assignment of Errors 7: Our rights to a defense were denied by not allowing us to amend our pleadings.

There are errors regarding determining the appellate review of the denial of the Nickersons' motion to amend was waived.

This Court stated, "The Nickersons argue that the district court abused its discretion when it denied their motion. However, the Nickersons fail to provide a citation to the record showing the district court's decision on the issue, much less address the basis for that decision." We cannot provide a citation to the record regarding the District Court's decision or address the basis for the decision when the District Court failed to provide a supporting order or memorandum stating its decision. The entire court record is present on appeal and there is no supporting order or memorandum from the District Court detailing the reasons why the District Court denied the Nickersons motion to amend.

> "As Foman and Smith declare, a district courts refusal to grant leave to amend without any justifying reason is, per se, an abuse of discretion." *Clark v. Olsen*, 110 Idaho 323, 715 P.2d 993 (1986)."

According to *Clark*, if the District Court denies a motion to amend without providing a justifying reason, it is an abuse of discretion. Therefore, according to Idaho law, the outright denial of the District Court to provide any justifying reason is automatically an abuse of discretion and we must be allowed to amend our pleadings.

In addition, the Idaho Rules of Civil Procedure permit amendments to the pleadings. According to I.R.C.P. 13(f) "Omitted Counterclaims. When a pleader fails to set up a counterclaim through oversight, inadvertence, or excusable neglect, or when justice requires, the pleader may by leave of court set up the counterclaim by amendment." Throughout this brief we have detailed the negligence of our former counsel and it is due to his actions that our current counterclaims were not set up earlier in the process. We have also detailed some of the fraud PHH and Chase have committed throughout this case.

Further, I.R.C.P. 15(b) states, "If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice the party in maintaining the party's action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence." PHH objected to our claims of fraud during summary judgment because they had not been pled. Therefore, according to Rule 15(b) we should have been permitted to amend our pleadings to include fraud. Our amended answer and counterclaims contain 70 pages of pleading fraud with specificity. Many of these 70 pages detail occurrences of events that have happened since the filing of our answers and counterclaims and according to Rule 15(d) we should have been allowed to supplement our pleadings.

15(d). Supplemental Pleadings. "Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit him to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented, whether or not the original pleading is defective in its statement of a claim for relief. If the court deems it advisable that the adverse party plead thereto, it shall so order, specifying the time therefor."

Therefore, because the District Court abused its discretion, because of excusable neglect, because the rules allow it, and because justice demands it, we should have been allowed to amend our pleadings.

Assignment of Error 8: Our rights to a defense were denied by abuse of discretion.

There are errors regarding finding the District Court did not abuse its discretion by rejecting the Nickersons' rule 60(b) motions. The District Court did not address all of the new evidence presented by the Nickersons, did not address all of the misconduct presented by the Nickersons, made errors of fact, and did not address all the facts regarding fraud and fraud on the Court.

We did not try to bypass the appeal by filing our 60(b) motions. We desperately wanted out of the Clearwater County District Court and in front of this Supreme Court. We followed the rules regarding deadlines in filing our 60(b) motions in order to preserve the rights they granted and the opportunity to demonstrate errors of fact and law they presented.

As evidenced by our assertions in the body of our Rule 60(b) motions, our request for relief at the end or our motion, and our certificate of service including all parties, it is evident we intended the District Court to grant relief from all of its summary judgments.

> "Wherefore, because of the mistakes, surprises, excusable neglect, the new evidence presented, the fraud and misconduct of PHH, Chase and the counsels of record, and fraud on the court, the Nickersons **request the court to set aside the judgments** on file and grant judgment in favor of the Nickersons." (emphasis added)

In addition, it is evident the District Court understood our intentions as well because in its order setting the schedule for responsive briefing he included all parties (SAR. 94-96). Therefore, among other errors regarding our 60(b) motions this Court has erred in limiting its review of our 60(b) motions to the context of PHH's second motion for summary judgment only.

A. Regarding our Rule 60(b)(1) motion based upon mistake, this Court claims all of the mistakes we identified were mistakes of law and only mistakes of fact qualify for relief from judgment. However, we identified several mistakes of fact made by the District Court. Point #4 under the heading of mistake references our affidavit which details the mistakes of fact made by the District Court (SAR. 23, 48-53). The District Court erred in fact by stating Chase acquired the note in November 2007 because he had just stated Coldwell assigned the note to Fannie Mae in 2002. The evidence the District Court relied upon to state Chase acquired the note in 2007 is an assignment from Coldwell to Chase. However, he just stated Coldwell assigned it to Fannie Mae in 2002 and therefore, Coldwell could not assign the note to Chase in 2007. The District Court made a factual error regarding a genuine issue of material fact. Further, the Coldwell assignment to Fannie Mae is only evidenced by a letter in which Fannie Mae claims to have the

note until December 3, 2009. The errors regarding the chain of title mistakes of fact are thoroughly detailed in our discussion regarding the errors granting summary judgment, point #5 above. Since these mistakes of fact were not addressed by the District Court and in fact the District Court erroneously determined relief could not be granted due a mistake of the court, the District Court abused its discretion and the 60(b) motion regarding mistake must be granted.

B. Regarding our Rule 60(b)(1) motions based upon surprise and excusable neglect, this Court has erred in determining our 60(b) motions for relief only applied to the final judgment. See our introduction to this argument above. All parties, including the District Court, understood all summary judgment decisions were being addressed and questioned. In light of this fact, it is apparent this Court agrees we were unjustly prejudiced by Mr. Mitchell's actions. Further, in our argument under point #9 we demonstrate Mr. Mitchell's actions continued to prejudice our efforts to defend ourselves. Mr. Mitchell left discovery incomplete and non-existent and we were never given the opportunity to recover from his negligent misconduct. Therefore, the District Court abused its discretion and the 60(b) motion regarding surprise and excusable neglect must be granted.

C. Regarding our Rule 60(b)(2) motion based upon "new evidence". As we stated, some of the evidence we presented as new was evidence the District Court had in its chambers but chose to ignore because it was presented after the hearing on summary judgment. This Court has reasoned the District Court did not err because we have not shown why this evidence could not have been discovered and presented to the District Court prior to the summary judgment hearing. We ask this Court the same question just in a different light. Why was this evidence concealed by PHH, Chase and their counsels of record? This evidence was sought in discovery 18 months prior to when we sent QWRs to Chase and PHH and we only received answers because federal law requires Chase and PHH to respond to a QWR. Since this evidence demonstrates Chase and PHH have lied to the Court and have withheld evidence, why should we be punished for not obtaining it timely enough? It is difficult to obtain discovery when the opposing parties are willing to conceal it and refuse to provide it. The District Court abused its discretion in refusing to consider the QWR evidence.

Further, in addition to the QWRs, we presented new authoritative evidence regarding the invalid notarization of Mr. Casperite's affidavit and evidence from the officer in charge of our deposition transcripts demonstrating the Rules regarding the deposition process had been violated (SAR. 31-32, 63-65). The District Court did not address this evidence and did not make

any rulings or findings of fact regarding this evidence. Therefore, the District Court abused its discretion and relief from judgment must be granted.

D. Regarding our Rule 60(b)(3) motion based upon fraud. The District Court opined "Fraud" is fraud upon the court system and that the Nickersons extensively alleged fraud committed on them by other parties but not fraud on the court. This Court stated we did not point them to any evidence of fraud; however, the 60(b) motion itself details the fraud (SAR. 33-38) and that is an incomplete analysis. The District Court abused its discretion by not addressing the fraud he admits we extensively allege. Therefore, the judgment must be set aside.

E. Regarding our Rule 60(b)(3) motion based upon misconduct. This Court has erred in its analysis by claiming we had only cited to our motion to suppress. At the bottom of page 40 and top of page 41 of our Appellant's Brief we directed this Court's attention to SAR p. 38, L. 12 – p. 43, L. 5. This is the portion of the record where we argued and detailed the misconduct. We demonstrated to the District Court that Mr. Stenquist and Mr. Manwaring violated the rules of civil procedure by their mishandling of our deposition transcripts, violated the rules of professional conduct, violated the attorney's oath, and violated their statutory duties as an attorney. Mr. Stenquist and Mr. Manwaring lied to and misled the District Court. Mr. Stenquist lied to the court regarding Chase's involvement with our loan and misled the District Court into believing no contract ever existed between Chase and the Nickersons. In addition, he used this lie to thwart discovery, conceal the truth and mislead the District Court into granting summary judgment in Chase's favor. Mr. Manwaring violations are even more comprehensive and are thoroughly detailed in our 300+ page amended pleadings where we detail over 100 false, misleading and contradictory statements he, PHH and Just Law have submitted in this action.

The District Court did not address the misconduct we detailed in our motion. Therefore, the District Court abused its discretion and judgment must be set aside.

F. Regarding our Rule 60(b)(iii) motion based upon fraud on the court. The District Court did not address this fraud and specifically stated we did not allege fraud on the court. We addressed this in our Appellant Brief, p. 41, and SAR 43-44.

> "Submitting an affidavit that embodies a criminal act is clearly a tampering with the administration of justice and a wrong committed against the court. Lying to the court about ownership and possession of the Nickerson Note and about default is an egregious tampering with justice and wrong against the court. Using feloniously filed documents to attempt a foreclosure is irrefutably fraud on the Court. Misleading your client regarding a case and allowing a case to proceed when, as an attorney, you "don't know what to do" is

unmistakably tampering with justice and committing a wrong against the institution set up to safeguard and protect the public."

Since the record and evidence demonstrates fraud on court and since the District Court did not address this issue, the District Court abused its discretion regarding this motion and judgment must be set aside.

Assignment of Error 9: Our rights to a defense were denied by the legal system established and empowered to protect our rights.

There are errors regarding determining we willfully chose to proceed without an attorney after our attorney withdrew from the case without our knowledge; not acknowledging we were forced to represent ourselves against our will; not recognizing the prejudice suffered by us when the initial status conference post our pro se appearance was turned into a Second Motion For Summary Judgment by PHH preventing and barring any opportunity for discovery by us; not realizing the prejudice suffered by us in defending that motion without any knowledge of the true status of the case due to the deception of our attorney and through no fault of our own; and determining that we were allowed to fully participate in all or any matters before the Court without extreme prejudice.

As stated above and confirmed by Mr. Mitchell's affidavit, Mr. Mitchell, our attorney, withdrew from this case without informing us, did not inform us or allow us to participate in any way in the first summary judgment process or other court proceedings. He told us our case had been appealed, that everything would be ok, and that our case was a slam dunk. Just prior to our appearance *pro se*, Mr. Clark, the attorney we hired who assigned Mr. Mitchell to our case, called and told us Mr. Mitchell was no longer with his firm. Mr. Clark did not offer to continue to represent us and due to the extreme misconduct and contradictory stories presented by Mr. Clark and Mr. Mitchell and the extreme misconduct of Mr. Stenquist and Mr. Manwaring, we did not trust any legal professional and were therefore forced to represent ourselves (R. 997-998).

As a result of Mr. Mitchell's negligence and misconduct, we were completely in the dark regarding the true status of our case. We asked the District Court what the next step in the process was going to be because we wanted the District Court to compel Chase and PHH to provide all of our account records, account notations and communication recordings. We also wanted to amend our pleadings to include everything Mr. Mitchell failed to enter and what we had covered with the limited discovery Chase and PHH had provided. As demonstrated

throughout this brief, Chase and PHH had provided false and conflicting testimony and evidence which demonstrated fraud. Chase and PHH had withheld discovery and evidence critical to our defense. We were instructed by the District Court to wait for a status hearing. A status hearing never came because it was converted into a summary judgment hearing by PHH. We were extremely prejudiced and handicapped by this occurrence. We were forced to defend ourselves without the benefit of having all of the evidence that Chase and PHH had withheld. In fact and reality, we were denied the opportunity to properly defend ourselves and were taken advantage of by Chase, PHH, and the District Court.

Even so, we worked diligently to present our defense, but the District Court ignored and struck the evidence that demonstrated fraud perpetrated by Chase and PHH, completely ignored the supplemental evidence in which Chase claimed to be the real party in interest on our note (R. 1232), and dismissed our objection to the fraudulently notarized affidavit of Ron Casperite (R.1237-1238). In addition, the District Court disregarded the evidence that was already in the record and did not require PHH to account for the large payment ($4,549.04) shown on our escrow statements that it had recognized in its prior summary judgment ruling; nor did it require PHH to account for principal balance discrepancies and other errors and irregularities contained within the account history; nor did the District Court recognize the fact PHH prevented our performance by refusing to accept payments and validate their alleged default which they have now recognized and proven was in error. As demonstrated throughout this Petition, the District Court's facts were contradicted by both PHH and Chase. The District Court contradicted itself by stating as fact that Fannie Mae bought our loan in December 2002 when it had declared the evidence that entered that fact into evidence was hearsay. As a result, the District Court's ruling was in error. As demonstrated throughout this appellate process, the District Court abused its discretion by not providing orders or memorandums documenting its rulings and by continuing to ignore and disregard all of the evidence we have provided that demonstrates, among other material facts, we did not default, PHH does not own our note, and Chase and PHH have committed fraud on us, the Court and the world at large.

The evidence, the District Court's errors, the misconduct of all counsels of record, the extreme prejudice suffered by us and the mandate of the Idaho Rules requiring a just determination all call for this Court to reconsider its Opinion and either remand or dismiss PHH's complaint. We did not default. We were prevented from performance. We were denied the right to defend ourselves.

Assignment of Error 10: Our rights to a defense were denied and appealing the injustice caused by this foreclosure is not frivolous.

There are errors regarding determining we have pursued finding justice with this appeal frivolously, unreasonably or without foundation and that opposing counsel be awarded any attorney fees.

This Supreme Court can choose to ignore the evidence, facts, rules and laws we presented but it cannot claim we have not acted in good faith to present our evidence and arguments before this Court and the District Court. What else could we or any other victim have done to stop their abusers when time after time the District Court chose to ignore our evidence or simply deem it inadmissible because it did not fit with how it wanted to rule? This Petition offers this Supreme Court opportunity to hear our evidence and render justice or to ignore our evidence in order not to overturn the District Court ruling. What else could we or any other victim have done to stop our abusers when the District Court chose to close their eyes to the contradictory representations of Chase and PHH and to believe the lies and false representations of Chase and PHH? This Petition offers this Supreme Court opportunity to consider the lies and misrepresentations surrounding this litigation and hold PHH and Chase accountable for them; or to make the choice not to consider these lies and misrepresentations and to let injustice reign simply because the District Court chose not to look at this evidence. We presented our case and followed the appellate rules to the letter of the law. Every point argued is supported by evidence, rules, laws, case law and the record. Therefore, the case law cited by this Court to award attorney fees against us should have been used to grant judgment for us. "Ordinarily, attorney fees will not be awarded where the losing party brought the appeal in good faith and where a genuine issue of law was presented." *Nelson v. Nelson*, 144 Idaho 710, 718, 170 P.3d 375, 383 (2007). We should have received some meritorious judicial whistleblower award, not be punished for exposing mortgage fraud, banking crimes and judicial corruption. We are not attorneys, but at least we are trying to do something to fight injustice. Where are all the Idaho attorneys? What are they doing to battle mortgage fraud? Reasonable inference from our vantage point concludes they are all working for the banksters or are counting the spoils collected from innocent homeowners like us.

Is it not a genuine issue of law that the holder of the note is the only one entitled to enforce it? Is it not a genuine issue of law that to issue a summary judgment the facts must be construed in the light most favorable to the non-moving party? Is it not an issue of law that the Supreme Court is to perform a *de novo* review of both the summary judgment and the motions of

reconsideration? We have made a good faith attempt to present arguments in the manner and format expected by the Supreme Court. We have pointed to (scoured) the record and case history in order to back up the genuine issues of material fact that defeat PHH's claim of summary judgment and the other orders of the District Court that have denied us justice. The time is now for this Court to decide if issues of material fact exist that deny summary judgment in favor of PHH and Chase. We have firmly established that PHH has no beneficial interest in our property or standing to foreclose on our property. No admissible evidence is in the record that proves default or establishes an accurate default other than our testimony that no default exists. PHH can have no injury. The evidence convicts Chase of active concealment, fraud, misrepresentation and misconduct. We petition this Court so that a rehearing may render a judgment based on the merits. Truth cannot be bound by our ability to present it or the laws that bind it quash justice. Truth has a voice of its own and it must be heard. Liberty, justice and the American way require truth not be prejudiced by our inadequacy to present our case properly. No reasonable person can deny we have made a good faith effort to demonstrate to this Supreme Court that Judge Griffin, acting on behalf of the District Court, ignored meritorious evidence presented to him, made inexcusable errors of fact and law that resulted in adverse rulings, demonstrated extreme prejudice toward us thereby denying us due process, and failed to abide by the law and follow the rules. Therefore, even if this Supreme Court should for some unknown procedural reason not grant our Petition for Rehearing and choose not to hear and consider the truth of this matter, this Supreme Court cannot and must not persist in ruling our appeal was frivolous, unreasonable and without foundation. Chase has earned sanctions and jail time, not attorney fees (See Nickersons Objection to Costs and Fees and Motion for Sanctions). The facts remain constant and cannot change because PHH, Chase, the District Court or even this Supreme Court will or order the truth to change - We did not default. PHH prevented our performance. PHH does not hold our note and mortgage. Chase abused us. PHH and Chase are guilty of active concealment and have committed Fraud On This Court, against us, and against all Idaho homeowners. We ask this Court to remember:

> "When deciding whether attorney fees should be awarded under I.C. § 12-121, the entire course of the litigation must be taken into account and if there is at least one legitimate issue presented, attorney fees may not be awarded..." *Michalk v. Michalk*, 148 Idaho 224, 220 P. 3d 580 (2009)

Our appeal was not frivolous, unreasonable or without foundation. Chase must not be awarded attorney fees.

Assignment of Error 11: Our rights to a defense were denied by PHH falsely claiming we executed a deed of trust.

There are errors regarding stating the Nickersons executed a Deed of Trust when we executed a Mortgage, not a Deed of Trust. This is a 50 acre agricultural property that could only be secured with a Mortgage and not a Deed of Trust. This is a 50 acre property we were only willing to secure with a Mortgage. PHH falsely claimed this in order to do a non-judicial foreclosure after they had admitted a non-judicial foreclosure was not appropriate. This error creates extreme prejudice for our property and the rights surrounding it. Affirming the loan attached is a Deed of Trust affirms fraud at the closing table and grants us right to pursue civil and criminal damages. It is an error in fact in finding to claim there is a Deed of Trust on this property (R. 1539-1543).

Assignment of Error 12: Our rights to a defense were denied by prejudice created by the condition of the record.

There are errors in determining why we filed a timely appeal, but continued to pursue all other legal remedies available at the District Court level. We did not attempt to bypass a timely appeal. This was our only way to preserve the legal remedies provided to us with a 60(b).

We filed a timely appeal. However, because we experienced extreme prejudice by our counsel's negligence; Chase's and PHH's dishonest and deceptive practices; and the District Court's willingness to simply ignore evidence, we continued to pursue all legal remedies available to us. Knowing our appeal was in progress, we continued to diligently pursue all evidence we could uncover to demonstrate to the District Court the errors it made and the fraud of PHH and Chase. As a result of our efforts, we presented several Rule 60(b) motions to demonstrate to the District Court the errors it had made, the surprise and excusable neglect due to our former counsel, the new evidence we were able to uncover and the fraud and misconduct of the opposing parties. However, once again, the District Court prejudicially ignored our evidence and arguments, denied our motions and simply stated we did not present any admissible evidence. In so doing the District Court abused its discretion, because it did not state why any of our evidence was inadmissible. Presumably, the District Court just wanted to rule against us.

We pursued our Rule 60(b) motions in order to corroborate our testimony and our claims. We wanted to present a more complete picture of this case to the appellate court and were hopeful District Court Judge Michael Griffin would finally get it and do the right thing. He did not. We have been diligent and have persistently pursued all legal remedies available to us in order for our story to be heard; in order to be able to defend ourselves; and in an effort to seek justice. We call on this Court to perform a *de novo* review; to consider the facts and evidence; to understand the prejudice we have been victims of; to force Chase and PHH to provide discovery; and to allow us to present our defenses and claims.

We incorporate this brief in its entirety under this assignment of error. We have discussed at length under other errors the prejudice created by the condition of the record. For the sake of brevity, we incorporate it herein.

Assignment of Error 13: Our rights to due process and to provide a defense were denied due to misrepresentation from opposing counsel and the District Court refusing to allow our evidence to be entered in the record.

There are errors regarding failing to ensure equal access to justice for us, by accepting as true, documented and conflicting lies and fraud of PHH and Chase; and by refusing to consider or accept evidence and truth presented and attempted to be presented by us that the District Court prejudicially refused to hear. Allowing the lies and fraud of PHH and Chase to be relied upon as fact has created impossibility for us in defending our rights. PHH does not own our loan. We did not execute a Deed of Trust. We did not default. Even though these statements are all true, the erroneous finding of the Court that PHH has beneficial interest allowed Judge Griffin to render evidence that Chase provided in response to a Qualified Written Request (QWR) that Chase owns and holds the Note to be ignored and not considered based on timeliness alone. If the Court had recognized the fatal flaws in the chain of title, and denied PHH standing instead of erroneously finding PHH had beneficial interest, PHH would have had to prove they had beneficial interest. PHH does not have beneficial interest and cannot prove it. This is a genuine issue that refutes summary judgments in favor of PHH or Chase.

The adverse rulings that were based on the lies and misrepresentation of counsel have prevented us from successfully entering evidence in the record and being able to properly present our defenses and claims. We have covered this error in detail throughout this brief and incorporate the brief in its entirety under this assignment of error. We also specifically

incorporate our Objection To Costs and Fees and Motion For Sanctions herein in support of this assignment of error.

Assignment of Error 14: Our rights to a defense were denied without reason or law.

There are errors regarding finding we failed to cite adverse rulings in the record for the Court to consider, provide citations to the record to review, or waived any of their issues on appeal. District Court Judge Michael Griffin grossly abusing his discretion in the denial of various motions and prejudicially ruling without providing written orders, supporting memorandums or a factual or lawful basis for his decisions. Requiring us to cite something that does not exist creates impossibility. We appealed the decision and rulings as a whole so this Court would review the record *de novo*.

This error is similar to error number 7 because this Court found we did not provide any citation to the record regarding our Motion to Strike the Second Affidavit of Ronald E. Casperite and Motion to Strike the Depositions of Charles and Donna Nickerson. There is nothing in the record to cite other than the ruling. The District Court denied the motions without providing any order or memorandum setting forth its decision or reasons for denying these motions. The Court granted the motions by weighing inadmissible evidence and ignoring genuine issues that prevented summary judgment in favor of PHH or Chase. Therefore, we are citing the denial as a whole for abuse of discretion due to the prejudice and judicial impossibility it created for us.

> "Our prior decisions may not have uniformly recited the same language in describing genuine factual issues under Rule 56, but it is clear enough from our recent cases that at the summary judgment stage the judges function is not himself to weigh the evidence and to determine the truth of the matter but to determine there is a genuine issue for trial…there is no requirement that the trial judge make findings of fact. The inquiry performed is a threshold inquiry of determining whether there is a need for a trial – whether, in other words, there are any genuine factual issues that properly can be resolved only by a finder of fact because they may reasonably be resolved in favor of either party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 342, 106 S. Ct. 2505, 91, L. Ed. 2d 202 (1986)

Both of these documents represent inadmissible evidence for the reasons detailed in the record. Without this affidavit and without the fabricated depositions, there is nothing in the record to support any default whatsoever. Therefore, our claims were dismissed without cause or right and Summary Judgment has been granted without proof or evidence.

When Judge Griffin confronted Mr. Manwarring directly about proving the existence of default at the first Summary Judgment hearing, Kipp Manwarring relied on the inadmissible deposition testimony submitted as his only evidence to cite. He stated, "the default is clear in relation to the status of their loan as of 2010. The Nickersons acknowledge that they have made no payment since then." PHH did not even challenge whether or not we were current in January 2010. Therefore, a genuine issue of material fact exists as to the existence of default when the complaint was filed and performance was prevented. PHH only claimed we had not made payments since February 2010, which is an issue of prevention of performance, not default. PHH has admitted they refused payment from February 2010 to present (R. 561). The complaint was not filed based on what happened in or after February 2010. The complaint is based on a default that was supposedly pre-existent in February 2010. PHH has not proved default. The only admissible evidence in the record regarding default is our testimony that they cannot prove default for there was no default.

As discussed in point 5.A. above and in our Motion To Strike, the Second Affidavit of Ronald E. Casperite is not validly notarized and cannot be used as evidence. Further, Mr. Casperite could not have had any personal knowledge of any of our payments made or not made to Chase because he was a hired litigation liaison of PHH. All he did was take some of the data Chase provided on their account history and massage it to fit his format. He did not take the principal balance provided by Chase on their account history. He claimed "Upon PHH's receipt from Chase of the Nickersons' loan, the principal balance was $261,172.62." However, he contradicts that principal balance with his own illustrative loan history which shows the principal balance of $259,983.72 as of January 21, 2010. As demonstrated above, even if one ignores the notary fraud, Mr. Casperite's testimony is contradictory and incomplete. This witness is impeached and his testimony cannot be relied upon for summary judgment. Additionally, this testimony only confirms what we have stated since February 2010 – PHH's alleged default was wrong. Since PHH's alleged default is wrong, and in reality non-existent, PHH's complaint fails and must be dismissed.

Our motion to strike depositions is another example of the flagrant violations perpetrated against us by Chase, PHH and their counsels of record. In our Motion To Suppress, we detailed the meritorious reasons why our depositions should have been suppressed (R. 1819-1825) and perhaps the most grotesque is the fact I.R.C.P. 30(e) was violated.

I.R.C.P. 30(e) **Submission to witness - Changes - Signing.**

> When the testimony is fully transcribed the deposition shall be submitted to the witness for examination and shall be read to or by the witness, unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within 30 days of its submission to the witness, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed unless on a motion to suppress under Rule 32(d)(4) the court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

We were denied the opportunity to read the transcripts, make changes or sign the transcripts. We did not even know any transcripts existed. Mr. Mitchell told us they had not been prepared and we had no reason not to believe him. Making a transcript of the true depositions would have defeated PHH and Chase's claims, not allowed them to be granted Summary Judgment. In addition, the transcripts were submitted to the District Court prior to the 30 day time limit for signing breaking the Rules of Procedure. PHH referenced portions of the transcripts in documents submitted to the District Court just 9 days after the taking of the depositions and Chase submitted the entire transcript, in violation of I.R.C.P. 30(f)(4)(B) "only those portions to be used shall be submitted to the court," just 12 days after the taking of the depositions. Further, the officer did not sign and state on the record the facts or any reasons why the transcripts were missing our signatures. Mistreating and misusing a witness' testimony violates the very core of the judicial system. This constitutes severe misconduct on the part of all counsels of record and calls for this Court to suppress and strike the depositions in accordance with I.R.C.P. 32(d)(4).

Further, as a matter of record, PHH claimed in their Appellate Reply Brief that we did not object to the depositions during the Summary Judgment. However, this is not accurate. During the Summary Judgment hearing we not only verbally objected, but we made a verbal motion that the depositions be suppressed and stricken from the record, the Affidavit of Ron Casperite be struck, and that we be allowed to file an Amended Answer and Counterclaim per I.C.R.P. 7(b)(1). The Court ignored our request and verbal motions. Also as a matter of record, our Summary Judgment Reply Brief was filed prior to his ruling and we objected to the depositions and affidavit of Ron Casperite in that as well.

We petitioned the Court for a continuance of this Summary Judgment hearing so we could expand the factual record of the case as soon as we were notified of it. Judge Griffin

ignored our request despite numerous calls asking for him to make a decision regarding the continuance. We communicated extreme urgency to the clerks because we needed to know whether or not to go ahead and submit our Reply Brief in accordance with the pre-hearing deadlines. Judge Griffin ignored us. The District Court clerk can affirm this. During the hearing Judge Griffin told us he was not going to continue the hearing, but would allow us to submit our Reply Brief and other supplemental evidence after the hearing. Please note this hearing was supposed to be a status hearing we had been asking for since we first appeared *pro se*. Not only did the Judge convert it to a Summary Judgment hearing, refuse to answer us regarding the continuance so we knew whether or not to file our Reply Brief, but at the hearing he abruptly added other motions we were not previously informed would be addressed at the hearing. We told him we were not prepared to argue those because we were unaware they were being included with the Summary Judgment hearing. He held the hearing anyway and we presented our case the best we could in the presence of such malicious prejudice.

We were denied our right to proper representation and presentation at the Summary Judgment hearing.

The Court refused to compel discovery, to allow us to depose witnesses, to have access to evidence that refutes all claims by PHH and Chase, and to present material facts and our witness testimony. This constitutes extreme abuse of discretion. We were comprehensively denied our right to due process of law.

Assignment of Error 15: Our right to present claims and offer a defense were denied by procedural technicalities, prejudicial rulings and legal chicanery.

We did not waive any of our arguments on appeal. We came to this Court for a *de novo* review of this entire case, for justice. We appealed everything and tried to address all issues by pointing to the record in its entirety. Judicial incompetence, Fraud on the Court, misrepresentations of fact, attorney negligence, failure to establish standing, failure to provide proof and evidence that create cause or right for PHH or Chase to bring complaints, require this Court to review the record in its entirety. We have been swindled, abused, and have suffered severe, significant and substantial damages. Judge Griffin failed to ensure equal access to justice, uphold the laws surrounding this litigation, and denied our rights to present a defense and offer our claims. The record is inadequately prepared due to procedural technicalities, prejudicial rulings and legal chicanery. We attempted to correct this limitation with various motions and

reconsiderations, but all were denied. Stipulations occurred that violated material evidence presented to our attorney and defies the truth of the matter. Findings of fact were found that contradicted previous findings of fact and rulings. Rulings were made by ignoring evidence. Opposing counsels lied, withheld evidence, and misrepresented truth to the Court without consequence. Fraud and extensive evidence of fraud, prevention of performance, and abusive debt collection was pled from the first conversation we had with Mr. Mitchell regarding this property. We prepared and submitted documents to Mr. Mitchell for this case, the FBI, the Attorney General, Consumer Protection Bureau, and other such entities. This evidence refutes all claims by PHH and Chase. Mr. Mitchell's Memorandum In Opposition To PHH Mortgage's and Chase's Motion to Summary Judgment attempted to present our arguments before the Court (R. 609). However, the Court dismissed his attempts. He subsequently withdrew without notifying us.

We appealed the entire proceeding to this Supreme Court for justice. Judge Griffin abused his authority and discretion when he weighed evidence, ignored genuine issues of material fact, granted extreme leniency to opposing counsel, and enforced unreasonable prejudice against us. Procedural technicalities, prejudicial rulings and legal chicanery has victimized our case from its inception and we have been prevented from presenting witness testimony, evidence and truth that refutes PHH's claim and implicates criminal mischief and wrongdoing by PHH, Chase and their accomplices. We have been denied our right to present claims and offer a defense. Nothing has been waived, advertently or inadvertently. Justice would not waive it. Justice will not allow it to be waived.

Assignment of Errors 16: Our right to a defense were denied by ignoring IAR 35(a)(4).

This Court erred in finding we did not challenge all adverse orders when we appealed from the Final Judgment, the Order Dismissing Motions to Reconsider, and other interlocutory orders by the District Court in order to make sure all issues were addressed on appeal, even with the handicaps created by the District Court's prejudicial rulings and failure to provide written orders and memorandums.

Chase claims we did not specifically address the summary judgment dismissing their claim on appeal. In our notice of appeal we stated we appealed from the Final Judgment, the Order Dismissing Motions to Reconsider, and other interlocutory orders by the District Court. The order dismissing our claims against Chase is one of the other interlocutory orders that are on

appeal. This order is specifically addressed in our motion to reconsider Chase's and PHH's summary judgment and the denial of that motion to reconsider is on appeal. IAR 35(a)(4) "...The statement of issues presented will be deemed to include every subsidiary issue fairly comprised therein." Thus, the summary judgment in favor of Chase is before the Court and must be reversed in accordance with the issues and evidence set forth in our motion to reconsider and in light of the fact the District Court abused its discretion by not considering all of the evidence and arguments presented in our Rule 60(b) motions.

Assignment of Error 17: Our rights to a defense were denied and this Petition For Rehearing has been filed so justice can be found, served, and endure.

This Petition For Rehearing incorporates all other issues and assignments of error in our request for rehearing. This Petition For Rehearing addresses assignments of error and issues that defeat any judgment in favor of PHH and Chase. This Petition For Rehearing requests opportunity to present our case before this Supreme Court so that justice can be found, served, and endure. This Court ruled the truth was presented frivolously, but it did not deny the truth exists. This Supreme Court must be able to see the rulings they are affirming do not provide justice for us or render it upon PHH and Chase.

Rather than silencing the truth and forcing it to seek justice outside this Court, provide us opportunity to present our case again. Compel PHH and Chase to answer to our evidence. Compel PHH and Chase to provide admissible evidence. Compel PHH and Chase to answer for breaking Rules of Procedure, violating their oaths, misrepresenting truth to this Court, committing fraud on the Court, mishandling facts and evidence, violating lending laws, and other such acts. Compel justice to be served.

In support of our additional assignments of error and arguments below, we submit the findings in *Greene v. US*. The *Greene* court found, "Entertaining issues raised for the first time on appeal is discretionary with the panel hearing the appeal."

> "To begin, it is a well-established general rule that an appellate court will not consider an issue raised for the first time on appeal. (citations omitted). This rule is not an absolute bar to raising new issues on appeal; the general rule is disregarded when we think it necessary to remedy an obvious injustice. See *Thomas E. Hoar, Inc. v. Sara Lee Corp.*, 900 F.2d 522, 527 (2d Cir.), cert. denied, 498 U.S. 846, 111 S.Ct. 132, 112 L.Ed.2d 100 (1990). We will also sometimes entertain arguments not raised in the trial court if the elements of the claim were fully set forth and there is no need for additional fact finding.

> See *Vintero Corp. v. Corporacion Venezolana de Fomento*, 675 F.2d 513, 515 (2d Cir.1982). Entertaining issues raised for the first time on appeal is discretionary with the panel hearing the appeal." *Greene v. US*, 13 F. 3d 577 (2nd Cir. 1994).

Although we did not specifically address the following issue in light of the rules of evidence, we did identify the principal balance discrepancies of Chase's account history. According to the Idaho Rules of Evidence, the account history submitted by Chase is inadmissible hearsay. The account history Chase submitted and PHH relied upon for its alleged proof of default is on its face untrustworthy, and it is also deemed untrustworthy due to the fact it conflicts with the escrow statement evidence. Therefore, according to I.R.E. 801(c) and I.R.E. 803(7) this account record is hearsay and all summary judgments in favor of Chase and PHH must be reversed.

> I.R.E. 803(7) Absence of entry in records kept in accordance with the provisions of paragraph (6). Evidence that a matter is not included in the memoranda, reports, records, or data compilations, in any form, kept in accordance with the provisions of paragraph (6), to prove the nonoccurrence or nonexistence of the matter, if the matter was of a kind of which a memorandum, report, record, or data compilation was regularly made and preserved, *unless the sources of information or other circumstances indicate lack of trustworthiness*. (emphasis added)

The District Court, Chase and PHH have determined this account history is untrustworthy because they do not accept the principal balance as fact. According to Reference #s 62-63 the principal balance on the account history drops from $261,562.14 on June 16, 2009, to $391.52 on July 21, 2009, with no payment or other transaction occurring. Also, on those two dates the escrow balance goes from non-reporting to a balance of $3,391.90. The principal balance remained $391.52 from July 21, 2009, until a payment is credited on November 11, 2009, which brought the principal balance to $0.00. The principal balance then goes negative in December 2009 and ends on January 21, 2010, as $-1,186.90. (R. 636-639). This account history also contradicts the escrow statement which demonstrates the account history is untrustworthy. The escrow balance on July 21, 2009, of $3,391.90 does not match the escrow balance of $935.27 reported on the escrow statement Chase provided to us (R. 590) for that time period nor do the escrow balances line up from that time thru January 21, 2010, when the account history shows an escrow balance of $0.00 (R. 636). Further, the escrow statement shows a payment of $4,549.04 in July of 2009 which is not reflected on the account history (R. 589-590, 639). We contend it is an extreme injustice to use the account history provided to allege we did not make our payments when the opposing parties themselves and the Court have determined it is untrustworthy. This is

an account history. It is either fact or fiction. Therefore, since Chase, PHH and the District Court have all determined this account history is untrustworthy and the evidence demonstrates it is untrustworthy, then, according to I.R.E. 803(7), this account history must be treated as hearsay and is inadmissible as evidence "to prove the nonoccurrence or nonexistence" of our payments to Chase (i.e. – to claim we were in default because we did not make all of our payments to Chase) and summary judgment in favor of PHH must be reversed. Further, this Court opined that we must provide our own evidence regarding the account history and not just discredit PHH's. We would like to direct the Court's attention to the evidence the Court missed and our former counsel provided in our defense of the first summary judgment which showed a $4,549.04 payment reflected on our escrow statement in July of 2009 (R. 589-590). Thus, aside from the untrustworthiness of the account history and the fact it is inadmissible; the evidence of this payment into escrow demonstrates there is a genuine issue of material fact regarding default that warrants a reversal of summary judgment.

Our rights to a defense were denied by the procedures put in place to ensure equal access to justice.

> *Under our system of government the process of adjudication is surrounded by safeguards evolved from centuries of experience. These safeguards are not designed merely to lend formality and decorum to the trial of causes. They are predicated on the assumption that to secure for any controversy a truly formed and dispassionate decision is a difficult thing, requiring for its achievement a special summoning and organization of human effort and the adoption of measures to exclude the biases and prejudgments that have free play outside the courtroom. All of this goes for naught if the man with an unpopular cause is unable to find a competent lawyer courageous enough to represent him. His chance to have his day in court loses much of its meaning if his case is handicapped from the outset by the very kind of prejudgment our rules of evidence and procedure are intended to prevent.* Professional Responsibility: Report of the Joint Conference, 44 A.B.A.J. 1159, 1216 (1958) Black's Law Dictionary 4th Edition

We tried to fight PHH, Chase and their accomplice's theft and assault on our own. They were too big.

We hired an attorney to fight for us. His battle strategy failed, personal issues defeated him, and he left the battle without even telling us.

We pled with the District Court to take over the fight, uphold the law, and render justice. He ignored evidence and told us he would not help us.

We appealed to the Supreme Court to see truth and help us find relief, to fight injustice for us and for the law you serve. Our cause is unpopular. Public record has penned encyclopedias on the hostile takeover of the right to own property by PHH and Chase. Are you courageous enough to preserve our rights, serve justice, and uphold the law? Will you ignore the injustice you know exists or will you use your authority to stand and be counted? If this Court is unwilling to help us end this nightmare and reclaim what is rightfully ours, please, as fellow human beings, as men who have committed your life to upholding the law, will you at least tell us where to go to find justice in this land? To have life and liberty - To acquire, possess or protect property in this State and in this land - To pursue happiness and secure safety - This is all we asked of the State of Idaho. The Idaho Constitution calls this an inalienable right of man. For us, it has been unattainable, a right apparently only available to the unjust within these borders. We have told PHH, Chase, and their accomplices, we will fight all the way for our home, for our family, and for our name. We prayed the battle would end as we approached your bench. What does properly in the record mean? As you review the record, please define it in light of justice or it will be redefined in the darkness of injustice.

We have fought a good fight and we have kept the faith. The opposing parties committed so many wrong and illegal acts we could not develop our brief any more within the page limitations. Time limitations beyond our control have been placed upon us that have prevented us from developing this petition any further. We appeal to you with the truth. It is all we have at our disposal to fight this battle. Rule righteously or put us in front of a jury and let them have opportunity to render a courageous verdict.

We requested this Supreme Court review all orders. IAR 35(a)(4) "...The statement of issues presented will be deemed to include every subsidiary issue fairly comprised therein." The procedure established to make sure we did not inadvertently forget to mention an important assignment of error is being used to say we failed to specifically state it. This is not right. It is an error.

The truth of this matter must be heard in order for justice to be served for our family, for Idaho landowners and the World At Large.

This Petition for Rehearing must be granted in order for this Court to have opportunity to render judgment based on the truths of this matter:

PHH does not own our note. PHH has no beneficial interest in this property.

We did not default on this note. Extensive witness testimony, account notations, taped conversations, and material evidence demonstrate and support this assertion. Evidence and proof refute the existence of any default whatsoever.

PHH has no claim to injury because of failure to establish right or cause to claim injury, prevention of performance, and fraud.

Truth requires our name be cleared of all wrongdoing regarding this property and the atrocities committed against us be punished. Justice and rules that govern procedure require this Court severely punish opposing counsels for their active concealment of the truth. This Supreme Court disbarred John Mitchell. May the perpetual, malicious acts being committed against us and the World At Large disbar opposing counsels before God, this State, and this Court.

So that justice may be fully served and to ensure adequate protections are in place to protect Idaho property owners from illegal land grabs and hostile takeovers of their family fortunes and financial portfolios, we request this Court grant this Petition For Rehearing.

DATED this 16 day of July, 2016

Charles Nickerson and Donna Nickerson

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 15th day of July, 2016, I caused to be served a true and correct copy of the Brief in Support of Petition for Rehearing by the method indicated below, and addressed to the following:

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Charles Nickerson

CHARLES NICKERSON AND DONNA NICKERSON
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Defendants Pro Se

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CLEARWATER

PHH MORTGAGE, Plaintiff/Counter-Defendant, vs. CHARLES NICKERSON and DONNA NICKERSON, husband and wife; KNOWLTON & MILES PLLC; WELLS FARGO BANK, N.A., AND JOHN DOES I thru X Defendant, COLDWELL BANKER MORTGAGE, a/d/b/a of PHH MORTGAGE, and JPMORGAN CHASE BANK, N.A. Third Party-Defendants.	Case No.: CV 2011-28 **MOTION FOR SANCTIONS**

COMES NOW, Defendants, Charles and Donna Nickerson, in accordance with I.R.C.P. 11(c), move this Court to sanction Chase and PHH for signing and submitting pleadings, motions and other papers to this District Court that were known to be or should have been known to be false, misleading and not grounded in fact. Their joint actions have denied us access to justice, robbed us of our right to due process, and prevented us from finding relief at the District Court and Supreme Court levels. They have maliciously caused a record to be created that is incomplete and based on falsehoods. Judge Griffin's judgments rely solely upon these falsehoods and are therefore not enforceable by law, fact, or justice. This has created needless pain, suffering, and damages for our family and makes a mockery of finding justice in these proceedings.

PHH has now moved this Court to execute judgment when the appeal has not been fully resolved to circumvent justice and escape full liability for their actions. This Court has rightly granted a stay pending appeal. Since the appeal is not yet fully resolved, PHH's motion to set aside stay is inappropriate and must be denied. The Idaho Supreme Court has determined Chase lied in their pleadings, but have yet to rule on the full consequences of Chase's deception.

CHASE

In conjunction with and in support of this motion we are submitting a true and correct copy of our motion for sanctions against Chase that was submitted to the Supreme Court. As stated, the Supreme Court has not yet acted upon this motion. The determination by the Supreme Court on this motion will prove justice has been thwarted and that PHH and Chase have sabotaged all proceedings by Judge Griffin at the District Court and Supreme Court levels.

Among other errors, Chase has made the following statements that are false, not supported by any evidence and contradict the facts determined by the District Court and the Supreme Court.

- The Nickersons missed 11 payments while Chase was servicing the note.
- Freddie Mac purchased the note from Coldwell Banker Mortgage.
- PHH repurchased the note from Freddie Mac.
- Chase never owned the note.

All of the above effect genuine issues of material fact and since all claims by PHH and Chase have been proven to be false, in addition to any monetary sanctions, an appropriate sanction would be to vacate the summary judgment decision in favor of Chase because ***frustra legis auxillium quaerit qui in legem comittit*** – he who offends against the law vainly seeks the help of the law. A very full and detailed briefing regarding this issue was submitted to the Supreme Court and is incorporated into this motion. See Exhibit 2 - *Objection to Costs and Fees and Motion for Sanctions* and Exhibit 3 - *Affidavit of Charles Nickerson in Support of Objection to Costs and Fees and Motion for Sanctions*.

PHH

The most damaging and blatantly fraudulent statement made in violation of Rule 11 is PHH's claim that they were and are the Note Holder. However, the hard evidence presented clearly demonstrates they were not and are not the Note Holder (R. 1112, 1139, 1140 – *Affidavit of Charles Nickerson in Support of Motion for Summary Judgment* – Exhibits 6 and 9; R. 1232 – *Notice of Supplemental Evidence* – Exhibit A). Further, we have documented over 100

discrepancies, contradictions and falsehoods made by PHH and their counsel in our amended answer – Twenty-Second Affirmative Defense – Contradictory Statements. See Exhibit 1. PHH's and their counsel's blatant violation of the Rule 11 mandate demonstrates a complete disregard for the integrity of the judicial process and proves malicious intent in the filing and prosecution of these proceedings. Therefore, in addition to monetary sanctions, according to the law, PHH's complaint must be dismissed.

CONCLUSION

Chase and PHH have built their case based upon lies and deception and have not taken any steps to insure their statements and claims are well grounded in fact. Their actions have created irregularities which render any judgment in there favor void. Therefore, not only are monetary sanctions warranted, it is appropriate and just to vacate the summary judgments in favor of Chase and PHH, dismiss PHH's complaint with prejudice, and allow us to pursue our amended counterclaims and third party complaint.

This wrongful foreclosure complaint is based solely on records and statements whose authenticity and veracity have been challenged and refuted. It is unjust and unlawful to proceed with execution of judgment without establishing that the facts and issues being relied upon for judgment are truthful and accurately presented in the record. To do otherwise, perpetually condemns the enforceability of this execution. Therefore, a stay continues to be appropriate and necessary until the true merits of this case have been litigated and fully resolved.

Wherefore, we request Chase and PHH be appropriately sanctioned and that we be allowed to pursue all of our claims against them.

Oral argument requested.

DATED this 11th day of April, 2017

CHARLES NICKERSON

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 11th day of April, 2017, I caused to be served a true and correct copy of the MOTION FOR SANCTIONS by the method indicated below, and addressed to the following:

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Charles Nickerson

**Please note: Mr. Stenquist and Ms. Magnuson already have copies of the documents listed below and in the interest of saving resources we are not serving them again.

- Objection to Costs and Fees and Motion for Sanctions
- Affidavit of Charles Nickerson in Support of Objection to Costs and Fees and Motion for Sanctions
- Brief in Support of Petition for Rehearing

EXHIBIT 1

TWENTY-SECOND AFFIRMATIVE DEFENSE

Contradictory Statements

250. ***allegans contraria non est audiendus*** - one making contradictory statements is not to be heard

251. Based on this Latin maxim, PHH is not to be heard and their complaint must be dismissed.

252. The Nickersons assert PHH has made countless untrue and often contradictory statements. All of these statements are taken from the record that is before this Court.

253. PHH claims to be holding a Deed of Trust on the Nickersons property (Complaint paragraph 1). However, the legal description PHH used to identify the property is not the legal description of the Nickersons property (Complaint paragraph 7). PHH claimed this was scrivener error, however, as the evidence presented below demonstrates a pattern of contradictory and false statements, PHH's and Just Law's claim of scrivener error has no merit.

254. PHH, in paragraph 2 of the Complaint claims to have beneficial interest in a Deed of Trust instrument number 190566. Instrument 190566 is not the Nickersons Mortgage, and thus, PHH is not claiming beneficial interest in the Nickersons Mortgage and their complaint must be dismissed.

255. PHH, in paragraph 2 of the Complaint, states a copy of that Deed of Trust is attached as Exhibit "A". Complaint Exhibit A is instrument number 190568 which is not that Deed of Trust instrument number 190566.

256. PHH, in paragraph 2 of the Complaint, states, "A copy of the Assignment of Record recorded December 20, 2007, as instrument number 207590...is attached as Exhibit "B". However, Complaint Exhibit B is instrument number 214459.

257. PHH claims to have beneficial interest in the Nickersons Mortgage based on a the assignment of record recorded on December 20, 2007, as instrument number 207590. Instrument number 207590 is an assignment in which Coldwell allegedly assigns all of its interest in the Note and Mortgage to Chase. In other words, PHH is claiming to obtain beneficial interest from an assignment which assigns interest from Coldwell to Chase and does not even mention PHH. In addition, instrument number 207590 is fraudulent because Coldwell did not have interest in the Note and Mortgage in November of 2007. According to PHH and Fannie Mae, Fannie Mae did. See Exhibit 10.

258. PHH, in paragraph 3 of the Complaint, claims the Nickersons are the grantor of the Deed of Trust, Complaint Exhibit A. The Nickersons did not execute a Deed of Trust, the Nickersons executed a Mortgage and thus, they are the mortgagor not the grantor. Furthermore, there is no grantor defined in this document.

259. PHH, in paragraph 7 of the Complaint, provides a legal description of a property that is not the Nickersons property.

260. PHH, in paragraph 10 of the Complaint, states the Nickersons breached their obligations; however, PHH blocked all attempts by the Nickersons to keep their obligations or to cure the disputed default and the Nickersons were prevented by PHH from making their monthly payments. PHH, by these and other such actions, breached any alleged contract and violated all related governing duties, responsibilities and obligation through, among other breaches, prevention of performance and creating impossibility for the Nickersons.

261. PHH, in paragraph 12.c of the Complaint, claims interest is due from January 1, 2009, however, PHH clearly knew the Nickersons payments were made in 2009 and 2010 and thus, their claim of interest from January 1, 2009, is false.

262. PHH, in paragraph 17 of the Complaint, states the Note is attached as Exhibit B. The Note is not attached as Exhibit B. It is attached as Exhibit C.

263. PHH, in paragraph 18 of the Complaint, claims they are entitled to a deficiency judgment in accordance with the terms of the Deed of Trust. Since there are no terms in the Mortgage presented regarding a deficiency judgment, PHH is not entitled to one.

264. PHH through Just Law moved the Court for an order to serve the Nickersons by publication and subsequently served by publication when they knew the Nickersons were represented and had contact information for both the Nickersons and the firm representing them. The Nickersons counsel stopped PHH's and Just Law's illegal non-judicial foreclosure attempt in October of 2010 by threatening them with legal action.

265. In answer to the Nickersons request for admission number 13, PHH states "PHH is unaware of any payments made or not made by the Nickersons to Chase." This answer was provided on July 3, 2012 a full two and a half years after PHH claimed the Nickersons were in default. How could PHH claim default if they were "unaware of any payments made or not made by the Nickersons to Chase"? In addition, how can PHH claim they were unaware of payments when Chase claimed they transferred all account records to PHH?

266. PHH in response to request for admission number 20 states, "PHH admits that it is the mortgage company's responsibility to maintain an accurate record of transactions." However, in reality, PHH did not maintain an accurate record of the Nickersons account, see preceding paragraph.

267. Request for admission number 20 states, "Admit it is the responsibility of the mortgage company to maintain accurate records of all transactions and communications..." PHH admits they must maintain accurate records of transactions, but **denies** they must maintain accurate records of communications.

268. In interrogatory number 1, PHH was asked who owned the Note prior to Chase purchasing it. PHH responded by stating "PHH states that it held the original note through its subsidiary, Coldwell Banker. PHH believes that note was transferred to the Federal Home

Mortgage Association, (Fannie Mae), which in turn, had JP Morgan Chase service the note. When you defaulted on the note, Fannie Mae assigned the note back to PHH as the originating lender. PHH is the holder of the note in this foreclosure action." This answer is contradictory for the following reasons:

a. PHH believes the note was transferred to Fannie Mae. How can they not know? No one knew because this transfer was not recorded in the Clearwater County land records.

b. Fannie Mae had Chase service the Note. Exhibit 15, a letter from Coldwell not Fannie Mae, states, "Recently you received a notification letter communicating that effective November 1, 2007, the servicing of your mortgage loan will transfer from the Mortgage Service Center to Chase Home Finance LLC."

c. There is no record of an assignment from Fannie Mae to PHH. However, Chase claims to have purchased the note on the same date that Fannie Mae states they terminated interest. See Exhibits 9 and 10.

d. PHH claims to be the holder of the note but they can not be the holder of the note. Chase purchased the note on December 3, 2009, and claims to have the original note in their possession as of January 10, 2014. See Exhibits 1 and 9.

269. In response to interrogatory number 2 which asked PHH to state how the note was transferred from Chase, PHH states "the assignment of the deed of trust and note were properly completed in writing and the assignment was recorded as noted in the complaint." This statement has the following problems:

a. The assignment referenced in the complaint is 207590 which is the assignment from Coldwell to Chase (Exhibit 11). This assignment is fraudulent because at the time of this assignment Coldwell had already assigned interest to Fannie Mae, so Coldwell had nothing to assign to Chase.

b. The assignment attached to the complaint is the assignment from Chase to PHH (Exhibit 8). This contradicts PHH's answer to interrogatory number 1 where PHH claims Fannie Mae transferred the Note directly to PHH. In addition, this assignment is fraud because as stated above Chase claims ownership of the Note from December 3, 2009 to the present.

270. In response to interrogatory number 4, PHH states, "the assignment of the deed of trust was performed in writing and the promissory note was assigned as indicated on the allonges to that note." However, 1) there are no attachments or allonges, to the note. 2) one cannot be sure which assignment PHH is referring to but both assignments state they are assigning interest in the note and deed of trust which contradicts PHH's statement that the note was assigned via an allonge.

271. In response to interrogatory number 8 which asked why PHH immediately started foreclosure proceedings in February of 2010, PHH states, "You were several months in default." Several months has been an ever changing figure since February 2010. For example, PHH originally claimed the Nickersons were 14 months in default and almost three years later PHH changed its mind and has just recently sworn the Nickersons were 9 months in default. In February of 2010, when the Nickersons asked PHH to validate the existence of any default, PHH claimed they did not have any account records. As of July 3, 2012, PHH stated they were not even aware of any payments made or not made to Chase. PHH could not state, imply, assert or suggest the Nickersons were several months in default when they did not have any account records and were not aware of payments made or not made to Chase. Further, it is presumed PHH is still relying on the same inaccurate, invalid, untrustworthy and unreliable records presented thus far in these proceedings to make these statements.

272. Interrogatory number 9 asks PHH to describe/list the information provided to PHH regarding the transfer/sale of the note. PHH claims it is the same account information as

Chase provided in their response to discovery. PHH is claiming the first account information they received regarding the Nickersons account was the information provided by Chase on August 21, 2012. How can PHH claim a default in February of 2010 when they do not get the account information until August of 2012?!

273. Interrogatory number 10 asks PHH to describe any agreements in place between PHH and Chase regarding the transfers and sales of notes. PHH states, "There was no agreement between PHH and Chase. The assignment of the note was directed by Fannie Mae due to your default and PHH's responsibility as originating lender to foreclose." There are several problems with this answer:

a. PHH claims the assignment of the Note was directed by Fannie Mae. However, Fannie Mae terminated interest in the note on December 3, 2009, which is the same day Chase purchased the note (Exhibits 9 and 10), and the assignment from Chase to PHH did not allegedly occur until June 9, 2010 which is four months after PHH initiated foreclosure. (Exhibits 2 and 3).

b. PHH claims the assignment was directed by Fannie Mae due to default. There is no record of default. The account history provided by Chase which is what PHH claims to be relying upon for default shows the principal balance on the account was $0 in November of 2009 and had a negative principal balance, $-1,186.90, on January 21, 2010.

c. The assignment from Chase to PHH, in contradiction to PHH's response, clearly indicates there was some type of agreement regarding the assignment. "KNOW ALL MEN BY THESE PRESENTS THAT FOR VALUE RECEIVED, J.P. Morgan Chase Bank...does hereby, without recourse, sell, assign, endorse, and transfer unto, PHH...all of its right, title and interest in...That certain Deed of Trust Note..." (Exhibit 8).

d. PHH was not the originating lender. Coldwell Banker Mortgage was the originating lender.

274. Request for production number 3 asks PHH to produce all documents related to the transaction and or servicing the Nickersons note between Chase, Coldwell, Fannie Mae, and PHH. PHH responded by stating, "loans are processed in 'batches' and as such there are no documents specific to this note between any of the above named entities. PHH does not have in its possession documents pertaining to service of the note between Fannie Mae and Chase." Below are the contradictions to these statements:

a. Exhibit 11 is an assignment document in which Coldwell assigns all of the interest it does not have in the Note and Mortgage to Chase.

b. Exhibit 8 is an assignment document in which Chase purportedly assigned all its interest in the Note and Mortgage to PHH. However, Chase apparently was not consulted about this assignment because they claim they did not transfer ownership of the Note and Mortgage to PHH as is evidenced by Exhibits 1 and 9.

c. There is no document in which Fannie Mae assigns servicing to Chase because Coldwell assigned servicing to Chase not Fannie Mae.

d. It is very disturbing to think there is no documentation associated with the transfers of loans to Fannie Mae from PHH and Coldwell. No wonder there is so much fraud in the mortgage industry. See *Amid New Reports of Continued Robo-Signing, Brown Calls for End to Risky Practices Undermining Housing Market* – Exhibit 17.

275. PHH provides the same response to request for production number 4. The same contradictions apply as presented in the above paragraph.

276. Request for production number 7 asks PHH to provide any agreements between Chase and PHH related to the transfers and sales of notes. PHH states they do not have any

agreements with Chase related to the transfer and sales of notes. As detailed above, Chase, in the assignment submitted to the Court, claims to have received some value for the assignment to PHH so some kind of agreement must have been in place for that to have occurred. Well, maybe not, it has already been demonstrated that assignment was false, fraudulent and fabricated.

277. In response to nine (9) of the fourteen (14) requests for production and fifteen (15) of the twenty-one (21) interrogatories PHH gives the following objection in order to either avoid the request all together or to provide a partial and incomplete answer. "Object. The information requested is not reasonably designed to lead to discoverable information. Rather, the request appears designed to harass or to cause unnecessary delay or needless increase in the cost of litigation, and is unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the litigation."

a. This appears to be PHH's way of saying the evidence will incriminate me so I better not provide it.

b. "unreasonable or unduly burdensome or expensive, given the needs of the case" Perhaps this is why the U.S. Congress enacted 12 C.F.R. § 1024.38 which details record keeping requirements for mortgage servicers. Too expensive given the needs of the case. The needs of the case are about taking someone's home and robbing, killing and destroying their life. How can providing documented evidence be too expensive?

c. "the discovery already had in the case" – PHH had yet to provide discovery in this case even though the Nickersons repeatedly asked for the discovery and understood from their counsel a motion to compel PHH for the discovery was before the court.

d. "the amount in controversy" – When you are taking someone's home the monetary ramifications go far beyond the amount in controversy and the amount in controversy represents an oppressive seizure of investment, value and equity from the Nickersons.

e. "the importance of the issues at stake in the litigation" – Apparently, PHH has very little regard of the importance of home ownership and the constitutional rights and passion of the American homeowner.

278. In an affidavit, Ron Casperite, a Complex Litigation Liaison (an account analyst) for PHH, claimed the Nickersons had missed at least ten (10) monthly payments and in the same affidavit he claimed the Nickersons had missed thirteen (13) monthly payments.

279. In the same affidavit, Ron Casperite states, "By February 2010 Chase had returned the Nickersons' loan to PHH."

a. Chase did not return the Nickersons loan to PHH in February 2010.

b. Chase allegedly transferred servicing of the loan to Mortgage Service Center not PHH (Exhibit 4).

c. Chase could not "return" the loan to PHH because PHH never had it.

280. In PHH's memorandum in support of summary judgment, PHH claimed the Nickersons missed (11) monthly payments which contradicts Ron Casperite's claims of ten (10) or thirteen (13) missed payments.

281. In PHH's memorandum in support of summary judgment, PHH states, "In accordance with the terms of the note in paragraphs 6 and 7, Chase sent written notices to the Nickersons stating the default." First, the default notices sent by Chase were sent in January and February of 2009 and had conflicting default amounts. February's default amount was less than January's default amount when there were allegedly no payments made. When found and questioned by the Nickersons, Chase informed and assured the Nickersons it was an error and

instructed the Nickersons to disregard the notices because they were being randomly, incorrectly, inaccurately and independently generated by their system, so since the Nickersons knew they were not in default, they ignored them as instructed. Second, the terms of the note are very specific about who is supposed to send the notice of default. Paragraph 6 of the Note states, "(C) **Notice of Default** If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder..." Paragraph 1 of the Note defines "Note Holder" as "The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the 'Note Holder.'" Chase was not the Note Holder at the time they sent these default letters. Fannie Mae was. See Exhibit 10.

282. PHH then states, "Consequently, the facts demonstrate PHH did not breach the note by failing to send notice of default." Contradictorily, these facts demonstrate 1) the notices were sent by Chase, 2) the notices present contradictory amounts of default, 3) the notices were sent in January and February of 2009 long before PHH had anything to do with this account, 4) Chase was not the Note Holder and by contract not the rightful entity to send the default notice, 5) PHH did not send these notices of default, 6) the Nickersons were told to disregard the notices, 7) PHH was not the Note Holder, and 8) PHH was in breach by failing to send notice of default.

283. In PHH's memorandum in support of summary judgment, PHH claims RESPA does not apply to the Nickersons mortgage. However, according to RESPA and Coldwell's actions, the Nickersons mortgage is a "federally related mortgage loan" because the loan was given as security on residential real property and was intentionally created by the lender for the purpose of selling to Fannie Mae and was apparently sold to Fannie Mae (Exhibit 10). 12 U.S.C. § 2602(1).

284. In PHH's conclusion section of the memorandum in support of summary judgment, PHH states the deadlines for producing factual information to support claims have

long passed. It must be noted that the date of this memorandum for summary judgment is October 12, 2012 and that PHH did not submit their discovery responses to the Nickersons until October 18, 2012 which was 5 months after PHH received the discovery requests and 48 days after the discovery cutoff. It is also important to note many of the contradictions noted in this section of the Nickersons answer have come from the discovery documents.

285. In PHH's reply brief dated November 1, 2012, PHH once again defends its claim that the Nickersons received notice of default from Chase which as has already been discussed was not valid according to the terms of the contract. However, PHH now adds the claim that as the discovery shows, PHH also sent a notice of default to the Nickersons. As noted above, PHH had not yet provided the discovery at the time PHH filed their Memorandum in Support of Summary Judgment. However, between the time of that memorandum and this reply PHH did file their discovery, but as PHH has stated the deadlines for producing factual support has long passed. Therefore, to present the claim that discovery shows PHH also sent a notice of default is more than contradictory. Also, the notice of default PHH provided with discovery does not qualify as a notice of default as defined by the Note because PHH was not the "Note Holder" as defined in the Note (contract) and PHH knew it was inaccurate and in dispute. Therefore, PHH's claim they were not in breach does not hold up under careful and lawful scrutiny.

286. PHH has never provided the Nickersons with proper notice of default.

287. PHH did not provide the Nickersons with proper notice of default prior to these wrongful foreclosure proceedings as required by law and the contract.

288. In PHH's trial brief PHH states, "the Nickersons granted a deed of trust naming PHH as beneficiary." The Nickersons granted a Mortgage to Coldwell not PHH. Also, PHH cannot claim beneficiary status in the original Mortgage. The record indicates beneficial interest in the Nickersons Mortgage was allegedly transferred to Chase (Exhibit 11) and then from Chase to PHH (Exhibit 8). Perhaps PHH is admitting what the Nickersons have stated all along that

both of those assignments are fraud and neither of those assignments transferred any beneficial interest.

289. In the trial brief PHH states "an employee of Chase, not PHH, may have stated the Nickersons' loan was current. However, the Nickersons have never identified that employee." In paragraph 20 of the Nickersons amended answer they identified Kim as the Chase employee who told them they were in good standing.

290. Noticeably absent from the trial brief is any claim by PHH that they hold the Nickersons Note. PHH quotes I.C. § 6-101(2) but totally misconstrues the point of that law. The point is the **secured creditor** can realize upon collateral for a debt. To be the secured creditor you must hold the debt (Note) and the security (Mortgage).

291. In PHH's memorandum in support of plaintiff's second motion for summary judgment PHH again claims, "the Nickersons granted a deed of trust naming PHH as beneficiary." The Nickersons granted a Mortgage to Coldwell not PHH. Also, PHH cannot claim beneficiary status to the original Mortgage. The record indicates beneficial interest in the Nickersons Mortgage was allegedly transferred to Chase (Exhibit 11) and then allegedly from Chase to PHH (Exhibit 8). Perhaps PHH knows and is admitting those assignments are fraud, to conspiring to commit fraud, and that neither of those assignments can or did transfer any beneficial interest.

292. In PHH's memorandum in support of plaintiff's second motion for summary judgment, PHH claims they should get summary judgment of foreclosure on their deed of trust. The deed of trust they are claiming as theirs is the recorded deed of trust in which Coldwell is the beneficiary. Again PHH is skipping all of the assignments and going back to the original recorded deed of trust which is a false and misleading record of what has occurred and what the Nickersons were told was executed and recorded.

293. In PHH's memorandum in support of the plaintiff's second motion for summary judgment, PHH states, "PHH received the loan from Chase on February 10, 2010. When PHH received the loan from Chase in February 2010..."

a. PHH did not receive the loan from Chase. Chase allegedly transferred servicing rights to Mortgage Service Center (Exhibit 4). There is nothing in the record indicating Chase transferred the loan or servicing rights for that matter to PHH in February of 2010.

b. The alleged transfer of servicing occurred on February 5, 2010, not February 10, 2010 (Exhibit 4).

294. In PHH's memorandum in support of the plaintiff's second motion for summary judgment, PHH states, "PHH refused to accept any further payments from the Nickersons until the total amount in default was paid. (*Second Affidavit of Ronald Casperite*)." Mr. Casperite did not make that statement in said affidavit.

295. Noticeably missing from PHH's memorandum in support of Plaintiff's second motion for summary judgment is any claim by PHH to be the Note holder. PHH quotes I.C. § 6-101(2) but totally misconstrues the point of that law. The point is the **secured creditor** can realize upon collateral for a debt. To be the secured creditor you must hold the debt (Note) and the security (Mortgage).

296. In paragraph 9 of the second affidavit of Ron Casperite, Mr. Casperite states, "the Nickersons' loan during the time Chase serviced the loan and since February 2010 the time PHH had the loan."

a. Ron Casperite is stating PHH had the loan in February 2010. PHH did not have the loan and there is nothing in the record from PHH indicating PHH had the loan in February 2010.

b. The record demonstrates Chase allegedly transferred servicing to Mortgage Service Center, a separate legal entity, in February 2010 (Exhibit 4).

297. In paragraph 11 of the second affidavit of Ron Casperite, Mr. Casperite states, "Just prior to Chase returning the Nickersons' loan..." Chase did not return the Nickersons' loan. Chase allegedly transferred servicing (Exhibit 4). Chase could not "return" the loan to PHH because PHH never had it.

298. In paragraph 10 of the second affidavit of Ron Casperite, Mr. Casperite states, "From November 2007 through December 2009 the Nickersons were obligated to pay 26 monthly payments. During that time period the Nickersons only made 17 monthly payments. The Nickersons failed to make 9 monthly payments causing their loan to go into default." As of December 2009, the total amount for 9 missed payments is $20,960.91. However, in the affidavit of Chase employee in support of summary judgment, Brandie S. Watkins presents, in letters dated December 7, 2009, a conflicting amount of $28,368.84 of which $27,514.84 was due to missed payments. This contradictory evidence, at a minimum, clearly and deeply demonstrates the total lack of integrity, credibility and reliability of Chase's and PHH's account records and history.

299. In paragraph 13 of the second affidavit of Ron Casperite, Mr. Casperite states, "Upon PHH's receipt from Chase of the Nickersons' loan..." Chase did not transfer the Nickersons' loan. Chase allegedly transferred servicing (Exhibit 4).

300. In paragraph 14 of the second affidavit of Ron Casperite, Mr. Casperite states, "Since February 2010 the Nickersons have not made any further payments on the loan, nor have the Nickersons cured their default." However, in Mr. Casperite's first affidavit he stated PHH declined to accept any further payments. There is a big difference in stating the Nickersons have not made payments and stating PHH declined to accept payments.

301. A careful comparison of Mr. Casperite's illustrative loan history (*Second Affidavit of Ronald E. Casperite*, Exhibit C) and Chase's detailed transaction history (Exhibit 18) reveals the following contradictions:

a. The illustrative loan history Principal Balance column Transaction Dates 7/21/2009 thru the second entry on 10/3/2009 are blank. There is nothing there. However, a careful review of the detailed transaction history for these dates show a Principal Balance of $391.52.

b. The next entry on the illustrative loan history Transaction Date 10/3/2009 has a Principal Balance of $261,170.62 and on the detailed transaction history it is $0.00.

c. The next entry on the illustrative loan history that has an entry for a Principal Balance is Transaction Date 11/11/2009 with a balance of $261,170.62. Even though a payment was credited on that date with a principal amount of $391.52 which would normally reduce the Principal Balance, Mr. Casperite did not credit the $391.52 against his Principal Balance of $261,170.62. The detailed transaction history also shows a payment was credited on 11/11/2009 with a principal amount of $391.52 which brought the Principal Balance to $0.00.

d. The next entry on the illustrative loan history that has an entry for a Principal Balance is Transaction Date 12/11/2009 with a balance of $260,777.05. The detailed transaction history Principal Balance is $-393.57.

e. The next entry on the illustrative loan history that has an entry for a Principal Balance is Transaction Date 1/13/2010 with a balance of $260,381.42. The detailed transaction history Principal Balance is $-789.20.

f. The last entry on the illustrative loan history that has an entry for a Principal Balance prior to the alleged transfer of servicing the loan to Mortgage Service

Center is Transaction Date 1/21/2010 with a balance of $259,983.72. The detailed transaction history Principal Balance is $-1,186.90

302. The second affidavit of Ron Casperite is not notarized. This is a violation of the law and is an affront to the judicial process. The notary stamped the affidavit but did not sign it. "A signed notarization is the ultimate assurance upon which the whole world is entitled to rely that the proper person signed a document on the stated day and place. Local, interstate, and international transactions involving individuals, banks, and corporations proceed smoothly because all may rely upon the sanctity of the notary's seal…'The proper functioning of the legal system depends on the honesty of notaries who are entrusted to verify the signing of legally significant documents.'…a false notarization is a crime and undermines the integrity of our institutions upon which all must rely upon the faithful fulfillment of the notary's oath." *Klem v. Washington Mut. Bank*, 176 Wash. 2d 771, 295 P.3d 1179 (2013).

303. PHH starts off their motion to take judicial notice by stating "the Harrises request the Idaho Supreme Court to take judicial notice." The motion was filed on behalf of PHH in the Second Judicial District, not on behalf of the Harrises for the Idaho Supreme Court.

304. In PHH's response in opposition to Nickersons' motion for summary judgment, PHH states, "Failure to properly preserve fraud as an affirmative defense in an answer is fatal to a party's ability to rely on that defense at summary judgment, *McKee Bros., Ltd v. Mesa Equipment, Inc.*, 102 Idaho 202, 628 P.2d 1036 (1981)" This is a total contradiction and misinterpretation of what the Court ruled in *McKee Bros., Ltd v. Mesa.* What the Court actually stated is quoted below.

> "In response to plaintiff's motion for summary judgment, the defendant filed an affidavit alleging fraud on the part of the plaintiff. The court below concluded that the defendant might be able to establish the necessary elements of fraud and therefore ordered that 'if Defendant files an amended answer properly setting up such defense within ten days, and leave is hereby granted therefor, then the motion for summary judgment must accordingly be denied.'"

305. In PHH's response in opposition to Nickersons' motion for summary judgment, PHH states, "At the time PHH filed this action, there is no question it was the beneficiary under the deed of trust and had standing to foreclose."

a. Alleged beneficial interest in a deed of trust does not prove standing in a judicial foreclosure action. In a judicial foreclosure action the Plaintiff must own, prove ownership and hold both the Note and Mortgage.

b. PHH did not have beneficial interest in the Note or Mortgage at the time PHH filed this action. Chase allegedly purchased the Note on December 3, 2009, (Exhibit 9) and still claims to be the investor and holder of the Note (Exhibit 1).

c. The Nickersons had clearly questioned, adamantly denied and challenged PHH's interest and standing and PHH has failed and refused to legitimately and legally prove they have standing.

d. The Nickersons did not knowingly or willingly execute a Deed of Trust.

306. In PHH's response in opposition to Nickersons' motion for summary judgment, PHH states, "PHH is the beneficiary under the deed of trust." Again PHH could not be and is not the beneficiary under the deed of trust because Chase did not and has not transferred, assigned, or sold the Nickersons Note and Mortgage to PHH. See Exhibits 1 and 9. Further, the Nickerson did not execute a deed of trust.

307. In PHH's response in opposition to Nickersons' motion for summary judgment, PHH states, "In the event a deed of trust is recorded against real property exceeding 40 acres, the remedy is to treat the deed of trust as a mortgage because by statute the trustee is not authorized to exercise power of sale in nonjudicial foreclosure proceedings. *Frazier v. Neilsen & Co* , 115 Idaho 739, 769 P. 2d 1111, 1114 (1989). Exceeding the statutorily authorized acreage amount does not render a deed of trust invalid; rather, it prevents nonjudicial foreclosure by a trustee with power of sale. As a matter of law, the Nickersons' argument has no merit."

a. As a matter of law, "Because the legislature has created a separate scheme for deeds of trust, the rationale for *Brown v. Bryan,* that mortgages and deeds of trust are functional equivalents, is undercut. The legislature obviously intended separate treatment; therefore, they are not functionally the same. A mortgage and a deed of trust are also separately defined. Compare I.C. § 45-901 with I.C. § 45-1502(3). " *Frazier v. Neilsen & Co, Id.* Exceeding the statutorily authorized acreage amount is not lawful.

b. As a matter of law, a deed of trust was illegally used and can have no binding on the Nickersons or their property and therefore, the use thereof is fraudulent.

c. Just Law, on their own website, states; "Action on a deed of trust is governed by I.C. §§ 45-1502 through 45-1515. A deed of trust may be used to secure a loan when the trust property consists of 40 acres or less, or is real property located within an incorporated city or village at the time of transfer." Just Law in providing Idaho law summary is admitting a deed of trust could not be used on the Nickersons' fifty (50) acre property.

d. Just Law, knowing it was illegal to non-judicially foreclose on the Nickerson's property, attempted a non-judicial foreclosure anyway. Just Law only stopped the non-judicial because the Nickersons counsel threatened legal action and pointed out their civil and criminal liability and exposure, if they proceeded.

e. Coldwell's representations and assurances at closing was the Nickersons were getting a mortgage.

308. In PHH's response in opposition to Nickersons' motion for summary judgment, PHH states, "There are no genuine issues of material fact regarding PHH's position as Note Holder." The material fact is PHH was not and is not the Note Holder. Chase claims to have purchased the Nickersons Note in December of 2009 and maintains they are in possession of the

note and are the investor on the loan as of January 10, 2014. See Exhibits 1 and 9. Further, simply stating, implying or making other such conclusory statements to show one has position as Note Holder does not meet the standing requirements in a judicial foreclosure. PHH has systematically and categorically failed to demonstrate and unequivocally not presented any factual evidence proving their position as is necessary to prove standing, ownership and their Note Holder status. ***affirmanti non neganti incumbit probatio*** – the burden of proof is upon him who affirms, not upon him who denies

309. In PHH's response in opposition to Nickersons' motion for summary judgment, PHH states, "Using language from a recorded assignment of the deed of trust, the Nickersons contend Coldwell Banker did not have any interest in the note or deed as of the date of the assignment. Although the Nickersons reference a paragraph from their memorandum as supporting the alleged fact, there are no facts before the court sustaining the Nickersons' argument."

a. The first fact before the court was the assignment from Coldwell to Chase which was first referenced by PHH in their complaint.
b. The second fact before the court was introduced in evidence by PHH in their responses to interrogatories in which they claim Coldwell transferred the loan to Fannie Mae and is evidenced by Exhibit 10 in which Fannie Mae claims ownership from December 2002 to December 2009.
c. Based on these facts Coldwell could not transfer ownership and beneficial interest in the Note and Mortgage to Chase because Fannie Mae had ownership and beneficial interest at the time of the assignment.

310. In PHH's response in opposition to Nickersons' motion for summary judgment, PHH states, "Regardless of whether PHH held beneficial interest at the time Just Law, Inc., was appointed successor trustee, it is irrelevant to this judicial foreclosure action." PHH and Just Law

are showing a very flippant attitude toward breaking the law and insuring everything filed in the county land records is accurate. These are felony offenses. The Nickersons assert PHH breaking the law is not irrelevant. The Nickersons request the Court take notice of the seriousness and severity of PHH's statements and take appropriate action to insure justice is served.

311. In PHH's response in opposition to Nickersons' motion for summary judgment, PHH states, "In part the Nickersons assert fraud because of the alleged absence of a letter from PHH constituting notice of new creditor. The Nickersons contend the absence of such letter violates the Truth in Lending Act. All of the Nickersons' claims in their counterclaim were dismissed by summary judgment. They cannot now resurrect those claims."

a. PHH does not claim to have sent a notice of new creditor nor defend the violation.

b. The Nickersons counsel did not allege a violation of the Truth in Lending Act in the original counterclaim so they were not resurrecting any claim. The Nickersons were simply presenting a fact to the court. However, it would be proper and appropriate for this court to revisit the decision to discuss the Nickersons claims in light of the fraudulent representations PHH and Chase used to manipulate that decision.

c. Further, PHH, Just Law and their attorneys of record concealed evidence, refused to provide discovery, submitted fraudulent documents and instruments, obstructed justice, oppressed the Nickersons and their counsel, conspired against the Nickersons, prohibited justice being served, and committed other such acts as to get the Nickersons counterclaim dismissed.

312. PHH, in their objection to supplemental evidence states, "The Nickersons attempt to present supplemental evidence without affidavit." However, page 4 of the Nickersons notice of supplemental evidence is an affidavit of Charles Nickerson introducing the supplemental evidence into the record.

313. The Nickersons have identified over one hundred (100) discrepancies, contradictions and falsehoods made by PHH in the record. The above list is not comprehensive and every instance identified is documented by the evidence. Therefore, since ***allegans contraria non est audiendus*** – one making contradictory statements is not to be heard, ***frustra legis auxilium quaerit qui in legem comittit*** – he who offends against the law vainly seeks the help of the law, and ***fraus omnia vitiat*** – fraud vitiates everything, PHH's complaint should and must be dismissed.

314. In light of the overwhelming amount of contradictions, discrepancies and falsehoods presented above, the Nickersons would like to point the Court's and Just Law's attention to I.C. § 3-201. **Duties of Attorneys.** "In addition to such duties as the Supreme Court may by rule prescribe, it is the duty of the attorney and counselor:

1. To support the constitution and laws of the United States and of this state.

2. To maintain the respect due to the courts of justice and judicial officers.

3. To counsel or maintain such actions, proceedings or defenses only as appear to him legal or just, except the defense of a person charged with a public offense.

4. To employ, for the purpose of maintaining the causes confided to him, such means only as are consistent with truth, and never seek to mislead the judges by an artifice or false statement of fact or law.

5. To maintain inviolate the confidence, and at every peril to himself, to preserve the secrets of his clients.

6. To abstain from all offensive personality, and to advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which he is charged.

7. Not to encourage either the commencement or the continuance of an action or proceeding from any motive of passion or interest.

8. Never to reject for any consideration personal to himself, the cause of the defenseless or the oppressed."

315. "Be not deceived; God is not mocked: for whatsoever a man soweth, that shall he also reap." Galatians 6:7

316. "Therefore to him that knoweth to do good, and doeth it not, to him it is sin." James 4:17

EXHIBIT 2

Charles and Donna Nickerson
3165 Neff Rd
Orofino, ID 83544

Appellants Pro Se

IN THE SUPREME COURT OF THE STATE OF IDAHO

PHH MORTGAGE,

Plaintiff-Third Party Defendant-Counterdefendant-Respondent,

v.

CHARLES NICKERSON and DONNA NICKERSON

Defendant-Counterclaimant-Third Party Complainant-Appellant,

and

COLDWELL BANKER MORTGAGE, a d/b/a of PHH MORTGAGE and JP MORGAN CHASE BANK, NA,

Third Party Defendants-Respondents.

OBJECTION TO COSTS AND FEES AND MOTION FOR SANCTIONS

Supreme Court Docket No. 42163-2014
Clearwater County No. 2011-28

COMES NOW, Charles and Donna Nickerson, Appellants, in accordance with I.A.R. 40, 41 and 11.2(a) submit this Objection to Costs and Fees and Motion for Sanctions.

STATEMENT IN SUPPORT OF MOTION FOR SANCTIONS

We, the Nickersons, contend Chase, Jon Stenquist and his firm should not be awarded fees, but rather, should be sanctioned in accordance with I.R.C.P. 11(a)(1) and I.A.R. 11.2(a) for signing and certifying documents to the Court "that to the best of the signer's knowledge, information, and belief after reasonable inquiry it is well grounded in fact." The admissions, interrogatories, briefs and affidavits of Chase presented to the Supreme Court in the record contain statements that are false, not supported by any evidence and conflict with the facts the Court deemed to be undisputed and relied upon to rule against us.

A few statements made by Chase that are false:

- The Nickersons missed 11 payments while Chase was servicing the note.
- Freddie Mac purchased the Nickersons' note from Coldwell Banker.
- PHH repurchased the note from Freddie Mac.
- Chase never owned the Nickersons' note.

A few statements made by Chase that are not supported by admissible evidence:

- The Nickersons missed 11 payments while Chase was servicing the note.
- Freddie Mac purchased the Nickersons' note from Coldwell Banker.
- PHH repurchased the note from Freddie Mac.
- Chase never owned the Nickersons' note.

A few statements made by Chase that contradict the facts determined by this Court:

- The Nickersons missed 11 payments while Chase was servicing the note.
- Freddie Mac purchased the Nickersons' note from Coldwell Banker.
- PHH repurchased the note from Freddie Mac.
- Chase denied receiving the note in November 2007.
- Chase never owned the Nickersons' note.

Chase and Mr. Stenquist's continual and persistent presentation of false information to the District Court and now this Court has needlessly increased the cost of this litigation by forcing it to continue and their actions should bar them from any awards of fees or costs. Their deliberate obstruction of evidence by blocking all access to our account records and creating circumstantial impossibilities in conducting discovery laid the foundation for the judgments rendered and forced this appeal. This level of blatant legal and procedural chicanery, manipulation of the legal system, and intentionally abusive debt collection practices reek of organized fraud, violates any claimed integrity of the banking industry and invalidates the constitutional protections of the Idaho judicial system.

Frustra legis auxilium quaerit qui in legem comittit – He who offends against the law vainly seeks the help of the law.

Allowing them to prevail and be rewarded codifies their ability to destroy not only the Nickersons, but sets precedents that grants them access to the life savings and financial portfolios of all Idaho homeowners. In fact, it creates authority that can be pointed to throughout the 9th Circuit and across the United States of America.

In Respondent Chase's brief under the statement of facts section, p. 3, (Exhibit 1) Chase states falsely without any supporting or admissible evidence, "the Nickersons were at least 11 months behind in their scheduled payments on the Note. R. 330, 441-53. In February 2010, PHH repurchased the Note from Freddie Mac and began servicing the Note." This Court affirmed the District Court's belief (based on PHH's evaluation of Chase account records) that we had allegedly only missed 9 payments thus impeaching Chase's testimony. Page 330 of the Record is Mr. Stenquist's affidavit in which he states, "I have access to my client's files in this matter and make this affidavit based upon personal knowledge…" and introduces a "true and correct copy of the Nickersons' payment history provided to the Nickersons on May 13, 2010, detailing all payments made to Chase on the Note from 2008 through 2010." Exhibit 2 (R. 330, 331). On a side note, the final principal balance on this account record is $-1,186.90. Exhibit 3 (R. 443). Additional moneys were also held in escrow and suspense accounts. True discovery will prove any claims the Nickersons were behind in their scheduled payments in February 2010 to be irrefutably false. In addition, there was and is no evidence present that PHH acquired our Note from Freddie Mac. There is no evidence that Freddie Mac ever had any involvement with our loan even though Chase has repeated this claim in multiple documents. Freddie Mac denied involvement upon inquiry by the Nickersons. This claim is only a bald assertion from Mr. Stenquist with no foundation or factual basis in the undisputed material facts section of his memorandum in support of summary judgment. Exhibit 4 (R. 537). Further, this assertion does not correspond with the facts presented by this Court. "In December of 2002, the note was assigned to Fannie Mae, and J.P. Morgan Chase acquired the note in November of 2007, at which point Chase Home Financial began servicing the loan. In February of 2010, Mortgage Service Center resumed responsibility for loan servicing, and in June of 2010, Chase assigned the note to PHH." Opinion, p. 2. This Court specifically states Chase acquired the note in 2007 and assigned it to PHH in June 2010. However, not only did Mr. Stenquist claim PHH repurchased the loan from Freddie Mac. Mr. Stenquist specifically denied Chase acquired the note in 2007, Exhibit 5 (R. p. 109, L. 11 and p. 128, L. 2-5), and stated 8 times in response to our interrogatories and requests for production that Chase did not own our note, they were a servicer only. Exhibit 7 (R. 747-751, 759, 760). Mr. Stenquist, knowing the facts presented by this Court because they are the same facts presented in the District Court's judgment, still persisted in presenting false, contrary and conflicting information cloaked as facts to this Court.

It is axiomatic to point out to this Court a genuine issue of material fact exists when the two parties opposing the Nickersons present contrary and conflicting material facts that impeach each other's testimony especially when neither of their facts are supported by any foundational, circumstantial or inferential evidence that is rooted in truth whatsoever.

More examples of how Mr. Stenquist, who has sworn to have access and personal knowledge of Chase's files and has the complete record in this case, has persisted in presenting statements that are false, misleading, contradictory and not grounded in truth or fact at all were included in our appellate brief – p. 21 ¶CC, and pp. 47-48. In addition, Mr. Kirk J. Houston should be held in violation of these rules as well because he signed Chase's brief which contained the known to be false statements of fact regarding missing payments and Freddie Mac. Chase's brief, p. 3. In accordance with the civil and appellate rules, we move the Court sanction, not pay Mr. Stenquist, Mr. Houston and their firm for knowingly presenting statements that are not grounded in fact, and are indeed, as the record demonstrates, collectively and comprehensively false. As attorneys, their oaths and licensures obligate them to behave in manners that support and uphold laws, not manipulate and break them. *Therefore to him that knoweth to do good, and doeth it not, to him it is sin.* These maliciously false statements create extreme prejudice, substantial damages and significant injuries toward the Nickersons and have resulted in judgments not based on the merits or true facts of the case.

Further, please consider the evidence withheld by Mr. Stenquist and Chase in this case. Mr. Stenquist claims to have personal knowledge of Chase's files, yet when in discovery we requested Chase and Mr. Stenquist provide all correspondence from Chase to us, Mr. Stenquist purposefully, based on reasonable inference, failed to provide the notice of new creditor letter dated December 22, 2009, in which Chase states they purchased our loan on December 3, 2009. Exhibit 9 (R. 1139, 1140). This federally mandated notice of new creditor refutes Mr. Stenquist's claims that Chase never owned our note and contradicts the "facts" cited in the Opinion. This admission would have required Chase produce witness testimony, account notations and taped conversations that would not only defeat Summary Judgment in their favor but establish extreme negligence in record keeping, demonstrate the intent to defraud the Nickersons, and implicate Chase in criminal wrongdoing, not only with the Nickerson account, but other accounts as well. Even more glaring is Mr. Stenquist's and Chase's omission that Chase is the real party in interest – owner, holder and investor – on our note. In Chase's federally mandated response dated January 10, 2014, to our qualified written request, Chase states "We are not required to produce

the original note which will remain in our possession...The investor for this loan is JPMorgan Chase Bank, National Association." Exhibit 10 (R. 1232). By withholding and concealing this evidence necessary to defeat Summary Judgment and prove our claims, Mr. Stenquist and Chase have committed fraud against us and the Court. This is further compounded when Mr. Stenquist not only denied producing discovery by concealing the truths regarding the ownership of our note but also restricted us from further discovery and access to Chase as guaranteed by federal lending laws and regulations. 12 C.F.R. § 1024.38 requires servicers to "(iii) Provide a borrower with accurate and timely information and documents in response to the borrower's requests for information with respect to the borrower's mortgage loan." Because Chase refused to provide needed discovery regarding our records and our attempts to circumvent the fallout of their fraudulent actions, we reached out to Chase to verify Moffatt Thomas was in fact representing Chase and to secure our personal records. Jon Stenquist not only failed to provide the information, but he put us on notice that Moffatt Thomas is our only authorized contact for Chase and demanded we cease and desist from contacting Chase directly. Since Moffatt Thomas refused to provide information on our account by hiding under the cloak they do not have access to the records because they were only the Servicer and we were threatened not to contact Chase directly, how can this Court or the District Court require us to present direct evidence that we are unable to attain due to the unlawful actions of opposing counsel? Extensive witness testimony, detailed account notations, taped conversations with Chase employees and other third parties confirm we were victims of abusive debt collection, prevented from performance and that our account records spent enormous amounts of time in research and correction trying to maintain the truthful and factual status of the account solely due to Chase's incompetent record keeping practices and fraudulent attempts to steal the equity in our ranch. See two letters from us and a letter from Jon Stenquist. Exhibits 11-13.

Therefore, Chase must not be awarded attorney fees. Rather, Chase and their representation in this case should be sanctioned and criminally punished for presenting false evidence, for omitting evidence that proves all our claims, and for using their false statements to withhold and conceal discovery. The deliberate lies and willful concealment of evidence by Chase and those acting on their behalf created impossibility and hardship for us in defending against their conflicting stories, prevented us from securing justice, and maliciously blocked our finding appropriate or timely relief. In addition, their actions created prejudice in our presentation because of being forced to defend additional issues rather than keeping to the main

points: PHH does not own our loan; we did not default; PHH and Chase intentionally prevented and sabotaged our performance. Evidence, witness testimony, account records, account notations and taped conversations in Chase's possession irrefutably prove it. Justice Horton, Chase and Mr. Stenquist are responsible for needlessly increasing the costs of this litigation. We are pleading with you and the rest of the Court to see this and act appropriately. No attorney fees or costs should be awarded to Chase, but rather, Mr. Stenquist and the other attorneys of his firm should be sanctioned for presenting false information as fact. We have reached out to Moffatt Thomas, their managing partners, directors and others asking them to come forward with the truths of this matter. See Exhibit 14. Their silence implicates them as accomplices defrauding our family and committing fraud on this Court and the State of Idaho.

The recognized and undeniable shenanigans of Chase have contributed to the necessity and costs of this appeal. We did not escalate this case to you frivolously and therefore attorney fees in favor of Chase should not be awarded. Rather, we came to you pleading for help, relief and justice with the evidence we have been allowed to enter in the record, but without the benefit of all the evidence provided to our attorney that would support claims of fraud being properly in the record. Nonetheless, the evidence in the record and even the findings of this Court and the District Court are enough to create genuine issues of material fact and circumstantial evidence that any person could use to make reasonable inferences. The Idaho Supreme Court has ruled "[c]ircumstantial evidence is competent to establish negligence and proximate cause." *KRINITT v. Idaho Dept. of Fish and Game*, 357 P.3d 850, 159 Idaho 125 (2015). Whether or not we have successfully overcome the procedural web created by the negligence of our former attorney or surmounted the legal system manipulation and fraud of opposing counsels, the circumstantial evidence and conflicting evidence surrounding this case creates genuine issues of material fact that deserve and require summary judgment in favor of Chase be defeated, the opinion we have brought this case before the Supreme Court frivolously be reversed, and any attorney fees in favor of Chase be denied. The basis for these attorney fees is because the Supreme Court found we brought this case frivolously. We cannot be required to produce direct evidence that has been unlawfully but systematically withheld from us and hidden from the Court or that the Court has refused to look at. We contend it might be easier for us to get a camel through a needle's eye than for us to have compelled Clearwater County Judge Michael Griffin to look at our evidence impartially when the true status of this case was revealed to us. Judge Griffin repeatedly denied motions or ignored them so they became deemed denied without providing legal authority or

basis. Non-existent reasons and unprovided legal basis cannot be cited or properly refuted by a *pro se* litigant or a licensed attorney. Directing this Court's attention to specific citations in the record or adverse rulings is impossible when the District Court failed to provide memorandums or legal basis in support of his adverse rulings. It is unjust to punish us for the failure of an Idaho District Court Judge failing to properly fulfill his responsibilities. Therefore, the Nickersons request this Court reverse their opinion this case was brought frivolously and instead sanction Chase and their representatives for thwarting justice and sabotaging the proceedings at the District Court and Supreme Court levels.

STATEMENT IN SUPPORT OF OBJECTION TO COSTS AND FEES

The Nickersons allege and reallege, state and restate, each and every allegation, statement and argument above as if set forth in its entirety in this statement and incorporate this statement in the above Statement In Support of Motion for Sanctions.

1. Chase's only involvement with this appeal should be in regards to the Summary Judgment rendered in their favor on 11/16/12. This Summary Judgment occurred and is due to the admitted misconduct and negligence of our former counsel, John Mitchell. All further proceedings were prejudiced by the condition he left our case in when he secretly withdrew from our case. As Mr. Mitchell stated in his affidavit (Exhibit 8, SAR. 69-70), we had no idea summary judgment on our counterclaims and third-party complaint had been sought by Chase and PHH, heard by the District Court and awarded by the District Court. Mr. Mitchell's negligence, by his actions and inactions, in presenting and not properly presenting our claims against Chase and successfully compelling discovery from Chase resulted in summary judgment against us. We were not requested or permitted to present any affidavits or other evidence to prosecute our claims. No meaningful discovery was allowed to be pursued by us. Further, Mr. Mitchell told us a motion to compel Chase and PHH to provide the requested discovery was denied by the Court so our case had been moved to the Appeal Courts. Additionally, we were deprived of the opportunity to depose any representatives from Chase or PHH regarding our account records, communication records and account notations. Mr. Mitchell's negligence, deception and inability to navigate the malicious prejudice created by opposing counsels he was fighting in Judge Griffin's courtroom prevented us from participating in, developing and presenting our case properly. Mr. Mitchell stated in his affidavit, "The Nickersons' case was not decided on the merits and really no meaningful discovery was ever answered by the Plaintiffs. There is no prejudice to the Plaintiffs in allowing the Nickersons to have discovery done

properly and have the underlying case and their counterclaims decided on the facts of the case and not have the case decided because of an incompetent mentally unfit at the time attorney who did not know how to handle the mess that he created." This Court has held, "It is said that, where it appears that a judgment was taken against appellant through the negligence of an attorney who had been employed by such party, nothing is left to the discretion of the court, and the judgment must be set aside." *Pierce v. Vialpando,* 78 Idaho 274, 301 P.2d 1099 (1956). In addition, this Court clearly recognizes the importance of a case being properly set up from the beginning. As stated by J. Jones in a recent special concurrence: "Had the… case been adequately presented in district court…they may have come out substantially better." *Hilliard v. Murphy Land Company, LLC.* No. 42093-2014 (May 21, 2015). Therefore, because Chase's continued involvement in this case and the appeal is solely due to the negligence of our attorney, Chase's attorney fees cannot be ascribed to us. Also, according to the law, the summary judgments dismissing our counterclaims and third-party complaint must be set aside. We will expound more on this point in our Brief In Support of Petition For Rehearing.

2. As detailed in the Statement In Support Of Sanctions above, the Nickersons' appeal of the prejudicial and conflicting memorandums, interlocutory orders and judgments rendered by Judge Michael Griffin in an attempt to secure justice cannot be rightfully or truthfully judged frivolous. Thus, no claim for attorney fees by Chase can be awarded. We contend seeking to protect and enjoy life, liberty and the pursuit of happiness cannot be deemed frivolous, unreasonable or without foundation in any setting or environment. The Nickersons have filed a Petition For Rehearing in which we will further demonstrate the merits of the appeal and the truthful fact that our appeal for justice was not and is not frivolous. Therefore, before any award of fees occurs, we request the Petition For Rehearing and its supporting brief be reviewed in their entirety.

3. We should not be required to pay the fees of more than one attorney nor for any fees that do not directly relate to the appeal nor for any fees that cannot be ascertained as to what they specifically are for. It is axiomatic that it is not our responsibility to bring additional lawyers up to speed in order to write a brief, attend hearings or represent their client. It is not our responsibility or the Court's to guess what has been redacted. If they want to ascribe a fee to the appeal, then we and the Court must be able to determine it was a legitimate expense toward the appeal.

"Where the documentation of hours is inadequate, the district court may reduce the award accordingly... Counsel for the prevailing party should make a good faith effort to exclude from a fee request hours that are excessive, redundant, or otherwise unnecessary...The applicant should exercise "billing judgment" with respect to hours worked, see supra, at 434, and should maintain billing time records in a manner that will enable a reviewing court to identify distinct claims." *Hensley v. Eckerhart*, 461 U.S. 424, 103 S. Ct. 1933, 76 L. Ed. 2d 40 (1983)

"many of the submitted time records lack sufficient detail to permit the Court to ascertain if the time expended was reasonably necessary, redundant, or excessive. The records are replete with vague entries such as "[g]ather information and respond to client's request," "[i]dentify and prepare documents," "appeal communications," "correspondence," "review memos," "review documents and issues," "review background materials," "maintenance of pleading documents for electronic clip," "document research," etc. It is appropriate to reduce the compensable number of hours on this basis. See Miller v. Woodharbor Molding & Millworks, Inc., 174 F.3d 948, 950 (8th Cir. 1999) (noting that inadequate documentation may result in a reduced fee). Similarly, Dominos' counsel has heavily redacted the time sheets submitted with the Motion, and those redactions generally leave the Court in the dark as to the precise nature of the work performed. Courts routinely reduce fee requests where redactions leave it impossible to discern the appropriateness of counsel's work.

...

Dominos has nowhere explained why it required the services of so many different lawyers. And, the involvement of so many "cooks in the kitchen" has resulted in a significant amount of redundancy and overlapping billing. As the Gorman court noted, "[i]t may be reasonable to expect a client to pay the cost of having several lawyers . . ., and of course a client can elect to pay an unreasonable sum for his or her representation. However, the issue deserves scrutiny when the prevailing party asks the losing party to assume that extra financial burden." *Bores v. Domino's Pizza LLC*, Civ. No. 05-2498 (RHK/JSM) (D. Minn. Oct. 27, 2008).

"Ideal is entitled to discover the information it requires to appraise the reasonableness of the amount of fees requested by IFIC, including the nature and extent of the work done by IFIC's counsel on various phases of the case, so that it may present to the court any legitimate challenges to IFIC's claim. *See National Ass'n of Concerned Veterans v. Secretary of Defense,* 675 F.2d 1319, 1329 (D.C.Cir.1982). IFIC may opt to withhold billing statements under a claim of attorney client privilege; however, where IFIC's assertion of a privilege results in the withholding of information necessary to Ideal's defense to IFIC's claim against it, the privilege must give way to Ideal's right to mount a defense. Under the common law doctrine of implied waiver, the attorney client privilege is waived when the client places otherwise privileged matters in controversy. *See* 6 JAMES W. MOORE, ET AL., MOORE'S FEDERAL PRACTICE § 26.49[5] (3d ed.1997).

...

By claiming indemnification of attorney's fees from Ideal and offering the billing statements as evidence of the same, IFIC waived its attorney client privilege with respect

to the redacted portions of the billing statements and any other communications going to the reasonableness of the amount of the fee award." *Ideal Electronic Sec. Co. v. Intern. Fidelity Ins.*, 129 F.3d 143 (D.C. Cir. 1997).

Based upon the findings in *Ideal*, the Nickersons move this Court compel Chase provide the REDACTED billing information in their Memorandum of Costs and Fees and resubmit this document to the Court accordingly in order for the Nickersons to mount a defense to those charges. The Nickersons must have this information in order to overcome this obstacle to investigation and there is no way for the Court to correctly ascertain or determine if the fees requested are reasonable and necessary unless the REDACTED information is disclosed. Chase bears the burden of establishing by clear and convincing evidence the time and effort claimed was necessary and justified. This cannot be done with vague, unclear or REDACTED entries.

By making this request for attorney fees, and voluntarily submitting the Memorandum of Costs and Fees as a whole, Chase has placed the entire contents at issue, and thereby waives any claim of lawyer-client privilege regarding specific REDACTED entries. *UNITED HERITAGE PROPERTY AND CASUALTY COMPANY v. FARMERS ALLIANCE MUTUAL INSURANCE COMPANY*, No. CIV. 1: 10-456 WBS (D. Idaho July 26, 2011)

The Nickersons right to a fair trial, the circumstantial evidence surrounding this case and the intentional and unintentional actions and inactions of Chase in preventing discovery, and the Nickerson's access to federally mandated records that should have been provided to the Nickersons in the normal course of business but were not, compels the REDACTED information be provided in the interest of justice. A suppression of truth is equivalent to an expression of falsehood. Chase, nor their attorneys, have the lawful right to conceal discovery in order to defraud the Nickersons so Chase and their accomplices can secure unjust gain, evade civil liability, and escape criminal prosecution. The Nickersons believe Chase is concealing the REDACTED identity and information in their memorandum to further evade discovery.

In addition, the lawyer-client privilege has been waived in accordance with I.R.E. 502.

502 (d) Exceptions. There is no privilege under this rule:
(1) Furtherance of crime or fraud. If the services of the lawyer were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew or reasonably should have known to be a crime or fraud;

Chase has specifically retained the services of Moffatt Thomas and Jon Stenquist in order to aid them in wrongfully foreclosing on the Nickersons and evading any civil liability or exposure they have created for themselves in their treatment of the Nickersons and their account.

According to Mr. Benjamin Ritchie in a recent webinar, "The party asserting the [attorney-client] privilege bears the burden of proving each element." Fee entries must specifically relate to legal advice given, not communication regarding factual matters or business advice. He pointed out that in T3 Enterprises, Inc v. Safeguard Business Systems the Court conducted a review, and "found that a number of … [the email communications] concerned factual matters and business advice, not legal advice."

The statements and arguments presented in regards to specific entries throughout this objection should not in any way convey we are acknowledging, conceding or agreeing to the veracity, authenticity or legitimacy of the fees submitted. In addition to the fact we believe we are not responsible for any of Chase's attorney fees, based upon the case law presented above and common sense, we specifically contest the following:

- 08/01/14 BCR 0.80 132.80 Research Idaho Appellate Rules and Idaho Rules of Civil Procedure – Note: Maintaining competency in the rules is a cost of doing business and should not be charged.
- 08/01/14 JAS 0.40 77.20 Correspondence with client regarding REDACTED REDACTED – Note: No way to know if this was specifically regarding the appeal. See request above.
- 10/24/14 BCR 1.10 182.60 Review and analyze issues and strategies relating to pending appeal in Idaho Supreme Court and pending motions in the District Court – Note: Pending motions in District Court were not regarding the appeal and any time spent on those motions are not fees related to the appeal. Review and analyze issues and strategies is too vague.
- 10/28/14 JAS 0.10 19.30 Review Court's Order regarding Nickerson recent motion and briefing schedule – Note: This entry can only refer to the District Court's order regarding the Nickersons' 60(b) motions and is not related to the appeal.
- 11/18/14 JAS 0.30 57.90 Review Motion for Clarification filed by Nickersons in response to Court's Order – Note: This is regarding District Court matters and is not related to the appeal nor did this motion have anything whatsoever to do with

Chase. We should not be billed for Chase's obsession with pushing this foreclosure through in their feeble attempt to cover their very exposed backsides. The first question asked by Chase upon bulldogging their way into being a party in this case was "What do we want? I know my client has a lot of exposure here."

- 11/26/14 BCR 0.90 149.40 Review and analyze settlement strategies in wake of district court's denial of post judgment motions – Note: Settlement proceedings initiated by Chase regarding District Court's denial is not a part of the appeal.
- 12/10/14 BCR 1.40 232.40 Research Idaho Appellate Rules… – Note: Time spent researching rules is a cost of doing business not a cost of appeal. How much of this time was spent on researching rules?
- 01/28/15 BCR 1.10 182.60 Review and analyze the Nickersons' third notice of appeal and issues related thereto – Note: We should not be required to pay two attorneys to perform the same task. See next entry.
- 01/28/15 JAS 0.40 77.20 Review Third Amended Notice of Appeal – Note: Same task performed by BCR.
- 03/04/15 JAS 0.50 96.50 Further develop strategy and conference with original PHH counsel in case regarding current representation – Note: What does PHH's representation and this strategy meeting/conference specifically have to do with Chase or the appeal? We should not be billed for a scheming session with Jason Rammel and Jon Stenquist, especially about Amelia Sheets.
- 04/29/15 JAS 0.10 19.30 Forward REDACTED to client REDACTED - Note: No way to know if this was specifically regarding the appeal. REDACTED information must be released.
- 05/20/15 JAS 0.40 77.20 Prepare research and correspondence to PHH's attorney regarding moving forward with writ of possession in light of questions and request for same by PHH's attorney – Note: This is not related to the appeal. Further, regarding this and other entries dealing with the execution of judgment against our property, Chase claims to have no current beneficial interest in the property. Actually, Chase has claimed to have never had any beneficial interest in the property. Therefore their involvement is purely voluntary and malicious in nature and reality, and cannot be billed to us in any forum. We move this Court recognize their involvement and qualify it as circumstantial evidence that creates

a genuine issue of material fact and an admission they do in fact possess an interest in the foreclosure of our property.

- 05/26/15 JAS 0.60 115.80 Review client request and analyze options for dealing with PHH's lack of involvement per request – Note: PHH's lack of involvement is not our problem so the cost for Chase dealing with their accomplice's lack of involvement or sensible fear of continued involvement cannot be assigned to us.
- 05/26/15 BCR 1.10 182.60 Review and analyze PHH's brief on appeal – Note: We are not responsible for two attorneys performing the same task. See next entry. Nor should we have to pay for Chase attorney's to train, educate or mentor PHH in the illegal field of mortgage fraud.
- 05/26/15 JAS 1.00 193.00 Review and analyze PHH's appellate brief. See above.
- 05/27/15 KJH 0.70 116.20 Analyze issues presented by FedEx's difficulty delivering our response brief to the appellants – Note: We are not responsible for FedEx's delivery difficulties and mailing issues are clerical tasks which are not to be awarded as attorney fees. Also in regards to this entry, Kirk Houston apparently had Jon Stenquist help him with navigating the difficulties of FedEx mailing. We should not be billed 1.1 hours for mailing procedure mentoring. See 5/28/15 JAS entry below.
- 05/27/15 JAS 0.40 77.20 Coordinate filing deadlines and shepardizing of cases – Note: What does this have to do with our appeal? Shepardizing what cases? There is only one case on appeal.
- 05/28/15 JAS 0.40 77.20 Review and analyze issues relating to problems with delivery of brief by FedEx – Note: We are not responsible for FedEx's delivery difficulties and mailing issues are clerical tasks which are not to be awarded as attorney fees. See 5/27/15 KJH entry above.
- 06/05/15 BCR 0.80 132.80 Review and analyze issues and strategies for oral argument on appeal – Note: BCR did not participate in oral argument. Simply stating issues and strategies is too vague to allow a determination of whether this effort was duplicated by JAS or other attorneys working on this case.
- 06/25/15 KJH 0.20 33.20 Review and analyze Nickersons' reply brief – Note: This task was charged by JAS and BCR on 6/22/15. Both JAS and BCR charged for additional work on preparation for oral argument, however, KJH performed no

additional work on this case in preparation for oral argument so we should not be charged for his review of our reply brief.

- 06/30/15 BCR 0.50 83.00 Review and analyze notice of assignment to Court of Appeals from Supreme Court – Note: Duplicate effort performed by JAS. See JAS entry below.
- 06/30/15 BCR 0.90 149.40 Review and analyze issues and strategies arising from assignment of appeal from Supreme Court to Court of appeals – Note: Duplicate effort performed by? JAS. See next entry.
- 06/30/15 JAS 1.10 212.30 Review notice of assignment, review and analyze options in light of same, and draft correspondence to client with recommendations moving forward in light of assignment to Court of Appeals. Note: Duplicate effort. See previous entries. Entry too vague.
- 06/30/15 KJH 0.30 49.80 Review and analyze the Idaho Appellate Rules 116 and 118 regarding assignment of cases to the Idaho Court of Appeals and petitions for rehearing – Note: Knowing the rules is a cost of doing business and that cost should not be assigned to us.
- 07/02/15 BCR 0.50 83.00 Review and analyze issues and strategies regarding Supreme Court's reassignment of case to itself, oral argument strategies, and potential foreclosure of Nickerson property – Note: Review and analyze issues and strategies too vague to determine if effort not duplicated by another attorney. Unless Chase is foreclosing on our property through PHH and has a personal beneficial interest or still retains ownership in this property but are concealing it from the Court, this entry is beyond the scope of their involvement. Either way, foreclosure efforts are not a part of the appeal.
- 07/15/15 JAS 0.20 38.60 Conference with counsel for PHH regarding status of substitution and eviction – Note: Substitution and eviction are not a part of the appeal and has nothing to do with Chase unless Chase is in fact still the owner but is foreclosing through PHH to avert discovery and liability.
- 08/03/15 JAS 0.30 57.90 Review writ of application for foreclosure and sale filed by PHH counsel – Note: Foreclosure and sale not related to appeal and has nothing to do with Chase.

- 09/30/15 JAS 0.30 57.90 Review status in light of hearing on eviction – Note: As far as the Nickersons are aware, a hearing on eviction never took place. There was a hearing on the Nickersons' motion to stay execution that occurred on 09/29/15 in which PHH's counsel did not appear and the hearing had to be rescheduled to 10/06/15. As a result of the hearing on 10/06/15, the District Court determined PHH had significant issues on appeal so it granted the Nickersons motion to stay execution. This hearing was not a part of the appeal and would have had nothing to do with Chase unless Chase admitted to being the real party of interest in this supposed hearing. However, if this hearing took place, the Nickersons move this Court to immediately require Chase provide the details of this hearing so the Nickersons can contact the appropriate Court and protect their interests regarding it. No hearing on this date took place according to the Clearwater County docket.
- 11/05/15 BCR 1.10 182.60 Review and analyze issues and strategies for oral argument on appeal – Note: Review and analyze issues and strategies too vague to determine if effort not duplicated by another attorney or if this would qualify as a billable charge.
- 11/09/15 BCR 0.50 83.00 Review and analyze issues and strategies regarding pending motion to stay foreclosure – Note: Stay of foreclosure was an issue before the District Court in which we prevailed. This is not an appellate issue and Chase had no reason for involvement in this motion. Further, the order was granted 10/15/15 so it was no longer a "pending" motion on 11/09/15.
- 11/10/15 JAS 0.10 19.30 Review rules regarding time limitations for oral argument – Note: Knowing the rules is a cost of doing business and cannot be assigned to us.
- 12/01/15 BCR 0.90 149.40 Review and analyze issues and strategies for oral argument on appeal – Note: Review and analyze issues and strategies too vague to determine if effort not duplicated by another attorney and too broad to determine if time spent was excessive.
- 12/07/15 JAS 0.80 154.40 Review Supreme Court rules and procedures in preparation for oral argument – Note: Knowing the rules is a cost of doing business and cannot be assigned to us.

- 12/07/15 BCR 0.90 149.40 Review and analyze issues and strategies for oral argument on appeal – Note: Review and analyze issues and strategies too vague to determine if effort not duplicated by another attorney and too broad to determine if time spent was excessive. Appears to be duplicate of task entered on 12/01/15.
- 04/27/16 BCR 0.70 118.30 Review and analyze Supreme Court's decision on appeal – Note: BCR, JAS, and KJH all charge for this same task. We are not responsible for three attorneys performing the same task. See next two entries.
- 04/27/16 JAS 1.10 216.70 Review and analyze decision from Idaho Supreme Court in affirming lower court decision and awarding attorneys' fees and costs.
- 04/27/16 KJH 0.70 116.20 Review Idaho Supreme Court's decision affirming trial court.
- 4/27/16 JAS 0.60 118.20 Draft correspondence to client regarding REDACTED REDACTED – Note: No way to know if this was specifically regarding the appeal. The Nickersons move this Court require Chase to identify this REDACTED information.

The next block of issues deal with the fact three attorneys were performing essentially the same duties in preparation of Chase's Respondent Brief. We should not be charged for duplicate efforts of three different attorneys. If Chase wants to pay for more attorneys than the attorney of record that is their choice. We should not be asked to pay for it. *Bores, Id.* Kirk Houston claims to have written the brief so duplicate tasks performed by Jon Stenquist and Ben Ritchie cannot be claimed.

- 05/05/15 KJH 0.50 83.00 Prepare response brief outline.
- 05/06/15 JAS 0.20 38.00 Develop brief outline.
- 05/11/15 BCR 1.20 199.20 Review and analyze issues and strategies for addressing the Nickersons' various issues on appeal – Note: Entry too vague to know which issues and strategies to determine if duplicate effort logged by other two attorneys.
- 05/12/15 JAS 0.60 115.80 Review appellate issues and coordinate drafting of resondent's brief – Note: Entry too vague to know which issues and to determine if duplicate effort logged by other two attorneys.
- 05/13/15 JAS 0.80 154.40 Draft and revise appellate brief arguments and citations to record and current law – Note: Duplicate efforts preparing the brief logged by

JAS and other two attorneys. We should not be billed for three attorneys performing and redoing the same effort. We did not request Chase retain and utilize multiple attorneys to defend against our *pro se* pleadings.

- 05/14/15 BCR 0.90 149.40 Review and analyze appellate brief and arguments made therein in preparation to drafting and revising brief and for oral argument. Note: Entry too vague to determine which arguments and to determine if duplicate effort logged by other two attorneys; BCR did not write brief or participate in oral argument. On 5/13/15, JAS claims to draft and revise appellate brief. BCR cannot prepare to draft an already drafted document. We should not be billed for BCR to duplicate work allegedly completed by JAS.
- 05/18/15 JAS 0.80 154.40 Review and revise respondents brief – Note: JAS did not write respondents brief. Duplicate effort.
- 05/18/15 BCR 0.60 99.60 Review and analyze issues and strategies for appellate brief regarding addressing co-defendant's arguments and standard of review – Note: KJH also has entry regarding standard of review, and issues and strategies is too vague to determine if duplicate effort logged by himself or other two attorneys. Entry too broad to determine if time spent was excessive.
- 05/18/15 KJH 0.80 132.80 Draft and revise section of respondents' brief setting forth the standard of review for each of appellants' claims of error. – Note: JAS had already drafted and revised twice prior to this entry. Duplicate effort.
- 05/19/15 JAS 0.60 115.80 Draft and revise response brief – Note: KJH wrote the brief not JAS. Duplicate effort. Duplicate entry. See 5/13/15 JAS and 5/18/15 JAS.
- 05/21/15 JAS 1.90 366.70 Review and revise supreme court brief for respondent Chase – Note: KJH wrote the final brief not JAS. Duplicate effort. See 5/18/15 JAS.
- 05/23/15 JAS 0.40 77.20 Draft and revise brief – Note: KJH signed the brief not JAS. Duplicate effort and entry. See 5/13/15 JAS and 5/19/15 JAS. JAS is claiming to draft a brief that has already been created and revised.
- 05/26/15 KJH 0.60 99.60 Review Idaho Supreme Court rules for formatting and serving response briefs – Note: Knowing the rules is a cost of doing business and should not be assigned to us.

- 05/27/15 BCR 1.10 182.00 Edit, revise, and citecheck respondent's brief on appeal – Note: KJH wrote the brief not BCR. Duplication of effort.

Above, we have noted the additional fees Chase is claiming on appeal that relate to additional attorneys performing duplicate tasks, that do not relate to the appeal, and that do not specifically state what they are. In the case of duplicate tasks, only Mr. Stenquist's charges should be considered as being relevant since he is the attorney of record. In entries dealing with preparing the Respondent's brief, Mr. Houston signed the brief so either only his fees should be considered or only Mr. Stenquist's. We did not request Chase hire an additonal attorney to write a brief for Mr. Stenquist. No fees specifically excluded by Mr. Stenquist should be included because he has already admitted those fees are not appropriate in regards to the award of attorney fees on appeal.

In addition, Mr. Stenquist has wasted time and resources by submitting a list of all fees he charged his client when, for the purpose of fees on appeal, he should have only included those fees specifically related to the appeal. However, with that being said, it is interesting to note some of the tasks he and his firm are performing. Perhaps their inclusion of these fees is the answer to our prayers that Chase's own words would ultimately bring their destruction and demise. PHH is supposedly the entity foreclosing, yet Chase is the entity aggressively pushing and compelling PHH to execute judgment, and attempting to bypass the Nickersons one year of redemption by forcing a premature eviction and possession. Emphasis added to below entries:

- 01/28/15 BCR 0.20 33.20 Phone call to counsel for co-defendant PHH Mortgage relating to whether PHH intends on proceeding with foreclosure.
- 02/03/15 JAS 0.20 38.60 Review correspondence and issues relating to PHH foreclosure and contact and respond to same.
- 02/11/15 BCR 0.40 66.40 Correspondence to counsel for co-defendant regarding status of repossession and appeal issues. – Note: PHH has never had possession or lawful beneficial interest in our property. Possession of this property was transferred directly to us from the previous owner. Coldwell Banker sold our property to Fannie Mae prior to PHH allegedly establishing any relationship with Coldwell Banker and after we were previously told the property was ineligible to be sold to Fannie Mae.
- 02/12/15 JAS 0.20 38.60 Review status of case and discuss foreclosure pending appeal.

- 02/18/15 BCR 0.50 83.00 Review and analyze status of appeal and status of co-defendant's foreclosure of real property.
- 02/27/15 BCR 0.50 83.00 Draft correspondence to counsel for co-defendant regarding foreclosure of property and appellate issues.
- 03/11/15 JAS 0.20 38.00 Field call from PHH's counsel regarding foreclosure.
- 03/31/15 BCR 0.50 83.00 Review and analyze status of negotiations with PHH Mortgage and appellate briefing issues. – Note: Why is Chase in negotiations with PHH?
- 05/07/15 BCR 0.50 83.00 Review and analyze issues and strategies regarding compelling PHH to foreclose on real property
- 05/08/15 BCR 0.90 149.40 Correspondence to counsel for co-defendant regarding foreclosure of real property.
- 05/08/15 BCR 0.50 83.00 Review and analyze additional issues regarding foreclosure of real property by co-defendants.
- 05/11/15 JAS 0.40 77.20 Draft correspondence to counsel for PHH regarding property seizure request.
- 05/20/15 JAS 0.40 77.20 Prepare research and correspondence to PHH's attorney regarding moving forward with writ of possession in light of questions and request for same by PHH's attorney.
- 05/26/15 JAS 0.60 115.80 Review client request and analyze options for dealing with PHH's lack of involvement per request.
- 07/01/15 JAS 0.30 57.00 Draft and revise correspondence to PHH counsel requesting action on possession of property.
- 07/01/15 JAS 0.20 38.00 Field call from A. Sheets regarding being fired by PHH for the appeal. – Note: PHH firing counsel has nothing to do with Chase nor their involvement regarding our case. Why was Amelia Sheets fired and what was discussed with Chase regarding her firing that compelled JAS to record this entry? Further, why were Jason Rammell and Kipp Manwarring also removed from the Nickerson's case without the Nickersons or the Court being properly notified of the change of attorney of record or substitutions being filed? In the interest of justice, the Nickersons move this Court to remand this case to the District Court

and allow the Nickersons to conduct discovery and validate all the genuine issues of material fact and fraud that surround this case.

- 07/01/15 JAS 0.20 38.00 Draft correspondence to PHH counsel with link to Nickersons' website. – Note: This entry is too vague for us to determine if it is relevant to the appeal. Did Mr. Stenquist refer PHH to www.mountn.org or to www.ithappenedtous.com? Further, .20 minutes feels excessive to simply direct a person to a website.
- 07/02/15 BCR 0.50 83.00 Review and analyze issues and strategies regarding Supreme Court's reassignment of case to itself, oral argument strategies, and potential foreclosure of Nickerson property.
- 07/06/15 BCR 0.60 99.00 Review and analyze status of foreclosure of Nickersons' real property and eviction of Nickersons.
- 07/15/15 JAS 0.20 38.00 Conference with counsel for PHH regarding status of substitution and eviction.
- 07/16/15 JAS 0.10 19.30 Review quiet title issues and case law regarding eviction issues to assist in acceleration of process. – Note: Why is Chase involved in the acceleration of process? This demonstrates and corroborates the ongoing abusive debt collection we suffered with Chase. Their irrational and aggressive demands that we sign the title of our Idaho Ranch over to them without cause or right amidst threats to taking everything else we owned if we refused is insane. Chase employees, notations and taped recordings validate our story. Reasonable inference from their ongoing actions supports and substantiates it. Please! Stop their abuse!
- 08/03/15 BCR 1.10 182.60 Review and analyze PHH's foreclosure documents and analyze effect foreclosure will have on pending appeal.
- 08/03/15 JAS 0.30 57.90 Review writ of application for foreclosure and sale filed by PHH counsel.
- 08/21/15 BCR 0.40 66.40 Research and analyze status of foreclosure action against Nickersons.
- 09/08/15 BCR 1.10 182.60 Review and analyze briefing by counsel for PHH Mortgage in support of motion to proceed with foreclosure.

- 09/08/15 JAS 0.60 115.80 Review and analyze PHH Mortgage's memorandum in opposition to stay of execution.
- 09/21/15 JAS 0.40 77.20 Review and analyze issues in connection with foreclosure proceedings and hearing notice.
- 09/21/15 JAS 0.20 38.00 Draft correspondence to client regarding attendance at hearing on property seizure. – Note: To the Nickersons knowledge, there was no hearing regarding a writ of ejection of the Nickersons nor a writ of ejection. If this is not the case, the Nickersons request this Court move Chase to provide additional information regarding this hearing such as time, place, and Court. There is no record of this hearing on the Clearwater County docket.
- 09/29/15 BCR 0.40 66.40 Review and analyze issues regarding pending eviction and foreclosure.
- 10/06/15 BCR 0.80 132.80 Attend hearing on Nickersons' motion to stay. – Note: This was not an appellant issue that involved Chase. Judge even asked Chase what their dog in this fight was at the hearing on this motion.
- 10/06/15 JAS 1.00 193.00 Prepare for hearing on borrower's writ of ejection and appear at oral argument via telephone. – Note: To the Nickersons knowledge, there was no hearing regarding a writ of ejection of the Nickersons nor a writ of ejection. If this is not the case, the Nickersons request this Court move Chase to provide additional information regarding this hearing such as time, place, and Court. There is no record of this hearing on the Clearwater County docket.
- 11/09/15 BCR 0.50 83.00 Review and analyze issues and strategies regarding pending motion to stay foreclosure.

District Court Judge Gregory FitzMaurice asked Mr. Stenquist during oral argument on the Nickersons' motion to stay, what is your dog in this fight? The question *Why is Chase so interested in PHH pushing forward with foreclosure* demands an answer. What is in it for Chase if they have no beneficial interest in the property? According to Mr. Stenquist, Chase has no interest in the Nickersons' property, so why the intense interest and involvement in the foreclosure and eviction of the Nickersons? Perhaps, as Chase's correspondence to the Nickersons states, Chase is the real party in interest and they have committed Fraud on the Court in an attempt to defraud the Nickersons and avoid extreme exposure caused by their actions. Chase's obsession with execution of judgment creates reasonable inference and establishes

circumstantial evidence that requires further discovery to expose the real party of interest in this case. PHH cannot foreclose, their complaint must be dismissed with prejudice, and they should answer for their fraud on the Court and defrauding of the Nickersons if they do not own the Nickersons property. We contend and the evidence demonstrates they do not. It is interesting to note Judge FitzMaurice granted the Nickersons' motion to stay execution because he found PHH had significant issues on appeal. No appeal would have ever been necessary if Judge Michael Griffin would have allowed the Nickersons equal access to justice. The Nickersons were never even granted a Status Hearing after they found out their attorney had secretly withdrawn. The requested Status Hearing to set forth discovery deadlines and establish the true status of the case was turned into a Motion For Summary Judgment Hearing by PHH. The Nickersons were denied the opportunity to properly review the true status of the case, adequately prepare their claims and defenses, conduct discovery and prepare or pursue any reasonable presentation of their case.

Another alarming entry is: 08/05/14 TZM 0.50 45.00 Download new discovery records from the client's secure file server. What did that new discovery show? It was never presented to the Nickersons or the District Court. The Nickersons move this Court require Chase to present this new evidence along with the other discovery requested as it may contain information that corroborates with our story and validates our claims.

4. Since Mr. Stenquist disclosed to the Court, via his exhibit in support of his declaration of costs and fees, that settlement talks had occurred allegedly to fulfill expectations of the Court or create the illusion attempts were made, we would like the Court to be aware no good faith settlement has ever been offered to us at any time by either party. Mr. Stenquist simply used the settlement platform to continue in his practice of presenting false information to us. For the record, Mr. Stenquist and Mr. Ritchie approached us regarding settlement after we faxed a letter to Mr. Stenquist on September 2, 2014. Exhibit 14. The letter states the following:

> In your recent affidavit in support of your Motion to Augment the record you testify, "I have personal access to my client's files in this matter and make this affidavit based upon personal knowledge..." Since you claim to have personal knowledge of your client's files, then you are taking and accepting personal responsibility for the fraud you and your client have perpetrated against the Nickersons and the Court. You have made and are making a personal choice to hide, conceal and/or destroy evidence that validates all the Nickersons' claims and defenses. You have made and are making a personal choice to allow PHH to fraudulently and wrongfully foreclose on the Nickersons property. You have made and are making a personal choice to catastrophically damage and comprehensively destroy all aspects of the Nickersons' life and way of life emotionally, physically and financially.

You know and are personally aware that Chase claims to be in possession of the Nickersons Note and Mortgage, that Chase claims to be the investor on the Nickersons loan, and that the account history provided by Chase is inaccurate which means PHH has no legal, ethical or moral right or authority to foreclose and you and your firm are accomplices to PHH's wrongful foreclosure. As an officer of the Court, you have taken an oath to uphold the law and it is not only your lawful duty but your ethical and moral responsibility to inform the Court PHH has wrongfully foreclosed upon the Nickersons.

Mr. Stenquist, among other violations to be expounded upon under separate cover, you have violated I.C. § 3-201. **Duties of Attorneys. 4. To employ, for the purpose of maintaining the causes confided in him, such means only as are consistent with the truth, and never seek to mislead the judges by an artifice or false statement of fact or law.** Specifically, you have intentionally sought to mislead the judge by making false statements including stating Chase never owned the Nickerson Note or Mortgage and that they were only the servicer (You made this false statement eight times in order to thwart the discovery process and deny the Nickersons their equal access to justice.). Further, you used this artifice to mislead the judge into determining there was no contract between Chase and the Nickersons. In addition, by your omission and concealing the fact that Chase claims to own the Nickersons loan and to never have sold nor assigned it to PHH you have violated the Lawyer's oath and are judged by the following maxim: ***suppressio veri expressio falsi*** – a suppression of truth is equivalent to an expression of falsehood. (Other violations to be expounded upon under separate cover.)

Mr. Stenquist, it is time for you and your client to come clean. The comprehensive damages suffered by the Nickersons family, my family, and those adversely affected by the nightmare caused by your ongoing actions is severe, significant and substantial. Your exposure and the inescapable exposure you have created for your firm and client civilly, criminally and morally is enormous and ever increasing. You have purposefully and maliciously misled and committed fraud on the Court by both what you have stated and by your ongoing silence regarding the truths that surround this case. You have purposefully and maliciously performed these actions in order to gain unjust enrichment for you, your firm and your accomplices and destroy the Nickersons emotionally, physically and financially. Your testimony that you have access to Chase's files and personal knowledge of the information condemns you and indicts you and your firm for all responsibility and liability for the intentional fraud perpetrated upon the Nickersons and the Court. It is your sworn duty as an officer of the Court and the duty of your firm under the agreements of their incorporation to make it right. It is clearly within your power and responsibility to stop making excuses for the willful assault on this family and to make it right. Therefore, we require you immediately file whatever motion, affidavit or other document that is appropriate or required to halt this case, stop the ongoing abuse being suffered by our family, and prevent PHH from wrongfully foreclosing.

Mr. Stenquist, you are on notice that we, the Nickersons, the Nickersons' heirs, the Nickersons' relatives and the Nickersons' friends are resolved to pursue whatever steps necessary to avail ourselves of all legal remedies available civilly, criminally and

> publically to ensure justice is served upon you, your firm, your client and your accomplices for the individual, joint and conspiring roles and parts you have played, are playing and may continue to play in destroying our life, liberty, financial security, and pursuit of happiness. Our allegations of bad faith, predatory lending, wrongful foreclosure, breach of fiduciary duty, breach of contract, fraud, intentional infliction of emotional distress, unjust enrichment, reckless record keeping, negligence, breach of duty of care, libel and slander of credit, civil conspiracy, offering false and forged instruments for the record, unfair methods and practices, and violations of the lawyer's oath are all true, well documented and will be proven. Your successful thwarting of our story being told this far will not continue. Mr. Stenquist, you, your alleged client and now your firm and your client have it within your power to end this assault and makes this right. No more excuses. No more legal chicanery. No more payoffs or deals. No more abuse. Do the right thing and do it now.
>
> On behalf of the entire Nickerson family and others adversely impacted by this unlawful action,
>
> Charles Nickerson
> cc. Moffatt Thomas Board of Directors, Managing Partners, Others

Not only did Mr. Stenquist have a clear opportunity to stop this litigation, end mounting attorney costs, and grant us relief, but Moffatt Thomas's Managing Partners, Directors and others of interest received copies of this letter, and had opportunity as well. In response to this letter, Mr. Stenquist and Mr. Ritchie offered a settlement conference call. Prior to this call the Nickersons sent them another letter in an attempt to gage the sincerity of Mr. Stenquist in which the Nickersons stated in part:

> Mr. Ritchie, we are trusting the meeting you and Jon Stenquist are initiating is a genuine demonstration of good faith and represents a true desire to take full responsibility for the wrongs committed and is not another gesture of legal chicanery to abuse us further. We trust Chase and Moffatt Thomas are prepared to make things right so that we will all be able to put this behind us and move forward with our lives after our meeting on Thursday. Certainly, this is in the best interest of all parties involved.

In response to this letter, Mr. Ritchie cancelled the settlement conference. About three months later, Mr. Stenquist sent us a lengthy discourse disguised as a settlement attempt that was clearly nothing more than an attempt to intimidate us into giving up our search for justice by detailing all the legal reasons we could not prevail against Chase, restating Chase was only a witness in this case and not a lender and was not in a position to pursue or halt any foreclosure action, stating that we missed 10 payments while Chase was servicing our loan, and propagating other such lies. (Note: In Chase's brief on appeal and during Oral Argument they stated we

missed 11 payments.). We responded with the following letter stating their offer to discuss settlement was denied. Also included as Exhibit 15.

Dear Mr. Stenquist,

Your offer is denied. You need not wait until December 5 to automatically withdraw it. Your fax and review of the case clearly indicate you have severely underestimated and grotesquely limited the resolve, intentions, and comprehensive lengths the Nickerson Family intends to pursue to find justice in this case. You have also fatally failed to acknowledge and properly defer to your greatest enemy and most undefeatable opponent in this case, the truth. Mr. Stenquist, you and your accomplices can twist it, warp it, hide it, try to change it all you want, but the truth is the truth, and truth is going to set us free. You may have somewhat successfully prevented the truth from being told, presented and proven thus far. However, time, persistence and different audiences will ultimately prevail against your legal chicanery and categorically hold you accountable for your criminal thievery and unlawful involvement in this case.

Do not nauseate or offend us by saying you do not want to take the Idaho Ranch from us or those we serve. You know we made every payment we were obligated to make and have heroically honored every obligation we had or have ever had regarding this property. It is well documented in the Chase communication records that Chase refused to send statements, give us receipts, provide us with records, etc. It is well documented our payments were misapplied, then applied correctly, that all payments were made and that we were on time and in good standing. It is well documented Chase embezzled thousands of dollars from our escrow surplus. It is well documented criminal acts have been committed and not just with our loan. It is well documented Chase had and still has a contract with Nickersons and that you have lied and continue to lie about it. It is well documented Chase breached the contract by inaccurate accounting and that you maliciously presented a fabricated account transaction and payment history, which has been contested and proven inaccurate, to cover your and/or their illegal activity. It is well documented you have purposefully thwarted our discovery efforts by not providing the plethora of notes, conversations and documentation regarding the countless calls and hours of conversations between Chase and our family. There is a lot more well documented too, and you, Chase, PHH and Just Law know it. A lot of other people know it too.

Having said that, thank you for taking the time to share your legal strategies and theories with us. We appreciate your neatly crafted attempt to intimidate and/or discourage us, but it did not and it will not work. Frankly, your case overview is full of inaccuracies, false claims and truth loopholes. Your gravest mistake is not realizing our opportunity to tell our story before a just judge, law enforcement agencies and public officials is coming soon. When that day comes, justice will demand answers from you and the evidence will irrefutably support our claims. Whether civilly, criminally, publicly, or all of the above, you and your accomplices will ultimately answer for what you have done to our family. Make no mistake, we will not be silent or silenced until you do. We have lived through and survived the undeserved hell Chase and their accomplices have put us through. We

have watched a ranch purchased as a gift to share with others attack and steal our entire life savings, family home, financial freedom and all other assets. We have fought injustice valiantly as other have watched in disbelief and anger as they have seen us endure it. You, nor your accomplices, can change the truth or what we have experienced. We are the ones who were on the recorded calls. We know they exist. We spent countless hours dealing with the incompetence of your client and their record keeping nightmares. We sifted through their abusive credit collection practices until we found representatives with integrity and customer service brains who found our payments and corrected the records. We were the victims of the promised correspondence for our records that never came and that you and your accomplices have now used to try to discredit us. We listened when representatives read back what they had entered into the system. We undeservedly suffered comprehensive and malicious losses, damages, and assaults. Our scars burn with a fervent passion to see justice served and to prevent you from stealing other people's lives and putting them through the anguish you have inflicted upon us. Therefore, you can assume any legitimate settlement offers that might be forthcoming must include confessions and apologies or they will be denied as well. The fact is we can and will rebuild our financial portfolio. However, your theft of our life and freedom cannot be repaid. There is no just and fair penalty or reparation for what you and your accomplices have done to our family. You cannot change the fact we did nothing wrong. You cannot change the fact what you, Chase and your accomplices have done is morally, ethically, financially and legally wrong. We want justice served, and we will not stop until we get it. God and a lot of other people out there know the truth of the severe, significant and substantial abuse we have suffered and the superhuman lengths we went to in honoring all commitments regarding this property. Our legal strategy is simple, the truth will set us free. Whether you or your accomplices like it or not, God will be the final Judge in this matter. We pray God will render to each man according to his deeds.

As a matter of record, no settlement conference occurred nor was any valuable consideration ever offered or discussed between Chase and our family. No further details are being given per I.R.E. 408.

CONCLUSION

We do not owe Chase any attorney fees. Thank you for reviewing this Objection and Motion. We pray you will make a just, fair and equitable decision in our favor regarding this matter.

DATED this 25th day of May, 2016

CHARLES NICKERSON DONNA NICKERSON

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 25th day of May, 2016, I caused to be served a true and correct copy of the foregoing document entitled Objection to Costs and Fees and Motion for Sanctions by the method indicated below, and addressed to the following:

Elisa Sue Magnuson
Aldridge Pite, LLP
4375 Jutland Dr. STE 200
San Diego, CA 92177
Phone (858)750-7600
Fax (619)590-1385

(x) U.S. Mail
( ) Hand Delivered
( ) Overnight or Priority Mail
( ) Facsimile

Jon A. Stenquist
Moffatt Thomas Barrett Rock & Fields
PO Box 51505
Idaho Falls, ID 83405
Fax (208)522-5111

(x) U.S. Mail
( ) Hand Delivered
( ) Overnight or Priority Mail
( ) Facsimile

Charles Nickerson

EXHIBIT 3

Charles and Donna Nickerson
3165 Neff Rd
Orofino, ID 83544

Appellants Pro Se

IN THE SUPREME COURT OF THE STATE OF IDAHO

PHH MORTGAGE, Plaintiff-Third Party Defendant-Counterdefendant-Respondent, v. CHARLES NICKERSON and DONNA NICKERSON Defendant-Counterclaimant-Third Party Complainant-Appellant, and COLDWELL BANKER MORTGAGE, a d/b/a of PHH MORTGAGE and JP MORGAN CHASE BANK, NA, Third Party Defendants-Respondents.	**AFFIDAVIT OF CHARLES NICKERSON IN SUPPORT OF OBJECTION TO COSTS AND FEES AND MOTION FOR SANCTIONS** Supreme Court Docket No. 42163-2014 Clearwater County No. 2011-28

I, CHARLES NICKERSON, deposes and states:

1. I am an appellant in the above-entitled action.
2. I am competent to testify to these matters.
3. I have personal knowledge of all matters discussed and detailed in the objection to costs and motion for sanctions.
4. I have personally read and reviewed the entire record in this matter that has been presented to me.
5. I have personally read and reviewed Chase's answers to our interrogatories and requests for production in which Chase claims 8 times they did not own the note and they were a servicer only.

6. There is no evidence in the record that supports Chase's claim that Freddie Mac purchased our note or that PHH repurchased our note from Freddie Mac. In fact, I submitted evidence that Fannie Mae claims to have held our loan from December 27, 2002, until December 3, 2009, that Chase claims to have purchased our loan on December 3, 2009, and that as of January 10, 2014, Chase still claims to be the owner and holder of our note and mortgage.
7. I have personally reviewed the Declaration of Jon A. Stenquist and his Exhibit A.
8. The line items listed in our statement in support of objection to costs and fees are taken from the Declaration of Jon A. Stenquist's Exhibit A.
9. I have over 30 years experience maintaining, reading and interpreting mortgage accounts and financial accounts of all types including checking, savings, money market, auto loans, lines of credit and credit card accounts. As a result, I have a thorough understanding of a principal balance and how to read and interpret account histories. The account history provided by Chase in May of 2010 (R. 441-453) reflects as of the payment credited in November 2009 a principal balance of $0.00 and on the last record in January 2010 a principal balance of $-1,186.90. A negative principal balance normally indicates the account is overpaid and the borrower could be due a refund.
10. In my experience, monthly statements, receipts of payments and personal account records are provided in the normal course of doing business and upon request.
11. My personal knowledge, involvement as an account holder on this account, and review of Chase's account records as submitted allows me to state Chase's claim that the Nickersons missed at least 11 payments from January 2008 through December 2009 is false and not supported by the account history they provided or the truthful occurrences relating to the account.
12. Exhibits 2-10 referenced in our statements in support of our objection and motion are true and correct copies taken from the record.
13. Exhibit 6 is a true and correct copy of a letter from Fannie Mae dated May 2, 2013, received in response to our inquiries into the involvement of Fannie Mae with regards to our loan involved in this case. Fannie Mae claims to have purchased our loan on December 27, 2002, and to have terminated interest in the loan on December 3, 2009.
14. Exhibit 9 is a true and correct copy of the Notice of New Creditor we received from Chase dated December 22, 2009. In this letter Chase claims to have purchased the

Nickersons loan on December 3, 2009, which is the same day Fannie Mae terminated their interest in the loan.

15. Exhibit 10 is a true and correct copy of a letter dated January 10, 2014, that Chase sent to us in response to a qualified written request. In this letter Chase states, "We are not required to produce the original note which will remain in our possession...The investor for this loan is JPMorgan Chase Bank, National Association."
16. Based upon ¶¶ 13-15 above, reasonable inference, circumstantial evidence and factual evidence indicates as of January 10, 2014, Chase claims to be the owner and holder of our note and mortgage.
17. ¶¶ 13-15 contradict Chase's claim that Freddie Mac had any involvement with our note and mortgage, and contradict Chase's denial of ever having owned our note and mortgage, and their claim they were a servicer only. See Exhibits 1, 4, 5 and 7.
18. Exhibits 11-13 are true and correct copies of correspondence between the Nickersons and Chase and Jon Stenquist.
19. Exhibit 14 is a true and correct copy of a letter we sent to Jon Stenquist and the Managing partners of Moffatt Thomas informing them of their liability and our resolve to secure justice in this case.
20. Exhibit 15 is a true and correct copy of our letter stating Mr. Stenquist's offer to discuss settlement was denied.

In accordance with I.R.C.P. 7(d) and I.C. § 9-1406, I certify (or declare) under penalty of perjury pursuant to the laws of the State of Idaho that the foregoing is true and correct.

DATED this 25th day of May, 2016

CHARLES NICKERSON

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 25th day of May, 2016, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

Elisa Sue Magnuson
Aldridge Pite, LLP
4375 Jutland Dr. STE 200
San Diego, CA 92177
Phone (858)750-7600
Fax (619)590-1385

(x) U.S. Mail
( ) Hand Delivered
( ) Overnight or Priority Mail
( ) Facsimile

Jon A. Stenquist
Moffatt Thomas Barrett Rock & Fields
PO Box 51505
Idaho Falls, ID 83405
Fax (208)522-5111

(x) U.S. Mail
( ) Hand Delivered
( ) Overnight or Priority Mail
( ) Facsimile

Charles Nickerson

C. Additional Issues on Appeal.

Chase requests attorney's fees and costs on appeal pursuant to Idaho Appellate Rules 40 and 41, and Idaho Code Section 12-121.

D. Statement of the Facts.

a. The Mortgage and Deed of Trust.

On or about October 4, 2002, the Nickersons executed a 30-year Note (the "Note"), promising to pay PHH or the holder thereof principal and interest payments. R. 330, 333-39. The Nickersons agreed to the terms of the Note and understood the contents thereof. R. 330, 350, Deposition of Donna Nickerson ("D. Nickerson Depo.") 36:1-7 and R. 392-93, Deposition of Charles Nickerson ("C. Nickerson Depo.") 9:24 – 10:9.

To secure the repayment of the Note, the Nickersons executed a Deed of Trust, recorded as Instrument No. 190568, Clearwater County, Idaho, on October 4, 2002. R. 330, 415-31. In December 2007, servicing of the loan was transferred to Chase. The Nickersons made their first payment to Chase on January 4, 2008, and made a total of 10 payments to Chase in 2008. The Nickersons only made a few payments in the year 2009, and as of the Nickersons' payment in December 2009, the Nickersons were at least 11 months behind in their scheduled payments on the Note. R. 330, 441-53. In February 2010, PHH repurchased the Note from Freddie Mac and began servicing the Note. PHH brought this action in January 2011, requesting judicial foreclosure for the Nickersons' failure to pay the Note as required.

Exhibit 1 1of1

STATE OF IDAHO)
: ss.
County of Bonneville)

JON STENQUIST, being first duly sworn on oath, deposes and states as follows:

1. I am an attorney of record for third party defendant JPMorgan Chase Bank, N.A. ("Chase") in the above-referenced matter. I have access to my client's files in this matter and make this affidavit based upon personal knowledge and in support of Chase's Motion for Summary Judgment.

2. Attached hereto as Exhibit "A" is a true and correct copy of the October 4, 2002 Note executed by Donna and Charles Nickerson in favor of Coldwell Banker Mortgage (PHH) in the original principal amount of $285,000.00.

3. Attached hereto as Exhibit "B" is a true and correct copy of the Deposition of Donna Nickerson taken on October 3, 2012 in Lewiston, Idaho.

4. Attached hereto as Exhibit "C" is a true and correct copy of the Deposition of Charles Nickerson taken on October 4, 2012 in Lewiston, Idaho.

5. Attached hereto as Exhibit "D" is a true and correct copy of the Deed of Trust executed by Donna and Charles Nickerson and recorded as Instrument No. 190568 in the office of the Clearwater County Recorder on October 4, 2002.

6. Attached hereto as Exhibit "E" is a true and correct redacted copy of the Customer Account Activity Statement from The Mortgage Service Center dated December 14, 2011 which provides a history of all the Nickersons' payments made to PHH Mortgage Corporation during the years PHH serviced the loan which included the years 2002 through 2007 and then 2010 through 2011.

7. Attached hereto as Exhibit "F" is a true and correct copy of the Nickersons' payment history provided to the Nickersons on May 13, 2010 detailing all payments made to Chase on the Note from 2008 through 2010.

8. Attached hereto as Exhibit "G" is a true and correct copy of the January 4, 2009 Acceleration Warning letters Chase sent to Donna Nickerson and Charles Nickerson.

9. Attached hereto as Exhibit "H" is various correspondence from Chase to the Nickersons in an attempt to modify the Nickersons payments including a January 17, 2009 letter Chase sent to the Nickersons detailing a Repayment Plan. Also included are true and correct copies of correspondence Chase sent to the Nickersons dated February 7, 2009 and March 25, 2009.

10. Attached hereto as Exhibit "I" is a true and correct copy of Nickerson's Answers to Third Party Defendant JPMorgan Chase Bank's First Set of Interrogatories, Requests for Production of Documents and Requests for Admissions to Third Party Plaintiff's Charles and Donna Nickerson, dated June 1, 2012.

Further affiant sayeth naught.

Jon A. Stenquist

SUBSCRIBED AND SWORN to before me this 15th day of October, 2012.

Kimberly A. Brockbank
NOTARY PUBLIC FOR IDAHO
Residing at Idaho Falls, Idaho
My Commission Expires 3/28/14

CHASE HOME FINANCE LLC
Detailed Transaction History

Date: 5/13/2010

Loan # 0920
DONNA NICKERSON
CHARLES R NICKERSON

Interest Rate:	6.28%
Payment Due Date:	1/1/2009
Monthly Payment Amt:	$0.00
Current Escrow Balance:	$0.00
Current Principal Balance:	$0.00

Property Address:
3165 NEFF RD
OROFINO,ID 83544-0000

Mailing Address:
PO BOX 3414
REDMOND,WA 98073

Activity for Period 1/1/2008 – 1/31/2010

Reference #	Tran Date Principal Amt	Effective Date Interest Amt	Due Date Escrow Amt	Total Tran Amt Fees/Other Amt	Transaction Description Suspense Amt	Principal Bal	Escrow Bal
92	1/21/2010	1/21/2010		$20.00	FASTPAY FEE ASSESSMENT		
	$0.00	$0.00	$0.00	$20.00	$0.00	$-1,186.90	$0.00
91	1/21/2010	1/21/2010	4/1/2009	$20.00	FASTPAY FEE PAID		
	$0.00	$0.00	$0.00	$20.00	$0.00	$-1,186.90	$0.00
90	1/21/2010	1/21/2010	3/1/2009	$2,328.99	PAYMENT		
	$397.70	$1,362.66	$568.63	$0.00	$0.00	$-1,186.90	$0.00
89	1/13/2010	1/12/2010	2/1/2009	$2,328.99	PAYMENT		
	$395.63	$1,364.73	$568.63	$0.00	$-2,328.99	$-789.20	$-568.63
88	1/12/2010	1/12/2010	1/1/2010	$-187.63	MORTGAGE INSURANCE		
	$0.00	$0.00	$-187.63	$0.00	$0.00	$-393.57	$-1,137.26
87	12/16/2009	12/16/2009	12/1/2009	$-187.63	MORTGAGE INSURANCE		
	$0.00	$0.00	$-187.63	$0.00	$0.00	$-393.57	$-949.63
86	12/11/2009	12/11/2009		$20.00	FASTPAY FEE ASSESSMENT		
	$0.00	$0.00	$0.00	$20.00	$0.00	$-393.57	$-762.00
85	12/11/2009	12/11/2009	2/1/2009	$20.00	FASTPAY FEE PAID		
	$0.00	$0.00	$0.00	$20.00	$0.00	$-393.57	$-762.00

REDACTED

CONFIDENTIAL INFORMATION

JPMC0004

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Although Chase attempted to modify the terms of the Note to allow the Nickersons to catch up on their payments, the Nickersons did not agree to any of the modifications offered by Chase. Stenquist Aff. Ex. H; *see also* D. Nickerson Depo. 175:12-15 and C. Nickerson Depo. 87:17-22.

8. The Nickersons only made a few payments in the year 2009, and as of the Nickersons' payment in December 2009, the Nickersons were at least 11 months behind in their scheduled payments on the Note. Stenquist Aff. Ex. F.

9. In February 2010, PHH repurchased the Note from Freddie Mac and began servicing the Note.

10. PHH brought this action in January 2011, requesting Judicial Foreclosure for the Nickersons' failure to pay the Note as required.

11. The Nickersons filed their Amended Complaint their counterclaim against PHH and later added Chase as a third party defendant in their Amended Complaint, alleging that all payments under the Note were paid current through January 2010, at which time they allege PHH refused to accept payments. Based on this claim, the Nickersons contend that Chase and PHH have falsely reported a payment delinquency and have destroyed the Nickersons' credit. The Nickersons also contend that the destruction of their credit served to deprive Mr. Nickerson of employment in the telccom and IT fields. *See generally*, Amended Complaint.

12. On or about April 2, 2012, Chase served upon the Nickersons its First Set of Interrogatories, Requests for Production of Documents and Requests for Admissions to Third Party Plaintiffs Charles and Donna Nickerson. The Nickersons did not serve their answers to Chase's Requests for Admissions within thirty (30) days as required by the rules.

4. Third-Party Defendant J.P. Morgan Chase Bank N.A. (hereafter "Chase) is a foreign corporation.

5. On or about October 4, 2002, Nickersons executed a Note and a Deed of Trust with Coldwell as the beneficiary. The real property securing this transaction is located in Clearwater County, Idaho, and is more particularly described as follows:

Township 36 North, Range 2 East, Boise Meridian

Section 22: SE1/4 NW1/4, SE 1/4 SW 1/4 NW 1/4

A copy of said Note is attached as Exhibit C to the PHH's Complaint in this matter. A copy of said Deed of Trust is attached as Exhibit A to the PHH's Complaint.

6. Said property consists of more than 50 acres and is in part agricultural property and thus the Deed of Trust is legally a Mortgage but for ease of reference will be referred to as the Deed of Trust.

7. Coldwell assigned the Note and Mortgage to Chase on or about December 20, 2007.

8. When the Note and Mortgage was transferred to Chase the Nickersons immediately began having accounting problems with their account.

9. Nickersons would receive notices of failure to provide insurance followed by notices that Chase had made a mistake, etc. Nickersons had contact with Chase employees who stated from the computer records regarding Nickersons' account that it showed they were being billed twice a month instead of monthly.

10. Nickersons continued to make timely payments during this time when allowed.

11. Nickersons always carried adequate insurance on the subject property.

12. Nickersons made numerous requests for information about their account, including but not limited to statements but never received anything.

13. During this time the Chase employees that Nickersons had contact with were rude, offensive, and threatening.

14. On or about September of 2009, Nickersons began working with a Chase employee named Kim.

Exhibit 5 pg. 1 of 2

LAW OFFICES OF
CLARK AND FEENEY, LLP
LEWISTON, IDAHO 83501

Paragraph 6 require a legal conclusion and therefore require no response.

6. Responding to Paragraph 7 of the Complaint, JPMorgan admits that the Nickersons' Note and Mortgage were assigned by Coldwell, but lacks sufficient information to form a belief as to the parties and dates of assignment(s) and therefore denies the remaining allegations of Paragraph 7 of the Complaint.

7. JPMorgan denies the allegations contained in Paragraphs 8-10 of the Complaint.

8. Responding to Paragraph 11 of the Complaint, JPMorgan lacks sufficient information and knowledge to form a belief as to the truth of those allegations and, therefore, denies the same.

9. JPMorgan denies the allegations of Paragraphs 12-13 of the Complaint.

10. Responding to Paragraph 14 of the Complaint JPMorgan lacks sufficient information and knowledge to form a belief as to the truth of those allegations and, therefore, denies the same.

11. Responding to Paragraph 15 of the Complaint, JPMorgan admits it received a payment on September 2, 2009, but lacks sufficient information and knowledge to form a belief as to the truth of the remaining allegations of said paragraph and, therefore, denies the same.

12. JPMorgan denies the allegations of Paragraph 16 of the Complaint.

13. Responding to Paragraph 17 of the Complaint, JPMorgan admits it received a payment on November 11, 2009, but lacks sufficient information and knowledge to form a belief as to the truth of the remaining allegations of said paragraph and, therefore, denies the same.

3900 Wisconsin Avenue, NW
Washington, DC 20016-2892

May 2, 2013

Ms. Donna Nickerson
3165 NEFF RD
OROFINO, ID 83544

Ref. 3165 NEFF RD., OROFINO, ID 83544

Fax # 425-691-7926 and First Class Mail

Dear Ms. Nickerson,

Thank you for contacting Fannie Mae. You requested a written response to your letter dated 4/18/13.

Please be advised that Fannie Mae does not own your loan. Our records show that the loan was sold to Fannie Mae on 12/27/2002, and Fannie Mae's interest in the loan terminated as of 12/3/2009. Your request for copies of your loan file, communications and correspondence should be directed to your mortgage servicer, JP Morgan Chase.

If you have further questions, please contact our Resource Center at 1-800-732-6643.

Margie
Business Analyst
Fannie Mae's Resource Center
Washington D.C

Exhibit 6

COMES NOW Third Party Defendant, JPMorgan Chase Bank, N.A. ("JPMorgan"), by and through undersigned counsel of record, and answers and responds to defendants Charles and Donna Nickersons' first set of interrogatories and requests for production of documents as follows:

PRELIMINARY STATEMENT

JPMorgan, based upon its current understanding and belief of the facts and the information presently known to it, responds and objects as follows to Third Party Plaintiff's First Set of Requests for Interrogatories and Requests for Production ("Nickersons' Requests"). The following responses are based upon diligent exploration of JPMorgan's understanding and belief respecting the matters about which inquiry was made. It is anticipated that further discovery, independent investigation and consultation with experts may supply additional facts, add meaning to known facts, and establish entirely new factual conclusions and legal contentions, all of which may lead to substantial additions to, modifications of, and variations from the responses herein set forth. The following responses are, therefore, made without prejudice to JPMorgan's right to produce evidence of subsequently discovered documents or facts.

INTERROGATORIES

INTERROGATORY NO. 1: Please identify who owned the Nickersons' note prior to Chase purchasing it and on what date was said note purchased?

ANSWER NO. 1: JPMorgan objects to this interrogatory on the grounds that the matter sought is not relevant to the subject matter involved in the pending action nor reasonably calculated to lead to the discovery of admissible evidence. JPMorgan further objects to this interrogatory as it mischaracterizes the facts, contending that JPMorgan purchased the Nickersons' note, whereas, JPMorgan was a servicer of the note and not a purchaser.

INTERROGATORY NO. 2: Please identify all the federally mandated procedures followed when Chase purchased the note, including but not limited to the transfer details and documentation.

ANSWER NO. 2: JPMorgan objects to this interrogatory on the grounds that the term "all the federally mandated procedures followed" is vague and ambiguous. JPMorgan also objects to this interrogatory on the grounds that the matter sought is not relevant to the subject matter involved in the pending action nor reasonably calculated to lead to the discovery of admissible evidence. JPMorgan objects to this interrogatory because it mischaracterizes the facts, contending JPMorgan purchased the note, whereas JPMorgan was a servicer of the note and not a purchaser.

INTERROGATORY NO. 3: Please state the reason behind Chase's decision to sell the Nickersons' note? Please include the documentation of the transaction.

ANSWER NO. 3: JPMorgan objects to this interrogatory on the grounds that the matter sought is not relevant to the subject matter involved in the pending action nor reasonably calculated to lead to the discovery of admissible evidence. JPMorgan, as a servicer of the loan, did not "sell" the Nickersons' note.

INTERROGATORY NO. 4: Please state how the transaction were handled, e.g., electronically?

ANSWER NO. 4: JPMorgan objects to this interrogatory because the term "transactions were handled" is vague and ambiguous. In light of the prior interrogatories contained herein, JPMorgan did not purchase, own or sell the Nickersons' note and merely acted as servicer of the loan.

INTERROGATORY NO. 5: Please state why a Fannie Mae Collateral #4002697229 is attached to the account?

ANSWER NO. 5: JPMorgan objects to this interrogatory on the grounds that the matter sought is not relevant to the subject matter involved in the pending action nor reasonably calculated to lead to the discovery of admissible evidence. JPMorgan objects to this interrogatory on the further grounds that the term "Fannie Mae Collateral #4002697229" is vague and ambiguous and that the interrogatory is calculated to or would operate to vex, annoy, harass, oppress, embarrass, or unduly burden JPMorgan.

INTERROGATORY NO. 6: Please state whether Chase is licensed to provide mortgages or service mortgages on 50 acre properties? If affirmative, please give the month, day and year of said license.

ANSWER NO. 6: JPMorgan objects to this Interrogatory because the terms "licensed to provide mortgages or service mortgages on 50 acre properties" and "said license" are vague and ambiguous. JPMorgan also objects to this Interrogatory because it calls for a legal conclusion.

INTERROGATORY NO. 7: Please state the reasoning behind Chase's decision to not foreclose on the Nickersons' note prior to transferring it to PHH.

ANSWER NO. 7: JPMorgan objects to this interrogatory on the grounds that the matter sought is not relevant to the subject matter involved in the pending action nor reasonably calculated to lead to the discovery of admissible evidence. JPMorgan further objects to this interrogatory as it mischaracterizes the facts, contending that JPMorgan was the owner of the note, in a position to determine to foreclose or not foreclose, when in fact, JPMorgan was a servicer of the note.

INTERROGATORY NO. 8: Please state the reason Chase stopped sending monthly statements to the Nickersons after March of 2009.

ANSWER NO. 8: JPMorgan lacks insufficient information to determine when regular monthly statements ceased to the Nickersons and therefore objects to this interrogatory to the extent it may mischaracterize the facts. The documents attached hereto indicate that the Nickersons began working with JPMorgan's loss mitigation group to avoid foreclosure and were sent a forbearance agreement with an alternative payment plan. Because alternative payment amounts were offered to the Nickersons, regular monthly statements may have ceased in light of the new payment plan.

INTERROGATORY NO. 9: Please describe/list what information was provided to PHH regarding the transfer/sale of the note.

ANSWER NO. 9: JPMorgan objects to this interrogatory because the term "regarding the transfer/sale of the note" is vague and ambiguous. As a servicer for the Nickersons' loan, JPMorgan is not aware of the information exchanged in the transfer/sale of the of the note between buyer and seller. Without waiving this objection, please see the documents provided herewith.

INTERROGATORY NO. 10: Please describe the agreements in place between Chase and PHH regarding transfers and sales of notes.

ANSWER NO. 10: To the extent this interrogatory requests information regarding matters other than the Nickersons' loans, JPMorgan objects to this interrogatory on the grounds that the request for information is not relevant to the subject matter involved in the pending action nor reasonably calculated to lead to the discovery of admissible evidence. JPMorgan objects to this interrogatory on the further grounds that the interrogatory is overbroad

and is calculated to or would operate to vex, annoy, harass, oppress, embarrass, or unduly burden JPMorgan and constitutes an unreasonable invasion of the right to privacy of persons not party to this litigation. JPMorgan further objects to this interrogatory because the matter sought is not relevant to the subject matter involved in the pending action nor reasonably calculated to lead to the discovery of admissible evidence. JPMorgan further objects to this interrogatory as it mischaracterizes the facts, contending that JPMorgan is in privity with PHH, when in fact, JPMorgan was merely a servicer of the note. Without waiving these objections, please see the documents provided herewith.

INTERROGATORY NO. 11: Please state/describe where the refunded insurance money went.

ANSWER NO. 11: JPMorgan objects to this interrogatory because the term "the refunded insurance money" is vague and ambiguous.

INTERROGATORY NO. 12: Please list all suits relating to foreclosure and the results of such suits Chase has been a party of over the last four (4) years.

ANSWER NO. 12: JPMorgan objects to this interrogatory on the grounds that the matters sought are not relevant to the subject matter involved in the pending action nor reasonably calculated to lead to the discovery of admissible evidence. JPMorgan objects to this interrogatory on the further grounds that the interrogatory is overbroad and is calculated to or would operate to vex, annoy, harass, oppress, embarrass, or unduly burden JPMorgan, and constitutes an unreasonable invasion of the right to privacy of persons not party to this litigation.

INTERROGATORY NO. 13: Please list all federal sanctions or fees, requested of Chase to pay regarding their foreclosure practices for the past four (4) years, including for each such sanction or fee the date, the amount and the reason for each sanction/fee.

RESPONSE NO. 8: JPMorgan objects to this request because the term "refund of insurance money" is vague and ambiguous. Without waiving this objection, please see the documents provided herewith, with specific reference to documents numbered JPMC0097-0112.

REQUEST FOR PRODUCTION NO. 9: Please produce copies of all documents of whatsoever nature, description or kind related to any and all sanctions or fees placed upon Chase in the last four (4) years.

RESPONSE NO. 9: JPMorgan objects to this request on the grounds that the matter sought is not relevant to the subject matter involved in the pending action nor reasonably calculated to lead to the discovery of admissible evidence. JPMorgan objects to this request on the further grounds that the request is overbroad and is calculated to or would operate to vex, annoy, harass, oppress, embarrass, or unduly burden JPMorgan, and constitutes an unreasonable invasion of the right to privacy of persons not party to this litigation.

REQUEST FOR PRODUCTION NO. 10: Please produce copies of all documents of whatsoever nature, description or kind related to the foreclosure proceedings by Chase against the Nickersons.

RESPONSE NO. 10: JPMorgan objects to this request because it requests documents that are available from the public record. Without waiving this objection, please see the documents provided herewith.

REQUEST FOR PRODUCTION NO. 11: Please produce copies of all documents of whatsoever nature, description or kind initially received by Chase in regards to the transfer/sale of the Nickerson's note.

RESPONSE NO. 11: JPMorgan objects to this Request because the terms "transfer/sale" are vague and ambiguous and because JPMorgan did not purchase the Note, but

was merely a servicer of the Note. Without waiving these objections, please see the attached documents.

REQUEST FOR PRODUCTION NO. 12: Please produce copies of all monthly payment reminders, requests, notices sent to the Nickersons.

RESPONSE NO. 12: Please see the attached documents. In addition, discovery is ongoing and JPMorgan will supplement this response in the event any additional information becomes available.

REQUEST FOR PRODUCTION NO. 13: Please produce copies of all documents of whatsoever nature, description or kind related to any and all federally mandated procedures that Chase followed when it purchased the Nickersons' note from Chase.

RESPONSE NO. 13: JPMorgan objects to this request because the term "all federally mandated procedures" is vague and ambiguous. JPMorgan also objects to this request on the grounds that the matter sought is not relevant to the subject matter involved in the pending action nor reasonably calculated to lead to the discovery of admissible evidence. JPMorgan objects to this request on the further grounds that the request is overbroad and is calculated to or would operate to vex, annoy, harass, oppress, embarrass, or unduly burden JPMorgan.

REQUEST FOR PRODUCTION NO. 14: Please produce copies of all documents of whatsoever nature, description or kind related to the process of how the transfers, sales, and servicing.

RESPONSE NO. 14: JPMorgan objects to this request on the grounds that the matter sought is not relevant to the subject matter involved in the pending action nor reasonably calculated to lead to the discovery of admissible evidence. JPMorgan objects to this request on the further grounds that the request is overbroad and is calculated to or would operate to vex,

September 28, 2014

Re: Charles and Donna Nickerson

To Whom it May Concern:

My name is John Mitchell. I was the attorney of record for Charles and Donna Nickerson in a foreclosure suit involving PHH and Chase.

I originally met the Nickersons when Just Law was trying to do a non judicial foreclosure on the property. After pointing out in either a phone call or a letter or both to Just Law that a non judicial foreclosure was not a proper remedy in this matter the non judicial foreclosure was cancelled and I informed them to contact me if they were going to purse a judicial foreclosure. The next contact with regards to the case came from the Nickersons who had found out that the Plaintiff had filed a complaint and instead of serving them personally or contacting me as requested had asked for and received permission to effectuate service via publication.

During my representation of the Nickersons I was personally experiencing some major mental issues including severe depression anxiety and compulsive gambling. As a footnote I am a recovering alcoholic with almost 16 years of sobriety however I was naive or refused to recognize that my addiction relapsed into a different destructive behavior.

During my representation of the Nickersons my depression and compulsive gambling had me contemplating suicide numerous times daily and without question I was mentally, emotionally and physically unfit. I have since received impatient treatment for gambling and while my depression is better to a great extent I still experience periods of depression. In October of 2013 I resigned from the bar in lieu of suspension and I have spent the time just trying to survive. I recently have gotten a seasonal job through a temporary employment agency inspecting onions of behalf of the State.

I struggle every day to come to grips with the disaster that is my life and want to emphasize that I realize that I am responsible for my actions and choices. In hindsight I clearly could not handle the stress of practicing law and I lost it mentally. Unfortunately I did not recognize that fact soon enough and during my representation of the Nickersons I did not know what to do and not knowing what to do led my to being dishonest with myself and others, notably the Nickersons.

I did not keep the Nickersons informed about the status of their case after their depositions were taken, did not tell them about a summary judgment motion, the summary judgment decision, told them an appeal had been filed when it had not and withdrew from the case without telling them. I cannot remember exactly what I did or did not do or say or did not say but I am sure the Nickersons are in a better position to inform the Court. While my opinion is probably meaningless I do think

Exhibit 8
page 183

that the Nickersons ar[illegible]obably the most honest and caring peop[illegible]hat I have ever met.

The Nickersons deserve to have the underlying complaint and their counterclaims decided on the merits of the case and not have their life affected because they put their faith in an attorney who did not have the mental and emotional capabilities to give them adequate representation.

The Nickersons have uncovered countless irregularities and falsities in their case which if presented properly to a Court should be a defense to the foreclosure claim and support for their counterclaims.

During my representation of the Nickersons I talked with several governmental agencies about wrongful foreclosures in general and the Nickersons' case in specific. I talked with the FBI agents in Lewiston and the Attorney General's office in Boise. I gave the FBI a fairly thick binder identifying specific incidents of misconduct on the part of the plaintiffs with supporting documentation that this type of conduct had been done extensively before. Off the top of my head I cannot remember the specifics but I seem to recall notary fraud. To the best of my recollection I remember interest and thinking that one of these agencies would take the case on and investigate but ultimately these agencies declined. I also filed on line complaints with one or two federal agencies but do not remember if they took any action.

The Nickersons' case was not decided on its merits and really no meaningful discovery was ever answered by the Plaintiffs. There is no prejudice to the Plaintiffs in allowing the Nickersons to have discovery done properly and have the underlying case and their counterclaims decided on the facts of the case and not have the case decided because of an incompetent mentally unfit at the time attorney who did not know how to handle the mess that he created. I believe all the Nickersons want is the chance to put on their defense and their proof for their counterclaims.

In accordance with I.R.C.P. 7(d) and I.C. 9-1406 I certify or declare under penalty of perjury pursuant to the laws of the State of Idaho that the foregoing is true and correct. Dated the 28th day of September, 2014.

Sincerely,

John Mitchell

Exhibit 8
10
page 1

Chase Home Finance LLC
OH4-7382
3415 Vision Drive
Columbus, OH 43219-6009

December 22, 2009

DONNA NICKERSON
CHARLES R NICKERSON
PO BOX 3414
REDMOND WA 98073

Account Ending In:	0920
Date of Loan:	October 4, 2002
Original Amount of Loan:	$285,000.00
Mortgage Property Address:	3165 NEFF RD OROFINO, ID 83544

SUBJECT: NOTICE OF NEW CREDITOR

We are sending you this Notice in accordance with the requirements of the "Helping Families Save Their Homes Act of 2009." Your mortgage loan (referenced above) has been sold or transferred to JPMorgan Chase Bank, N.A. ("Chase"). Chase is the New Creditor of your loan.

- This Notice is provided for informational purposes only.
- You are not required to take any action as a result of this Notice.
- This Notice does not affect the servicing of your mortgage loan or change your servicer. Please continue to make payments on your mortgage loan to your current servicer at the same address to which you were instructed by your servicer to make payments (unless or until you are advised differently by your servicer). Any mortgage payments that are not sent timely to your servicer may result in late fees and other charges

The term "we" means Chase. The terms "you" and "your" mean the mortgage borrower(s) identified above.

LC-CHEN-0809B

Exhibit 9 pg. 1 of 2.

NOTICE OF NEW CREDITOR

Please note the following information regarding the transfer of your mortgage loan:

1. The identity (name), address and telephone number of the New Creditor is:

   JPMorgan Chase Bank, N.A.
   111 Polaris Parkway
   Columbus, OH 43240-2050
   1-800-848-9136

2. The date of the sale of your mortgage loan to the New Creditor was: December 3, 2009.

3. Chase Home Finance, LLC is acting as the agent for the creditor. If you have any questions regarding this Notice, please contact Chase Home Finance, LLC at the address and phone number below:

   Chase Home Finance, LLC
   3415 Vision Drive
   Columbus, OH 43219
   1-800-848-9136

4. Evidence of transfer of ownership of your mortgage loan or the instrument securing your mortgage loan is recorded in the land records of the county in which the mortgaged property is located.

5. Any investor or creditor that purchases your loan is required under federal law to give you written notice. If you have any questions concerning this Notice, please feel free to contact us toll-free at:

   1-800-848-9136

Chase (OH4-7302)
3415 Vision Drive
Columbus, OH 43219-6009

CHASE

January 10, 2014

Donna Nickerson and Charles R. Nickerson
Po Box 3414
Redmond, WA 98073

Verification of debt for mortgage loan ******0920
Borrower(s): Donna Nickerson
Charles R. Nickerson

Dear Donna Nickerson and Charles R. Nickerson:

This letter is in response to the correspondence we received on December 16, 2013 about the account above.

Enclosed are copies of the following documents:

- Loan Transaction History
- Note
- Security Instrument
- Assignment of Mortgage

It is our position that Chase has addressed your correspondence in a manner that complies with the Real Estate Settlement Procedures Act and Regulation X. We are not required to produce the original note which will remain in our possession in accordance with applicable record retention requirements.

Please note, that the account was transferred to a new servicer on September 20, 2012.

Information regarding the Mortgage Electronic Registration Systems (MERS) can be located on the MERS website at http://www.mersinc.org/. However, this is not a MERS loan.

Any information or document requested but not included with our prior response is unavailable or considered confidential, and cannot be provided. A response to all questions related to loan transactions can be found in the loan transaction history.

The investor for this loan is JPMorgan Chase Bank, National Association.

If you have questions, please call us at the telephone number listed below.

Sincerely,

Chase
(800) 848-9136
(800) 582-0542 TDD / Text Telephone
www.chase.com

Exhibit A 10 pg. 1 of 1

Charles and Donna Nickerson
3165 Neff Rd.
Orofino. ID 83544
425-691-7926
Fax # 425-691-7926

Chase
P.O. Box 183166
Columbus, OH 43218-3166
Chase loan #1916210920

June 12. 2014

To Whom it May Concern,

We are writing to request a copy of all notations made on our account by Chase employees from January 1, 2009 to present.

We are also requesting a copy of the tapes for all conversations that occurred between January 1, 2009 to present. Davion Thomas, a Chase Mortgage specialist, instructed us to send this request to you to obtain the information we need.

Additionally, we are trying to piece together what has occurred with our loan from origination to present so we can see the chain of ownership and transfers associated with our loan. Therefore, please provide details regarding the chain of ownership of our property from origination to present. This should include all investors, dates ownership or transfers occurred, and specifically state who Chase received our loan from.

Due to the urgency of this request, please send the requested information to the physical property address, 3165 Neff Road. Orofino, Idaho 83544. Thank you for your prompt attention in filling this request.

Charles Nickerson

Charles and Donna Nickerson
3165 Neff Rd.
Orofino, ID 83544
425-691-7926
Fax # 425-691-7926

Chase
Legal Department
Attention: Cheryl Wolf
194 Wood Ave. S
Iselin, NJ 08830

Re: Chase loan #1916210920

June 12, 2014

Dear Cheryl,

My daughter spoke with Katie Holland with my authorization who directed us to contact you regarding our loan with Chase. Specifically, we are inquiring about Chase's involvement in any litigation dealing with our property currently or at any time since January 2010. We are concerned a firm may be unlawfully "representing" Chase without proper authorization from Chase on issues regarding our loan. The unnecessary and inconceivable ramifications for all parties is substantial so we request your immediate investigation and involvement in this matter. Our family has suffered greatly as a result of this firm's actions and we are asking you to please assist us in learning the truth and determining Chase's true involvement.

If Chase has authorized or initiated litigation regarding our loan, please send us a proof of authority that includes the firm and attorney representing Chase, the date they were retained and the issues Chase retained the firm for. If Chase is not aware they are being represented, or misrepresented as the case may be, please send us a letter stating this fact as soon as possible. Due to the seriousness and urgency of this issue, we request you fax your response to the number you have on file, 1-425-691-7926, and also mail a copy to the property address, 3165 Neff Road, Orofino, Idaho 83544. Again, this issue affects both our interests and yours in the property so we thank you in advance to your prompt attention to this matter.

Charles Nickerson

MOFFATT THOMAS
Attorneys at Law

Larry C. Hunter
Randall A. Peterman
Mark S. Prusynski
Stephen R. Thomas
Gerald T. Husch
Scott L. Campbell
Patricia M. Olsson
Christine E. Nicholas
Bradley J Williams
Lee Radford

Michael O. Roe
David S. Jensen
James L. Martin
C. Clayton Gill
Michael W. McGreaham
David P. Gardner
Julian E. Gabiola
Kimberly D. Evans Ross
Jon A. Stenquist
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Tyler J. Anderson
Andrew J. Waldera
C. Edward Carher III
Benjamin C. Ritchie
Matthew J. McGee
Mindy M. Willman
Jetta Hatch Mathews
Andrea J. Rosholt
Maria O. Hart
Kirk J. Houston

Of Counsel:
John S. Simko
John C. Ward
David B. Lincoln
Gary T. Dance
Norman M. Semanko

MAILING ADDRESS:
PO Box 51505
Idaho Falls ID 83405-1505

PHYSICAL ADDRESS:
900 Pier View Dr STE 206
Idaho Falls ID 83402-4972

www.moffatt.com

208.522.6700 MAIN
800.422.2889 TOLL-FREE
208.522.5111 FAX

July 14, 2014

Charles and Donna Nickerson
3165 Neff Road
Orofino, ID 83544

Re: PPH Mortgage v. Nickerson, et al.
MTBR&F File No. 23161.0016

Dear Mr. and Mrs. Nickerson:

I am writing you at the request of my client, JPMorgan Chase Bank, N.A. ("Chase"). Chase has provided me with your attached letter, dated June 12, 2014, wherein you inquire as to whether my firm is legitimately representing Chase.

Rest assured that my firm has been engaged by Chase to defend it from your claims. My receipt of the attached date-stamped letter and certified envelope evidences our engagement. You are on notice that this firm is your only authorized contact for Chase, and accordingly, cease and desist from contacting Chase directly.

Sincerely,

Jon A. Stenquist

JAS/mrs

cc: Kipp L. Manwaring

Charles and Donna Nickerson
3165 Neff Rd.
Orofino, ID 83544
425-691-7926
Fax # 425-691-7926

Chase
Legal Department
Attention: Cheryl Wolf
194 Wood Ave. S
Iselin, NJ 08830

Re: Chase loan #1916210920

June 12, 2014

Dear Cheryl,

My daughter spoke with Katie Holland with my authorization who directed us to contact you regarding our loan with Chase. Specifically, we are inquiring about Chase's involvement in any litigation dealing with our property currently or at any time since January 2010. We are concerned a firm may be unlawfully "representing" Chase without proper authorization from Chase on issues regarding our loan. The unnecessary and inconceivable ramifications for all parties is substantial so we request your immediate investigation and involvement in this matter. Our family has suffered greatly as a result of this firm's actions and we are asking you to please assist us in learning the truth and determining Chase's true involvement.

If Chase has authorized or initiated litigation regarding our loan, please send us a proof of authority that includes the firm and attorney representing Chase, the date they were retained and the issues Chase retained the firm for. If Chase is not aware they are being represented, or misrepresented as the case may be, please send us a letter stating this fact as soon as possible. Due to the seriousness and urgency of this issue, we request you fax your response to the number you have on file, 1-425-691-7926, and also mail a copy to the property address, 3165 Neff Road, Orofino, Idaho 83544. Again, this issue affects both our interests and yours in the property so we thank you in advance to your prompt attention to this matter.

Charles Nickerson

Exhibit 13 Pg 2 of 3

3165 Neff Road
Grafton, ID 83544

CERTIFIED MAIL

7012 2920 0002 2751 6707

UNITED STATES POSTAL SERVICE

1000

08830

U.S. POSTAGE
PAID
GREAT FALLS, MT
59401
JUN 17, 14
AMOUNT
$3.79
00013162-01

Chase
Legal Department
Attn: Cheryl Wolf
194 Wood Ave. S
Iselin, NJ 08830

08830$2710

Charles and Donna Nickerson
3165 Neff Rd
Orofino, ID 83544

September 2, 2014

Jon A. Stenquist
Moffatt Thomas Attorneys at Law
P.O. Box 51505
Idaho Falls, ID 83405-1505
Fax # (208)522-5111

RE: PHH v. Nickerson, etal, Clearwater County Case No. CV-2011-28

Dear Mr. Stenquist,

In your recent affidavit in support of your Motion to Augment the record you testify, "I have access to my client's files in this matter and make this affidavit based upon personal knowledge..." Since you claim to have personal knowledge of your client's files, then you are taking and accepting personal responsibility for the fraud you and your client have perpetrated against the Nickersons and the Court. You have made and are making a personal choice to hide, conceal and/or destroy evidence that validates all the Nickersons' claims and defenses. You have made and are making a personal choice to allow PHH to fraudulently and wrongfully foreclose on the Nickerson property. You have made and are making a personal choice to catastrophically damage and comprehensively destroy all aspects of the Nickersons' life and way of life emotionally, physically and financially.

You know and are personally aware that Chase claims to be in possession of the Nickerson Note and Mortgage, that Chase claims to be the investor on the Nickerson loan, and that the account history provided by Chase is inaccurate which means PHH has no legal, ethical or moral right or authority to foreclose and you and your firm are accomplices to PHH's wrongful foreclosure. As an officer of the Court, you have taken an oath to uphold the law and it is not only your lawful duty but your ethical and moral responsibility to inform the Court PHH has wrongfully foreclosed upon the Nickersons.

Mr. Stenquist, among other violations to be expounded upon under separate cover, you have violated I.C. § 3-201. **Duties of Attorneys. 4. To employ, for the purpose of maintaining the causes confided to him, such means only as are consistent with truth, and never seek to mislead the judges by an artifice or false statement of fact or law.** Specifically, you have intentionally sought to mislead the judge by making false statements including stating Chase never owned the Nickerson Note or Mortgage and that they were only the servicer (You made this false statement eight times in order to thwart the discovery process and deny the Nickersons their equal access to justice.). Further, you used this artifice to mislead the judge into determining there was no contract between Chase and the Nickersons. In addition, by your omission and concealing the fact that Chase claims to own the Nickersons loan and to never have sold nor assigned it to PHH you have violated the Lawyer's oath and are judged by the following

maxim: *suppressio veri expressio falsi* – a suppression of truth is equivalent to an expression of falsehood. (Other violations to be expounded upon under separate cover.)

Mr. Stenquist, it is time for you and your client to come clean. The comprehensive damages suffered by the Nickerson family, my family, and those adversely affected by the nightmare caused by your ongoing actions is severe, significant and substantial. Your exposure and the inescapable exposure you have caused for your firm and client civilly, criminally and morally is enormous and ever increasing. You have purposefully and maliciously misled and committed fraud on the Court by both what you have stated and by your ongoing silence regarding the truths that surround this case. You have purposefully and maliciously performed these actions in order to gain unjust enrichment for you, your firm and your accomplices and destroy the Nickersons emotionally, physically and financially. Your testimony that you have access to Chase's files and personal knowledge of that information condemns you and indicts you and your firm for all responsibility and liability for the intentional fraud perpetrated upon the Nickersons and the Court. It is your sworn duty as an officer of the Court and the duty of your firm under the agreements of their incorporation to make it right. It is your moral and ethical obligation as a human being to make it right. It is clearly within your power and responsibility to stop making excuses for the willful assault on this family and to make it right. Therefore, we require you immediately file whatever motion, affidavit or other document that is appropriate or required to halt this case, stop the ongoing abuse being suffered by our family, and prevent PHH from wrongfully foreclosing.

Mr. Stenquist, you are on notice that we, the Nickersons, the Nickersons' heirs, the Nickersons' relatives and the Nickersons' friends are resolved to pursue whatever steps necessary to avail ourselves of all legal remedies available civilly, criminally and publicly to ensure justice is served upon you, your firm, your client and your accomplices for the individual, joint and conspiring roles and parts you have played, are playing and may continue to play in destroying our life, liberty, financial security, and pursuit of happiness. Our allegations of bad faith, predatory lending, wrongful foreclosure, breach of fiduciary duty, breach of contract, fraud, intentional infliction of emotional distress, unjust enrichment, reckless record keeping, negligence, breach of duty of care, libel and slander of credit, civil conspiracy, offering false and forged instruments for the record, unfair methods and practices, and violations of the lawyer's oath are all true, well documented and will be proven. Your successful thwarting of our story being told thus far will not continue. Mr. Stenquist, you, your alleged client and now your firm know the truth of what you have done to the Nickerson family. You, the leadership of your firm and your client have it within your power to end this assault and make this right. No more excuses. No more legal chicanery. No more payoffs or deals. No more abuse. Do the right thing and do it now.

On behalf of the entire Nickerson family and others adversely impacted by this unlawful action,

Charles Nickerson
cc: Moffat Thomas Board of Directors, Managing Partners, Others

Charles and Donna Nickerson
3165 Neff Rd
Orofino. ID 83544

December 2. 2014

Jon A. Stenquist
Moffatt Thomas Attorneys at Law
P.O. Box 51505
Idaho Falls. ID 83405-1505
Fax # (208)522-5111

RE: PHH v. Nickerson, etal, Clearwater County Case No. CV-2011-28
Settlement Offer dated December 1. 2014

Dear Mr. Stenquist.

Your offer is denied. You need not wait until December 5 to automatically withdraw it. Your fax and your review of the case clearly indicate you have severely underestimated and grotesquely limited the resolve, intentions, and comprehensive lengths the Nickerson Family intends to pursue to find justice in this case. You have also fatally failed to acknowledge and properly defer to your greatest enemy and most undefeatable opponent in this case, the truth. Mr. Stenquist, you and your accomplices can twist it, warp it, hide it, try to change it all you want, but the truth is the truth, and the truth is going to set us free. You may have somewhat successfully prevented the truth from being told, presented and proven thus far. However, time, persistence and different audiences will ultimately prevail against your legal chicanery and categorically hold you accountable for your criminal thievery and unlawful involvement in this case.

Do not nauseate or offend us by saying you do not want to take the Idaho Ranch from us or those we serve. You know we made every payment we were obligated to make and have heroically honored every obligation we had or have ever had regarding this property. It is well documented in the Chase communication records that Chase refused to send statements, give us receipts, provide us with records, etc. It is well documented our payments were misapplied, then applied correctly, that all payments were made and that we were on time and in good standing. It is well documented Chase embezzled thousands of dollars from our escrow surplus. It is well documented criminal acts have been committed and not just with our loan. It is well documented Chase had and still has a contract with the Nickersons and that you have lied and continue to lie about it. It is well documented Chase breached the contract by inaccurate accounting and that you maliciously presented a fabricated account transaction and payment history, which has been contested and proven inaccurate, to cover your and/or their illegal activity. It is well documented you have purposefully thwarted our discovery efforts by not providing the plethora of notes, conversations and documentation regarding the countless calls and hours of conversations between Chase and our family. There is a lot more well documented too, and you, Chase, PHH and Just Law know it. A lot of other people know it too.

Exhibit 15 Pg 1 of 2

Having said that, thank you for taking the time to share your legal strategies and theories with us. We appreciate your neatly crafted attempt to intimidate and/or discourage us, but it did not and it will not work. Frankly, your case overview is full of inaccuracies, false claims and truth loopholes. Your gravest mistake is not realizing our opportunity to tell our story before a just judge, law enforcement agencies and public officials is coming soon. When that day comes, justice will demand answers from you and the evidence will irrefutably support our claims. Whether civilly, criminally, publicly, or all of the above, you and your accomplices will ultimately answer for what you have done to our family. Make no mistake, we will not be silent or silenced until you do. We have lived through and survived the undeserved hell Chase and their accomplices have put us through. We have watched a ranch purchased as a gift to share with others attack and steal our entire life savings, family home, financial freedom and all other assets. We have fought injustice valiantly as others have watched in disbelief and anger as they have seen us endure it. You, nor your accomplices, can change the truth or what we have experienced. We are the ones who were on the recorded calls. We know they exist. We spent countless hours dealing with the incompetence of your client and their record keeping nightmares. We sifted through their abusive credit collection practices until we found representatives with integrity and customer service brains who found our payments and corrected the records. We were the victims of the promised correspondence for our records that never came and that you and your accomplices have now used to try to discredit us. We listened when representatives read back what they had entered into the system. We undeservedly suffered comprehensive and malicious losses, damages, and assaults. Our scars burn with a fervent passion to see justice served and to prevent you from stealing other people's lives and putting them through the anguish you have inflicted upon us. Therefore, you can assume any legitimate settlement offers that might be forthcoming must include confessions and apologies or they will be denied as well. The fact is we can and will rebuild our financial portfolio. However, your theft of our life and freedom cannot be repaid. **There is no just and fair penalty or reparation for what you and your accomplices have done to our family.** You cannot change the fact we did nothing wrong. You cannot change the fact what you, Chase and your accomplices have done is morally, ethically, financially and legally wrong. We want justice served, and we will not stop until we get it. God and a lot of other people out there know the truth of the severe, significant and substantial abuse we have suffered and the superhuman lengths we went to in honoring all commitments regarding this property. Our legal strategy is simple, the truth will set us free. Whether you or your accomplices like it or not, God will be the final Judge in this matter. We pray God will render to each man according to his deeds.

Sincerely,

Charles Nickerson

cc: Benjamin C. Ritchie, Moffat Thomas – Managing Partners

Exhibit 15 Pg 2of2

CHARLES NICKERSON AND DONNA NICKERSON
3165 Neff Rd
Orofino, ID 83544

Defendants Pro Se

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CLEARWATER

PHH MORTGAGE, Plaintiff/Counter-Defendant, vs. CHARLES NICKERSON and DONNA NICKERSON, husband and wife; KNOWLTON & MILES PLLC; WELLS FARGO BANK, N.A., AND JOHN DOES I thru X Defendant, COLDWELL BANKER MORTGAGE, a/d/b/a of PHH MORTGAGE, and JPMORGAN CHASE BANK, N.A. Third Party-Defendants.	Case No.: CV 2011-28 **MOTION TO QUASH EXECUTION AND JUDGMENT**

COMES NOW, Defendants, Charles and Donna Nickerson, to defend our interests in our property from an action that has arisen from fraud, misrepresentation, concealment, fraudulent suppression of material facts, bad faith, breach of trust, breach of contract, abusive debt collection practices, and other such criminal and malicious intent. We hereby move this Court to quash execution and judgment. As detailed throughout the record and in our *Response in Opposition to Set Aside Stay and Issuance of Writ and Order of Sale* and our *Motion for Sanctions*, Chase and PHH have obtained their summary judgments based upon contradictory and intentionally fraudulent and misleading statements. They have purposefully and maliciously misled the District Court, and Judge Griffin prejudicially manipulated the proceedings and issued judgment in their favor. They have created irregularities which render the underlying judgment

void. Therefore, we call on this Court to use its inherent authority to quash execution and judgment.

AUTHORITY

(N.Y.) Execution will be stayed by order of court to prevent fraud or great injustice, either perpetually or for a definite time – *Lansing v. Orcott*, 16 Johns. 4.

Every court has power to watch over the execution of its judgments, and, where its process has been irregularly or fraudulently executed, to quash it. *(Ala. 1880) Rhodes v. Smith, 66 Ala. 174; (Md. 1875) Schultze v. State, 43 Md. 295; (Vt. 1837) Mattocks v. Judson, 9 Vt. 343; (Va. 1795) Hendricks v. Dundass, 2 Wash. 50.*
American Digest 1658 – Present (Century Edition, Volume 21 1st Decennial – 11th Decennial) Part 447. Grounds and Part 467. Grounds.

This Court not only has the inherent power and authority to quash execution and judgment, in the interest of justice, it is its duty to quash it.

CONCLUSION

As we have demonstrated in our *Response in Opposition to Set Aside Stay and Issuance of Writ and Order of Sale* and our *Motion for Sanctions*, and numerous other pleadings before this Court, Chase and PHH have obtained judgments through concealment, deception, and fraud. Therefore, in the interest of justice, this Court must quash execution and judgment.

Wherefore, we request execution and judgment be quashed, and that we be allowed to pursue all of our claims against Chase and PHH.

Oral argument requested.

DATED this 11th day of April, 2017

CHARLES NICKERSON

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 11th day of April, 2017, I caused to be served a true and correct copy of the MOTION TO QUASH EXECUTION AND JUDGMENT by the method indicated below, and addressed to the following:

Elisa Sue Magnuson
Aldridge Pite, LLP
4375 Jutland Dr. STE 200
San Diego, CA 92177
Phone (858)750-7600
Fax (619)590-1385

(•) U.S. Mail
( ) Hand Delivered
( ) Overnight or Priority Mail
( ) Facsimile

Jon A. Stenquist
Moffatt Thomas Barrett Rock & Fields
PO Box 51505
Idaho Falls, ID 83405
Fax (208)522-5111

(•) U.S. Mail
( ) Hand Delivered
( ) Overnight or Priority Mail
( ) Facsimile

Charles Nickerson

FILED April 13, 2017 AT 12:27 p.m. OROFINO, IDAHO
BY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CLEARWATER

PHH MORTGAGE, Plaintiff/Counter-Defendant. vs. CHARLES NICKERSON and DONNA NICKERSON, husband and wife; KNOWLTON & MILES, PLLC; WELLS FARGO BANK, N.A., and JOHN DOES I through X, Defendants, COLDWELL BANKER MORTGAGE, a d/b/a of PHH MORTGAGE, and J P MORGAN CHASE BANK, N.A. Third Party Defendants.	CASE NO. CV 2011-28 ORDER DENYING MOTION TO QUASH EXECUTION AND JUDGMENT and MOTION FOR SANCTIONS

Defendants Charles Nickerson and Donna Nickerson have file Motions to Quash Execution and Judgment and for Sanctions. Nickersons allege that the appeal of this matter is not yet fully resolved. However, The Idaho Supreme Court, in an opinion issued April 27, 2016 affirmed the judgment of the district court and the district court's denial of the Nickersons' Rule 60(b) motions to set aside the judgment. *PHH Mortg. v. Nickerson*, 160 Idaho 388, 400, 374 P.3d 551, 563 (2016), *reh'g denied* (July 19, 2016). A remittitur was issued on July 22, 2016.

The Appeal is fully resolved and Nickersons are merely attempting to relitigate a matter that has been through the litigation process. Nickersons have not provided any factual or legal basis for relief from the Judgment. The Supreme Court has made the

final determination and nothing can be accomplished by this Court hearing oral argument on either motion. Sanctions obviously are not warranted against PHH, the prevailing party and Plaintiff is entitled to proceed with execution of its Judgment of Foreclosure.

Defendant's Motions to Quash Execution and Judgment and Motion for Sanctions are denied.

DATED this 13th day of April, 2017.

Gregory FitzMaurice
District Judge

CERTIFICATE OF SERVICE

I, the undersigned Deputy Clerk of the above entitled Court, do hereby certify that on this 13th day of April, 2017, served a true and correct copy of the Order Denying Motion to Quash Execution and Motion for Sanctions by mail or fax to:

Elisa Sue Magnuson
Aldridge Pite, LLP
13125 W. Persimmon Ln. Ste 150
Boise, ID 83713

✓ Mail
_____ Fax

Charles and Donna Nickerson
3165 Neff Road
Orofino, ID 83544

✓ Mail
_____ Fax

CLEARWATER COUNTY DISTRICT COURT SECOND JUDICIAL DISTRICT STATE OF IDAHO

Carrie Bird, Clerk of Court

By: C. Gering
Deputy Clerk

FILED April 13, 2017 AT 12:27pm OROFINO, IDAHO
BY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CLEARWATER

PHH MORTGAGE, Plaintiff/Counter-Defendant. vs. CHARLES NICKERSON and DONNA NICKERSON, husband and wife; KNOWLTON & MILES, PLLC; WELLS FARGO BANK, N.A., and JOHN DOES I through X, Defendants, COLDWELL BANKER MORTGAGE, a d/b/a of PHH MORTGAGE, and J P MORGAN CHASE BANK, N.A. Third Party Defendants.	CASE NO. CV 2011-28 ORDER LIFTING STAY

A stay of execution pending appeal of an Amended Judgment, entered on June 24, 2014 was issued by this Court on October 15, 2015.

The appeal process has been completed, with the Supreme Court affirming the Judgment by opinion issued April 27, 2016, rehearing was denied, and a remittitur was issued on July 22, 2016. There is no further reason to stay the execution of the Judgment of Foreclosure.

A Writ of Execution on the Judgment of Foreclosure and Order of Sale on Foreclosure shall be issued.

DATED this 13th day of April, 2017.

Gregory FitzMaurice-District Judge

CERTIFICATE OF SERVICE

I, the undersigned Deputy Clerk of the above entitled Court, do hereby certify that on this 13th day of April, 2017, served a true and correct copy of the Order Lifting Stay by mail or fax to:

Elisa Sue Magnuson
Aldridge Pite, LLP
13125 W. Persimmon Ln. Ste 150
Boise, ID 83713

✓ Mail
_____ Fax

Charles and Donna Nickerson
3165 Neff Road
Orofino, ID 83544

✓ Mail
_____ Fax

CLEARWATER COUNTY DISTRICT COURT SECOND JUDICIAL DISTRICT STATE OF IDAHO

Carrie Bird, Clerk of Court

By: L. Hering
Deputy Clerk

FILED April 13, 2017 AT 12:28 p.m. OROFINO, IDAHO
BY

PETER J. SALMON (ISB #6659)
ELISA SUE MAGNUSON (ISB #8085)
ALDRIDGE PITE, LLP
4375 Jutland Dr., Ste. 200
San Diego, CA 92177
Telephone: (858) 750-7600
Facsimile: (619) 590-1385
E-mail: emagnuson@aldridgepite.com

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CLEARWATER

PHH MORTGAGE, Plaintiff, v. CHARLES NICKERSON, DONNA NICKERSON; COLDWELL BANKER MORTGAGE; J.P. MORGAN CHASE BANK, N.A.; KNOWLTON & MILES PLLC; WELLS FARGO BANK, N.A. Defendants.	Case No.: CV-2011-0000028 **ORDER OF SALE AND DECREE OF FORECLOSURE**

COMES NOW Plaintiff PHH Mortgage ("Plaintiff"), through its attorney of record; the Court having rendered judgment for foreclosure in this matter;

NOW, THEREFORE, IT IS HEREBY ORDERED AND ADJUDGED:

1. That Plaintiff in accordance with the Judgment rendered in this matter have a decree of foreclosure against the interests of Defendants in the real property at issue, and against the real property at issue as legally described herein and commonly known as 3165 Neff Road,

Orofino, ID 83544 ("Subject Property"), in regard to the Deed of Trust recorded as instrument 190568 on October 4, 2002, in the official records of Clearwater County, Idaho, and Note executed by the borrowers Donna Nickerson and Charles R. Nickerson on October 4, 2002 ("collectively referred to herein as the Subject Loan"), in an amount as follows:

- Judgment Amount $385,276.45
- Interest from 4/4/14 to 6/23/14 at the rate of 5.25%..... $ 3,964.95
- Interest from 6/24/14 to present at the rate of 5.25%..... $53,969.34
- **TOTAL JUDGEMENT AMOUNT through 7/22/17** $443,210.74

Additionally interest accrues from the date of judgment at the rate set forth by Idaho Code Section 28-22-104 and the Idaho State Treasurer's Office which currently is 5.25% or $55.41 daily from February 23, 2017. The repayment of the aggregate sums described herein is secured by a valid Deed of Trust and lien on the Subject Property in favor of Plaintiff.

2. Plaintiff has a first priority lien subject to the Deed of Trust on the Subject Property which is prior in time and superior in right to any right, title, claim, or interest that all Defendants, and all persons claiming under them, may have in the Subject Property, either as encumbrancers, purchasers, or otherwise; said first priority mortgage lien being evidenced by the Deed of Trust recorded as instrument 190568 on October 4, 2002, in the official records of Clearwater County, Idaho.

3. The interests of Defendants are junior and subordinate to those of Plaintiffs, and that Defendants and all persons claiming under Defendants, either as encumbrancers, purchasers or otherwise, shall be forever barred and foreclosed of all right, title and interest and equity of redemption they may have in and to the Subject Property, when the time for redemption has elapsed under Idaho Law.

TO THE CLEARWATER COUNTY, IDAHO SHERIFF:

4. The following described mortgage real property shall be sold at public auction in the County of Clearwater, State of Idaho, by and under the direction of the Sheriff of Clearwater County, Idaho, subject to the statutory right of said Defendants to redeem the same in accordance with the laws of the State of Idaho, to-wit:

SITUATE IN THE COUNTY OF CLEARWATER, STATE OF IDAHO.

TOWNSHIP 36 NORTH, RANGE 2 EAST, BOISE MERIDIAN
SECTION 22: SE1/4 NW1/4, SE1/4 SW1/4 NW 1/4

Which may now be known as: **3165 Neff Road, Orofino, ID 83544.**

5. The Sheriff shall give notice of such sale in the manner provided by law.

6. Plaintiff shall be permitted to credit bid at such sale any amount up to and including the total amount of the Judgment as set forth herein.

7. Plaintiff or any party to the suit may become a purchaser at the sale and the Sheriff of Clearwater County, Idaho be directed to execute a certificate of sale and, subsequently, a deed to the purchaser of the Subject Property.

8. The proceeds of the sale under foreclosure shall be applied:

a) First, in payment of the costs of the foreclosure sale;

b) Second, in payment of the amounts due Plaintiff described in paragraph 1 above;

c) Third, upon completion of the foreclosure sale, if any, and after payment to Plaintiff, any surplus funds from the foreclosure sale will be deposited with the Clerk of the Court and distributed upon either further order of the Court or upon Stipulation of the appearing parties in this matter in accordance with Idaho Law.

9. The Sheriff shall make a report of such sale and file it with the Clerk of this Court within the time required by law.

10. The Sheriff will make, execute and deliver to the purchaser or purchasers a certificate of sale and, following the expiration of the period of redemption, a Sheriffs Deed of the premises so sold, and setting forth each tract or parcel of land so sold and the sum paid therefore.

11. That after the confirmation of the sale of the Subject Property, the purchaser or purchasers at such sale, or their heirs or assigns, be let into possession of the premises so sold on production of the certificate of sale or a duly authenticated copy thereof, and that each and every other party to this action who may be in possession of the premises, under them or either of them shall deliver to such grantee or grantees named in such certificate of sale possession of such portion of the premises as shall be described under the certificate of sale.

IT IS FURTHER ORDERED AND ADJUDGED:

That jurisdiction of this cause is hereby expressly reserved and retained for the purpose of making such further orders as may be necessary in order to carry this Judgment and Decree of Foreclosure into effect and correct any mathematical error, to grant any accrued credits, or for the purpose of making such further orders as may be necessary or desirable.

ENTERED this 13th day of April, 2017

DISTRICT COURT JUDGE

HONORABLE GREGORY FITZMAURICE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of April, 2017, I caused a true and correct copy of this document to be served to:

Counsel for Plaintiff: Elisa S. Magnuson ALDRIDGE PITE, LLP 13125 W Persimmon Ln Ste 150 Boise, ID 83713 Fax: (858)412-2789 *Attorney for Plaintiff*	✓ US Mail ____ Facsimile ____ Fed Ex ____ Other
Counsel for Defendant JP Morgan Chase: Jon Stenquist MOFFATT THOMAS PO Box 51505 Idaho Falls, ID 83405 Fax: (208)522-5111 E-mail jas@moffatt.com	✓ US Mail ____ Facsimile ____ Fed Ex ____ Other
Defendants: Charles and Donna Nickerson 3165 Neff Road Orofino, ID 83544	✓ US Mail ____ Facsimile ____ Fed Ex ____ Other

CLEARWATER COUNTY DISTRICT COURT SECOND JUDICIAL DISTRICT STATE OF IDAHO

C. Gering

Clerk of the Court

Case No. CV2011-28
Filed April 27, 2017
at 4:46 o'clock P. M
Carrie Bird
By KJ
Clerk
Deputy

CHARLES NICKERSON AND DONNA NICKERSON
3165 Neff Rd
Orofino, ID 83544

Defendants Pro Se

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CLEARWATER

PHH MORTGAGE, Plaintiff/Counter-Defendant, vs. CHARLES NICKERSON and DONNA NICKERSON, husband and wife; KNOWLTON & MILES PLLC; WELLS FARGO BANK, N.A., AND JOHN DOES I thru X Defendant, COLDWELL BANKER MORTGAGE, a/d/b/a of PHH MORTGAGE, and JPMORGAN CHASE BANK, N.A. Third Party-Defendants.	Case No.: CV 2011-28 **MOTION TO VACATE OR AMEND ORDER OF SALE AND DECREE OF FORECLOSURE**

COMES NOW, Defendants, Charles and Donna Nickerson, respectfully, with the expectation of fairness and impartiality in the administration of and equal access to justice; request this Court vacate or amend its Order for Sale and Decree of Foreclosure for the reasons set forth herein.

In accordance with our motion to reconsider filed in conjunction with this motion and facts of law that defeat any adverse judgment in favor of PHH, we request the Court vacate its Order for Sale and Decree of Foreclosure.

If the Court is unwilling to vacate in the interest of justice, then we request the Court amend its order to conform with the laws and rights of redemption. According to I.C. § 6-101, "sales of real estate under judgments of foreclosure of mortgages and liens are subject to

redemption", and according to I.C. §§ 11-310 and 11-401 – 11-403 we have one year to redeem the property during which time we remain in possession of the property.

> A mortgage foreclosure decree, providing that the purchaser of mortgaged premises at the foreclosure sale should be let into possession thereof, and should have possession on production of sheriff's deed, conformed to the statute relating to redemption of realty from mortgage foreclosure sale, and cannot be construed to mean that mortgagee or any other purchaser at such sale was to have possession of the mortgaged property prior to one year from the date of sale or before the issuance of the sheriff's deed. *Eastern Idaho Loan & Trust Co. v. Blomberg*, 62 Idaho 497, 113 P.2d 406 (1941).

According to this authority, the decree granting immediate possession upon production of the Sheriff's Certificate of Sale cannot be construed to mean any purchaser at the sale will be let into possession of our property prior to one year from the date of sale or before the issuance of the Sheriff's Deed which is not issued until the year of redemption has expired. Further, according to I.C. § 11-403, "If no redemption be made within one (1) year after the sale...the purchaser or his assignee is entitled to a conveyance [legal transfer of ownership]." Until the time of redemption expires, the purchaser has no legal grounds for possession. Therefore, in order to avoid any confusion or further liability for Clearwater County and the officials acting on its behalf regarding this matter and prevent future actions and civil dispute, the order should be amended to explicitly state the purchaser will not be allowed possession until the year of redemption has expired and the law allows the Sheriff to issue his deed.

Further, this property is a two parcel property of 50± acres that is listed as two separate parcels in the County Tax Records. We purchased and were given a wet note Warranty Deed for the two parcels which remains in our possession on the entire 50± acreage ranch. We only agreed to provide one parcel to Coldwell Banker as a security interest when the original loan was negotiated. However, as the record shows, Coldwell Banker agreed verbally and in writing to be bound by all over 40 acre restrictions associated with a mortgage as part of their agreement with us. Therefore, if this Court fails to vacate judgment, its order must be amended to specify only the one parcel is to be or can be sold to satisfy the judgment. As a matter of record, I.C. § 11-304 states when the sale is of real property consisting of several known lots or parcels they must be sold separately and in the order the judgment debtor determines and the sheriff must follow their directions. Thus, even if both parcels were lawfully able to be sold, additional directions must be provided to allow us to direct the order of sale.

The equity in our one parcel more than covers the entire judgment amounts awarded to PHH and Chase. Nonetheless, even if it did not, the property is the only security ever provided

on this loan and is the only lawful recourse available to satisfy any alleged default or judgment suffered in defending our right to ownership. Per any conflict associated with this property, the original loan documents granted us the right to present any defenses and claims to refute them. Thus, it is clearly beyond the right of the Court to abuse its discretion, judicial or legal, to create an error of law in the circumstances surrounding execution of judgment to exercise the perversity of its will. Therefore, any judgment must cause the sale of the property to satisfy any and all judgments that have been awarded as a result of our being forced to fight and defend our property rights against this wrongful foreclosure. This District Court has disallowed our contractual right to offer a defense through procedural manipulation and effectually impeding our access to the Court record, but it is beyond the jurisdiction or discretion of this Court to deny us the right to use the property value to satisfy any resulting judgments – I.C. § 6-108. Further, this District Court has denied us right to due process and the right to be heard according to the law, but it is beyond the jurisdiction or the authority of the Court to obligate us to give our abusers any moneys beyond the equity from the sale of the alleged security interest to fund their mortgage fraud scheme.

Additionally, moneys beyond the satisfaction of judgment represent equity in the property that lawfully belongs to us, and must be returned to us upon sale of the property as its rightful owner per I.C. §§ 6-102 and 11-301. PHH and Chase must not be awarded for their collusion to commit fraud and defraud our family with unjust gain. It is also not lawful for Clearwater County to seize our moneys and hold them hostage for unjust gain without cause or right. This judgment is mortgage terrorism against our property and financial portfolio. It is unconscionable that after paying years of payments toward the satisfaction of a fraudulently crafted loan; making significant investments and improvements to the property which substantially increased its property value well beyond the original purchase price and loan amount, as has been demonstrated with certified assessments and appraisals; that PHH and Chase could be allowed through prevention of performance, abusive debt collection, false claims, and forged assignments to now secure a judgment that is greater than the original loan amount. Though this represents the unbelievable abuse of justice and democracy, it happened to us in Clearwater County, Idaho, without cause or right. We submit the massiveness of this event should demand the Idaho Emergency Broadcast System to immediately publish the following emergency broadcast to all homeowners, business owners, and consumers in Idaho: Beware: It could happen to you!

Wherefore, we request the Court vacate the order as requested in our motion to reconsider or amend the order to explicitly state the purchaser at the sale will not be let into possession until the year of redemption has expired, specify the parcel that is to be sold, and instruct the Sheriff to pay all moneys beyond the judgment amount to the Nickersons at the time of the sale. Once again, we ask this Court to uphold the laws that are in place to save our home, consider the truth that has been hidden within your chambers, and restore judicial integrity and fairness to this Clearwater County District Court in regards to this matter.

Oral argument requested.

DATED this 27th day of April, 2017

CHARLES NICKERSON

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 27th day of April, 2017, I caused to be served a true and correct copy of the MOTION TO VACATE OR AMEND ORDER OF SALE AND DECREE OF FORECLOSURE by the method indicated below, and addressed to the following:

Elisa Sue Magnuson
Aldridge Pite, LLP
4375 Jutland Dr. STE 200
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( ) Facsimile

Charles Nickerson

Case No. CV2011-28
Filed April 27, 2017
at 4:46 o'clock P. M
Carrie Bird Clerk
By KJ Deputy

CHARLES NICKERSON AND DONNA NICKERSON
3165 Neff Rd
Orofino, ID 83544

Defendants Pro Se

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CLEARWATER

PHH MORTGAGE, Plaintiff/Counter-Defendant, vs. CHARLES NICKERSON and DONNA NICKERSON, husband and wife; KNOWLTON & MILES PLLC; WELLS FARGO BANK, N.A., AND JOHN DOES I thru X Defendant, COLDWELL BANKER MORTGAGE, a/d/b/a of PHH MORTGAGE, and JPMORGAN CHASE BANK, N.A. Third Party-Defendants.	Case No.: CV 2011-28 **MOTION TO RECONSIDER ORDER DENYING MOTION TO QUASH EXECUTION AND JUDGMENT AND MOTION FOR SANCTIONS**

COMES NOW, Defendants, Charles and Donna Nickerson, respectfully, but with all rights vested and granted in us as natural born citizens of the United States and property owners of a 50± deeded acreage organic farm and working ranch situated in Orofino, Idaho, to challenge the orders of this Court in accordance with I.R.C.P 11 and the interest of justice. We hereby request this Court procedurally, systematically, and comprehensively reconsider its Order Denying Motion to Quash Execution and Motion for Sanctions and stop and forever bar the targeted assault against our family and property for the reasons set forth herein. We request this motion be considered in conjunction with all evidence and filings that have been entered by us in the record and that is readily available to this Court. To allow this foreclosure to proceed is not only morally and ethically wrong, but doing so constitutes a wrongful foreclosure; causes our family extreme, substantial and significant damages and injuries; and causes Clearwater County

exposure and liability for wrongful foreclosure, unlawful execution, intentional infliction of emotional distress, judicial malice, unwarranted economic damages, actual and consequential damages, and other damages as will be detailed under separate cover.

In the interest of justice and judicial expediency and to avert future necessary actions regarding the unlawful seizure and wrongful foreclosure of our property, we request this Court comprehensively reconsider the prejudicial and procedurally manipulated judgments that have been rendered by this District Court. The summary judgment granted to PHH relies upon the summary judgment granted to Chase. The summary judgment granted to Chase relies upon deceit and attorney negligence. Both judgments rely upon contradictory testimony; fraudulently crafted documents that have been proven to violate Idaho **(I.C. § 18-3203. Offering false or forged instruments for record)** and federal laws; fail to establish PHH has any ownership in the property whatsoever (See *Notice of Supplemental Evidence);* establish Chase has repeatedly lied to Idaho Courts about their true involvement in this action and have unlawfully averted discovery that defeats summary judgment in favor of either; and implies collusion and corruption in the judicial duty of establishing and maintaining civilized standards of procedure and evidence. Evidence exists in the record, in truth, in reality, in fact, and in law, which creates genuine issue of material fact that prevents any summary judgment in favor of PHH or Chase while facts remain that demand summary judgment in favor of our family. PHH, Chase, Moffat Thomas, John Stenquist, Kirk Houston, Benjamin Ritchie, Just Law, Kipp Manwarring, Jason Rammel, Amelia Sheets, Aldridge Pite, Elisa Sue Magnuson, Peter Salmon, their office staff and accomplices, this Court, the Idaho Supreme Court, and, soon to be named others, are fully aware Judge Michael Griffin, has caused to be created a record based on false premises, unjust rulings, malicious injustice and comprehensive fraud. Judge Griffin has granted those with long rap sheets of mortgage fraud and servicing abuse in Idaho and across the United States the right to obstruct our ability to undertake reasonable discovery to produce triable issues of fact and repeatedly utilize legal chicanery and deceit to prevent us from being heard. Judge Griffin's authority to cause damage and injury to our family is solely based on the jurisdiction and authority vested in him and granted to him by Clearwater County, Idaho.

For the record, the execution of Judge Michael Griffin's authority is being carried out by Judge Gregory FitMaurice. This case has been litigated and these unlawful acts of judicial overreach and prejudicial rulings have been committed under the supervision of previous Administrative Judge John Stegner, and the current Administrative Judge Jeff Brudie. They have

been mistakenly and wrongfully affirmed by Supreme Court Justices Joel D. Horton, Justice Daniel T. Eismann, Justice Roger S. Burdick, and Justice Warren E. Jones, and Chief Justice Jim Jones,

In our motions, we have clearly set forth the fraud, misrepresentation, concealment, and deceit perpetrated by PHH and Chase throughout this litigation, and have clearly demonstrated Judge Griffin's manipulation of the record. We are compelling this Court to consider the facts and evidence we submitted to the District Court prior to judgment being rendered. Our factual basis for relief from judgment is, based on the evidence before the Court, PHH does not and did not hold or own our Note and Mortgage (See *Notice of Supplemental Evidence*). This evidence has never been addressed by the Courts nor refuted by Chase and PHH. Please carefully review the Supreme Court Opinion and you will realize this evidence was ignored by both the District Court and Supreme Court. By simply ignoring the evidence put before him, exceeding his discretion, and failing to provide opinion as to why, Judge Griffin prejudiced the record and created procedural impossibility for us to provide the Supreme Court with reversible decision. Obviously, any Court can rule however they choose if they are allowed to rule by will and prejudice, not fact or truth. Further, the attorneys of record have acted as assistant judges in participating with rulings, instructing the Court on procedure and determinations, and asserting jurisdiction over this foreclosure case. Their exercise of jurisdiction has denied our fundamental Constitutional rights to due process. Thus, justice and constitutional due process require you to stand in the gap of error and false claims that has permeated this litigation, and give democracy and justice the opportunity to prevail. Legal issues, contractual provisions, applicable law and judicial responsibility require Chase and PHH be compelled to answer to this evidence; and then be required to truthfully answer our interrogatories and requests for production. Otherwise, the execution of this judgment is unlawful and constitutes judicial malice as the root and base issue of standing has never been litigated or resolved.

> A "Movant must show that it has an interest in the relevant note, and that it has been injured by debtor's conduct (presumably through a default on the note). Such is necessary to establish constitutional standing." *In re Wilhelm*, 407 B.R. 392, 398 (Bankr. D. Idaho 2009).

PHH has not refuted Chase's claim of possession of the Note. Therefore, PHH admits Chase owns the Note. Thus, PHH, according to I.C. § 28-3-301 is not the person entitled to enforce the note, because the note is not endorsed to them, nor is it in their possession.

I.C. § 28-3-301. Person entitled to enforce instrument. "Person entitled to enforce" an instrument means (i) the holder of the instrument, (ii) a nonholder in possession of the instrument who has the rights of a holder…
I.C. § 28-1-201. General definitions. (21) "Holder" means: (A) The person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession;

Therefore, our legal basis and authority for relief from judgment is the irrefutable fact that PHH did not have standing to file their complaint. PHH was not and is not the Holder; and according to Idaho law, they are not entitled to enforce.

Wherefore, since both the District Court and Supreme Court have ignored the fact that Chase claimed to be in possession of our Note and the investor on our loan in January of 2014, a fact that demonstrates PHH was not the Holder and did not have standing to file the complaint, we request this Court address this issue and vacate its Order Denying Motion to Quash Execution and Judgment and Motion for Sanctions and hold in abeyance its Order of Sale and Decree of Foreclosure.

We further request this Court review the errors made by this Court's predecessor in their entirety and understand by executing judgment you are fully affirming and fully aligning yourself and Clearwater County with the judgments rendered and all resulting liability and exposure incurred.

There are grave inconsistencies and substantial irregularities in the record created by PHH and Chase. This District Court and the Idaho Supreme Court have made contradictory rulings and findings that, in and of themselves, create genuine issues of material fact that defeat summary judgment and challenge the integrity and sobriety of the Court. This District Court is not the trier of fact in a summary judgment ruling and has not been granted the right or discretion to render summary judgment in the presence of genuine issues of material fact. Regarding standing, the following contradictory facts and opinions exist:

- In the District Court's Memorandum Opinion RE: Chase's Motion for Summary Judgment, this Court stated, "Chase initially serviced this loan. There was no contract between Chase and the Nickersons that has been presented to the court." However, the Court contradicts this statement, after no new evidence regarding any contractual relationship between Chase and the Nickersons had been provided by Chase or PHH, in its Memorandum Opinion RE: Plaintiff's Second Motion for Summary Judgment and Nickerson's Motion Summary Judgment when it stated, "J P Morgan Chase Bank (Chase) owned the note and serviced the loan from the

end of 2007 until the beginning of 2010." This Court is claiming Chase owned the note and therefore, had a contract with the Nickersons.

- In the Undisputed Facts RE: Plaintiff's Complaint section of the District Court's Memorandum Opinion RE: PHH's Motion for Summary Judgment, this Court stated, "The note was initially serviced by J P Morgan Chase Bank (Chase), and later reconveyed to PHH." However, the Court contradicted this undisputed fact in its more recent Memorandum Opinion RE: Plaintiff's Second Motion for Summary Judgment and Nickerson's Motion Summary Judgment when it stated, "The note was initially serviced by Mortgage Service Center. J P Morgan Chase Bank (Chase) owned the note and serviced the loan from the end of 2007 until the beginning of 2010." The very fact this Court disputes its own undisputed facts raises genuine issues of material fact
- Chase denied they were assigned the note in 2007. See *JPMorgan Chase Bank, N.A. 's Answer to Third Party Complaint*, ¶ 6. This contradicts the District Court's finding that Chase acquired the note in 2007.
- The District Court found "The note was assigned from Coldwell Banker Mortgage to Fannie Mae in December of 2002." However, the only evidence in the record regarding Fannie Mae is a letter Fannie Mae sent to us in which Fannie Mae stated they purchased the loan in December of 2002 and sold it in December of 2009. The Court ruled this evidence was hearsay and did not consider it even though this creates a genuine issue of material fact in the chain of title. He then used this evidence to rule against us when it was in favor of the banks.
- The District Court then contradicts the rest of the Fannie Mae letter by finding "J P Morgan Chase Bank (Chase) owned the note and serviced the loan from the end of 2007 until the beginning of 2010." Chase could not have owned the note in 2007 because Fannie Mae claimed ownership until December of 2009.
- The District Court then claims, "Chase assigned the note to PHH in 2010 (June)." However, PHH contradicts the Court's findings by claiming Fannie Mae assigned the note directly to them. Chase contradicts the Court's findings in its response to our QWR and its Notice of New Creditor where Chase claims to have bought our note in December 2009 and to still have it in its possession as of January 2014.
- PHH and Chase have presenting conflicting principal balances on the account.

- The affidavit PHH is relying upon for their Summary Judgment is invalidly notarized, constitutes Notary Fraud, violates I.C. § 55.716, and New Jersey code which requires notaries affix their signature to all notarizations, and conflicts with other testimony in the record regarding default.
- The default amount claimed by PHH in their complaint differs by over $11,000 to which they claimed after they were forced to examine their account statements.
- We have provided affidavit testimony we did not default.

In Summary, The Courts, PHH and Chase have presented the following facts as the chain of title to the alleged note: a) Coldwell sold the loan to Fannie Mae, however, there is no record of this transfer in the Clearwater County land records, nor has any assignment been presented, b) Coldwell assigned the loan to Chase, c) Fannie Mae transferred the loan to PHH, d) Chase had not ever owned the loan, and e) Chase assigned the loan to PHH.

However, a) Coldwell could not both sell the loan to Fannie Mae, and then subsequently assign the loan to Chase. b) There is no record of transfer from Fannie Mae to PHH, no allonges on the Note from Fannie Mae to PHH, and Fannie Mae claims to have terminated their interest in the loan on December 3, 2009. c) Chase did not and could not assign the loan to PHH because Chase has claimed they did not own the loan. However, in contradiction, the evidence demonstrates Chase claims to have purchased the loan on December 3, 2009, which is the same date Fannie Mae terminated their interest in the loan, and Chase claims to still own the loan as of January 10, 2014, which has the same result – Chase did not and has not assigned the Nickersons Note and Mortgage to PHH.

Further, no accurate default or the existence of default without contradiction or issues of fact and law has been established.

The contradictions of the Court, Chase and PHH demonstrate issues of fact and law exist regarding PHH's standing. Thus, summary judgment in PHH's favor must be dismissed. Further, the Supreme Court found Chase was an owner of the Note. Therefore, both summary judgments were based on false claims and must be reversed.

Executing a foreclosure judgment against this property with evidence in the record that clearly invalidates any summary judgment in favor of PHH or Chase demonstrates extreme malice and the targeted comprehensive negligence of the Idaho Judicial Branch against Charles and Donna Nickerson and their property situated in Orofino, Idaho.

All it takes for evil to prosper is for good men to do nothing.

No power on earth has a right to take our property from us without our consent.

John Jay, First Chief Justice of the United States Supreme Court

We have committed no right or act to give cause or right for our property or consent to our property being taken from us.

This is our home. We want to keep it. We have, and have always had, the wherewithal to keep it. We are resolved to keep it.

All instruments, evidence, testimony, motions, briefs, and notices of issue we have presented to this Clearwater County District Court and the Idaho Supreme Court have been filed to protect the interests and ownership of two parcels of property known separately in the Clearwater County Record originally as 3165 Neff Road and now as 139 Neff Road, and the equity firmly established in those two parcels for the benefit and enjoyment of the entire Nickerson family and other individuals, groups and denominations from within and outside the State of Idaho. As such, all losses, damages and injuries being incurred have and are affecting the Nickersons, their children, their heirs, those they serve, the integrity of the Clearwater County records, and the wet ink Warranty Deed in the current possession of the Nickerson Family which no person or entity can lawfully claim right or cause to act against. The litigation of this case has not been resolved based on the true merits of the case; due process has not been served; and the right to a defense has been irrefutably denied Charles and Donna Nickerson and all others being comprehensively damaged and injured by these proceedings. Execution of judgment against our property demonstrates this District Court has ignored, failed and refused to consider evidence in the record; intentionally failed to enter or render opinions so they could be pointed to, reviewed, and reversed in a higher court in violation of judicial standards; and caused extreme injustice and prejudice to occur by its rulings based on false finding of fact. These proceedings have violated and made a mockery of the Idaho Rules of Civil Procedure and have created a record which the Supreme Court has been unwilling to overturn because doing so required it to set and establish precedents they were apparently unwilling or unable to render even in the best interest of justice.

We have been forced to represent ourselves pro se with extreme prejudice due to the admitted negligence of our Idaho attorney and the record he caused to be created (*See Affidavit In Support of Motion of Relief, Exhibit 8, John Mitchell's Affidavit*), glaringly obvious judicial incompetence and prejudice of Justice Michael Griffin (See *Motion For Relief From Judgment*) and the State of Idaho's apparent prejudice against pro se litigants. It is unjust and prejudicial to

hold pro se litigants to the standards set forth for civil proceedings without latitude while allowing judges and attorneys impunity in failing to meet deadlines, follow the rules, and tell the truth. This violates case law from the Ninth Circuit which requires some latitude be given to pro se litigants, especially on the technical side of the Rules of Civil Procedure.

> "We recognize that the plaintiff represented himself and therefore, in evaluating his compliance with the technical rule of civil procedure, we treat him with great leniency." *Draper v. Coombs*, 792 F.2d 945 (9th Cir. 1986)

This demonstrates extreme prejudice and is in violation of the United States Constitution and the right of states to exist. We submit we have already paid for the state and federal laws to be written and for the salaries of those who write and are supposed to enforce the laws. It is unjust and unfair to then require a victim, an innocent homeowner like us whose property and equity is being stolen without cause or right, to pay a private citizen (an attorney, a person whose title by definition means to twist and turn) to make the rest of you do your job.

The fact we rely upon to defeat Summary Judgment is *Truth is sovereign.*

To allow any adverse ruling against Charles and Donna Nickerson in this matter demonstrates NO person or financial portfolio can afford to own a home or do business in the State of Idaho.

The law cannot be bent by favor, not broken by power, nor corrupted by money; for not only if it be overthrown, but even if it be neglected or carelessly preserved, there is nothing secure in what anyone may think he has [in Idaho], or will inherit from his father [in Idaho], or yet may leave to his children [in Idaho]. Cicero, Pro CAECINA 73

I believe that banking institutions are more dangerous to our liberties than standing armies. Thomas Jefferson

Mr. District Court Judge, do your duty. Uphold the law, protect justice, and use the powers vested in you to defend justice and do what is right and equitable under the circumstances and the law. Let reason and conscience compel you to help us save our home. We have done nothing wrong. We did not default. PHH has no cause or right to take our home. Further, any judgment in favor of Chase is negated by their blatant deception and fraud. Any reasonable person would deduce this entire litigation has been a fraudulent attempt to steal our equity and conceal criminal actions that expose Chase and PHH to extreme liability and exposure from audit and consequence. This entire litigation is rooted in mortgage fraud, predatory lending,

abusive debt collection and servicing abuse practices. Please be a just judge and allow democracy and the judicial system to preserve its dignity and integrity. Hold PHH, Chase and their accomplices accountable for their criminal actions and inactions to the fullest extent of the law.

Oral argument requested.

Justice demanded.

DATED this 27th day of April, 2017

CHARLES NICKERSON

THE STOP THE ABUSE CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 27th day of April, 2017, I caused to be served a true and correct copy of the MOTION TO RECONSIDER ORDER DENYING MOTION TO QUASH EXECUTION AND JUDGMENT AND MOTION FOR SANCTIONS by the method indicated below, and addressed to the following:

Elisa Sue Magnuson
Aldridge Pite, LLP
4375 Jutland Dr. STE 200
San Diego, CA 92177
Phone (858)750-7600
Fax (619)590-1385

(x) U.S. Mail
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Jon A. Stenquist
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PO Box 51505
Idaho Falls, ID 83405
Fax (208)522-5111

(x) U.S. Mail
( ) Hand Delivered
( ) Overnight or Priority Mail
( ) Facsimile

On behalf of my family, those I serve, and my fellow American citizens, these documents are being served so you and your accomplices personally, and in collusion, may be without excuse and held accountable for these and all other rules, laws and governing principles you have violated by your comprehensive actions and inactions. Liberty and justice for all includes our family and we intend to present the truths of this matter not only to you and to this Court, but to the highest Courts in this land, and ultimately to the Final Judge.

Thou shalt not steal.

No one should suffer for the act of another.

Charles Nickerson

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CLEARWATER

PHH MORTGAGE, Plaintiff/Counter-Defendant. vs. CHARLES NICKERSON and DONNA NICKERSON, husband and wife; KNOWLTON & MILES, PLLC; WELLS FARGO BANK, N.A., and JOHN DOES I through X, Defendants, COLDWELL BANKER MORTGAGE, a d/b/a of PHH MORTGAGE, and J P MORGAN CHASE BANK, N.A. Third Party Defendants.	CASE NO. CV 2011-28 ORDER DENYING MOTION TO VACATE OR AMEND ORDER OF SALE AND DECREE OF FORECLOSURE

Defendants' Motion to Vacate or Amend Order of Sale and Decree of Foreclosure is DENIED.

DATED this 16th day of May, 2017.

Gregory FitzMaurice
District Judge

CERTIFICATE OF SERVICE

I, the undersigned Deputy Clerk of the above entitled Court, do hereby certify that on this 16th day of May, 2017, served a true and correct copy of the Order Denying Motion to Vacate or Amend Order of Sale and Decree of Foreclosure by mail or fax to:

Elisa Sue Magnuson
Aldridge Pite, LLP
13125 W. Persimmon Ln. Ste 150
Boise, ID 83713

X Mail
_____ Fax

Charles and Donna Nickerson
3165 Neff Road
Orofino, ID 83544

X Mail
_____ Fax

Jon Stenquist
Moffett Thomas
P.O. Box 51505
Idaho Falls, ID 83405

X Mail
_____ Fax

Carrie Bird, Clerk of Court

By: Babi Dey
Deputy Clerk

FILED May 16, 2017
12:17 PM BP
BY _____ CLEARWATER, IDAHO

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CLEARWATER

PHH MORTGAGE, Plaintiff/Counter-Defendant. vs. CHARLES NICKERSON and DONNA NICKERSON, husband and wife; KNOWLTON & MILES, PLLC; WELLS FARGO BANK, N.A., and JOHN DOES I through X, Defendants, COLDWELL BANKER MORTGAGE, a d/b/a of PHH MORTGAGE, and J P MORGAN CHASE BANK, N.A. Third Party Defendants.	CASE NO. CV 2011-28 ORDER DENYING MOTION TO RECONSIDER ORDER DENYING MOTION TO QUASH EXECUTION AND JUDGMENT

Defendants' Motion to Reconsider Order Denying Motion to Quash Execution and Judgment and Motion for Sanction is DENIED.

DATED this 16th day of May, 2017.

Gregory FitzMaurice
District Judge

CERTIFICATE OF SERVICE

I, the undersigned Deputy Clerk of the above entitled Court, do hereby certify that on this 16th day of May, 2017, served a true and correct copy of the Order Denying Motion to Reconsider Order Denying Motion to Quash Execution and Judgment and Motion for Sanctions by mail or fax to:

Elisa Sue Magnuson
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Carrie Bird, Clerk of Court

By: Babi Dey
Deputy Clerk

FILED 5/25/17 AT 4:42 pm OROFINO,IDAHO
BY BM

CHARLES NICKERSON AND DONNA NICKERSON
3165 Neff Rd
Orofino, ID 83544

Defendants Pro Se

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CLEARWATER

PHH MORTGAGE, Plaintiff/Counter-Defendant, vs. CHARLES NICKERSON and DONNA NICKERSON, husband and wife; KNOWLTON & MILES PLLC; WELLS FARGO BANK, N.A., AND JOHN DOES I thru X Defendant, COLDWELL BANKER MORTGAGE, a/d/b/a of PHH MORTGAGE, and JPMORGAN CHASE BANK, N.A. Third Party-Defendants.	Case No.: CV 2011-28 **NOTICE OF ISSUES**

COMES NOW, Defendants, Charles and Donna Nickerson, provide notice to this Court and Clearwater County of the below issues regarding the pending unlawful foreclosure and seizure of our property.

ISSUE 1.

It is not lawful or just to ignore evidence that demonstrates PHH has no lawful right to our Note, Mortgage or property. We have provided evidence to the Court, letters from Chase, which state Chase is in possession of our note and that Chase is the investor on our loan (*Notice of Supplemental Evidence*). However, the Court has chosen to ignore this evidence which also procedurally permitted the Idaho Supreme Court to ignore it as well. This evidence has not been refuted by PHH. Therefore, PHH does not hold our note, and thus, by law – I.C. § 45-911, PHH cannot hold our mortgage or foreclose on our property nor can they have experienced any

alleged injury or have any alleged cause for action. PHH does not have standing. (*Motion for Relief from Judgment* – pp. 9-10 and *Affidavit of Charles Nickerson in Support of Motion for Relief from Judgment* – Ex. 1-3)

ISSUE 2.

It is not lawful or just to ignore contradictions, fraud and perjury submitted in evidence. According to the common law and common sense, one who contradicts himself is not to be heard. This District Court has chosen to ignore the fact that the affidavit PHH is relying upon for their summary judgment is contradictory and is the embodiment of notary fraud. The affidavit contains the notary's seal but it is not signed by the notary. Both New Jersey and Idaho law require the notary's signature on the affidavit. The affidavit presented facts that contradict the witness' prior testimony. Therefore, the affidavit PHH provided should not have been heard, and thus, any judgment in favor of PHH is not lawful or enforceable. (*Objection to Second Affidavit of Ronald E. Casperite, Motion for Relief from Judgment* – p. 11 and *Affidavit of Charles Nickerson in Support of Motion for Relief from Judgment* – Ex. 4)

ISSUE 3.

It is not lawful or just for the District Court to fail to provide orders or memorandum opinions so a decision can be properly appealed. District Court Judge Michael Griffin did not provide a memorandum opinion regarding his denial of our Motion to Amend our pleadings or our Motion to Suppress or our Objection to Second Affidavit of Ronald E. Casperite. Therefore, the Idaho Supreme Court would not or could not consider any of our arguments regarding those issues. Denying our constitutional and contractual rights by procedural manipulation is a crime against our persons and our property. Denying our rights to due process in a foreclosure proceeding injures our persons and contaminates the Clearwater County land records.

ISSUE 4.

It is not lawful or just to disregard a detailed account transaction history provided via an affidavit by a Chase employee that shows a negative principal balance indicating the account was paid off prior to when PHH alleged default. According to this account history, there was no default. Additionally, numerous transactions were not reflected in this transaction history, escrow activity was not disclosed on this transaction history, nor does the escow account balance match the escrow reporting, and other such accounting discrepancies. (*Memorandum in Support of Summary Judgment* – p. 12 and *Affidavit of Charles Nickerson in Support of Motion for Summary Judgment* – p. 3)

ISSUE 5.

It was not lawful or just for PHH to prevent our performance. PHH blatantly refused to accept payments, refused to research and provide proof of the alleged default when we provided proof of payments made and questioned their alleged default (PHH violated federal law and RESPA - 12 C.F.R § 1024.35 and 12 C.F.R. § 1024.38), and systematically, illegally, unlawfully, maliciously, and intentionally blocked all of our efforts and attempts to resolve the disputed default. PHH has since admitted the default was wrong. We were never provided opportunity to cure the alleged default. (*Affidavit of Charles Nickerson in Support of Motion for Summary Judgment* – p. 2, *Affidavit in Support of Motions to Reconsider* – p. 3, *Charles Nickerson's and Donna Nickerson's Amended Answer, Counterclaim, Third Party Complaint and Demand for Jury Trial* – pp. 28-34)

ISSUE 6.

It is prejudicial and illegal for a judgment to be awarded without a trial when the plaintiff admits the original default amount was inaccurate by over $11,000.00, and they failed to verify the default when it was disputed at the time it was originally claimed. (*Response in Opposition to Motion to Set Aside Stay and Issue Writ* – pp. 3-5)

ISSUE 7.

It is not lawful or just for the Court to order summary judgment (determine no issue of material fact exists) when the Court contradicts its own statements of undisputed fact regarding the chain of title to our Note and Mortgage. (*Motion for Relief from Judgment* – p.3 and *Affidavit of Charles Nickerson in Support of Motion for Relief from Judgment* – pp. 3-8)

ISSUE 8.

It is not lawful or just and is beyond the jurisdiction of this District Court for the Court to deny us our right to possess our property during the one year redemption period. (*Motion to Vacate or Amend Order of Sale and Decree of Foreclosure* – pp. 2-3)

ISSUE 9.

It is not lawful or just to allow a judgment to stand when the judgment is obtained through the negligence of an attorney. (*Brief in Support of Petition for Rehearing* – pp. 41-45) "It is said that, where it appears that a judgment was taken against appellant through the negligence of an attorney who had been employed by such party, nothing is left to the discretion of the court, and the judgment must be set aside." *Pierce v. Vialpando,* 78 Idaho 274, 301 P.2d 1099 (1956). The record demonstrates and our attorney has admitted a judgment was taken

against us because of his negligence. (*Affidavit of Charles Nickerson in Support of Motion for Relief from Judgment* – Ex. 8)

ISSUE 10.

It is not lawful or just to rely upon a judgment obtained through fraud, judicial manipulation, admitted attorney negligence and other such unjust acts to rely upon, obtain or execute a second summary judgment.

ISSUE 11.

It is not lawful or just to ignore the fraud PHH and Chase committed. Virtually every filing submitted by PHH and Chase contains fraud. The extensiveness of this fraud is summarized in our *Motion for Relief from Judgment* – pp. 12-18 and detailed in *Charles Nickerson's and Donna Nickerson's Amended Answer, Counterclaim, Third Party Complaint and Demand for Jury Trial* in its entirety.

ISSUE 12.

It is not lawful or just to allow and permit all the attorneys involved in this action to violate **Rule of Professional Conduct 8.4 – Misconduct** and violate the **Idaho Attorney's Oath** – *"I will never seek to mislead a court or opposing party by false statement of fact or law, and will scrupulously honor promises and commitments made."* and violate **I.C. § 3-201. Duties of Attorneys.** *"4. To employ, for the purposes of maintaining the causes confided in him, such means only as are consistent with truth, and never seek to mislead judges by an artifice or false statement of fact or law."* These violations are summarized in our *Motion for Relief from Judgment* – pp. 18-23 and detailed in *Charles Nickerson's and Donna Nickerson's Amended Answer, Counterclaim, Third Party Complaint and Demand for Jury Trial* – pp. 251-279.

ISSUE 13.

It is not lawful or just or within the jurisdiction of this Court to deny a party's contractual right to provide claims or defenses.

ISSUE 14.

It is not lawful or just and is extremely prejudicial to award attorney fees to a party that has blatantly lied, obstructed justice, thwarted discovery, intentionally misled the Court, and perpetrated fraud. Further, it is unlawful and unjust to allow any attorney fee awards to not be solely covered by proceeds from the foreclosure sale.

ISSUE 15.

It is not lawful or just or within the jurisdiction of this Court or any Court to participate or order the unlawful seizure of our property. No consent, cause or right has been granted to any entity to take our property from us. *"No power on earth has a right to take our property from us without our consent."* John Jay, First Chief Justice of the United States Supreme Court

DATED this 25th day of May, 2017

CHARLES NICKERSON

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 25th day of May, 2017, I caused to be served a true and correct copy of the NOTICE OF ISSUES by the method indicated below, and addressed to the following:

Elisa Sue Magnuson
Aldridge Pite, LLP
4375 Jutland Dr. STE 200
San Diego, CA 92177
Phone (858)750-7600
Fax (619)590-1385

(•) U.S. Mail
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Jon A. Stenquist
Moffatt Thomas Barrett Rock & Fields
PO Box 51505
Idaho Falls, ID 83405
Fax (208)522-5111

(•) U.S. Mail
( ) Hand Delivered
( ) Overnight or Priority Mail
( ) Facsimile

Charles Nickerson

FILED 05/25/2017 AT 4:40PM OROFINO,IDAHO
BY SM

CHARLES NICKERSON AND DONNA NICKERSON
3165 Neff Rd
Orofino, ID 83544

Appellants Pro Se

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR CLEARWATER COUNTY

PHH MORTGAGE, Plaintiff-Third Party Defendant-Counterdefendant-Respondent, v. CHARLES NICKERSON and DONNA NICKERSON Defendants-Counterclaimants-Third Party Complainant-Appellant, and COLDWELL BANKER MORTGAGE, a d/b/a PHH MORTGAGE and JP MORGAN CHASE BANK, NA, Third Party Defendants-Respondents.	Case No.: CV 2011-28 **NOTICE OF APPEAL**

TO: THE ABOVE NAMED RESPONDENTS, AND THEIR ATTORNEYS, AND TO THE CLERK OF THE ABOVE-ENTITLED COURT

NOTICE IS HERBY GIVEN THAT:

1. The above named appellants, Charles and Donna Nickerson, being forced to represent themselves pro se against their will due to the negligence of Idaho attorneys and the Nickerson's understandable lack of faith in the integrity and sobriety of the judgments of Clearwater County District Court Judge Michael Griffin and now affirmed by Judge Gregory FitzMaurice, appeal against the above named respondents to the Idaho Supreme Court from the District Courts' Order of Sale and Decree of Foreclosure, filed April 13, 2017; Order Denying Motion to Quash Execution and Judgment and Motion for Sanctions, filed April 13, 2017; Order Lifting Stay,

filed April 13, 2017; Order Denying Motion to Vacate or Amend Order of Sale and Decree of Foreclosure, filed May 16, 2017, and; Order Denying Motion to Reconsider Order Denying Motion to Quash Execution and Judgment, filed May 16, 2017; Judge Gregory FitzMaurice presiding.

2. That the party has a right to appeal to the Idaho Supreme Court, and the judgments or orders described in paragraph 1 above are appealable orders pursuant to I.A.R. 11(a) and any other such applicable rules that must be applied to ensure access to justice.

3. Appellants intend to assert a number of issues on appeal, including, but not limited to the issues set forth below.

4. The preliminary issues on appeal are as follows:

a. Whether it is lawful or just for the District Court to disregard the laws of redemption which grant the Nickersons the right to possess the property during the redemption period.

b. Whether it is lawful or just for the District Court to ignore the Nickersons' request and rights (contractual and I.C. § 11-304), to sell a two parcel property one parcel at a time and to be allowed to direct the order of the sale.

c. Whether it is lawful or just for a District Court to fail to provide memorandum opinions or cite authority so decisions and renderings can be properly put before the Supreme Court for reversal and whether this type of procedural manipulation can be relied upon to uphold or execute judgment.

d. Whether it is lawful or just to foreclose on a property or execute judgment against a property when a debtor was prevented from performance, never given opportunity to cure the alleged default amount being used to claim default, and was denied their contractual right to provide claims and defenses.

e. Whether it is lawful or just to obtain or execute a judgment acquired through mortgage usury and to add accruing interest to that judgment when the prevailing party lied, obstructed justice, never provided an account for missing payments held in suspense accounts, failed to credit substantial escrow moneys, failed to explain why transactions were missing from the account records, the two banks contradict their own evidence, opposing parties have admitted the claimed default is inaccurate, the debtor has provided testimony no default existed, the banks have

refused to provide discovery base on false ownership claims, and other such record keeping errors exist.

f. Whether it is lawful or just to issue a summary judgment when the judgment amount was never properly established, is disputed, changed multiple times due to inaccurate record keeping, and conflicting claims still exist.

g. Whether it is lawful or just to issue sanctions against the prevailing party when it is proven the prevailing party lied, presented contradictory facts and evidence, and presented proven to be fraudulent affidavits and testimony to the Court and obtained their summary judgment through fraud and judicial manipulation.

h. Whether it is lawful or just to rely upon a summary judgment obtained through fraud, judicial prejudice, procedural manipulation, and admitted attorney negligence to uphold and execute a second summary judgment.

i. Whether it is lawful or just to uphold a judgment that was fraudulently obtained.

j. Whether it is lawful or just for a judgment to be executed when this Court has made procedural mistakes, discrepancies of fact exist, and assignment of errors are undeniably present.

k. Whether it is lawful or just for a judgment to be executed based solely on procedural manipulation and judicial prejudice when justice has not been served and a victim has reached out to the Supreme Court to uphold laws in place to protect them, save their ranch, and protect their rights and interests.

l. Whether it is lawful or just for attorney fees to be granted to PHH when they illegally attempted a non-judicial foreclosure, purposefully presented false and contradictory statements and evidence, and intentionally concealed evidence.

This appeal is taken upon both matters of law and issues of fact. This appeal is necessary for justice to be properly served; federal and Idaho laws to be upheld; and Idaho and United States Constitutional rights to be protected and preserved. Appellants reserve the right to add additional issues on appeal and to revise or restate the issues set forth above.

5. No portion of the record has been sealed.

6. A reporters transcript has not been ordered because no oral arguments nor hearings have been conducted on these motions.

7. The appellants request the following documents in their entirety to be included in the clerk's record:

a. Response in Opposition to Motion to Set Aside Stay and Issuance of Writ of Execution and Order of Sale, filed April 11, 2017
b. Motion to Quash Execution and Judgment, filed April 11, 2017
c. Motion for Sanctions, filed April 11, 2017
d. Supporting documents filed on April 11, 2017
e. Order of Sale and Decree of Foreclosure, filed April 13, 2017
f. Order Denying Motion to Quash Execution and Judgment and Motion for Sanctions, filed April 13, 2017
g. Order Lifting Stay, filed April 13, 2017
h. Motion to Vacate or Amend Order of Sale and Decree of Foreclosure, filed April 27, 2017
i. Motion to Reconsider Order Denying Motion to Quash Execution and Judgment and Motion for Sanctions, filed April 27, 2017
j. Order Denying Motion to Vacate or Amend Order of Sale and Decree of Foreclosure, filed May 16, 2017
k. Order Denying Motion to Reconsider Order Denying Motion to Quash Execution and Judgment, filed May 16, 2017
l. Notice of Issues, filed May 25, 2017

8. The appellants reserve the right to supplement the record as necessary for justice to be served.

9. We certify:
   a. The estimated fee for preparation of the clerk's record has been paid.
   b. The appellate filing fee has been paid.
   c. Service has been made upon all parties required to be served pursuant to I.A.R. 20.

DATED this 25th day of May, 2017

Charles Nickerson and Donna Nickerson

Charles Nickerson and Donna Nickerson

We, CHARLES NICKERSON and DONNA NICKERSON, deposes and states: that we are appellants in the above-entitled appeal and that all statements in this notice of appeal are true and correct to the best of our knowledge and belief and, in accordance with I.C. § 9-1406, certify

(or declares) under penalty of perjury pursuant to the laws of the State of Idaho that the foregoing is true and correct.

DATED this 25th day of May, 2017

Charles Nickerson and Donna Nickerson

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 25th day of May, 2017, I caused to be served a true and correct copy of the NOTICE OF APPEAL by the method indicated below, and addressed to the following:

Elisa Sue Magnuson
Aldridge Pite, LLP
4375 Jutland Dr. STE 200
San Diego, CA 92177
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(•) U.S. Mail
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Fax (208)522-5111

(•) U.S. Mail
( ) Hand Delivered
( ) Overnight or Priority Mail
( ) Facsimile

Charles Nickerson

FILED September 12, 2017 AT 8:21 AM BY BD OROFINO, IDAHO

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CLEARWATER

PHH MORTGAGE, Plaintiff-Third Party Defendant-Counterdefendant-Respondent, V. CHARLES NICKERSON and DONNA NICKERSON Defendant-Counterclaimant-Third Party Complainant-Appellant, V. COLDWELL BANKER MORTGAGE, A d/b/a of PHH MORTGAGE, and JPMORGAN CHASE BANK, N.A., Third-Party Defendants-Respondents,	CV2011-28 SUPREME COURT NO. 45146-2017 CLERK'S CERTIFICATE OF EXHIBITS

I, Barbie Deyo, Deputy Clerk of the District Court of the Second Judicial District of the State of Idaho, in and for the County of Clearwater, do hereby certify:

There were no exhibits offered for identification or admitted into evidence during the course of this action.

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IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Orofino, Idaho this 12th day of September, 2017.

CARRIE BIRD
Clerk of the District Court

BY: Barbie Deyo
Deputy Clerk

CLEARWATER COUNTY DISTRICT COURT SECOND JUDICIAL DISTRICT STATE OF IDAHO

FILED September 12, 2017 AT 8:21 A.M. OROFINO, IDAHO
BY BD

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CLEARWATER

PHH MORTGAGE,	)	
	)	
Plaintiff-Third Party Defendant-Counterdefendant-Respondent,	)	SUPREME COURT NO. 45146-2017
v.	)	CERTIFICATE TO RECORD
	)	
CHARLES NICKERSON and DONNA NICKERSON,	)	
	)	
Defendant-Counterclaimant-Third Party Complainant-Appellant,	)	
	)	
v.	)	
	)	
COLDWELL BANKER MORTGAGE, a d/b/a of PHH MORTGAGE, and JPMORGAN BANK, N.A.,	)	
	)	
Third Party Defendants-Respondents	)	

I, Barbie Deyo, Deputy Clerk of the District Court of the Second Judicial District of the State of Idaho, in and for the County of Clearwater, do hereby certify that the above foregoing record in the above-entitled cause was compiled and bound under my direction as, and is a true and correct record of the pleadings and documents that are automatically required under Rule 28 of the Idaho Appellate Rules, as well as those requested by Counsels.

I FURTHER CERTIFY, that the Notice of Appeal was filed in the District Court on the 25th day of May, 2017.

CARRIE BIRD, Clerk

By Barbie Deyo
Deputy Clerk

CLEARWATER COUNTY DISTRICT COURT SECOND JUDICIAL DISTRICT STATE OF IDAHO

FILED September 12, 2017 AT 8:21 A.M. OROFINO, IDAHO
BY BP

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CLEARWATER

PHH MORTGAGE, Plaintiff-Third Party Defendant-Counterdefendant-Respondent, v. CHARLES NICKERSON and DONNA NICKERSON Defendant-Counterclaimant-Third Party Complainant-Appellant, v. COLDWELL BANKER MORTGAGE, a d/b/a of PHH MORTGAGE, and JPMORGAN BANK, N.A., Third Party Defendants-Respondents	CV2011-28 SUPREME COURT NO. 45146-2017 CERTIFICATE OF SERVICE

I, Barbie Deyo, Deputy Clerk of the District Court of the Second Judicial District of the State of Idaho, in and for the County of Clearwater, do hereby certify that copies of the Clerk's Record were placed in the United States mail and addressed to Elisa S. Manguson, Alldridge Pite LLP, 13125 W. Persimmon Ln., Ste. 150, Boise, ID 83713, Benjamin C. Ritchie, Moffatt, Thomas, Barrett, Rock & Fields, Chartered, P.O. Box 817, Pocatello, ID 83204-0817, and Charles and Donna Nickerson, 3165 Neff Road Orofino, ID 83544 this 12th day of September, 2017.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 12th day of September, 2017.

CARRIE BIRD, Clerk

By Barbie Deyo
Deputy

CLEARWATER COUNTY DISTRICT COURT SECOND JUDICIAL DISTRICT STATE OF IDAHO