

FILED

JAN 18 2017

**COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____**

No. 34618-8-III

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION III

SHERYL C. MOORE,

Appellant,

v.

SELECT PORTFOLIO SERVICING, INC., QUALITY LOAN SERVICE
CORPORATION OF WASHINGTON, U.S. BANK NATIONAL
ASSOCIATION, and MORTGAGE ELECTRONIC REGISTRATION
SYSTEMS, INC.,

Respondents.

RESPONDENTS' APPELLATE BRIEF

John E. Glowney, WSBA #12652
Vanessa S. Power, WSBA #30777
STOEL RIVES LLP
600 University Street, Suite 3600
Seattle, WA 98101
206.624.0900
Attorneys for Respondents

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
I. INTRODUCTION	1
II. RELEVANT FACTUAL AND PROCEDURAL BACKGROUND	1
III. AUTHORITIES AND ARGUMENT	3
A. Res Judicata Bars Moore’s Claims	3
B. Moore’s Note Was Not Accelerated and the Statute of Limitations Has Not Expired	6
C. Moore Acknowledged the Debt and Restarted the Statute	13
D. Respondents Submitted the Original Note into Evidence at Summary Judgment	14
E. Moore’s Failure to Challenge the Original Note and Deed of Trust in Her Pleadings Waived Such Challenges	17
F. The Holder of a Promissory Note Is Entitled to Enforce the Note and Deed of Trust	21
IV. CONCLUSION.....	26

TABLE OF AUTHORITIES

Page(s)

Cases

<i>4518 S. 256th, LLC v. Gibbon</i> , 195 Wn. App. 423, 382 P.3d 1 (2016)	7
<i>Alexander v. Wells Fargo Bank, N.A.</i> , No. C15-459-RAJ, 2015 WL 5123922 (W.D. Wash. Sept. 1, 2015)	24
<i>Bain v. Metro. Mortg. Grp.</i> , 175 Wn.2d 83, 285 P.3d 34 (2012)	2, 21, 22, 23
<i>In re Bass</i> , 738 S.E.2d 173 (N.C. 2013)	19, 20, 21
<i>Bhatti v. Guild Mortg. Co.</i> , No. C11-0480, 2011 WL 6300229 (W.D. Wash. Dec. 16, 2011), <i>aff'd</i> , 550 F. App'x 514 (9th Cir. 2013)	2
<i>Bridge v. Ocwen Fed. Bank FSB</i> , No. 1:07 CV 2739, 2013 U.S. Dist. LEXIS 127588 (N.D. Ohio Sept. 6, 2013)	25
<i>Brown v. Dep't of Commerce</i> , 184 Wn.2d 509, 359 P.3d 771 (2015)	21, 23
<i>In re Butler</i> , 512 B.R. 643 (Bankr. W.D. Wash. 2014)	23
<i>Cagle v. Abacus Mortg., Inc.</i> , No. 2:13-cv-02157-RSM, 2014 WL 4402136 (W.D. Wash. Sept. 5, 2014)	24
<i>Carpenter v. Longan</i> , 83 U.S. (16 Wall.) 271, 21 L. Ed. 313 (1872)	22
<i>Conner v EverHome Mortgage</i> 2016 WL 6837961(2016)	23

<i>In re Cook</i> , 457 F.3d 561 (6th Cir. 2006)	16
<i>Coupounas v. Madden</i> , 514 N.E.2d 1316 (Mass. 1987)	18
<i>Currier v. Perry</i> , 181 Wash. 565, 44 P.2d 184 (1935).....	3
<i>Dye v. Wells Fargo</i> , No. 13-cv-14854, 2014 U.S. Dist. LEXIS 65419 (E.D. Mich. May 13, 2014)	25
<i>Edmundson v. Bank of Am., N.A.</i> , 194 Wn. App. 920, 378 P.3d 272 (2016).....	6
<i>Elene-Arp v. Fed. Home Fin. Agency</i> , No. C12-2154, 2013 WL 1898218 (W.D. Wash. May 7, 2013)	21
<i>Frazer v. Deutsche Bank Nat'l Tr. Co.</i> , No. 11-cv-5454, 2012 WL 1821386 (W.D. Wash. May 18, 2012)	24
<i>Golden v. McGill</i> , 3 Wn.2d 708, 102 P.2d 219 (1940).....	3
<i>Herzog v. Herzog</i> , 23 Wn.2d 382, 161 P.2d 142 (1945).....	6
<i>Jewell v. Long</i> , 74 Wn. App. 854, 876 P.2d 473 (1994).....	13
<i>Johnson v. CitiMortgage, Inc.</i> , No. 2:13-cv-00037-RSM, 2013 WL 6632108 (W.D. Wash. Dec. 17, 2013).....	23
<i>Kelly-Hansen v. Kelly-Hansen</i> , 87 Wn. App. 320, 941 P.2d 1108 (1997).....	3
<i>Kepner-Tregoe, Inc. v. Leadership Software, Inc.</i> , 12 F.3d 527 (5th Cir. 1994)	15

<i>Kiefer v. ABN AMRO</i> , No. 12-10051, 2012 WL 3600351 (E.D. Mich. June 12, 2012)	25
<i>Livonia Prop. Holdings, L.L.C. v. 12840–12976 Farmington Rd. Holdings, L.L.C.</i> , 717 F. Supp. 2d 724 (E.D. Mich. 2010).....	24, 25
<i>Livonia Props. Holdings, LLC v. 12840-2976 Farmington Rd. Holdings, LLC</i> , 399 F. App'x 97 (6th Cir. 2010)	25
<i>Lynott v. Mortgage Electronic Registration Systems, Inc.</i> , 2012 U.S. Dist. LEXIS 170607, 2012 WL 5995053 (W.D. Wash. 2013)	22, 23
<i>Manning v Mortgage Electronic Registration Systems, Inc.</i> , 196 Wn.App. 1043 2016 WL 6534890.....	5
<i>Meachum v. Bank of N.Y. Mellon Tr. Co. N.A.</i> , No. 3:13-CV-2322-N, 2014 U.S. Dist. LEXIS 182288 (N.D. Tex. Dec. 16, 2014)	5
<i>Miller v. Deutsche Bank Nat'l Tr. Co.</i> , No. 12-cv-03279, 2013 U.S. Dist. LEXIS 126888 (D. Colo. Sept. 4, 2013)	16
<i>Mohlman v. Long Beach Mortg.</i> , No. 12–10120, 2013 WL 490112 (E.D. Mich. Feb. 8, 2013)	24
<i>Moran v. GMAC Mortg.</i> , No. 5:13-CV-04981-LHK, 2014 U.S. Dist. LEXIS 84411 (N.D. Cal. June 18, 2014)	25
<i>Mueller v. Abdnor</i> , 972 F.2d 931 (8th Cir. 1992)	15
<i>Myers v. Mortg. Elec. Registration Sys., Inc.</i> , No. 11-cv-05582-RBL, 2012 WL 678148 (W.D. Wash. Feb. 24, 2012)	22

<i>Petheram v. Wells Fargo Bank</i> , No. C13-1016, 2013 WL 6173806 (W.D. Wash. Nov. 21, 2013)	22
<i>In re Richmond</i> , 534 B.R. 479 (Bankr. E.D.N.Y. 2015).....	20, 21
<i>Rustad Heating & Plumbing Co. v. Waldt</i> , 91 Wn.2d 372, 588 P.2d 1153 (1979).....	8, 9
<i>Slorp v. Lerner, Sampson & Rothfuss</i> , No. 2:12-cv-498, 2013 U.S. Dist. LEXIS 32538 (S.D. Ohio Mar. 8, 2013).....	25
<i>Spokane Research & Def. Fund v. City of Spokane</i> , 155 Wn.2d 89, 117 P.3d 1117 (2005).....	3, 5
<i>In re Tragopan Props., LLC</i> , 164 Wn. App. 268, 263 P.3d 613 (2011).....	13
<i>Triffin v. Somerset Valley Bank</i> , 777 A.2d 993 (N.J. Super. Ct. App. Div. 2001).....	18
<i>United States v. Carriger</i> , 592 F.2d 313 (6th Cir. 1979)	14, 17
<i>United States v. Deaconess Med. Ctr.</i> , 140 Wn.2d 104, 994 P.2d 830 (2000).....	5
<i>United States v. Pang</i> , 362 F.3d 1187 (9th Cir. 2004)	14
<i>United States v. Varner</i> , 13 F.3d 1503 (11th Cir. 1994)	16
<i>Walker v. Quality Loan Serv. Corp.</i> , 176 Wn. App. 294, 308 P.3d 716 (2013).....	2
<i>Yhudai v. IMPAC Funding Corp.</i> , 205 Cal. Rptr. 3d 680 (Ct. App. 2016)	26
<i>Yvanova v. New Century Mortg. Corp.</i> , 365 P.3d 845 (Cal. 2016)	26

<i>Zalac v. CTX Mortg. Corp.</i> , No. C12-01474, 2013 U.S. Dist. LEXIS 20269 (W.D. Wash. Feb. 14, 2013)	4
--	---

Statutes

N.C.G.S. § 25-3-204 cmt. 1 (2011).....	20
N.Y. U.C.C. Law § 3-307	20
RCW 4.16.280	13
RCW 19.86.120	6
RCW 61.24	8
RCW 61.24.005(2).....	21, 23
RCW 61.24.030	11
RCW 61.24.040	11
RCW 61.24.040(1)(f).....	11, 12
RCW 61.24.040(2).....	10
RCW 61.24.090(1).....	8
RCW 62A.3-201 cmt. 1	21
RCW 62A.3-205	21
RCW 62A.3-205(b).....	4
RCW 62A.3-301	4, 21, 23
RCW 62A.3-308(a).....	17, 19
RCW 62A-308(a).....	18
U.C.C. § 3-307.....	17, 18
U.C.C. § 3-308.....	17, 18, 19

U.C.C. § 9-203(g)22

Rules

ER 90215, 16
ER 902(i).....14, 15, 16
ER 902(h).....16
Fed. R. Evid. 801(c).....15
Fed. R. Evid. 902(9).....16
Fed. R. Evid. 100316
GR 14.16, 23

Other Authorities

11 M.R.S. § 3–1308(1)20, 21
2 James J. White et al., *Uniform Commercial Code* § 17:6,
Westlaw (6th ed. Nov. 2016 update)17
6 William D. Hawkland & Lary Lawrence, U.C.C. Serv.
(West) § 3-204:2 (Rev. Art. 3).....20
6B Lary Lawrence, *Anderson on the Uniform Commercial
Code* § 3-204:8R (3d ed. 2003).....20
11 Am. Jur. 2d *Bills and Notes* § 170, Westlaw (database
updated Dec. 2016)9
6 John H. Wigmore, *Evidence* § 1770 (James H. Chadbourn
rev. ed. 1976)15
2 John W. Strong et al., *McCormick on Evidence* § 249 (4th
ed. 1992)15
Thomas A. Mauet, *Fundamentals of Trial Techniques* 180
(1988).....15

I. INTRODUCTION

Appellant Sheryl Moore's appeal should be denied. Most of Moore's claims were or could have been raised in her 2009 lawsuit, which was dismissed at summary judgment. Moore's statute of limitations argument fails to establish that her promissory note was accelerated or that she did not subsequently acknowledge the loan obligation. Moore's remaining claims were properly dismissed.

II. RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

In December 2006, Appellant Moore borrowed \$242,100 from First Franklin, a Division of National City Bank ("First Franklin"), and gave First Franklin a promissory note and deed of trust. Supplemental Clerks Papers ("SCP") ___ Declaration of Vanessa Power ("Power Decl."), Exs. A, B.¹ First Franklin subsequently endorsed the note in blank. *Id.*, Ex. B at 3. U.S. Bank National Association, as Trustee in Trust for Registered Holders of First Franklin Mortgage Loan Trust, Mortgage Loan Asset-Backed Certificates, Series 2007-FF2 ("USB as trustee"), is and was the holder of Moore's note at all times relevant to this lawsuit.

¹ A supplemental designation of clerk's papers has been submitted to the Spokane Superior Court. Respondents will update the pagination for the pleadings designated in the supplemental designation when an updated index is received.

In 2009, Moore filed a complaint in Spokane County Superior Court naming MERS² and USB as trustee's predecessor in interest as defendants in a lawsuit seeking damages as well as to rescind the note, and cancel the note and deed of trust. *See id.*, Ex. D, 2009 Complaint, *Moore v. Market Street Mortgage Co.*, No. 09-204936-4, Dkt. 1 (“*Market Street*”). The *Market Street* complaint also alleged that MERS violated Washington's Consumer Protection Act because it was not the owner of the note, had no beneficial interest, and had no right to initiate foreclosure proceedings. *Id.* at ¶¶ 2.6-2.7. On a motion for summary judgment in the 2009 case, the court dismissed all claims with prejudice on August 8, 2011. *Id.* Powers Decl., Ex. E, 2009 Judgment.

Moore's claims in this case were dismissed in part on a motion to dismiss and in part on a summary judgment motion. CP 37; 161-166; 167-168.

² MERS is identified in the deed of trust as a beneficiary in a nominee capacity for First Franklin and First Franklin's successors and assigns. As numerous courts have held, this creates no claims for a borrower. “[T]he mere fact MERS is listed on the deed of trust as a beneficiary is not itself an actionable injury.” *Bain v. Metro. Mortg. Grp.*, 175 Wn.2d 83, 120, 285 P.3d 34 (2012); *Walker v. Quality Loan Serv. Corp.*, 176 Wn. App. 294, 323, 308 P.3d 716 (2013) (rejecting the argument that designation of an ineligible beneficiary “standing alone, renders [a deed of trust] void”); *Bhatti v. Guild Mortg. Co.*, No. C11-0480, 2011 WL 6300229, at *5 (W.D. Wash. Dec. 16, 2011) (no declaratory relief based on MERS' capacity as nominee in deed of trust), *aff'd*, 550 F. App'x 514 (9th Cir. 2013).

III. AUTHORITIES AND ARGUMENT³

A. Res Judicata Bars Moore's Claims

The dismissal of Moore's 2009 suit operates as res judicata as to most of her claims in this case. Under res judicata, "a subsequent action should be dismissed if it is identical with the first action in the following respects: (1) persons and parties; (2) cause of action; (3) subject matter; and (4) the quality of the persons for or against whom the claim is made." *Spokane Research & Def. Fund v. City of Spokane*, 155 Wn.2d 89, 99, 117 P.3d 1117 (2005).

The res judicata doctrine applies not only to matters actually raised in the prior proceeding, "but to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time." *Golden v. McGill*, 3 Wn.2d 708, 720, 102 P.2d 219 (1940) (quoting *Currier v. Perry*, 181 Wash. 565, 569, 44 P.2d 184 (1935)); *Kelly-Hansen v. Kelly-Hansen*, 87 Wn. App. 320, 328-29, 941 P.2d 1108 (1997) ("When res judicata is used to mean claim preclusion, it encompasses the idea that when the parties to two successive proceedings are the same, and the prior proceeding culminated in a final judgment, a matter may not be relitigated, or even

³ Moore's appellate brief does not appear to appeal all of the issues raised below. Respondents address the issues that appear to be raised and reserve the right to address other issues if it is determined they are raised.

litigated for the first time, if it could have been raised, and in the exercise of reasonable diligence should have been raised, in the prior proceeding.” (footnotes omitted)).

Res judicata also applies to parties in privity with a party to the prior lawsuit. USB as trustee, as the current holder of Moore’s note, is in privity with First Franklin, a defendant in Moore’s 2009 lawsuit on the note and deed of trust.⁴

“Privity within the meaning of the doctrine of res judicata is privity as it exists in relation to the subject matter of the litigation, and the rule is construed strictly to mean parties claiming under the same title. It denotes mutual or successive relationship to the same right or property. The binding effect of the adjudication flows from the fact that when the successor acquires an interest in the right it is then affected by the adjudication in the hands of the former owner.”

⁴ The note was endorsed “in blank” by First Franklin, and therefore the Trust is the holder of the note. SCP ___ Power Decl., Ex. A at 3. An instrument endorsed in blank is “bearer” paper. Washington law (indeed, established commercial law throughout the country) does not require a written “chain of endorsements” to show that the holder of a note is entitled to enforce the note:

Under Washington law an instrument endorsed in blank becomes payable to the bearer and may be negotiated. RCW 62A.3-205(b). The holder of a negotiable instrument is the person in possession and is entitled to enforce it. RCW 62A.3-301; 62A.1-201(20).

Here, Plaintiff does not contest that Chase is in physical possession of the note and that it is endorsed in blank. Therefore, Chase is the holder of the note as a matter of law.

Zalac v. CTX Mortg. Corp., No. C12-01474, 2013 U.S. Dist. LEXIS 20269, at *8-9 (W.D. Wash. Feb. 14, 2013).

United States v. Deaconess Med. Ctr., 140 Wn.2d 104, 111, 994 P.2d 830 (2000) (citation omitted). Because USB as trustee is the successor in interest to First Franklin with respect to the note and deed of trust, and MERS was a party, res judicata applies here to any claim that could have been raised against First Franklin or MERS in the 2009 case:

This is the second lawsuit filed by Plaintiff against his lender arising out of foreclosure proceedings initiated against the Property. In the 2006 Lawsuit, Plaintiff alleged that JPMC and HFN did not have the right to foreclose due to deficiencies in the Note and Deed of Trust and because certain provisions of the Deed of Trust violated the Texas Constitution. JPMC and HFN defended their right to foreclose and obtained a final summary judgment against Plaintiff from a court of competent jurisdiction. Although Defendant was not a party to the 2006 Lawsuit, it is the successor to JPMC and the assignee of the Loan and Deed of Trust. This relationship is sufficient to establish privity for res judicata purposes.

Meachum v. Bank of N.Y. Mellon Tr. Co. N.A., No. 3:13-CV-2322-N, 2014 U.S. Dist. LEXIS 182288, at *12 (N.D. Tex. Dec. 16, 2014).

As a matter of law, because this case involves the same persons and parties, the same cause of action, and the same subject matter, all claims against MERS in this case were properly dismissed because they were, or could have been, raised in the 2009 case.⁵ See *Spokane Research & Def. Fund*, 155 Wn.2d at 99.

⁵ See *Manning v Mortgage Electronic Registration Systems, Inc.*, 196 Wn.App. 1043 2016 WL 6534890 (This decision has no precedential value, is not binding

Likewise, *res judicata* bars all claims against USB as trustee as a successor in interest regarding the validity of the note that were, or could have been, raised in the 2009 case.

B. Moore’s Note Was Not Accelerated and the Statute of Limitations Has Not Expired

Moore acknowledges that her promissory note is an installment note and that a separate statute of limitations arises as to each payment due thereunder. Moore Brief at 7-8. In Washington, for debts payable in installments, a new statute of limitations arises upon each installment payment as it becomes due. *See Edmundson v. Bank of Am., N.A.*, 194 Wn. App. 920, 930-31, 378 P.3d 272 (2016); *Herzog v. Herzog*, 23 Wn.2d 382, 388, 161 P.2d 142 (1945).

However, Moore claims that a June 11, 2008 notice of default “‘accelerated’ the obligation subject to a right of reinstatement if the loan was foreclosed non-judicially,” and that the statute of limitations expired on the accelerated obligation. CP 1-36 Compl. at ¶ 3.7. Moore, however, fails to address what the notice actually states and wholly mistakes the operation of the right of reinstatement and acceleration provided by the

on any court, and is cited only for such persuasive value as the court deems appropriate. GR 14.1.) Any claims against MERS are also barred by the applicable statutes of limitation. *See, e.g.*, RCW 19.86.120 (imposing four-year statute of limitations on CPA claims). MERS was properly dismissed from this case.

legislature for non-judicial foreclosure proceedings under the Deeds of Trust Act (“DTA”).

“Acceleration” refers to a lender’s right to declare the principal balance of a note immediately due and payable upon the occurrence of an event of default. Under Washington law, “[a]cceleration [of the maturity of the debt] must be made in a clear and unequivocal manner which effectively apprises the maker that the holder has exercised his right to accelerate the payment date.” *4518 S. 256th, LLC v. Gibbon*, 195 Wn. App. 423, 435, 382 P.3d 1 (2016) (second brackets in original; citation omitted). Here, in the very same paragraph that Moore points to as accelerating the note, the notice states, in all capital letters:

NOTWITHSTANDING SAID ACCELERATION,
YOU HAVE THE RIGHT TO REINSTATE THE
LOAN BY PAYING ... ON OR BEFORE THE
ELEVENTH (11) DAY BEFORE THE SALE
DATE.

Notice of Default. A borrower’s “right” to reinstate cannot co-exist with a true acceleration by a lender, since the essential property of acceleration is that the lender has the sole and absolute right to allow reinstatement rather than full payment.

Moreover, the notice anticipates acceleration will occur 11 days before the sale date in the event that the borrower does not reinstate the loan by that date. Moore’s statute of limitations argument fails as a matter

of law because the condition for acceleration never occurred, and because discontinuance or abandonment of a non-judicial foreclosure proceeding returns the parties to the status quo.⁶

This result follows directly from the Legislature’s purpose and intent in creating the provisions of the DTA that require the lender to give the debtor, by written notice, the opportunity to reinstate the loan by paying arrearages before the sale. Because the commencement of every new non-judicial foreclosure proceeding requires the lender to give the borrower another opportunity – a right – to reinstate the loan obligation, the lender and borrower are returned to the status quo whenever a non-judicial foreclosure proceeding is discontinued or abandoned.

The Washington Legislature, when it created the non-judicial foreclosure proceeding under the DTA, has “taken away” the common law rules governing acceleration of secured notes. *See Rustad Heating & Plumbing Co. v. Waldt*, 91 Wn.2d 372, 375, 588 P.2d 1153 (1979) (“An examination of the legislation creating the statutory deed of trust provided for in RCW 61.24 reveals the act created a security instrument allowing for quicker realization of the security interest. In exchange, the remedies

⁶ Under RCW 61.24.090(1), if the sale is continued, the reinstatement date is also continued to 11 days before the continued sale date. Because the sale never occurred in this case related to the June 2008 notice, the statutorily required milestone of “11 days before the sale date” was never reached and the loan was never accelerated.

available in conventional mortgages allowing acceleration of the entire debt and deficiency judgments were taken away.” (emphasis added)). A lender may still accelerate a note under the DTA, but can only do so in the manner provided for and subject to the rights given the borrower under the DTA.

Patently, as the court in *Rustad* noted, “acceleration” under the DTA is not “acceleration” as it operates in the common law outside the DTA. At common law, waiver of a notice of acceleration is left to the lender’s discretion. 11 Am. Jur. 2d *Bills and Notes* § 170, Westlaw (database updated Dec. 2016) (“The exercise of an option to accelerate is not irrevocable, and the holder of a note who has exercised the option of considering the whole amount due may subsequently waive this right and permit the obligation to continue in force under its original terms for all purposes.”). At common law, a defaulted borrower could not require or force a lender to reinstate an accelerated loan.

The DTA, in contrast, removes the lender’s common law discretion to waive or not waive acceleration, and guarantees the borrower a right to reinstate at any time prior to 11 days from the scheduled sale

date.⁷ Moreover, these “acceleration/reinstatement” rules apply each time a new non-judicial foreclosure proceeding is commenced. The DTA expressly provides for reinstatement in each separate non-judicial foreclosure proceeding.⁸ In other words, a note accelerated in a prior non-judicial proceeding against a borrower is not still accelerated. Instead, the DTA is clear that the process starts over if a prior non-judicial proceeding is discontinued or abandoned. A new non-judicial foreclosure proceeding provides the borrower and lender with the same rights, regardless of any acceleration that occurred in any prior discontinued proceeding.

In short, in place of the common law concept of acceleration, the DTA mandates that a borrower’s right to reinstate a loan exists with each non-judicial foreclosure proceeding commenced by a lender. As such, a lender’s notice of “acceleration” under the DTA can likewise only apply to a specific non-judicial foreclosure proceeding, and does not carry over to the next. The DTA statutory reinstatement right does not disappear simply because acceleration was declared in an earlier uncompleted proceeding.

⁷ Even if the common law of acceleration applied, the discontinuance or abandonment of a DTA non-judicial foreclosure proceeding would operate as a waiver of a prior acceleration notice.

⁸ RCW 61.24.040(2): “You may reinstate your Deed of Trust and the obligation secured thereby at any time up to and including the . . . day of . . . [11 days before the sale date], by paying the amount set forth or estimated above and by curing any other defaults described above.” (Brackets and ellipses in original.)

This requirement of the DTA for non-judicial foreclosure proceedings compels the conclusion that when a non-judicial foreclosure proceeding is discontinued or abandoned, the lender and borrower return to the status quo. The lender can again start another non-judicial foreclosure proceeding and give a new notice of acceleration, and the borrower again has a statutory right to reinstate (until 11 days before the sale date), but any prior acceleration notice is abandoned by operation of the DTA.

This interpretation of the DTA necessarily follows from the structure of non-judicial foreclosure proceedings established by the DTA. Under the DTA, a “notice of sale” must be sent to the borrower each time a lender commences the non-judicial foreclosure process. RCW 61.24.040.⁹ RCW 61.24.040(1)(f) prescribes that the borrower be served with a notice of trustee’s sale “in substantially the following form” that expressly provides for reinstatement 11 days before the sale date, and only permits “acceleration” (*i.e.*, a required payment of the entire amount due) after that date.

The above-described real property will be sold to satisfy the expense of sale and the obligation secured by the Deed of Trust as provided by statute. The sale will be made without warranty, express or implied,

⁹ A notice of default must also be sent, and other pre-conditions must be met, before the notice of trustee’s sale can be sent. *See* RCW 61.24.030.

regarding title, possession, or encumbrances on the . . . day of . . . The default(s) referred to in paragraph III must be cured by the . . . day of . . . (11 days before the sale date), to cause a discontinuance of the sale. The sale will be discontinued and terminated if at any time on or before the . . . day of . . . (11 days before the sale date), the default(s) as set forth in paragraph III is/are cured and the Trustee's fees and costs are paid. The sale may be terminated any time after the . . . day of . . . (11 days before the sale date), and before the sale by the Borrower, Grantor, any Guarantor, or the holder of any recorded junior lien or encumbrance paying the entire principal and interest secured by the Deed of Trust, plus costs, fees, and advances, if any, made pursuant to the terms of the obligation and/or Deed of Trust, and curing all other defaults.

RCW 61.24.040(1)(f) (emphasis added; ellipses in original).

It is therefore plain that each non-judicial foreclosure proceeding starts anew, and prior acts by the lender or borrower are treated as abandoned. With each new non-judicial foreclosure proceeding, the borrower has the full right of reinstatement until 11 days before a sale, regardless that borrower did not exercise this right in a prior proceeding.

Here, no trustee's sale was held related to the notice of default. Under the DTA, Moore and the lender were returned to the status quo. Moore has the right to reinstate in the event a new non-judicial foreclosure proceeding is commenced, and any prior acceleration that has been asserted is necessarily abandoned. Moore's note was never accelerated, and even if it were, the acceleration was abandoned as required by the

DTA when the non-judicial foreclosure proceeding was abandoned or discontinued.

C. Moore Acknowledged the Debt and Restarted the Statute

Even if the note were accelerated by the June 11, 2008, notice, claims otherwise subject to the statute of limitations are revived by a writing acknowledging the debt signed by the debtor. RCW 4.16.280. To this end, “[g]enerally, an acknowledgment must be in writing; recognize the existence of the debt; be communicated to the creditor or to another person with intent that it be communicated to the creditor; and not indicate an intent not to pay.” *Jewell v. Long*, 74 Wn. App. 854, 857, 876 P.2d 473 (1994). While oral testimony during judicial proceedings does not constitute an acknowledgment of debt, signed writings submitted to the court can. *Cf. In re Tragopan Props., LLC*, 164 Wn. App. 268, 282, 263 P.3d 613 (2011).

Moore’s November 2009 complaint and the attachments thereto operated to acknowledge the debt and thereby restart any statute of limitations anew. Moore’s 2009 complaint, which she signed, acknowledged that “[s]he was a borrower in a mortgage transaction on approximately 12/6/06 which ultimately involved the various Defendants [to that action].” SCP____ Power Decl., Ex. C at pp. 3, 8. The complaint also incorporated and attached a letter from Moore’s then-attorney to

Karen Gibbon, dated June 18, 2008, stating that Moore had been instructed to continue making payments in the amount of \$1,856.10 and purporting to enclose Moore's "May payment in the amount of \$1,856.10." *Id.* at pp. 5, 12. Thus, even assuming the note was accelerated in 2008, Moore restarted the statute of limitations by acknowledging her debt and her continuing obligation to make payments through her November 2, 2009, complaint. Based on this acknowledgment, Moore's claims that the statute of limitations has run on USB as trustee's ability to foreclose, failed as a matter of law.

D. Respondents Submitted the Original Note into Evidence at Summary Judgment

Moore's arguments related to Respondents' possession and ownership of Moore's original note and deed of trust were all properly dismissed. Respondents submitted the original note into evidence at the summary judgment hearing.¹⁰ Moore's promissory note was self-authenticating, non-hearsay, and admissible. ER 902(i); *United States v. Pang*, 362 F.3d 1187, 1192 (9th Cir. 2004) (citing *United States v. Carriger*, 592 F.2d 313, 316 (6th Cir. 1979)).

Moore's original note is admissible because it is self-authenticating, and a non-hearsay "verbal act." Moore's note and deed of

¹⁰ The submission of the original note into evidence was stated in Respondents summary judgment motion. CP 38-56.

trust are what the law designates as “verbal acts,” which are non-hearsay. *See Kepner-Tregoe, Inc. v. Leadership Software, Inc.*, 12 F.3d 527, 540 (5th Cir. 1994) (“Signed instruments such as wills, contracts, and promissory notes are writings that have independent legal significance, and are nonhearsay.” (quoting Thomas A. Mauet, *Fundamentals of Trial Techniques* 180 (1988))). “A contract, for example, is a form of verbal act to which the law attaches duties and liabilities and therefore is not hearsay.” *Mueller v. Abdnor*, 972 F.2d 931, 937 (8th Cir. 1992) (citing 2 John W. Strong et al., *McCormick on Evidence* § 249, at 101 (4th ed. 1992)).¹¹ Moore’s note and deed of trust are non-hearsay “verbal acts.”

Moore’s original note and deed of trust are self-authenticating. No witness is required to authenticate a note and deed of trust. ER 902 governs self-authenticating documents. Two provisions of ER 902 cover Moore’s note:¹²

¹¹ Verbal acts, however, are not hearsay because they are not assertions and not adduced to prove the truth of the matter. *See* 2 John W. Strong et al., *McCormick on Evidence*, § 249 at 101 (4th ed. 1992); 6 John H. Wigmore, *Evidence* § 1770 at 259 (James H. Chadbourn rev. ed. 1976). The Federal Rules of Evidence “exclude from hearsay the entire category of ‘verbal acts’ and ‘verbal parts of an act,’ in which the statement itself affects the legal rights of the parties or is a circumstance bearing on conduct affecting their rights.” Fed. R. Evid. 801(c) advisory committee’s note.

Mueller, 972 F.2d at 937.

¹² Both apply to the deed of trust. ER 902(i) applies to the note.

- ER 902(i): “Commercial Paper and Related Documents. Commercial paper, signatures thereon, and documents relating thereto to the extent provided by general commercial law.”
- ER 902(h): “Acknowledged Documents. Documents accompanied by a certificate of acknowledgment executed in the manner provided by law by a notary public or other officer authorized by law to take acknowledgments.”

As a self-authenticating document, there is no requirement that a witness authenticate the original note.

Appellants mistake the legal standard governing the admission of a self-authenticating document into evidence. Deutsche Bank was not required to present a witness to authenticate the note. See Fed. R. Evid. 1003. Rather, the note was admissible as a self-authenticating document without the need for further evidence in support of its authenticity. Under the Federal Rules of Evidence, signed commercial paper is “self-authenticating,” meaning that it “require[s] no extrinsic evidence of authenticity in order to be admitted.” Fed. R. Evid. 902(9). A signed promissory note falls into this category of evidence. See *In re Cook*, 457 F.3d 561, 566 (6th Cir. 2006) (“the promissory note is self-authenticating evidence pursuant to Rule 902”); *United States v. Varner*, 13 F.3d 1503, 1508-09 (11th Cir. 1994).

Miller v. Deutsche Bank Nat'l Tr. Co., No. 12-cv-03279, 2013 U.S. Dist. LEXIS 126888, at *27-28 (D. Colo. Sept. 4, 2013) (emphasis added; brackets in original).

E. Moore’s Failure to Challenge the Original Note and Deed of Trust in Her Pleadings Waived Such Challenges

Respondents’ production of the original note at summary judgment made a prima facie case to enforce it. As stated in White and Summers, “merely by producing a properly indorsed or issued instrument the plaintiff proves that he is entitled to enforce it as a holder.” 2 James J. White et al., *Uniform Commercial Code* § 17:6, Westlaw (6th ed. Nov. 2016 update); *Carriger*, 592 F.2d at 316 (“Under Uniform Commercial Code § 3-307 mere production of a note is prima facie evidence of its validity and of the holder’s right to recover on it.”).

More to the point, Moore admitted the signatures on the note were valid because Moore failed to “specifically deny” her signature in her complaint or to submit evidence that the original before the Court is not the original. Under RCW 62A.3-308(a),¹³ Moore must “specifically den[y]” the validity of her signature in her pleadings. She did not. To the contrary, she admitted she signed the note and deed of trust and attached copies of both. CP 1-36 Moore Complaint at ¶ 3.1: “On December 6, 2006, Ms. Moore signed the Promissory Note (Exhibit 1) and Deed of

¹³ Former U.C.C. § 3-307 is now § 3-308. See U.C.C. § 3-308 Official Comment 1 (“Section 3-308 is a modification of former Section 3-307. The first two sentences of subsection (a) are a restatement of former Section 3-307(1).”).

Trust (Exhibit 3) in favor of First Franklin a division of National City Bank.”¹⁴

Therefore, per the statute, “each signature” on the note is “admitted.”

In an action with respect to an instrument, the authenticity of, and authority to make, each signature on the instrument is admitted unless specifically denied in the pleadings. If the validity of a signature is denied in the pleadings, the burden of establishing validity is on the person claiming validity, but the signature is presumed to be authentic and authorized unless the action is to enforce the liability of the purported signer and the signer is dead or incompetent at the time of trial of the issue of validity of the signature.

RCW 62A-308(a) (emphasis added). Moreover, each signature on the note is presumed “authentic and authorized.” As the official U.C.C. § 3-308 comment explains, Moore cannot rely on denials or speculation; she must put on evidence to show that the signature is forged or unauthorized:

The question of the burden of establishing the signature arises only when it has been put in issue by specific denial. “Burden of establishing” is defined in Section 1-201. The burden is on the party claiming under the signature, but the signature is presumed to be authentic and authorized except as stated in the second sentence of subsection (a). “Presumed” is defined in Section 1-201 and means

¹⁴ See *Coupounas v. Madden*, 514 N.E.2d 1316, 1320 (Mass. 1987) (defendant disputing validity of notes “had to do more than ‘call into question’ the ‘integrity’ of the notes”); *Triffin v. Somerset Valley Bank*, 777 A.2d 993, 1001 (N.J. Super. Ct. App. Div. 2001) (general denial insufficient).

that until some evidence is introduced which would support a finding that the signature is forged or unauthorized, the plaintiff is not required to prove that it is valid. The presumption rests upon the fact that in ordinary experience forged or unauthorized signatures are very uncommon, and normally any evidence is within the control of, or more accessible to, the defendant. The defendant is therefore required to make some sufficient showing of the grounds for the denial before the plaintiff is required to introduce evidence. The defendant's evidence need not be sufficient to require a directed verdict, but it must be enough to support the denial by permitting a finding in the defendant's favor. Until introduction of such evidence the presumption requires a finding for the plaintiff.

U.C.C. § 3-308 Official Comment 1 (emphases added). In other words, “[t]he defendant is therefore required to make some sufficient showing of the grounds for the denial before the plaintiff is required to introduce evidence.” *In re Bass*, 738 S.E.2d 173, 177 (N.C. 2013) (citation omitted). Arguments over copies of the note provide no evidence that the original before the Court is either forged or unauthorized. Respondents had no obligation to submit additional evidence beyond the note and the presumption requires a finding for the Respondents.

Likewise, Moore cannot attack the indorsement signature because, like Moore's signature, it is subject to the U.C.C. rule that “each signature on the instrument is admitted unless specifically denied in the pleadings.” RCW 62A.3-308(a). Moore did not “specifically den[y]” the endorsement

signature in her complaint and therefore has admitted the signature is valid.

Without unambiguous evidence to the contrary, a signature that “is not qualified in any way and appears in the place normally used for indorsements . . . may be an indorsement” even if the signer intended the signature to be something else. N.C.G.S. § 25-3-204 cmt. 1 (2011). The UCC drafters’ strong presumption in favor of the legitimacy of indorsements protects the transfer of negotiable instruments by giving force to the information presented on the face of the instrument. See 6B Lary Lawrence, *Anderson on the Uniform Commercial Code* § 3-204:8R (3d ed. 2003) [hereinafter 6B Anderson]; see also 6 William D. Hawkland & Lary Lawrence, *U.C.C. Serv.* (West) § 3-204:2 (Rev. Art. 3) [hereinafter Hawkland].

Bass, 738 S.E.2d at 176 (emphases added; brackets and ellipsis in original). In *In re Richmond*, 534 B.R. 479 (Bankr. E.D.N.Y. 2015), an argument similar to Moore’s was rejected:

The Debtor also challenges the authority of the indorser to sign on behalf of New Century, because, based on his research on LinkedIn, he believes that the indorser now works as a dental assistant. (Affirmation in Further Supp., ECF No. 220, ¶ 30.) The result of the Debtor’s online search does not constitute admissible evidence; moreover, the current profession of the indorser is irrelevant as long as the indorser was authorized, at the time of the indorsement, to indorse the Note. The indorser’s signature is presumed to be authentic and authorized. 11 M.R.S. § 3–1308(1); N.Y. U.C.C. Law § 3–307. As the Official Comments note, “until some evidence is introduced which would support a finding that the signature is forged or unauthorized, the plaintiff is

not required to prove that it is valid.” Official Comment 1 to 11 M.R.S. § 3–1308. *See In re Bass*, 366 N.C. 464, 470–71, 738 S.E.2d 173, 177–78 (2013) (finding defendant’s unsupported assertion that an indorsement was forged or unauthorized insufficient to rebut presumption of authenticity).

Id. at 486. In short, Moore has admitted the validity of the signatures and has submitted no evidence demonstrating that the signatures are forged or unauthorized. Summary judgment on these issues was properly granted.

F. The Holder of a Promissory Note Is Entitled to Enforce the Note and Deed of Trust

USB as trustee, as holder of Moore’s note, was entitled to enforce the note and the deed of trust securing it. The holder of a note is the beneficiary of a deed of trust securing the note and is entitled to enforce the deed of trust through the non-judicial foreclosure procedure. *Brown v. Dep’t of Commerce*, 184 Wn.2d 509, 539-40, 359 P.3d 771 (2015); *Bain v. Metro. Mortg. Grp., Inc.*, 175 Wn.2d 83, 104, 285 P.3d 34 (2012) (“[A] beneficiary must either actually possess the promissory note or be the payee.”).¹⁵ USB as trustee is the beneficiary of Moore’s deed of trust because it holds her original note.¹⁶

¹⁵ RCW 62A.3-205; RCW 62A.3-301 (the holder of the note includes any party who takes possession of the note, endorsed in blank, by transfer); RCW 61.24.005(2) (beneficiary is the “holder of the [promissory note] . . . secured by the deed of trust”).

¹⁶ A holder can possess a note “directly or through an agent.” RCW 62A.3-201 cmt. 1; *Bain*, 175 Wn.2d at 106. Possession of Moore’s original note imparts the power to the Trust to enforce it. *See Elene-Arp v. Fed. Home Fin. Agency*, No.

The same rule applies to enforcement of the secured mortgage because the mortgage is security for the note, and is treated as an incident of the note, a rule that has been long-established in American jurisprudence:

“The note and mortgage are inseparable; the former as essential, the latter as an incident. An assignment of the note carries the mortgage with it, while an assignment of the latter alone is a nullity.”

Carpenter v. Longan, 83 U.S. (16 Wall.) 271, 274, 21 L. Ed. 313 (1872) (stating the common-law rule). Under well-established law in Washington and most jurisdictions, “the security follows the note,” *i.e.*, a transfer of the note transfers the security along with it.¹⁷

As it is well-established that the “security instrument will follow the note,” *Bain*, 285 P.3d at 44, CitiMortgage’s possession of the original Note imparts the authority to enforce the terms of the Deed of Trust. See *Lynott v. Mortgage Electronic Registration Systems, Inc.*, 2012 U.S. Dist. LEXIS 170607, 2012 WL 5995053 (W.D. Wash. 2013)

C12-2154, 2013 WL 1898218, at *4 (W.D. Wash. May 7, 2013); *Petheram v. Wells Fargo Bank*, No. C13-1016, 2013 WL 6173806, at *2 (W.D. Wash. Nov. 21, 2013).

¹⁷ The rule is codified in the U.C.C. “Subsection (g) codifies the common-law rule that a transfer of an obligation secured by a security interest or other lien on personal or real property also transfers the security interest or lien.” U.C.C. § 9-203(g) Official Comment 9. See *Myers v. Mortg. Elec. Registration Sys., Inc.*, No. 11-cv-05582-RBL, 2012 WL 678148, at *3 (W.D. Wash. Feb. 24, 2012) (“The statute merely codifies the longstanding common law rule that the deed follows the debt: ‘Transfer of the note carries with it the security, without any formal assignment or delivery, or even mention of the latter.’” (citation omitted)).

Johnson v. CitiMortgage, Inc., No. 2:13-cv-00037-RSM, 2013 WL 6632108, at *4 (W.D. Wash. Dec. 17, 2013) (emphasis added).

Respondents have the right to foreclose because they hold the original Moore note, not because MERS did or did not sign or record an assignment document.¹⁸ *In re Butler*, 512 B.R. 643, 656 (Bankr. W.D. Wash. 2014) (“[A]ny assignment of the Deed of Trust from MERS to One West had no legal effect on the ownership or possession of the Note and was irrelevant for purposes of the disputes at issue here.”); *Brown*, 184 Wn.2d 509; RCW 62A.3-301 (the holder of the note includes any party who takes possession of the note, endorsed in blank, by transfer); RCW 61.24.005(2) (beneficiary is the “holder of the [promissory note] secured by the deed of trust”); *e.g.*, *Johnson*, 2013 WL 6632108, at *3, *4 (“Contrary to Plaintiffs’ assertions, the present case is distinguishable from *Bain*, as CitiMortgage derives its authority to collect under the Note from its position as the Note holder, not by virtue of the assignment by MERS.” “CitiMortgage’s possession of the original Note imparts the authority to enforce the terms of the Deed of Trust.”); *Lynott v. Mortg. Elec. Registration Sys., Inc.*, No. 12-cv-5572-RBL, 2012 WL 5995053, at *2 (W.D. Wash. Nov. 30, 2012) (“U.S. Bank is the beneficiary of the deed

¹⁸ See *Conner v EverHome Mortgage* 2016 WL 6837961(2016) (This decision has no precedential value, is not binding on any court, and is cited only for such persuasive value as the court deems appropriate. GR 14.1.).

because it holds Plaintiff's note, not because MERS assigned it the deed.”).

Borrowers do not have standing to challenge prior assignments of the note and deed of trust or make claims based upon the securitization of the note. See *Cagle v. Abacus Mortg., Inc.*, No. 2:13-cv-02157-RSM, 2014 WL 4402136, at *4 (W.D. Wash. Sept. 5, 2014) (“Plaintiff lacks standing to bring claims based on the PSA, to which she was not a party.”); *Frazer v. Deutsche Bank Nat’l Tr. Co.*, No. 11-cv-5454, 2012 WL 1821386, at *2 (W.D. Wash. May 18, 2012) (“Plaintiffs are not parties to the pooling and servicing agreement and present no authority suggesting standing to challenge it.”). *Alexander v. Wells Fargo Bank, N.A.*, No. C15-459-RAJ, 2015 WL 5123922, at *3 (W.D. Wash. Sept. 1, 2015) (“[T]he majority of Ninth Circuit courts have held that ‘plaintiffs lack standing to challenge noncompliance with a PSA in securitization unless they are parties to the PSA or third party beneficiaries of the PSA.’” (citation omitted)); *Mohlman v. Long Beach Mortg.*, No. 12–10120, 2013 WL 490112, at *5 (E.D. Mich. Feb. 8, 2013) (“[V]iolating the REMIC rules does not establish a defect in ownership of the mortgage.” (citing *Livonia Prop. Holdings, L.L.C. v. 12840–12976 Farmington Rd. Holdings, L.L.C.*, 717 F. Supp. 2d 724, 748 (E.D. Mich. 2010))).

To have standing to challenge prior transfers, a borrower must make a real showing that he or she is at risk for making double payments. Otherwise, borrowers “[do] not have standing . . . to inspect each and every contract or agreement between any predecessor and successor mortgagee, searching for ‘irregularities’ and noncompliance.”¹⁹ In particular, where the lender produces the original note, as here, there is no risk of double payment and the borrower has no standing. *Livonia Props. Holdings, LLC v. 12840-2976 Farmington Rd. Holdings, LLC*, 399 F. App’x 97, 102 (6th Cir. 2010); *Bridge v. Ocwen Fed. Bank FSB*, No. 1:07 CV 2739, 2013 U.S. Dist. LEXIS 127588, at *17 (N.D. Ohio Sept. 6, 2013) (“Where, as here and in *Livonia*, the foreclosing party produces the original note, the obligor ‘cannot credibly claim to have standing to challenge’ the assignments and other agreements to which they were not a party.” (emphasis added; citation omitted)).²⁰

Claims based upon alleged violations of New York trust law are likewise unavailing for the same reasons. *See, e.g., Moran v. GMAC Mortg.*, No. 5:13-CV-04981-LHK, 2014 U.S. Dist. LEXIS 84411, at *12-

¹⁹ *Kiefer v. ABN AMRO*, No. 12-10051, 2012 WL 3600351, at *4 (E.D. Mich. June 12, 2012) (brackets in original; citation omitted).

²⁰ *Slorp v. Lerner, Sampson & Rothfuss*, No. 2:12-cv-498, 2013 U.S. Dist. LEXIS 32538, at *13-14 (S.D. Ohio Mar. 8, 2013) (where there is no risk plaintiff may have to pay the debt twice, plaintiff may not challenge assignment whatever relief is sought); *Dye v. Wells Fargo*, No. 13-cv-14854, 2014 U.S. Dist. LEXIS 65419 (E.D. Mich. May 13, 2014).

13 (N.D. Cal. June 18, 2014). Moore submits no case authority to support her securitization argument. Where a transaction is void, rather than voidable, a few courts hold that a borrower may have standing to raise some claims. See *Yvanova v. New Century Mortg. Corp.*, 365 P.3d 845 (Cal. 2016). *Yvanova* stands for the limited (and logical) proposition that if “a purported assignment necessary to the chain by which the foreclosing entity claims that power is absolutely void,” then “the foreclosing entity has acted without legal authority by pursuing a trustee’s sale, and such an unauthorized sale constitutes wrongful foreclosure.” *Id.* at 855-56. But the *Yvanova* court went on to explain that, “[w]hen an assignment is merely voidable, the power to ratify or avoid the transaction lies *solely* with the parties to the assignment[.]” *Id.* at 856 (emphasis added). On this point Moore’s claim fails entirely: prior assignments or transfers related to a mortgage trust are voidable – not void – transactions under New York law. See *Yhudai v. IMPAC Funding Corp.*, 205 Cal. Rptr. 3d 680, 683 (Ct. App. 2016), and cases cited therein.²¹

IV. CONCLUSION

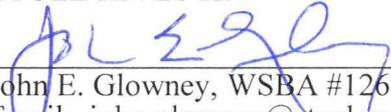
Moore’s appeal should be denied. All of her claims against MERS are barred by res judicata, and most of her remaining claims against the

²¹ *Yhudai* contains a good short history of how this argument (that New York trust transactions are void rather than voidable) first arose based upon a wrongly decided lower New York court opinion, and how it has been rejected by a subsequent appellate opinion and in other cases.

other Respondents are barred by res judicata. In any event Respondent USB as trustee is the holder of Moore's note and the proper party to enforce the note and deed of trust. Moore's note was not accelerated, and even if it were, the DTA provides that the parties return to the status quo when the non-judicial foreclosure proceeding is abandoned or discontinued. Moore subsequently acknowledged the obligation and restarted the statute of limitations. Respondents respectfully request the Court to deny Moore's appeal.

DATED: January 12, 2017.

STOEL RIVES LLP



John E. Glowney, WSBA #12652
Email: john.glowney@stoel.com
Vanessa S. Power, WSBA #30777
Email: vanessa.power@stoel.com

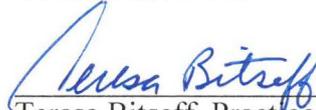
Attorneys for Respondents

CERTIFICATE OF SERVICE

I certify that I caused a true and correct copy of the foregoing document to be served upon the following parties via E-mail / PDF and U.S. First Class Mail:

EMILY S. BROOKS, WSBA #49013 The Brooks Plumb Law Firm 9207 E. Mission Ave., Suite A Spokane, WA 99206 509.891.0460 Email: emily@brooksplumb.com Counsel of Record for Plaintiff	
--	--

STOEL RIVES LLP



Teresa Bitseff, Practice Assistant

DATED: January 17, 2017

@ Seattle, WA