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Attorneys for Defendants AURORA LOAN SERVICES LLC, erroneously sued herein as
AURORA LOAN SERVICES; and MORTGAGE ELECTRONIC REGISTRATION
SYSTEMS, INC., erroneously served herein as MORTGAGE ELECTRONIC REGISTRATION
SERVICES, INC.

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

| | | |
|----------------------------------|---|------------------------------------|
| JUAN VAZQUEZ, an individual |) | CASE NO: 2:08-CV-01800-RCJ-RJJ |
| GABRIELA SOTO, an individual |) | |
| |) | HON. ROBERT C. JONES |
| |) | |
| Plaintiff, |) | ORDER GRANTING |
| v. |) | MOTION TO DISMISS COMPLAINT |
| |) | |
| AURORA LOAN SERVICES, QUALITY |) | |
| LOAN SERVICE CORP |) | |
| FIDELITY NATIONAL DEFAULT |) | |
| SOLUTION., MORTGAGE ELECTRONIC |) | |
| REGISTRATION SERVICES, INC., And |) | |
| DOES 1 through 50, inclusive, |) | |
| |) | |
| Defendant(s). |) | |

Defendants AURORA LOAN SERVICES LLC (“Aurora”) and MORTGAGE
ELECTRONIC REGISTRATION SYSTEMS, INC. (“MERS”), collectively “Defendants,” filed
and served their Motion to Dismiss Complaint on December 29, 2008, and the matter came on
regularly for hearing pursuant to the notice by the Court on March 23, 2009 at 9:00 a.m., with no

1 appearance by or on behalf of Plaintiffs and appearances on behalf of Defendants as noted on the
2 record.

3 The Motion was brought pursuant to Federal Rule of Civil Procedure 12(b)(6) for
4 failure to state a claim upon which relief can be granted against Defendants. The Motion was
5 based upon the Notice of Motion, the Memorandum of Points and Authorities, Request for
6 Judicial Notice including matters upon which judicial notice was requested and/or proper, and
7 upon all pleadings and documents filed with this Court.

9 Pursuant to the Notice of Motion, the Court's Notice of Electronic Filing, and this
10 Court's Minute Order dated December 29, 2008, any response to the Motion was to be filed
11 and served within 15 days, i.e. by no later than January 16, 2009. Local Rule 7-2(b). As
12 provided in the Court's Minute Order, "The failure to file points and authorities in response to
13 any motion shall constitute a consent to the granting of the motion. Local Rule 7-2(d). The
14 Court may then grant the motion and dismiss the non-moving party's claims."

16 The Court having considered the moving papers, its own files, and good cause
17 appearing, and having granted said Motion rules as follows based on the grounds as set forth
18 therein:

19 1. No response or opposition to the Motion was timely filed and served pursuant to
20 Local Rule 7-2(b). The Court may grant the motion to dismiss without a hearing where a local
21 rule provides that a party failing to file a timely opposition is deemed to waive any objection to
22 the motion. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Accordingly, pursuant to the
23 grounds set forth in the Motion:

25 2. The first claim for wrongful foreclosure fails. The loan documents and
26 foreclosure notices recorded in the Official County Records sufficiently demonstrate standing by
27 Defendants with respect to the loan and the foreclosure conducted pursuant to applicable law
28

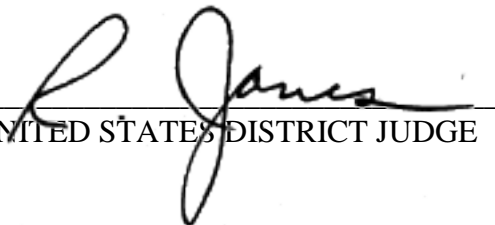
1 and Nevada foreclosure statutes. N.R.S. §§ 107.080 *et. seq.* The recitals in the recorded
2 trustee's deed upon sale following its completion confirm that the foreclosure was properly
3 noticed and completed pursuant to Nevada law. N.R.S. § 107.030(a).

4 3. The second and third claims for negligence fail against Defendants. The second
5 claim is not asserted against these Defendants. As to the third claim, neither Aurora nor MERS
6 were the broker or lender of Plaintiffs' conventional home mortgage loan. Moreover, neither
7 owes the alleged negligence duty as a matter of law. The elements of the claim cannot be stated
8 against Defendants.

9
10 4. The fourth claim for quiet title fails as a matter of law. As established, no claim
11 can be stated for wrongful foreclosure and there is no basis to quiet title to the subject property
12 back into Plaintiffs.

13 **IT IS THEREFORE ORDERED** that the Defendants' Motion to Dismiss is
14 GRANTED and judgment of dismissal shall be entered in favor of Defendants with prejudice.

15
16
17 DATED: April 20, 2009, 2009


UNITED STATES DISTRICT JUDGE

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21 Respectfully submitted by,
22 HOUSER & ALLISON
23 A Professional Corporation

24
25 /s/ Jeffrey S. Allison
Jeffrey S. Allison

26 Attorney for Defendant AURORA LOAN
27 SERVICES LLC and MORTGAGE ELECTRONIC
28 REGISTRATION SYSTEMS, INC.

1 **CERTIFICATE OF MAILING**

2 I hereby certify that I am over the age of eighteen (18), that I am not a party to this
3 action, and that on this date I caused to be served a true and correct copy of the following
4 documents:

4 **[PROPOSED] ORDER GRANTING MOTION TO DISMISS COMPLAINT**

5
6 By: U.S. Mail
7 Facsimile transmission
8 Overnight Mail
9 Hand and/or Personal Delivery

9 and addressed to the following:

10 Juan Vazquez
11 Gabriella Soto
12 1825 Navajo Lake Way
13 Las Vegas, NV 89128

13 *Plaintiffs, In Pro Se*

14 Kristin A. Schuler-Hintz
15 McCarthy Holthus, LLP
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17 Las Vegas, NV 89101
18 (702) 685-0329
19 (866) 339-5691

18 *Attorneys for Defendant QUALITY LOAN SERVICE CORPORATION*

20 Dated: March 30 2009

21 
22 An employee of HOUSER & ALLISON, APC