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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

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10 SUSAN WILKINSON, *et al.*,

11 Plaintiffs,

12 v.

13 DEUTSCHE BANK NATIONAL TRUST  
14 COMPANY, *et al.*,

15 Defendants.

Case No. 2:12-cv-00253-LDG (VCF)

**ORDER**

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17 The plaintiffs, Susan G. Wilkinson and The Wilkinson Family Trust (the Trust),  
18 brought this action in state court. Deutsche Bank National Trust Company removed this  
19 matter. The Court granted defendants' motion to dismiss the plaintiffs' complaint, but  
20 granted the plaintiffs leave to amend. The plaintiffs filed a First Amended Complaint  
21 seeking an order to avoid a Trustee's sale held November 14, 2011, due to alleged  
22 violations of NRS 107.080(3) and 107.086. Deutsche Bank now moves for summary  
23 judgment (#34), which motion the plaintiffs oppose (#37).

24 **Motion for Summary Judgment**

25 In considering a motion for summary judgment, the court performs "the threshold  
26 inquiry of determining whether there is the need for a trial—whether, in other words, there

1 are any genuine factual issues that properly can be resolved only by a finder of fact  
2 because they may reasonably be resolved in favor of either party.” *Anderson v. Liberty*  
3 *Lobby, Inc.*, 477 U.S. 242, 250 (1986); *United States v. Arango*, 670 F.3d 988, 992 (9th Cir.  
4 2012). To succeed on a motion for summary judgment, the moving party must show (1)  
5 the lack of a genuine issue of any material fact, and (2) that the court may grant judgment  
6 as a matter of law. Fed. R. Civ. Pro. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322  
7 (1986); *Arango*, 670 F.3d at 992.

8 A material fact is one required to prove a basic element of a claim. *Anderson*, 477  
9 U.S. at 248. The failure to show a fact essential to one element, however, “necessarily  
10 renders all other facts immaterial.” *Celotex*, 477 U.S. at 323. Additionally, “[t]he mere  
11 existence of a scintilla of evidence in support of the plaintiff’s position will be insufficient.”  
12 *United States v. \$133,420.00 in U.S. Currency*, 672 F.3d 629, 638 (9th Cir. 2012) (quoting  
13 *Anderson*, 477 U.S. at 252).

14 “[T]he plain language of Rule 56(c) mandates the entry of summary judgment, after  
15 adequate time for discovery and upon motion, against a party who fails to make a showing  
16 sufficient to establish the existence of an element essential to that party’s case, and on  
17 which that party will bear the burden of proof at trial.” *Celotex*, 477 U.S. at 322. “Of  
18 course, a party seeking summary judgment always bears the initial responsibility of  
19 informing the district court of the basis for its motion, and identifying those portions of ‘the  
20 pleadings, depositions, answers to interrogatories, and admissions on file, together with the  
21 affidavits, if any,’ which it believes demonstrate the absence of a genuine issue of material  
22 fact.” *Id.* at 323. As such, when the non-moving party bears the initial burden of proving,  
23 at trial, the claim or defense that the motion for summary judgment places in issue, the  
24 moving party can meet its initial burden on summary judgment “by ‘showing’—that is,  
25 pointing out to the district court—that there is an absence of evidence to support the  
26 nonmoving party’s case.” *Id.* at 325. Conversely, when the burden of proof at trial rests on

1 the party moving for summary judgment, then in moving for summary judgment the party  
2 must establish each element of its case.

3         Once the moving party meets its initial burden on summary judgment, the non-  
4 moving party must submit facts showing a genuine issue of material fact. Fed. R. Civ. Pro.  
5 56(e); *Nissan Fire & Marine Ins. Co. v. Fritz Companies, Inc.*, 210 F.3d 1099, 1103 (9th Cir.  
6 2000). As summary judgment allows a court "to isolate and dispose of factually  
7 unsupported claims or defenses," *Celotex*, 477 U.S. at 323-24, the court construes the  
8 evidence before it "in the light most favorable to the opposing party." *Adickes v. S. H.*  
9 *Kress & Co.*, 398 U.S. 144, 157 (1970). The allegations or denials of a pleading, however,  
10 will not defeat a well-founded motion. Fed. R. Civ. Pro. 56(e); *Matsushita Elec. Indus. Co.*  
11 *v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986). That is, the opposing party cannot  
12 "rest upon the mere allegations or denials of [its] pleading' but must instead produce  
13 evidence that 'sets forth specific facts showing that there is a genuine issue for trial.' "  
14 *Estate of Tucker v. Interscope Records*, 515 F.3d 1019, 1030 (9th Cir. 2008) (quoting Fed.  
15 R. Civ. Pro. 56(e)).

16         In its moving papers, Deutsche Bank sets forth nine statements of fact with which  
17 the plaintiffs do not take any issue and which the Court will not repeat as the parties are  
18 familiar with them. Rather, in opposition, the plaintiffs assert only that Deutsche Bank has  
19 failed to establish that the required documents for the State of Nevada Foreclosure  
20 Mediation Program were served. The record establishes the contrary. Deutsche Bank has  
21 provided evidence, which plaintiffs have failed to place into dispute, that the required  
22 documents were posted and mailed to the property.

23         Accordingly, for good cause shown,


24         **THE COURT ORDERS** that Defendants' Motion for Summary Judgment as to the  
25 Plaintiffs' First Amended Complaint (#34) is GRANTED;

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THE COURT FURTHER **ORDERS** that Defendants' Motion for Hearing on its Motion for Summary Judgment (#41) is DENIED as moot.

DATED this 26 day of September, 2013.

  
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Lloyd D. George  
United States District Judge