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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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JAVAD KAVIANI, INDIVIDUALLY, AND AS  
SPECIAL ADMINISTRATOR ON BEHALF  
OF ESTATE OF KAREN MARIE WILSON,  
DECEASED,

Case No. 2:19-cv-00111-MMD-CWH

ORDER

Plaintiff,

v.

CALIBER HOME LOAN, et al.,

Defendants.

**I. SUMMARY**

Pro se Plaintiff Javad Kaviani sued Caliber Home Loan, Inc. (“Caliber” or “Defendant”), and Quality Loan Service Corporation (“Quality”) because Caliber refused to sell its interest in a deed of trust encumbering real property located at 10400 Sloping Hill Ave., Las Vegas, Nevada (the “Property”), to an LLC controlled by Plaintiff, even though Plaintiff’s brother purchased a homeowners’ association lien that also encumbered the Property, and because Caliber attempted to foreclose on the Property several times even though Plaintiff’s brother had entered bankruptcy. (ECF No. 1-1.) Plaintiff alleges six causes of action arising under state common law. (Id.) Caliber removed based on diversity of citizenship.<sup>1</sup> (ECF No. 1.) Before the Court are Plaintiff’s motion to remand because of an insufficient amount in controversy (“Motion to Remand”) (ECF No. 12), Caliber’s motion to dismiss the case (“Motion to Dismiss”) (ECF No. 14), and Plaintiff’s ex parte motion for a temporary restraining order preventing the Property

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<sup>1</sup>Quality consented to removal. (ECF No. 7 at 3.)

1 from being sold at a foreclosure sale on July 19, 2019 (“TRO Motion”) (ECF No. 26).<sup>2</sup>  
2 Because the Court agrees with Defendants—for various reasons, as explained below—  
3 the Court will deny Plaintiff’s Motion to Remand, grant Caliber’s Motion to Dismiss,<sup>3</sup> and  
4 deny Plaintiff’s TRO Motion as moot.

5 **II. BACKGROUND**

6 The facts described herein are mostly adapted from Plaintiff’s Complaint.

7 Karen Marie Wilson and her husband purchased the Property in 1998 by  
8 obtaining a loan (“Loan”) subject to a mortgage agreement and a corresponding deed of  
9 trust encumbering the Property (the “DOT”). (ECF No. 1-1 at 4.) Caliber now owns the  
10 Loan and DOT. (Id.) In 2002, the Property was transferred to Wilson as her sole  
11 property. (Id.) Sometime after that, Wilson stopped paying her homeowners’ association  
12 (“HOA”) dues. (Id.) The HOA encompassing the Property foreclosed on the Property  
13 under NRS § 116.3116, et seq. (Id.)

14 Non-party Ahmad Kaviani<sup>4</sup> purchased the HOA’s interest in the Property at a  
15 foreclosure sale in 2017. (Id.) Specifically, the deed evidencing Ahmad Kaviani’s interest  
16 in the Property states, “HOA Foreclosure Deed – Subject to First Mortgage Superpriority  
17 Amount Satisfied.” (ECF No. 1-1 at 24.) Plaintiff further alleges “[t]hat Ahmad Kaviani

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20 <sup>2</sup>The Court has also reviewed the parties’ responses, replies, and joinders to  
21 these motions. (ECF Nos. 17, 18, 21, 22, 23, 24.)

22 <sup>3</sup>Quality joined Caliber’s Motion to Dismiss (ECF No. 15), Caliber’s response to  
23 Plaintiff’s Motion to Remand (ECF No. 18), and Caliber’s reply in support of its Motion to  
24 Dismiss (ECF No. 24). In these documents, Quality states that there are no specific facts  
25 or allegations of wrongdoing directed at Quality in Plaintiff’s Complaint, and that it joins  
26 Caliber’s arguments in full. (See, e.g., ECF No. 24 at 1.) In addition, Quality points out  
27 that it only served as the foreclosure trustee as to the Property, and therefore had no  
28 contact with Plaintiff before June 8, 2018. (See, e.g., ECF No. 15 at 1.) The Court agrees  
with Quality it is similarly situated to Caliber, albeit not as directly involved with Plaintiff,  
and will therefore consider Plaintiff’s allegations against Quality in conjunction with his  
allegations against Caliber.

<sup>4</sup>Plaintiff says Ahmad Kaviani is his brother. (ECF No. 22 at 5, 7, 8.)

1 purchased the subject property through the HOA foreclosure sale, fully aware that the  
2 HOA Foreclosure Deed would be subject to the first mortgage.” (Id. at 8.)

3 In October 2017, an entity called KIC Funding LLC<sup>5</sup> (“KIC”) agreed with Ahmad  
4 Kaviani and Wilson to purchase the Property for the amount required to pay off the  
5 mortgage. (Id. 4.) But Wilson tragically passed away in November 2017. (Id.) So they  
6 were apparently never able to consummate their agreement.

7 Meanwhile, nobody appears to have been paying the mortgage. Thus, Caliber  
8 sought to foreclose on the Property for the amount it was owed under the mortgage  
9 agreement, setting a foreclosure auction for June 8, 2018. (Id. at 5.) Ahmad Kaviani filed  
10 for bankruptcy protection the day before the sale was set to occur, June 7, 2018. (Id.) In  
11 addition, sometime before the foreclosure sale, Plaintiff negotiated with Caliber to pay off  
12 the mortgage on the Property for \$185,000, including tendering a cashier’s check for that  
13 amount, but Caliber rejected Plaintiff’s offer. (Id.) The foreclosure sale thus went ahead  
14 as scheduled, but nobody purchased the Property, so it reverted to Caliber. (Id.)

15 On June 12, 2018, non-party Bill Waller of Platinum Properties posted a notice of  
16 foreclosure on the Property’s door. (Id.) In doing so, Mr. Waller told a tenant who had  
17 just moved in that the Property had been foreclosed upon, was now owned by Caliber,  
18 and that Caliber planned to evict the tenant. (Id.) The tenant was upset. (Id. at 6.) The  
19 tenant refused to pay Ahmad Kaviani any rent, and demanded compensation to cover  
20 the cost of moving into and out of the Property. (Id.)

21 Ahmad Kaviani then contacted Quality to ask why the foreclosure sale had  
22 occurred even though he had filed for bankruptcy. (Id.) Quality’s counsel told Ahmad  
23 Kaviani the foreclosure sale would be rescinded because Quality had overlooked Ahmad  
24 Kaviani’s bankruptcy filing. (Id.) On August 13, 2018, Ahmad Kaviani’s bankruptcy  
25 petition was dismissed. (Id.) Caliber again noticed the Property for a foreclosure auction

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27 <sup>5</sup>Plaintiff also says he “is the sole owner and operator of KIC Funding LLC. He is  
28 KIC Funding.” (ECF No. 22 at 7.)

1 on October 12, 2018, and Ahmad Kaviani again filed for bankruptcy on October 11,  
2 2018. (Id. at 7.) That bankruptcy petition was dismissed on April 5, 2019. (ECF No. 14 at  
3 5.)

4 On October 19, 2018, a state probate court in Las Vegas tasked with settling  
5 Wilson's estate declared that Ahmad Kaviani is the legal owner of the Property and  
6 quieted title in his favor. (ECF No. 14-3 at 4.) In that same order, Plaintiff was appointed  
7 the Special Administrator of Wilson's estate, an appointment limited in scope to "quieting  
8 and declaring title" to the Property. (Id. at 5; see also ECF No. 1-1 at 16.)

9 On July 2, 2019, another notice—indicating another foreclosure attempt—was  
10 posted on the Property's door. (ECF No. 26 at 1.) That notice stated the foreclosure sale  
11 will occur on July 19, 2019. (Id.) Plaintiff filed the TRO Motion on July 15, 2019, seeking  
12 to prevent the foreclosure sale from taking place on July 19. (Id.)

13 Plaintiff's Complaint asserts six claims: (1) breach of the covenant of good faith  
14 and fair dealing; (2) tortious interference; (3) unjust enrichment; (4) restraint of trade; (5)  
15 fraudulent misrepresentation; and (6) specific performance. (ECF No. 1-1.) Claims 1 and  
16 6 relate to Caliber's refusal to sell its interest in the Property to Plaintiff to date, where  
17 claim 6 seeks an order directing Caliber to sell its interest in the Property for a particular  
18 price. (Id. at 12-13.) Claims 2-5 relate to Caliber's attempts to foreclose on the Property  
19 while Ahmad Kaviani repeatedly filed for bankruptcy, basically alleging that Caliber's  
20 foreclosure attempts harmed Ahmad Kaviani's ability to collect rent on the Property  
21 because one or more of his tenants refused to pay rent when they learned the Property  
22 was being foreclosed on, and harmed both Plaintiff and Ahmad Kaviani because they  
23 have paid for upkeep of the Property.

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1 **III. MOTION TO REMAND (ECF NO. 12)<sup>6</sup>**

2 This is a diversity case that Caliber removed to this Court. (ECF No. 1 at 3-4.)  
3 Plaintiff moves to remand because he is seeking monetary damages in excess of  
4 \$50,000 and brings claims under state law. (ECF No. 12 at 1-2.) He further states he  
5 would like the Court “to remand the case back to the State Court so that he can seek  
6 injunctive relief against Caliber before the Property is sold at foreclosure.” (Id. at 2.)  
7 Defendant counters it properly removed this case because Plaintiff seeks injunctive relief  
8 regarding the Property, which is worth more than the \$75,000 jurisdictional amount-in-  
9 controversy threshold. (ECF No. 17 at 3-4.) The Court agrees with Defendant.

10 Federal courts are courts of limited jurisdiction, having subject-matter jurisdiction  
11 only over matters authorized by the Constitution and Congress. See U.S. Const. art. III,  
12 § 2, cl. 1; see also, e.g., *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377  
13 (1994). A suit filed in state court may be removed to federal court if the federal court  
14 would have had original jurisdiction over the suit at commencement of the action. See 28  
15 U.S.C. § 1441(a). However, courts strictly construe the removal statute against removal  
16 jurisdiction, and “[f]ederal jurisdiction must be rejected if there is any doubt as to the right  
17 of removal in the first instance.” *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992).  
18 The party seeking removal bears the burden of establishing federal jurisdiction. See *id.*  
19 at 566-57.

20 To establish subject matter jurisdiction pursuant to diversity of citizenship under §  
21 1332(a), the party asserting jurisdiction must show: (1) complete diversity of citizenship  
22 among opposing parties and (2) an amount in controversy exceeding \$75,000. See 28  
23 U.S.C. § 1332(a). Where it is not facially evident from the complaint that \$75,000 was in  
24 controversy at the time of removal, a defendant seeking removal must prove, by a  
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27 <sup>6</sup>Plaintiff phrases his motion as an opposition to Caliber’s petition for removal, but  
28 the Court construes it as a motion to remand.

1 preponderance of the evidence, that the amount in controversy requirement is met. See  
2 Valdez v. Allstate Ins. Co., 372 F.3d 1115, 1117 (9th Cir. 2004).

3 Under that preponderance of the evidence standard, a removing defendant must  
4 “provide evidence establishing that it is ‘more likely than not’ that the amount in  
5 controversy exceeds” the jurisdictional minimum. Id. at 1117 (citations omitted). As to the  
6 kind of evidence that may be considered, the Ninth Circuit has adopted the “practice of  
7 considering facts presented in the removal petition as well as any ‘summary-judgment-  
8 type evidence relevant to the amount in controversy at the time of removal.’” Matheson  
9 v. Progressive Specialty Ins. Co., 319 F.3d 1089, 1090 (9th Cir. 2003) (quoting Singer v.  
10 State Farm Mut. Auto. Ins. Co., 116 F.3d 373, 377 (9th Cir. 1997)). Conclusory  
11 allegations are insufficient. See Matheson, 319 F.3d at 1090 (citation omitted).

12 The Court finds Defendant has carried its burden to show that the amount in  
13 controversy exceeds \$75,000. Defendant proffered a copy of the tax assessment  
14 records for the Property showing an assessed value of \$163,637 for the 2019-2020  
15 fiscal year. (ECF No. 17 at 3-4 (citing ECF No. 17-1 at 2).) Defendant also points to  
16 Plaintiff’s allegation in his Complaint that as of June 8, 2018, \$215,141.12 was owed on  
17 the mortgage secured by the Property. (ECF No. 17 at 4 (citing ECF No. 1-1 at 5).) “In  
18 actions seeking declaratory or injunctive relief, it is well established that the amount in  
19 controversy is measured by the value of the object of the litigation.” Cohn v. Petsmart,  
20 Inc., 281 F.3d 837, 840 (9th Cir. 2002) (citation omitted). Here, because Plaintiff  
21 admittedly seeks injunctive relief, the object of the litigation is the Property. See  
22 Fresquez v. Nationstar Mortg., LLC, Case No. 2:16-cv-01274-KJD-NJK, 2017 WL  
23 1024269, at \*2 (D. Nev. Mar. 16, 2017); Wong v. Countrywide Home Loans, Inc., Case  
24 No. 2:16-cv-1012-JCM-CWH, 2017 WL 80253, at \*2 (D. Nev. Jan. 9, 2017). Whether the  
25 Court considers the value of Property, or the amount owed on the mortgage, the amount  
26 in controversy requirement is satisfied here because both amounts exceed \$75,000.  
27 (ECF Nos. 1-1 at 5, 17-1 at 4.) See also Fresquez, 2017 WL 1024269, at \*2; Wong,  
28 2017 WL 80253, at \*2. The Court will therefore deny Plaintiff’s Motion to Remand.

1 **IV. MOTION TO DISMISS (ECF NO. 14)**

2 Defendant moves to dismiss Plaintiff's case because he lacks standing in his  
3 individual capacity, and he fails to state a claim in his capacity as the special  
4 administrator of Wilson's estate. (ECF No. 14.) Defendant also moves to dismiss for  
5 failure to join necessary parties, and substantively attacks the merits of Plaintiff's  
6 individual claims. However, because the Court agrees with Defendant that Plaintiff lacks  
7 standing to bring this case in his individual capacity, and fails to state a claim in his  
8 capacity as the special administrator of Wilson's estate, the Court will focus on those two  
9 arguments herein, and grant Defendant's Motion to Dismiss in its entirety.

10 **1. Legal Standard**

11 A court may dismiss a plaintiff's complaint for "failure to state a claim upon which  
12 relief can be granted." Fed. R. Civ. P. 12(b)(6). A properly pled complaint must provide  
13 "a short and plain statement of the claim showing that the pleader is entitled to relief."  
14 Fed. R. Civ. P. 8(a)(2); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). While  
15 Rule 8 does not require detailed factual allegations, it demands more than "labels and  
16 conclusions" or a "formulaic recitation of the elements of a cause of action." *Ashcroft v.*  
17 *Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*, 550 U.S. at 555.) "Factual allegations  
18 must be enough to rise above the speculative level." *Twombly*, 550 U.S. at 555. Thus, to  
19 survive a motion to dismiss, a complaint must contain sufficient factual matter to "state a  
20 claim to relief that is plausible on its face." *Iqbal*, 556 U.S. at 678 (internal citation  
21 omitted).

22 In *Iqbal*, the Supreme Court clarified the two-step approach district courts are to  
23 apply when considering motions to dismiss. First, a district court must accept as true all  
24 well-pled factual allegations in the complaint; however, legal conclusions are not entitled  
25 to the assumption of truth. See *id.* at 678-79. Mere recitals of the elements of a cause of  
26 action, supported only by conclusory statements, do not suffice. See *id.* at 678. Second,  
27 a district court must consider whether the factual allegations in the complaint allege a  
28 plausible claim for relief. See *Id.* at 679. A claim is facially plausible when the plaintiff's

1 complaint alleges facts that allow a court to draw a reasonable inference that the  
2 defendant is liable for the alleged misconduct. See *id.* at 678. Where the complaint does  
3 not permit the court to infer more than the mere possibility of misconduct, the complaint  
4 has “alleged—but it has not show[n]—that the pleader is entitled to relief.” *Id.* at 679  
5 (internal quotation marks omitted). That is insufficient. A complaint must contain either  
6 direct or inferential allegations concerning “all the material elements necessary to sustain  
7 recovery under some viable legal theory.” *Twombly*, 550 U.S. at 562 (quoting *Car*  
8 *Carriers, Inc. v. Ford Motor Co.*, 745 F.2d 1101, 1106 (7th Cir. 1989) (emphasis in  
9 original)). When the claims in a complaint have not crossed the line from conceivable to  
10 plausible, the complaint must be dismissed. See *Twombly*, 550 U.S. at 570.

11 Particular care is taken in reviewing the pleadings of a pro se party, for a more  
12 forgiving standard applies to litigants not represented by counsel. See *Hebbe v. Pliier*,  
13 627 F.3d 338, 342 (9th Cir. 2010). Still, a liberal construction may not be used to supply  
14 an essential element of the claim not initially pled. See *Pena v. Gardner*, 976 F.2d 469,  
15 471 (9th Cir. 1992). If dismissal is appropriate, a pro se plaintiff should be given leave to  
16 amend the complaint and notice of its deficiencies, unless it is clear that those  
17 deficiencies cannot be cured. See *Cato v. United States*, 70 F.3d 1103, 1107 (9th Cir.  
18 1995).

## 19 **2. Individual Capacity**

20 Caliber argues Plaintiff lacks standing to maintain this suit in his individual  
21 capacity because he cannot show constitutionally-required injury—he is not a party to  
22 the Loan, has no ownership interest in the Property, and has not alleged any agreement,  
23 written or oral, between himself and Caliber. (ECF No. 14 at 6-7.) Plaintiff counters he  
24 has standing because he made Caliber an offer for KIC to buy Caliber’s interest in the  
25 Property, and because Caliber and Quality’s counsel communicated with him. (ECF No.  
26 22 at 4-5.) The Court agrees with Caliber.

27 Whether a plaintiff has standing depends on whether a plaintiff has fulfilled the  
28 “case or controversy” requirement of Article III. To satisfy Article III, a plaintiff “must show



1 that (1) it has suffered an ‘injury in fact’ that is (a) concrete and particularized and (b)  
2 actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the  
3 challenged action of the defendant; and (3) it is likely, as opposed to merely speculative,  
4 that the injury will be redressed by a favorable decision.” *Friends of the Earth, Inc. v.*  
5 *Laidlaw Env’tl. Sys. (TOC), Inc.*, 528 U.S. 167, 180-81 (2000). A suit brought by a plaintiff  
6 without Article III standing is not a “case or controversy,” and an Article III federal court  
7 therefore lacks subject matter jurisdiction over the suit. See *Steel Co. v. Citizens for a*  
8 *Better Env’t*, 523 U.S. 83, 101 (1998).

9 Plaintiff lacks standing to maintain this lawsuit in his individual capacity because  
10 he cannot show he has suffered an injury in fact. See *Friends of the Earth*, 528 U.S. at  
11 180 (stating that injury in fact is required to establish standing). The primary personal  
12 harm alleged by Plaintiff in his Complaint is that Caliber declined to sell its interest in the  
13 Property to an LLC he controlled at his desired price. (ECF No. 1-1 at 8-9, 12-13.) But  
14 Caliber had no duty to sell the Property to Plaintiff, especially at his desired price, so  
15 those allegations simply cannot establish the injury in fact necessary to give him  
16 standing. Finding otherwise would violate basic principles of contract law. The other  
17 personal harm Plaintiff alleges is that he has spent money on the upkeep of the Property  
18 that he will not be able to recover if Caliber forecloses on it. (ECF No. 1-1 at 10.) But  
19 even accepting Plaintiff’s allegations in his Complaint as true, Plaintiff has no individual  
20 ownership interest in the Property—his brother does. (*Id.* at 4.) Thus, to the extent  
21 Plaintiff spent money on the Property, he is not entitled any of that money if Caliber  
22 forecloses on the Property.

23 The remainder of Plaintiff’s allegations in his Complaint relate to harm suffered by  
24 his brother, not Plaintiff—who is not a party. Moreover, Plaintiff, as a pro se party, cannot  
25 represent his brother, even had his brother been identified as a plaintiff.<sup>7</sup> See, e.g.,  
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27 <sup>7</sup>Plaintiff’s brother is not a named Plaintiff or otherwise a party to Plaintiff’s  
28 Complaint. (ECF No. 1-1.) Further, the Court questions whether even Plaintiff’s brother

1 Hillygus v. Doherty, Case No. 3:18-cv-00212-MMD-WGC, 2018 WL 6729637, at \*1 n. 1  
2 (D. Nev. Dec. 21, 2018), aff'd, Case No. 3:18-cv-00212-MMD-WGC, ECF No. 104 at 1-2  
3 (dismissing appeal as frivolous and stating that pro se parties may not represent other  
4 parties). And any harm suffered by Plaintiff's brother cannot convey standing on Plaintiff.  
5 See, e.g., Lujan v. Defs. of Wildlife, 504 U.S. 555, 564 (1992) (emphasizing that Plaintiffs  
6 must allege facts showing that they, themselves, are injured).

7 In sum, the Court will dismiss Plaintiff's claims to the extent he brings them in an  
8 individual capacity because he lacks standing. To address Plaintiff's remaining argument  
9 as to standing, the fact that Defendants' counsel communicated with him does not  
10 convey standing upon him. As explained above, the standing inquiry focusses on the  
11 alleged harm suffered by the Plaintiff, not the conduct of Defendants' counsel.  
12 Defendants' counsel's communications with Plaintiff are simply irrelevant to the standing  
13 analysis.

### 14 **3. Capacity as Special Administrator**

15 Plaintiff further fails to state a claim to the extent he brings his Complaint as the  
16 Special Administrator of Wilson's estate. The Court will therefore dismiss his Complaint  
17 under Fed. R. Civ. P. 12(b)(6) as to his role as the Special Administrator of Wilson's  
18 estate.

19 The incurable flaw at the heart of Plaintiff's allegations as the Special  
20 Administrator of Wilson's estate is that he does not even allege Wilson's estate has been  
21 harmed by any of Defendants' conduct. As discussed above, Plaintiff alleges that he has  
22 been harmed (because Caliber refused to sell to him, which does not even give him  
23 standing), and his brother has been harmed. Nowhere does Plaintiff allege anything that  
24 could be construed as harm to Wilson's estate. In addition, Wilson's estate no longer has  
25 any interest in the Property. (ECF No. 14-3 at 3.) Thus, the disputes swirling around the

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26 would have standing to sue Caliber. He purchased the Property subject to Caliber's DOT  
27 (ECF No. 1-1 at 4), and is not a party to that DOT or its corresponding mortgage  
28 agreement. Thus, he cannot indefinitely prevent Caliber from exercising its rights under  
the DOT. Said otherwise, Caliber owes Plaintiff's brother no duty.

1 Property can no longer harm Wilson’s estate—as a matter of law. The Court will  
2 therefore grant Caliber’s Motion to Dismiss as to Plaintiff’s claims brought in his capacity  
3 as the special administrator of Wilson’s estate without wading too deeply into the  
4 substance of Caliber’s other arguments raised in its Motion to Dismiss.

5 However, the Court notes that the specific claims alleged in Plaintiff’s Complaint  
6 suffer from many substantive defects that would provide alternative routes to dismissal if  
7 taken. For example, Plaintiff’s claim for breach of the covenant of good faith and fair  
8 dealing fails because, “a party cannot breach the covenant of good faith and fair dealing  
9 before a contract is formed.” *Jung v. BAC Home Loans Servicing, LP*, Case No. 2:10-cv-  
10 2236 JCM GWF, 2011 WL 2462248, at \*2 (D. Nev. June 17, 2011) (citation omitted).  
11 Plaintiff’s allegations as to this claim appear to go to Caliber’s rejection of Plaintiff’s offer  
12 to purchase its interest in the Property, which lack any allegations evidencing a contract.  
13 These allegations also do not relate to Plaintiff’s role as Special Administrator of Wilson’s  
14 estate. Thus, Plaintiff’s claim for breach of the covenant of good faith and fair dealing  
15 fails as a matter of law. Further, “[a] financial institution owes no duty of care to a  
16 borrower when the institution’s involvement in the loan transaction does not exceed the  
17 scope of its conventional role as a mere lender of money[.]” *Larson v. Homecomings*  
18 *Fin., LLC*, 680 F. Supp. 2d 1230, 1235 (D. Nev. 2009) (citation omitted). Here, Plaintiff  
19 has made no allegations that Caliber acted as anything beyond a lender of money as  
20 regards its relationship with Wilson. Therefore, even if Plaintiff’s allegations related at all  
21 to Wilson’s estate, the Court questions whether Plaintiff could state a plausible claim for  
22 relief against Caliber as Special Administrator of Wilson’s estate.

23 The Court will therefore dismiss Plaintiff’s claims to the extent he brings his  
24 Complaint as the special administrator of Wilson’s estate for failure to state a claim.

#### 25 **4. Leave to Amend**

26 When, as here, the Court grants a motion to dismiss, it must then decide whether  
27 to grant leave to amend. The Court should “freely give” leave to amend when there is no  
28 “undue delay, bad faith[,] dilatory motive on the part of the movant, repeated failure to

1 cure deficiencies by amendments previously allowed, undue prejudice to the opposing  
2 party by virtue of ... the amendment, [or] futility of the amendment.” Fed. R. Civ. P. 15(a);  
3 Foman v. Davis, 371 U.S. 178, 182 (1962). Generally, leave to amend is only denied  
4 when it is clear that the deficiencies of the complaint cannot be cured by amendment.  
5 See DeSoto v. Yellow Freight Sys., Inc., 957 F.2d 655, 658 (9th Cir. 1992). This is such  
6 a case. The deficiencies in Plaintiff’s Complaint cannot be cured through amendment  
7 because they arise from the very nature of his lawsuit. Plaintiff cannot establish he has  
8 standing under these facts, or any consistent facts, as to his claims asserted in his  
9 individual capacity. Further, in his capacity as the special administrator of Wilson’s  
10 estate, he cannot state a claim under these or any consistent facts. Thus, amendment  
11 would be futile. The Court will dismiss all of Plaintiff’s claims—including those brought in  
12 his personal capacity—with prejudice. See Righthaven LLC v. Newman, 838 F. Supp. 2d  
13 1071, 1076 (D. Nev. 2011) (dismissing case with prejudice for lack of standing where  
14 amendment would have been futile).

15 **V. CONCLUSION**

16 The Court notes that the parties made several arguments and cited to several  
17 cases not discussed above. The Court has reviewed these arguments and cases and  
18 determines that they do not warrant discussion as they do not affect the Court’s decision.

19 It is therefore ordered that Plaintiff’s motion to remand (ECF No. 12) is denied.

20 It is further ordered that Defendant Caliber Home Loan, Inc.’s motion to dismiss  
21 (ECF No. 14) is granted in its entirety.

22 It is further ordered that Plaintiff’s claims are also dismissed as to Defendant  
23 Quality Loan Service Corporation because the Court finds Quality is similarly situated to  
24 Caliber, and Quality joined Caliber’s Motion to Dismiss.

25 It is further ordered that Plaintiff’s ex parte motion for a temporary restraining  
26 order (ECF No. 26) is denied as moot.

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The Clerk of Court is directed to enter judgment in Defendants' favor in accordance with this order and close this case.

DATED THIS 17<sup>th</sup> day of July 2019.



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MIRANDA M. DU  
UNITED STATES DISTRICT JUDGE