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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CHI CHEN, et al.,

 Plaintiffs,

 v.

U.S. BANK NATIONAL ASSOCIATION, et
al.,

 Defendants.

Case No. 16-1109RSM

ORDER DENYING MOTIONS FOR
SUMMARY JUDGMENT

I. INTRODUCTION

This matter comes before the Court on Defendant U.S. Bank’s Motion for Summary Judgment, Dkt. #309, and Plaintiffs’ Motion for Partial Summary Judgment, Dkt #316. U.S. Bank moves for summary judgment dismissal of Plaintiffs’ claims for inability to prove gross negligence, because certain knowledge is imputed to them by their agents, and based on the doctrines of estoppel, waiver, and laches. *Id.* Plaintiffs oppose this Motion, arguing there are genuine disputes as to material facts. Dkt. #328. Plaintiffs “request that the Court grant Partial Summary Judgment that U.S. Bank’s actions are the ‘primary cause’ of Plaintiffs’ loss of funds.” Dkt. #316 at 3. U.S. Bank opposes this Motion, also arguing a genuine dispute as to material facts. Dkt. #320 at 16. The Court finds oral argument unnecessary. For the reasons stated below, the Court DENIES both Motions.

II. BACKGROUND

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2 This is not the first time the Court has ruled on summary judgment and the Court will
3 not recite all the facts of this case. The Court will only focus on those facts necessary to
4 resolve these Motions. Many facts presented by the parties in briefing will be relevant to other
5 motions or at trial.

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7 The Court has previously summarized this case as follows:

8 Plaintiffs in this case are Chinese citizens who each invested
9 \$500,000 in a mining venture run by Defendants Quartzburg Gold,
10 LP (“Quartzburg”) and Idaho State Regional Center, LLC, in order
11 to qualify for the United States’ EB-5 immigration investor
12 program. Dkt. #3 at 2–3. At issue in this Motion is the Master
13 Escrow Agreement used by Defendants to structure the receipt and
14 distribution of investment funds. Dkt. #237-1 at 2. Although the
15 original agreement was between Defendants, Plaintiff investors
16 later executed Joinders making each of them an “Investor... to the
17 same extent as if such Person had originally executed this Master
18 Escrow Agreement.” *Id.*

19 Under the Agreement U.S. Bank was the “Escrow Agent.” Dkt.
20 #237-1 at 2. The “Background” section states that the money was
21 entering and exiting escrow to permit investors to qualify for EB-5
22 visas “with the objective of attaining lawful permanent residence
23 in the United States.” *Id.* A choice of law provision sets
24 Washington State as the source of governing law. *Id.* at 12.

25 The parties agreed that U.S. Bank would disburse the investors’
26 funds held in escrow “upon receipt of, and in accordance with a
27 Written Direction.” *Id.* at 4. A Written Direction was to be
28 “executed by the Issuer Representative” only. *Id.* “Issuer” refers
to Quartzburg, and the Issuer Representative is listed as Debra
Riddle, who worked for Quartzburg. *Id.* at 15. To put it another
way, this agreement permitted the investor’s funds to be disbursed
to Quartzburg upon the written request of Quartzburg without any
further authorization from the investors.

An example of what was required in a Written Direction is found
at Exhibit I to the Agreement. *See id.* at 17. According to this
example, Ms. Riddle would send Written Directions to U.S. Bank
listing specific Investors and the change to their immigration status
that warranted distribution of funds. The form lists five possible
reasons why the funds would be disbursed: a) Approval of

1 Investor's I-526 Petition with attached I-797 Notice of Action—
2 funds to be wired to Quartzburg; b) approval of Investor's I-526
3 Petition with attached Immigrant Visa Application Processing Fee
4 Bill Invoice—funds wired to Quartzburg; c) denial of Investor's I-
5 526 Petition with attached Form I-797 Notice of Action—funds
6 wired back to Investor; d) passage of 18 months with no action or
information from USCIS—funds wired back to Investor; e)
Quartzburg's approval of Investor's request for return of escrow
funds—funds wired back to Investor. *Id.* at 17–18.

7 Dkt. #249 at 2–3. Each Plaintiff filed his or her EB-5 forms, deposited \$500,000 in escrow
8 with U.S. Bank, and agreed to be bound by the Master Escrow Agreement by signing a joinder.
9 *See id.* at 3. These joinders named attorney Jason Blatt as “Investor Representative” who
10 would “represent [investors] for all purposes in connection with the funds to be deposited” in
11 escrow. Dkt #237-1 at 2. USCIS issued receipts of the EB-5 petitions, however these did not
12 reflect approval and stated at the top, “THIS NOTICE DOES NOT GRANT ANY
13 IMMIGRATION STATUS OR BENEFIT.” *See id.* Quartzburg nevertheless submitted
14 Written Directions instructing U.S. Bank to disburse to it the escrow funds from the investors,
15 with attached copies of receipts with the above language from USCIS. *Id.* These were sent out
16 between September 2012 and March 2014. *See* Dkt. #233 at Exhibits C-G and Dkt. #236 at
17 Exhibits B-C. Although these forms did not reflect approval of the investors' I-526 petitions,
18 the Written Directions “direct[ed] release” of the identified escrow funds and expressly
19 represented that the directed “release is in accordance with Exhibit I of Schedule A to the
20 Escrow Agreement” based on the investor's “Receipt of [Form] I-797C from USCIS.” *Id.*
21 U.S. Bank erroneously relied on these Written Directions and released the funds. Plaintiffs'
22 EB-5 petitions were not approved and Plaintiffs have not received refunds from Quartzburg.
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26 U.S. Bank submits evidence that many or all of the Plaintiffs worked with a company,
27 Westlead, to handle their investment and immigration paperwork. *See* Dkt. #309 at 6 (citing
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1 Dkt. #311 Ex. 12 (Tao Dep.) at 78:2-79:22, 92:3-20; Ex. 9 (Muroff Dep.) at 57:24-58:16, 82:2-
2 15; Ex. 17; Ex. 16; Ex. 11 (Song Dep.) at 188:3-12). The terms of that arrangement have not
3 been fully presented to the Court, however it appears that Westlead agreed, *e.g.*, to “[t]racking
4 the latest situation in the [I-526] application process and informing [Plaintiffs] in a timely
5 manner.” *See* Dkt. #311-22 at 2. It is unclear whether Westlead agreed to track the flow of the
6 investment money through escrow. All or nearly all of Plaintiffs worked with attorney Jason
7 Blatt, as part of the services provided by Westlead. *See* Dkt. #311, Ex. 3 (Blatt Dep.) at 16:17-
8 17:1; 28:9-15. Mr. Blatt was notified in September of 2013 of the disbursements out of escrow
9 and has stated in his deposition that he knew of the disbursements no later than October of that
10 year. *Id.* at 84:18-25, 85:21-24, 86:22-89:2, 90:18-91:25. He did not seek a return of
11 Plaintiffs’ funds and apparently used evidence of the disbursements to fight on behalf of
12 Plaintiffs’ immigration case before USCIS. Dkt. #311, Exs. 24 and 25. No other person at
13 Westlead demanded that Quartzburg return the investors’ funds or notified U.S. Bank of any
14 purported problem at this time.
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18 In November 2014, Westlead met in Taiwan with Defendant Sima Muroff on behalf of
19 Quartzburg and another company working with Plaintiffs, Worldway. The parties signed a
20 confidential “memorandum” confirming their discussion, under which Westlead agreed that
21 Quartzburg had released the funds from escrow and would announce that doing so was
22 consistent with the parties’ agreements, and that the funds were being used for Quartzburg’s
23 business plan. Dkt. #311-47 at 2. The exact language used was “Regional Center and GP shall
24 provide a statement that releasing Escrow Funds before any I-526 approval is pursuant to
25 Escrow Agreement... before Nov 25, 2014.” *Id.* Regional Center and GP refers to Defendants
26 Idaho State Regional Center, LLC and ISR capital, LLC. Later the document states that
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1 “Regional Center and GP []released the Escrow Funds from Escrow Account without notifying
2 the EB 5 investors...” *Id.* The parties also agreed that investors who desired to withdraw could
3 seek refunds from Quartzburg and Muroff, while the parties also committed to persuading
4 investors not to withdraw.

5 The instant suit was filed on December 3, 2015. Dkts. #1-2. Plaintiffs allege that U.S.
6 Bank breached the escrow agreement, causing the loss of the \$500,000 investments.

7 U.S. Bank has focused on Section 8 of the Escrow Agreement as a basis for limiting
8 liability. Section 8 states, in part:
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10 Liability of Escrow Agent. The Escrow Agent undertakes to
11 perform only such duties as are expressly set forth herein and no
12 duties shall be implied. The Escrow Agent shall have no liability
13 under and no duty to inquire as to the provisions of any agreement
14 other than this Master Escrow Agreement. The Escrow Agent
15 shall not be liable for any action taken or omitted by it in good
16 faith except to the extent that a court of competent jurisdiction
17 determines that the Escrow Agent’s gross negligence or willful
18 misconduct was the primary cause of any loss to an Investor or
19 Issuer.... Escrow Agent shall have no implied duties or
20 obligations and shall not be charged with knowledge or notice of
21 any fact or circumstance not specifically set forth herein. Escrow
22 Agent may rely upon any notice, instruction, request or other
instrument, not only as to its due execution, validity and
effectiveness, but also as to the truth and accuracy of any
information contained therein, which Escrow Agent shall believe
to be genuine and to have been signed or presented by the person
or parties purporting to sign the same. In no event shall Escrow
Agent be liable for incidental, indirect, special, consequential or
punitive damages....

23 Dkt. #237-1 at 7.

24 On March 3, 2020, three months before the instant Motion was filed, the Court issued
25 an Order on a summary judgment motion brought by a single Plaintiff, stating in part:
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27 As one would expect, Defendant U.S. Bank relies heavily on
28 Section 8, which purports to limit U.S. Bank’s liability to
situations of willful misconduct or gross negligence. U.S. Bank

1 argues that under Washington law, “[w]illful’ requires a showing
2 of actual intent to harm” and that “acting volitionally upon a
3 mistake does not show willfulness.” Dkt. #231 at 18 (citing
4 *Zellmer v. Zellmer*, 164 Wn.2d 147, 155 n.2, 188 P.3d 497 (2008);
5 *Riley v. Iron Gate Self Storage*, 198 Wn. App. 692, 706-07, 395
6 P.3d 1059 (2017)). U.S. Bank is correct that Yu “has presented no
7 evidence of willful misconduct whatsoever.” *See id.* U.S. Bank
8 cites to *Harper v. Dep’t of Corr.*, 192 Wn.2d 328, 340-41, 429
9 P.3d 1071 (2018) for the elements of gross negligence: “[g]ross
10 negligence most obviously differs from simple negligence in that it
11 requires a greater breach; to prove gross negligence, [the plaintiff]
12 must show that [the defendant] ‘substantially’ breached its duty by
13 failing to act with even slight care.” *Id.* at 19. U.S. Bank argues
14 that “granting summary judgment for a plaintiff in gross
15 negligence cases is almost never appropriate because of the factual
16 nature of the inquiry and the minimal showing of care needed by
17 the defendant to defeat the claim.” *Id.* at 20 (citing cases).

18 Dkt. #249 at 6 (footnote omitted). In a footnote on that page, the Court stated:

19 The Washington State Supreme Court has also stated that gross
20 negligence is the “failure to exercise slight care, mean[ing] not the
21 total absence of care but care substantially or appreciably less than
22 the quantum of care inhering in ordinary negligence.” *Swank v.*
23 *Valley Christian Sch.*, 188 Wn.2d 663, 684, 398 P.3d 1108, 1120
24 (2017). The Court in that case went on to state that “[b]ecause
25 [this] standard[] turns on a fine-grained factual analysis, **issues of
26 negligence and proximate cause are generally not susceptible to
27 summary judgment.**” *Id.* at 685.

28 *Id.* at 6 n.1 (emphasis added). The Court continued:

On a motion for summary judgment, the court views the evidence
and draws inferences in the light most favorable to the non-moving
party. The Court can easily find at this time that Plaintiff Yu has
failed to demonstrate that U.S. Bank engaged in willful misconduct
or gross negligence. Plaintiff Yu has presented no evidence of
willful misconduct. **There does appear to be evidence of
negligence on the record, however the record also arguably
contains evidence of a “minimal showing of care.”** For example,
under the Master Escrow Agreement, U.S. Bank was permitted to
rely on the “effectiveness” of the materials submitted by Debra
Riddle, which included a signed letter stating, erroneously perhaps,
that release of the funds was in accordance with the Escrow
Agreement based on attached documents. There is not enough here

1 to conclude that the “big mistake” made by U.S. Bank was gross
2 negligence as a matter of law.

3 The Court notes that many other arguments **and genuine disputes**
4 **of material fact** are raised by U.S. Bank. *See* Dkt. #231 at 15–26.
5 The Court need not address these other bases for denying this
6 Motion, however the Court is aware that arguments by the parties
7 as to the enforceability of the Section 8 limitation of liability are
8 raised in a separate pending Motion. *See* Dkt. #205.

9 *Id.* at 7–8 (emphasis added).

10 III. DISCUSSION

11 A. Legal Standard

12 Summary judgment is appropriate where “the movant shows that there is no genuine
13 dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed.
14 R. Civ. P. 56(a); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986). Material facts are
15 those which might affect the outcome of the suit under governing law. *Anderson*, 477 U.S. at
16 248. In ruling on summary judgment, a court does not weigh evidence to determine the truth of
17 the matter, but “only determine[s] whether there is a genuine issue for trial.” *Crane v. Conoco,*
18 *Inc.*, 41 F.3d 547, 549 (9th Cir. 1994) (citing *Federal Deposit Ins. Corp. v. O’Melveny &*
19 *Meyers*, 969 F.2d 744, 747 (9th Cir. 1992)).

20 On a motion for summary judgment, the court views the evidence and draws inferences
21 in the light most favorable to the non-moving party. *Anderson*, 477 U.S. at 255; *Sullivan v.*
22 *U.S. Dep’t of the Navy*, 365 F.3d 827, 832 (9th Cir. 2004). The Court must draw all reasonable
23 inferences in favor of the non-moving party. *See O’Melveny & Meyers*, 969 F.2d at 747, *rev’d*
24 *on other grounds*, 512 U.S. 79 (1994). However, the nonmoving party must make a “sufficient
25 showing on an essential element of her case with respect to which she has the burden of proof”
26 to survive summary judgment. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).
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1 **B. U.S. Bank’s Motion**

2 **a. Plaintiffs’ Claims of Negligence**

3 U.S. Bank has previously argued that granting summary judgment for a plaintiff in a
4 gross negligence case is inappropriate because of the essentially factual inquiry of such a case.
5 Washington case law, cited above, states that issues of negligence and proximate cause are
6 generally not susceptible to summary judgment in a gross negligence case. The Court has
7 generally not susceptible to summary judgment in a gross negligence case. The Court has
8 previously found that evidence exists in this case that tends to support a finding of negligence
9 *and* evidence exists that tends to support a finding of slight care. Even before reviewing the
10 instant briefing, the Court has essentially been convinced that summary judgment is
11 inappropriate for any party.

12 Both parties now raise tangential arguments, attempting to litigate the issue of the
13 applicable standard of care and to address affirmative defenses. However, if there are questions
14 of material fact precluding summary judgment, this Motion must be denied and many of the
15 remaining issues can be resolved separately. In their Opposition, Plaintiffs contend:

16 Even if the exculpatory language is enforceable (and Plaintiffs
17 contend it is not), there are several disputes about material facts in
18 this case precluding a ruling on summary judgment that U.S. Bank
19 was not grossly negligent. Questions of negligence are ordinarily
20 reserved for the trier of fact. *See, e.g. Graham v. Concord*
21 *Construction, Inc.*, 100 Wash.App. 851, 999 P.2d 1264 (Div. 3
22 2000) (negligence in performance of contract).

23 Dkt. # 328 at 9.

24 The Court has reviewed the facts highlighted by Plaintiffs and agrees that a genuine
25 dispute as to material fact precludes summary judgment. This finding is true regardless of the
26 applicable standard of care—negligence or gross negligence—which is the subject of a separate
27 Motion. Specifically, Plaintiffs point to the requirement in the Escrow Agreement that the
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1 funds be disbursed only after evidence of I-526 petition approval had been received in addition
2 to receiving a Written Direction, or a “substantially similar” document. *Id.* at 9–10. The
3 Escrow Agreement requires receipt of a Written Instruction conforming exactly to Exhibit I,
4 and Exhibit I requires a Written Direction with an attachment “evidencing Investor’s I-526
5 petition approval.” Dkt. #237-1 at 17. Viewing the Escrow Agreement in the light most
6 favorable to the non-moving parties, the Court cannot conclude that U.S. Bank did not agree to
7 actually examine attachments to Written Directions to see if they evidenced I-526 approval
8 rather than taking the disbursement-receiver’s word for it. The Court cannot rule as a matter of
9 law that “slight care” did not include reading and identifying this document. As to this issue
10 there remain material questions of fact, or questions of law entangled with factual questions
11 best left to the jury. Given this, Plaintiffs’ claims cannot be dismissed on summary judgment.
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14 **b. Affirmative Defenses of Estoppel, Waiver, and Laches**

15 Equitable estoppel is an affirmative defense which may apply where an admission,
16 statement, or act has been detrimentally relied on by another party. *Campbell v. Dep’t of Soc.*
17 *& Health Servs.*, 150 Wn.2d 881, 902, 83 P.3d 999 (2004). “The principle of equitable
18 estoppel is based upon the reasoning that a party should be held to a representation made or
19 position assumed where inequitable consequences would otherwise result to another party who
20 has justifiably and in good faith relied thereon.” *Wilson v. Westinghouse Elec. Corp.*, 85
21 Wn.2d 78, 81, 530 P.2d 298 (1975). The party asserting this defense must prove the following
22 elements by clear, cogent, and convincing evidence: (1) a party’s admission, statement, or act
23 which is inconsistent with its later claim; (2) reasonable reliance by another party on that
24 admission, statement, or act; and (3) injury to the relying party if the first party is permitted to
25 repudiate or contradict the earlier statement or action. *Campbell*, 150 Wn.2d at 902. Reliance
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1 is justified only when the party claiming estoppel lacked knowledge of the true facts and had no
2 convenient and available means to discover them. *Patterson v. Horton*, 84 Wn. App. 531, 544,
3 929 P.2d 1125 (1997). Where both parties can determine the law and have knowledge of the
4 underlying facts, estoppel cannot be invoked. *Lybbert v. Grant County*, 141 Wn.2d 29, 35, 1
5 P.3d 1124 (2000).

6
7 Waiver is defined as the intentional and voluntary relinquishment of a known right.
8 *Bowman v. Webster*, 44 Wn.2d 667, 669, 269 P.2d 960 (1954). Importantly, the person against
9 whom waiver is claimed must have intended to permanently relinquish the right, and his or her
10 conduct must be inconsistent with any other intent. *Bill McCurley Chevrolet, Inc. v. Rutz*, 61
11 Wn. App. 53, 57, 808 P.2d 1167 (1991). A waiver is unilateral and, unlike estoppel, does not
12 require reliance. *Bowman*, 44 Wn.2d at 670 (quoting *Kessinger v. Anderson*, 31 Wn.2d 157,
13 168-69, 196 P.2d 289 (1948)). A waiver may be express or implied. *Id.* at 669. To constitute
14 an implied waiver, there must exist unequivocal acts or conduct evidencing an intent to waive;
15 intent may not be inferred from doubtful or ambiguous facts. *Cent. Wash. Bank v. Mendelson-*
16 *Zeller, Inc.*, 113 Wn.2d 346, 354, 779 P.2d 697 (1989). Silence alone does not constitute an
17 implied waiver unless there is an obligation to speak. *Voelker v. Joseph*, 62 Wn.2d 429, 435,
18 383 P.2d 301 (1963).

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21 “Laches is an implied waiver arising from knowledge of existing conditions and
22 acquiescence in them.” *Buell v. City of Bremerton*, 80 Wn.2d 518, 522, 495 P.2d 1358 (1972).
23 The elements of laches are: (1) knowledge or a reasonable opportunity to discover on the part
24 of a potential plaintiff that he or she has a cause of action against a defendant; (2) the plaintiff’s
25 unreasonable delay in commencing that cause of action; and (3) damage to the defendant
26 resulting from the unreasonable delay. *Id.* The application of laches requires a close
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1 evaluation of all the facts in a case and is “seldom susceptible of resolution by summary
2 judgment.” *Couveau v. Am. Airlines, Inc.*, 218 F.3d 1078, 1083 (9th Cir. 2000) (per curiam).

3 U.S. Bank moves for summary judgment on its affirmative defenses of estoppel, waiver
4 and laches. U.S. Bank’s argument rests on the knowledge and actions of Plaintiffs’ purported
5 agents. For example, U.S. Bank argues:

- 6 • “The conduct of Plaintiffs’ agents at the time of Quartzburg’s directions to
7 disburse funds from escrow is inconsistent with Plaintiffs’ later assertion of
8 claims against U.S. Bank.” Dkt. #309 at 23.
- 9 • “...by neglecting or choosing at the time not to assert that the disbursements
10 were premature, or otherwise to demand compliance with what they now claim
11 to be the requirements of the Escrow Agreement, Plaintiffs (through their
12 agents) waived their right to do so now.” *Id.* at 25.
- 13 • “After being paid \$6,000 to provide a limited service, which it provided in good
14 faith, U.S. Bank was then belatedly sued for tens of millions of dollars in
15 ‘damages’ consisting of money spent by Quartzburg with the acquiescence of
16 Plaintiffs’ agents. These are the very type of inequitable circumstances that the
17 doctrine of laches is designed to prevent.” *Id.* at 26.

18 U.S. Bank believes Plaintiffs should be held responsible for the above knowledge, actions, and
19 omissions of their agents Jason Blatt, Westlead, and perhaps other agents. *Id.* at 20–21. The
20 Court has no reason to doubt that Mr. Blatt and others acted as agents at some point for
21 Plaintiffs. However, to impute their knowledge of the disbursements and subsequent
22 actions/omissions to Plaintiffs, the Court is being asked to find as a matter of law that the
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1 responsibility to “demand compliance” or somehow get the money back into escrow was within
2 the scope of the agency relationship.

3 The Court agrees with Plaintiffs that there are genuine issues of material fact precluding
4 summary judgment regarding “Plaintiffs’ agents’ interactions with U.S. Bank, whether
5 Plaintiffs’ agents relied on U.S. Bank themselves, and whether Plaintiffs had any intent to rely
6 on the agents, and whether Plaintiffs suffered prejudice as a result of their agents’ actions.”
7 Dkt. #328 at 12. The intent and knowledge of the Plaintiffs and their agents at different points
8 in time is something that will need to be ascertained in a courtroom. Even if the Court could
9 answer these questions now, it is not clear to what extent U.S. Bank relied on the omission of
10 Plaintiffs’ agents, or that Plaintiffs should be equitably barred from bringing suit a year or two
11 after their agents realized the funds were erroneously disbursed while simultaneously trying to
12 fight for Plaintiffs’ immigration status to be approved. The Court can evaluate equitable
13 considerations at or after trial. In sum, these affirmative defenses are not suitable for resolution
14 by summary judgment.
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18 **C. Plaintiffs’ Motion for Partial Summary Judgment on Causation**

19 Plaintiffs argue that U.S. Bank was the “primary cause” of their losses and seek a Court
20 order stating as much prior to trial. Such is necessary for their breach of contract claim due to
21 limitation of liability in Section 8 of the Escrow Agreement. Plaintiffs maintain that finding
22 U.S. Bank to be the primary cause is “a matter of common sense,” a “matter of plain language,”
23 and “a matter of fundamental fairness.” Dkt. #316 at 2–3. In one and a half pages of facts,
24 Plaintiffs focus solely on the actions of U.S. Bank, and argue that “[t]here are no genuine issues
25 of material fact surrounding the interpretation of this contractual provision...” *Id.* at 3.
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1 As previously stated, issues of negligence and proximate cause are generally not
2 susceptible to summary judgment in a gross negligence case. In its Response, U.S. Bank cites
3 to several more cases indicating that causation in a negligence case is typically a question for
4 the jury. Dkt. #320 at 16–17 (citing *N.L. v. Bethel Sch. Dist.*, 186 Wn.2d 422, 436-39, 378 P.3d
5 162 (2016) (causation is “normally a question for the jury”); *Schnall v. AT&T Wireless Servs.*,
6 *Inc.*, 171 Wn.2d 260, 279-80, 259 P.3d 129 (2011); *Graham v. Pub. Employees Mut. Ins. Co.*,
7 98 Wn.2d 533, 538-39, 656 P.2d 1077 (1983) (“As a general rule, the question of proximate
8 cause is for the jury.”); *Brust v. Newton*, 70 Wn. App. 286, 292, 852 P.2d 1092 (1994)). U.S.
9 Bank summarizes its position thusly:
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11 While Plaintiffs assert that the cause of their loss was U.S. Bank,
12 the facts show otherwise. In fact, Plaintiffs would not have
13 suffered the alleged loss if, for example: (1) Plaintiffs’ agents had
14 not misled them into investing in Quartzburg in the first place; (2)
15 Quartzburg had not instructed U.S. Bank to release the funds from
16 escrow in a way now alleged to have been premature and
17 deceptive; (3) Plaintiffs’ agents and counsel had made a different
18 decision when they learned of the disbursements, and stopped the
19 disbursements and Quartzburg’s expenditures of funds; (4)
20 Quartzburg had simply retained the funds in its own bank account
21 while waiting to see if USCIS would approve the project, rather
22 than spending the funds on speculative mining ventures before
23 approval; or (5) Quartzburg’s mining ventures had been even
24 moderately successful, such that there would be additional funds
25 available for investors. What the evidence shows is a chain of
26 events, almost all involving parties other than U.S. Bank, which
27 resulted in Plaintiffs’ investment funds being spent on unsuccessful
28 mining operations, from which they have not received a return. At
most, U.S. Bank’s good faith conduct could be considered one of
several intermediate links in the causal chain, but not a proximate
cause and certainly not “the primary cause.”

Dkt. #320 at 17–18.

26 The Court finds there is clearly a genuine dispute as to material facts precluding
27 summary judgment on this issue for the reasons stated by U.S. Bank. The Court is not being
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1 asked to merely interpret a contractual provision, as framed by Plaintiffs. The Court is being
2 asked to weigh the actions of U.S. Bank against the actions of the many other players in this
3 case so as to determine proximate cause. This is an intensely factual inquiry that will be left for
4 the jury. Accordingly, this Motion must be denied.

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6 **IV. CONCLUSION**

7 Having considered the applicable briefing submitted by the parties and the entire record,
8 the Court hereby finds and ORDERS:

- 9 1) Defendant U.S. Bank's Motion for Summary Judgment, Dkt. #309, is DENIED.
10 2) In ruling on this Motion, the Court did not rely on the sealed exhibit at Dkt. #327. The
11 Court therefore finds that the issue of sealing that document is moot and it will
12 accordingly remain sealed. Plaintiffs' Motion to Seal, Dkt. #325, is DENIED AS
13 MOOT. The Clerk is directed to keep Dkt. #327 under seal.
14 3) Plaintiffs' Motion for Partial Summary Judgment, Dkt. #316, is DENIED.
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16 DATED this 18th day of November, 2020.
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21 RICARDO S. MARTINEZ
22 CHIEF UNITED STATES DISTRICT JUDGE
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