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The Honorable James L. Robart

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

JOHN R. BUND II, personally, as Executor of the )	NO. 2:16-cv-920-JLR
Estate of Richard C. Bund, deceased, MANDY )	
HANOUSEK and GARETT HANOUSEK, a )	SECOND AMENDED COMPLAINT FOR
married couple, and on behalf of others similarly )	CLASS ACTION AND DAMAGES
situated, )	
)	
Plaintiffs, )	
)	
vs. )	
)	
SAFEGUARD PROPERTIES, LLC, a Delaware )	
corporation, )	
)	
Defendant. )	

JOHN R. BUND II, as Executor of the Estate of Richard C. Bund, deceased, and MANDY HANOUSEK and GARETT HANOUSEK, a married couple, and on behalf of others similarly situated, through their attorneys of record, Jeffers, Danielson, Sonn & Aylward, P.S., by Clay M. Gatens and Sally F. White, bring this Second Amended Complaint for Class Action and Damages against Safeguard Properties, LLC, and allege as follows:

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**I. NATURE OF THE CASE**

1.1 Safeguard contracts with mortgage lending and servicing institutions to conduct services on default and pre-foreclosure properties located throughout Washington State that are subject to loans owned, held, or serviced by lending or servicing institutions.

1.2 Specifically, Safeguard is hired by lending and servicing institutions to determine the occupancy status of properties, secure properties deemed vacant or abandoned by Safeguard, remove personal property from within the property, and provide miscellaneous other so-called “property preservation services.”

1.3 Such services include but are not limited to: forcibly entering the property to change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off.

1.4 Safeguard’s purported right to enter borrowers’ properties and conduct services is also based on this form provision.

1.5 On July 7, 2016, in *Jordan v. Nationstar Mortgage, LLC*, No. 92081-8, the Washington State Supreme Court deemed such form deed of trust provisions unenforceable as contrary to Washington State law, thereby eroding any purported legal justification for Safeguard to even enter upon borrowers’ properties. Exhibit M.

1.6 But even setting aside for the moment the unenforceability of these form deed of trust provisions, the form deed of trust provisions as written do not permit Safeguard’s damage to, destruction of, or conversion of borrowers’ property, and/or denial of the full use and enjoyment of

1 borrowers' real and/or personal property prior to the completion of foreclosure.

2 1.7 Yet, Safeguard has a common course of conduct whereby it wrongfully and forcibly  
3 enters borrowers' properties prior to completion of a foreclosure to perform destructive and  
4 disruptive acts, including destroying the existing lock(s) on a borrower's home, removing the  
5 borrower's destroyed locks from the home, damaging property inside the home, and removing the  
6 borrower's personal property from the home.  
7

8 1.8 These actions result in damage to the borrower's real and personal property,  
9 conversion of the borrower's personal property, and interference with the borrower's full use and  
10 enjoyment of their real and personal property.  
11

12 1.9 Safeguard's common course of conduct and actions are widespread throughout  
13 Washington. Safeguard recently reported that, between October 2011 and October 2015, there were  
14 "53,467 properties in Washington that Safeguard might have entered during that time period," and of  
15 the borrowers who then made claims against Safeguard requesting compensation for damaged  
16 properties, "No claimant in that time period demanded less than \$1,000. More than 85 percent of the  
17 claimants demanded more than \$1,000. More than 75 percent demanded \$1,500 or more. More than  
18 50 percent of the claimants demanded more than \$3,500." Exhibit L.  
19  
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21 1.10 Thus, not only does Safeguard have no legal right to be present on borrowers'  
22 properties in advance of the completion of any foreclosure proceedings, but Safeguard regularly acts  
23 beyond the scope of the unenforceable and illegal form deed of trust provisions relied upon by  
24 Safeguard.  
25  
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1 1.11 Safeguard's common course of conduct and common practices constitute common law  
2 trespass, intentional trespass, conversion of property, unjust enrichment, and violate Washington's  
3 Consumer Protection Act ("CPA") (RCW 19.86, *et seq.*), all in violation of Washington State law.  
4

## 5 II. PARTIES

6 2.1 Representative Plaintiff John Bund. JOHN R. BUND II ("Mr. Bund"), an individual,  
7 is the Executor of the Estate of Richard C. Bund, deceased (the "Estate").  
8

9 2.2 The Estate owns the real property located at 2485 Timaru Lane, Oak Harbor,  
10 Washington (the "Bund Property").

11 2.3 The Estate has agreed to act as Class representative in this matter as "Plaintiff Bund"  
12 or "Representative Plaintiff Bund."  
13

14 2.4 Representative Plaintiffs Mandy and Garrett Hanousek. MANDY HANOUSEK and  
15 GARETT HANOUSEK (collectively, "the Hanouseks") are a marital couple who owned real  
16 property located at 1114 Summit Street, Colton, Washington (the "Hanousek Property").

17 2.5 The Hanouseks have agreed to act as Class representatives in this matter as "Plaintiffs  
18 Hanousek" or "Representative Plaintiffs Hanousek".  
19

20 2.6 Defendant. Defendant SAFEGUARD PROPERTIES, LLC ("Safeguard" or  
21 "Defendant") is a Delaware limited liability company, with its primary place of business at 7887  
22 Safeguard Circle, Valley View, Ohio 44125.  
23

24 2.7 Safeguard transacts business throughout the state of Washington, and contracts with  
25 and employs agents throughout Washington to provide property inspection and preservation services  
26

1 for homes located in Washington that are in default under the terms of their loan agreement, but  
2 which homes have not been foreclosed upon.

3 2.8 Safeguard is a citizen of Delaware and Ohio.

4 2.9 Safeguard is the nation’s largest privately-held mortgage field services provider.

5 2.10 For purposes of this Second Amended Complaint, any references to Safeguard shall  
6 mean such acts and practices that were performed by Safeguard, its employees, agents,  
7 representatives, subcontractors, and all persons or entities directly or indirectly under Safeguard’s  
8 control.  
9  
10

11 **III. JURISDICTION AND VENUE**

12 3.1 This is an action for damages. Jurisdiction is vested in this Court pursuant to 28  
13 U.S.C. §§ 1332(d), 1441(a), 1453(b).

14 3.2 Venue is appropriate in this Court pursuant to 28 U.S.C. §§ 1391(b)(2), 1441(a); LCR  
15 3(d)(1).  
16

17 **IV. BACKGROUND REGARDING SAFEGUARD’S COMMON POLICIES AND**  
18 **PRACTICES**

19 4.1 For purposes of this Second Amended Complaint, “default properties” shall refer to  
20 homes where the borrower is in default on their mortgage, but no foreclosure has been initiated.  
21

22 4.2 Properties “pre-foreclosure” shall refer to homes where a judicial or non-judicial  
23 foreclosure has been initiated, but not completed.

24 4.3 “Foreclosed properties” shall refer to properties that have had a judicial or non-judicial  
25 foreclosure completed and a foreclosure and sale at law has been completed.  
26

1 **Safeguard's Unfair and Deceptive Business Practices**

2 4.4 On its website, Safeguard advertises its services to potential clients as follows:

3  
4 Safeguard leads the industry in delivering a full spectrum of inspection,  
5 maintenance, preservation, property registration, repairs and rehab  
6 services on vacant, defaulted and foreclosed properties.

7 What distinguishes Safeguard is our commitment to delivering  
8 excellent customer service and performing at the highest levels of  
9 quality, timeliness and cost-effectiveness. Our investment in  
10 technology supports that commitment, with faster and more accurate  
11 property updates and data-gathering capabilities that inform our clients'  
12 and our own decision-making processes.

13 Through a process of ongoing training and rigorous quality control,  
14 both for our national vendor network and our internal staff, we measure  
15 and monitor all aspects of service delivery to assure that we  
16 continuously meet or exceed industry guidelines and client  
17 expectations.

18 [www.safeguardproperties.com/services.aspx](http://www.safeguardproperties.com/services.aspx) (last accessed May 23, 2016)

19 4.5 Safeguard provides to mortgage lenders and servicers property inspection and  
20 preservation services for delinquent, pre-foreclosure, and foreclosed properties.

21 4.6 All borrowers' upon whose property Safeguard enters are subject to substantively the  
22 same form deed of trust provision that Safeguard relies upon to: (i) enter borrowers' properties in the  
23 event of default but prior to completion of foreclosure; and (ii) conduct its illegal services.

24 4.7 As will be further explained, on July 7, 2016, in *Jordan v. Nationstar Mortgage, LLC*,  
25 No. 92081-8, the Washington State Supreme Court held such form deed of trust provisions  
26 unenforceable as contrary to Washington State law, thereby eroding any purported legal justification  
for Safeguard's entry onto borrowers' properties, forcible entry into the borrowers' homes, removal

1 of borrowers' locks, installation of Safeguard's lock and lock boxes, damage to borrowers' homes,  
2 and conversion of borrowers' personal property prior to the completion of foreclosure. Exhibit M.  
3

4 **Safeguard's Retention of Subcontractors**

5 4.8 Safeguard's involvement with a residential property usually begins once a homeowner  
6 becomes delinquent or defaults on his or her mortgage.

7 4.9 Upon that occurrence, Safeguard is retained by a lending or servicing institution to  
8 perform inspection and preservation services on the home.  
9

10 4.10 Safeguard performs such services through a network of subcontractors trained and  
11 supervised by Safeguard via a common set of practices.

12 4.11 Upon a Washington borrower's delinquency or default, Safeguard will instruct a  
13 Washington subcontractor to inspect the home to determine its occupancy status.  
14

15 4.12 Safeguard does not instruct its vendors on making determinations or distinctions  
16 between "vacant" homes versus "abandoned" homes.

17 4.13 Once the home is deemed "vacant" or "abandoned," Safeguard instructs its  
18 subcontractors to forcibly enter the home and perform services, such as securing the home by  
19 boarding up the doorway or windows, turning off utilities to the home, and placing lockboxes or  
20 padlocks on the doors to the home.  
21

22 4.14 Such common instructions also include that the subcontractor should forcibly enter the  
23 home to perform destructive acts, including destroying and removing existing lock(s) on a home,  
24 damaging doors or smashing windows if necessary for entry, and removing personal property found  
25  
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1 in the home.

2 4.15 These common actions result in damage to the borrower's real and personal property,  
3 interference with the borrower's full use and enjoyment of the home, conversion of personal property  
4 located within the home, and they exceed the scope of any form deed of trust provision relied upon  
5 by Safeguard when instructing its agents to conduct preservation services upon a borrower's home.  
6

7 4.16 Subcontractors perform these services as agents of Safeguard and pursuant to specific  
8 common orders and directives from Safeguard.  
9

10 4.17 Despite extensive use of subcontractors, Safeguard has no common practice of  
11 adequately training or supervising its subcontractors.

12 4.18 Safeguard, likewise, has no common practice of screening its subcontractors'  
13 employees by way of reviewing qualifications or performing a background check that would uncover  
14 any criminal history.  
15

16 **Safeguard's Process for Determining Occupancy Status and Securing Default and Pre-**  
17 **Foreclosure Homes**

18 4.19 Safeguard's process in inspecting and securing a default or pre-foreclosure home starts  
19 when Safeguard orders a subcontractor to determine the occupancy status of the home.

20 4.20 Safeguard does not provide its subcontractors with clear standards for determining the  
21 occupancy status of the home.  
22

23 4.21 Safeguard stresses that subcontractors should make occupancy determinations quickly.

24 4.22 Safeguard tells its subcontractors that an occupancy status report of "unknown" is  
25 unacceptable and that subcontractors will not be compensated for subsequent inspections to clarify  
26



1 the occupancy status.

2 4.23 Frequently, Safeguard or its subcontractors inaccurately determine the occupancy  
3 status of a home.

4 4.24 If Safeguard or its subcontractor deems the home vacant or abandoned, Safeguard  
5 orders its subcontractor to gain access to the home by forcibly entering the home through locked  
6 doors or windows.

7 4.25 If Safeguard or its subcontractor deems the home vacant or abandoned, Safeguard  
8 orders its subcontractor to gain access to the home by forcibly entering the home through locked  
9 doors or windows.

10 4.26 Safeguard stresses to its subcontractors that the goal is to put the home back on the  
11 market as quickly as possible.

12 4.27 Upon entry, Safeguard instructs its subcontractors to remove all personal property and  
13 belongings from the home. The act of removing personal property and belongings found in the home  
14 is commonly known as “trashing out” the home.

15 4.28 Once a borrower’s home has been trashed out, Safeguard does not require its  
16 subcontractors to store, preserve, or track the items that were trashed out of the borrower’s home, and  
17 Safeguard does not have any practicing policy or procedure for returning “trashed out” belongings  
18 and personal property to borrowers.

19 4.29 Safeguard instructs its subcontractors to place their own locks and lock boxes on the  
20 borrower’s home and post a notice upon the borrower’s home instructing the borrower to contact  
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1 Safeguard for access to the home.

2 4.30 When Safeguard learns that a homeowner wants access to his or her home, Safeguard  
3 does not immediately provide access to the homeowner.  
4

5 4.31 When Safeguard learns that a homeowner wants access to his or her home, Safeguard  
6 does not immediately remove the locks that it had placed on the home.

7 4.32 When Safeguard learns that a homeowner wants access to his or her home, Safeguard  
8 neither restores the homeowner’s locks to the home nor returns the locks to the homeowner.  
9

10 4.33 When Safeguard learns that a homeowner wants the personal property that was  
11 removed from the home returned, Safeguard does not return the personal property.

12 4.34 When Safeguard learns that a homeowner wants the damage to the home repaired,  
13 Safeguard does not repair the damage.  
14

15 4.35 Safeguard’s common pattern and practice of using subcontractors to forcibly enter  
16 default and pre-foreclosure homes, cause damage to the borrower’s real and personal property,  
17 convert the borrower’s personal property and belongings located within the home, and interfere with  
18 the borrower’s full use and enjoyment of the home prior to completion of a foreclosure is unlawful  
19 and causes injury to Washington residents.  
20

21 **Safeguard’s Activities are Widespread**

22 4.36 Safeguard has a widespread common practice of forcible entry, resultant damage,  
23 removal of personal property from homes, and denial of the owner’s full use and enjoyment of their  
24 home.  
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1           4.37 In fact, Safeguard recently reported that, between October 2011 and October 2015,  
2 there were “53,467 properties in Washington that Safeguard might have entered during that time  
3 period,” and of the borrowers who then made claims against Safeguard requesting compensation for  
4 damaged properties, “No claimant in that time period demanded less than \$1,000. More than 85  
5 percent of the claimants demanded more than \$1,000. More than 75 percent demanded \$1,500 or  
6 more. More than 50 percent of the claimants demanded more than \$3,500.” Exhibit L. Thus,  
7 Safeguard’s unlawful acts and practices are widespread throughout Washington State.  
8

9  
10           4.38 Various news reports detail specific examples of Safeguard’s common practices.

11           4.39 In a 2012 article, borrowers reported returning home following Safeguard’s forcible  
12 entry to find personal possessions smashed with a sledgehammer in the front yard, damaged china  
13 and family photos, a lost coin collection, and even a missing family cat. *See* Exhibit A.

14  
15           4.40 In 2013, another borrower reported personal property stolen from a home by  
16 Safeguard: “Among the missing items were two shotguns, hunting clothing, an expensive hunting  
17 bow and even family photos that were hanging on the wall.” Exhibit B at p. 4.

18  
19           4.41 Another borrower reported Safeguard’s theft of two dozen VHS tapes of his daughters  
20 as they were growing up. Exhibit C at p. 1.

21           4.42 Still another borrower reported Safeguard shut off his sump pump which caused  
22 flooding in his basement thereby damaging his property. *Id.* at p. 2.

23  
24           4.43 These are just a handful of a long line of similar stories evidencing Safeguard’s  
25 common pattern and practices.  
26

1           4.44 A 2013 article offers further detail into the breadth and depth of Safeguard’s practices  
 2 via a detailed account of a former Safeguard’s complaint department employee who “gained a starkly  
 3 different perspective on his company’s pursuits as allegations of incompetence, malevolence and  
 4 larceny rolled in day after day.” Exhibit B at p. 1. According to the employee, “[p]eople with legal  
 5 title to their property called to complain that Safeguard contractors had broken into their homes and  
 6 carted off family heirlooms, valuable artwork and weapons . . . . People living next door to  
 7 foreclosed properties complained that Safeguard mixed up addresses and locked them out of their  
 8 own homes.” *Id.* at pp. 1-2.

11           4.45 As for Safeguard’s practice for responding to consumer complaints:  
 12  
 13                   [The employee] said . . . [t]he most common strategy . . . was to stall –  
 14                   ignore the claim for as long as possible with the hope that the person  
 15                   who called in would give up. “We would wear them down with  
 16                   paperwork and make them go away,” he said.

17 *Id.* at p. 3.

18           4.46 A 2013 news article summarized the lack of screening performed by Safeguard to  
 19 ensure its subcontractors employ reputable and qualified individuals:

20                   Many of the contractors willing to engage in the dirty work of cleaning  
 21                   and repairing these homes have landed there by way of joblessness –  
 22                   among them laid-off loan officers and other mortgage industry refugees  
 23                   striving to make an honest living in a bad economy.

24                   Others are felons or cheats drawn to a sector that boomed after the  
 25                   housing bubble popped, seeking opportunity in an industry with a  
 26                   history of underpaying its workers and neglecting background checks.  
 Fierce competition among the businesses that hire these contractors and  
 weak supervision by banks and federal agencies have prompted some  
 workers to take shortcuts and to do work they are not licensed to do.

1  
2 Exhibit D at p. 3.

3 4.47 It appears that Safeguard’s long history of illegal acts and common practices  
4 nationwide is beginning to catch up to the company. A December 11, 2013, article uncovered 68  
5 federal lawsuits filed against Safeguard in 27 separate states. Exhibit C at p. 1.

6  
7 **The Illinois Attorney General’s Action Against Safeguard**

8 4.48 In September 2013, Safeguard was sued by the Attorney General’s Office of the State  
9 of Illinois for the same unfair and deceptive business practices injurious to consumers targeted by the  
10 present action. *See* Exhibit E.

11  
12 4.49 In the Complaint, the Illinois Attorney General explained specific examples of  
13 Safeguard’s unlawful conduct (*id.* at ¶¶ 33-68), including the following:

14 4.49.1 “The Illinois Attorney General’s Office is aware of over 200 complaints from  
15 Illinois consumers against Safeguard concerning the removal of personal property.” *Id.* at ¶ 52.

16 4.49.2 “In at least one instance, Safeguard’s subcontractor removed vital medical  
17 supplies, including the tenant’s asthma pumps, from a legally-occupied home.” *Id.* at ¶ 64.

18 4.49.3 In another instance, Safeguard broke down a door with a sledgehammer and  
19 left it off the hinges upon departing. *Id.* at ¶¶ 93, 96, 99-100.

20 4.49.4 In another, Safeguard broke a back window to gain entry to a residence. *Id.* at  
21 ¶ 118.

22 4.49.5 And in still another instance, Safeguard shattered a borrower’s glass shower  
23 door while performing so-called preservation services. *Id.* at ¶ 128.

1           4.50 In an article about the lawsuit, Illinois Attorney General Lisa Madigan was quoted as  
2 follows: “This case shows the lengths that banks and their service providers will go to abuse and  
3 intimidate borrowers in foreclosure[.] . . . This company [Safeguard] was illegally breaking into  
4 people’s homes, removing all their possessions and locking them out. It is a homeowner’s worst  
5 nightmare.” Exhibit F.

6  
7           4.51 The Illinois AG action resulted in a settlement whereby Safeguard agreed to pay  
8 \$1,000,000, nearly all of which was paid to Illinois residents who filed complaints over Safeguard’s  
9 practices. Exhibit G.

10  
11           4.52 Under the settlement, Safeguard also agreed to “follow 40 operating standards in  
12 conducting inspections and other services relating to Illinois properties set by Madigan’s office to  
13 ensure homeowners’ rights are protected.” *Id.* These standards included the following:

- 14  
15           (a) “Inspectors must support their inspections with photographs and an affidavit;”  
16           (b) “The company must increase its oversight and quality control of its  
17 subcontractors;”  
18           (c) “Safeguard must maintain a 24-hour hotline for fielding consumer complaints;”  
19           and  
20           (d) “The company is prohibited from removing non-perishable and non-hazardous  
21 personal property prior to foreclosure unless it has a court order, and if Safeguard  
22 makes a mistake, it must restore a consumer’s possession of the home, restore  
23 utility service, and return or reimburse any personal property that has been  
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1 removed.”

2 *Id.*

3  
4 4.53 Remarking on the settlement, Illinois AG Madigan commented: “I am pleased that  
5 this settlement will provide some compensation for the nightmare they caused these homeowners and  
6 that it will ensure that Safeguard does not employ these brazen practices moving forward.” *Id.*

7 **The Maryland Attorney General’s Action Against Safeguard**

8  
9 4.54 Following the Illinois AG action, the Maryland Attorney General sued Safeguard for  
10 the same wrongful conduct perpetrated against Maryland residents.

11 4.55 On August 28, 2015, Maryland Attorney General Brian Frosh announced a settlement  
12 with Safeguard “resolving claims that the company’s inadequate policies and procedures resulted in  
13 Marylanders being wrongfully locked out of their homes or having their property damaged and  
14 belongings taken.” *See Exhibit H.*

15  
16 4.56 In the lawsuit, the Maryland Attorney General Consumer Protection Division “alleged  
17 that Safeguard failed to properly screen, train and supervise its network of vendors who perform  
18 inspection and preservation work in Maryland. Consumers have made hundreds of complaints to  
19 Safeguard about improper conduct at their homes by Safeguard agents.” *Id.*

20  
21 4.57 Under the settlement, Safeguard agreed to pay \$167,000 in restitution to Maryland  
22 residents harmed by the challenged actions, and to enact specific reforms including the following:

- 23 (a) “Implementing stringent background check requirements for employees and  
24 vendor agents, including evaluating prior misdemeanor convictions and  
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prohibiting work by those with felony convictions;”

(b) “Assuring its vendors that they will not be penalized if they report in good faith that they don’t know whether a property is occupied;”

(c) “Prohibiting the removal of non-hazardous personal property prior to foreclosure, except pursuant to court order;”

(d) Employing appropriate personnel to supervise and audit its Maryland vendors to ensure compliance with the settlement;” and

(e) “Maintaining records of all Maryland consumer complaints and, after notice, recording all calls from Maryland consumers to Safeguard’s toll free consumer hotline.”

*Id.*

**The Washington Supreme Court’s Decision Invalidating the Deed of Trust Provisions in Jordan v. Nationstar Mortgage, LLC, No. 92081-8**

4.58 In 2012, a lawsuit entitled *Jordan v. Nationstar Mortgage, LLC*, was filed in Washington State Superior Court in Chelan County under Cause No. 12-2-00385-2. This lawsuit challenged the legality and enforceability of the form deed of trust entry provisions relied upon by mortgage lenders and servicers to enter borrowers’ homes and “secure” their properties upon default, abandonment, or vacancy. See Exhibit I.

4.59 Following the grant of class certification in 2014, counsel for Nationstar removed the Complaint to the United States District Court for the Eastern District of Washington, where it was assigned to the Hon. Thomas O. Rice under Cause No. 2:14-cv-00175-TOR.



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4.60 In 2015, the parties filed cross-motions for partial summary judgment, and on August 10, 2015, Judge Rice issued an Order Certifying Questions to Washington Supreme Court on the following bases:

Put succinctly, this Court has been asked to decide whether so-called Entry Provisions within the deeds of trust of Plaintiff and other class members are enforceable under Washington law absent post-default consent of the borrower or permission from a court. Nationstar contends the Provisions—akin to a limited license or similar non-possessory interest in land—merely grant the lender the ability to enter, maintain, and secure the encumbered property and that such conduct does not constitute possession in violation of Washington’s lien theory of mortgages. Ms. Jordan, on the other hand, contends the Entry Provisions unlawfully deprive a borrower of her exclusive right to possession prior to foreclosure and that the borrower cannot agree by contract to relinquish such right prior to default. Instead, Ms. Jordan asserts that the lender either must obtain post-default consent of the borrower or a court-appointed receiver pursuant to RCW chapter 7.60.

Because of the complexity of the state law issues presented in the parties’ cross-motions for partial summary judgment and their significant policy implications, this Court finds that the Washington Supreme Court, which has not had occasion to settle these issues, “is better qualified to answer the certified questions in the first instance.” . . . Further, this Court finds the Washington Supreme Court’s answers are “necessary . . . in order to dispose of [this] proceeding.”

Exhibit J at pp. 3-4 (internal citations omitted).

4.61 Judge Rice then certified, *inter alia*, the following question of law to the Washington Supreme Court:

Under Washington’s lien theory of mortgages and RCW 7.28.230(1), can a borrower and lender enter into a contractual agreement prior to default that allows the lender to enter, maintain, and secure the encumbered property prior to foreclosure?

1 *Id.* at p. 10.

2 4.62 On August 18, 2015, the Washington Supreme Court sent a letter accepting Judge  
3 Rice’s Order Certifying Questions under Supreme Court No. 92081-8, and set a briefing schedule for  
4 the parties. Exhibit K.

5  
6 4.63 The parties timely submitted their briefs, and oral argument took place before the  
7 Washington Supreme Court on January 19, 2016.

8  
9 4.64 On July 7, 2016, the Washington Supreme Court issued its *En Banc* Opinion in *Jordan*  
10 *v. Nationstar Mortgage, LLC*, No. 92081-8, answering “the first certified question in the negative.”

11 Exhibit M at p. 6. The Court explained, “Our case law is clear that Washington law prohibits a  
12 lender from taking possession of property before foreclosure of the borrower’s home.” *Id.* at p. 8.  
13 The Court concluded that the deed of trust entry provisions allow the lender to take possession of the  
14 borrower’s home in advance of the conclusion of a foreclosure of the borrower’s home:  
15

16 From any approach, we find that Nationstar’s conduct constituted  
17 possession. . . . Nationstar’s vendor’s actions constituted possession  
18 because its actions are representative of control. The vendor drilled out  
19 Jordan’s existing locks and replaced the lock with its own. . . .  
20 [A]lthough [Jordan] was able to obtain a key by calling, the process  
21 made Nationstar the “middle man.” She could no longer access her  
22 home without going through Nationstar. . . . Nationstar effectively  
23 ousted Jordan by changing her locks, exercising control over the  
24 property. . . . Changing the locks is akin to exercising control, which is  
25 the key element of possession. By changing the locks, Nationstar took  
26 possession of the property. Since these actions are authorized by the  
entry provisions, the entry provisions allow the lender to take  
possession of the property. Because Washington law prohibits lenders  
from taking possession of the borrower’s property before foreclosure,  
the provisions are in conflict with state law. Therefore, we must  
answer the first certified question in the negative and find that the entry

1 provisions are unenforceable.

2 *Id.* at pp. 12-14.

3  
4 4.65 The Court concluded: “[T]he entry provisions are in direct conflict with state law and  
5 are unenforceable.” *Id.* at p. 20.

6 4.66 Based on *Jordan*, Safeguard has no legal right to engage in its common practice of  
7 forcible entry into pre-foreclosure homes, damage to borrowers’ real and person property, conversion  
8 of borrowers’ personal property and belongings located within the home, and interference with  
9 borrowers’ full use and enjoyment of their properties prior to the completion of a foreclosure.

11 **V. REPRESENTATIVE PLAINTIFFS**

12 5.1 The Representative Plaintiffs are just several examples of Safeguard’s common  
13 pattern and practice of unlawfully entering upon borrowers’ properties in advance of any foreclosure  
14 proceedings, damaging borrowers’ real property, converting borrowers’ personal property, and  
15 denying borrowers’ the full use and enjoyment of their property prior to completion of a foreclosure.

17 **Representative Plaintiff John Bund**

18 5.2 Mr. Bund is Executor of the Estate of Richard C. Bund, which Estate owns the Bund  
19 Property at 2485 Timaru Lane, Oak Harbor, Washington.

20  
21 5.3 Mr. Bund, as Executor, stands in the shoes of the Estate as the owner of the Property  
22 and has standing to bring this litigation on behalf of the Estate. *See* RCW 11.48.010 (“The personal  
23 representative shall be authorized in his or her own name to maintain and prosecute such actions as  
24 pertain to the management and settlement of the estate, and may institute suit to collect any debts due  
25  
26

1 the estate or to recover any property, real or personal, or for trespass of any kind or character.”);  
2 RCW 11.48.090 (“Actions for the recovery of any property or for the possession thereof, and all  
3 actions founded upon contracts, may be maintained by and against personal representatives in all  
4 cases in which the same might have been maintained by and against their respective testators or  
5 intestates.”); *see also, e.g., Davenport v. Elliott Bay Plywood Machines Co.*, 30 Wash. App. 152, 155,  
6 632 P.2d 76 (1981) (the personal representative of an estate has the “right to possession and control  
7 of all of the estate property”); *Collins v. Northwest Cas. Co.*, 180 Wash. 347, 351, 39 P.2d 986 (1935)  
8 (internal quotation marks omitted) (“It is the settled law of this state that executors and administrators  
9 are entitled to possession and control of the property both real and personal of estates while being  
10 administered by them, as against heirs and devisees as well as all other persons.”).

11  
12  
13 5.4 Mr. Bund was Executor of the Estate when the Bund Property was entered upon by  
14 Safeguard.

15  
16 5.5 At the time of the entry, the loan securing the Bund Property was in default, but no  
17 foreclosure proceedings had been initiated.

18  
19 5.6 At the time of the entry, the form deed of trust provision purporting to authorize  
20 Safeguard’s presence on the Bund Property in the event of default was unenforceable as contrary to  
21 Washington State law, pursuant to *Jordan v. Nationstar Mortgage*.

22  
23 5.7 At the time of the entry, Mr. Bund was in daily communication with the lender for the  
24 Bund Property.

25 5.8 At the time of the entry, the Bund Property was neither vacant nor abandoned.  
26

1           5.9     To gain entry to the Bund Property, Safeguard damaged the Bund Property, including  
2 damaging a lock, door, and shed latch on the Bund Property.

3  
4           5.10    While on the Bund Property, Safeguard changed the locks and placed a lock-box upon  
5 the Bund Property. Safeguard also removed personal property from the Bund Property, including the  
6 lock that was originally on the garage man door, adjacent to the garage vehicle door.

7           5.11    Before leaving, Safeguard left a sticker on the garage man door of the Bund Property  
8 directing the owner to call Safeguard's phone number for access to the Bund Property and additional  
9 information.

10  
11           5.12    Upon returning to the Bund Property several days later, Mr. Bund discovered the Bund  
12 Property had been entered upon and the locks had been changed. His key would not open the lock to  
13 the door, and he could not access the interior of the house, garage, or shed.

14  
15           5.13    Mr. Bund called the number for Safeguard written on the sticker. The Safeguard agent  
16 who answered Mr. Bund's call told him to call the lender, and then hung up without further  
17 discussion.

18           5.14    Additional phone calls by Mr. Bund to Safeguard were received with equal  
19 insensitivity and Mr. Bund was not given access to the Bund Property at that time.

20  
21           5.15    Safeguard did not remove its locks or lock box from the Bund Property, despite being  
22 contacted by Mr. Bund.

23           5.16    Safeguard did not return or replace the original locks upon the Bund Property despite  
24 being contacted by Mr. Bund.  
25  
26

1           5.17    Rather, Mr. Bund was later provided a key to enter to the residence on the Bund  
2 Property, but he was told to leave it in the lock box on the door upon leaving.

3  
4           5.18    Upon entering the home, Mr. Bund discovered the home had been damaged from  
5 Safeguard's entry, and personal property of the Estate was missing.

6           5.19    Mr. Bund reported the missing items and the damage to Safeguard, and requested  
7 return of the missing property and reimbursement and/or repairs to the damaged property.

8           5.20    Safeguard refused to return the missing property, to reimburse the Estate, or to repair  
9 the damaged property.

10  
11           5.21    To date, Safeguard has not repaired the damage it caused to the Bund Property and has  
12 not reimbursed the Estate for the costs to repair such damage or the lost rental value during the time  
13 the Estate was denied the full use and enjoyment of its real and/or personal property.

14  
15           5.22    Safeguard has not returned or paid the Estate for the personal property it removed  
16 from the Bund Property.

17           5.23    The exact value of the personal property of the Estate converted from the Bund  
18 Property is unknown at this time, but is believed to exceed \$600.00.

19  
20           5.24    The exact value of the damage to the Bund Property is unknown at this time, but  
21 multiple doors and locks suffered damage.

22           5.25    The exact value of the precluded rents arising from the denial of the full use and  
23 enjoyment of the Estate's real and/or personal property is unknown at this time.

24  
25           5.26    On information and belief, the actions and inactions alleged above are part of  
26

1 Safeguard's common business acts and practices.

2 **Representative Plaintiffs Mandy and Garrett Hanousek**

3  
4 5.27 The Hanouseks owned the Hanousek Property located at 1114 Summit Street, Colton,  
5 Washington.

6 5.28 During the period of the Hanouseks' ownership, the Hanousek Property was entered  
7 upon by Safeguard.

8 5.29 At the time of the entry, the loan securing the Hanousek Property was in default, but  
9 foreclosure proceedings had not concluded.

10 5.30 At the time of the entry, the form deed of trust provision purporting to authorize  
11 Safeguard's presence on the Hanousek Property in the event of default was unenforceable as contrary  
12 to Washington State law, pursuant to *Jordan v. Nationstar Mortgage*.

13 5.31 At the time of the entry, the Hanousek Property was not abandoned, but contained the  
14 Hanouseks' personal belongings.

15 5.32 Safeguard damaged the Hanousek Property in order to gain entry to the Hanousek  
16 Property, including by damaging a lock on the door of the Hanousek Property.

17 5.33 While on the Hanousek Property, Safeguard changed the front door locks and placed a  
18 lock-box upon the Hanousek Property. Safeguard also trashed out the interior of the Hanousek  
19 Property and removed personal property therefrom, including the lock that was originally on the front  
20 door, items in the refrigerator, and furniture.

21 5.34 Before leaving, Safeguard left a notice on a window by the front door of the Hanousek  
22  
23  
24  
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1 Property with Safeguard's phone number on it.

2 5.35 Upon returning to the Hanousek Property thereafter, the Hanouseks discovered their  
3 property had been entered upon and the front door locks had been changed. As a result, they could  
4 only access the interior of the house through the back door.  
5

6 5.36 Once inside, the Hanouseks discovered the missing items of personal property and the  
7 trashed out state of their real property.  
8

9 5.37 Due to Safeguard's unauthorized entry, the disheveled state of the Hanousek Property,  
10 and the new lock on the front door to which their key did not work, the Hanouseks did not feel  
11 comfortable staying in the Hanousek Property overnight and instead stayed in a hotel.

12 5.38 The Hanouseks requested reimbursement for the damaged and missing property, but  
13 their request was declined.  
14

15 5.39 To date, Safeguard has not reimbursed the Hanouseks for the missing or damaged  
16 property, or compensated the Hanouseks for the denial of the full use and enjoyment of their real  
17 and/or personal property.  
18

19 5.40 Safeguard has not returned or paid the Hanouseks for the personal property it removed  
20 from the Hanousek Property.

21 5.41 The exact value of the Hanouseks' personal property converted from the Hanousek  
22 Property is unknown at this time, but is believed to exceed \$100.00.  
23

24 5.42 The exact value of the damage to the Hanousek Property is unknown at this time.

25 5.43 The exact value of the denial of the full use and enjoyment of the Hanouseks' real  
26



1 and/or personal property is unknown at this time.

2 5.44 On information and belief, the actions and inactions alleged above are part of  
3 Safeguard’s common business acts and practices.  
4

5 **VI. PROPRIETY OF CLASS ACTION PROSECUTION**

6 **Proposed Class Definition**

7 6.1 The members of the proposed Class include all Citizens of Washington State:

8 (a) who own or owned real property in Washington State subject to a loan that was in  
9 default;

10 (b) which property, within the applicable statute of limitations, was entered upon by  
11 Safeguard and/or its agents prior to the completion of any judicial or non-judicial  
12 foreclosure; and  
13

14 (c) which entry upon the property by Safeguard was the proximate cause of damage to  
15 the homeowner by:

16 (i) damaging the homeowner’s real or personal property; and/or

17 (ii) converting the homeowner’s personal property or belongings; and/or

18 (iii) interfering with the homeowner’s full use and enjoyment of the home.  
19

20 **CR 23(a)(1): Numerosity**

21 6.2 The exact number of persons and/or entities similarly situated to the Representative  
22 Plaintiffs is currently unknown.  
23

24 6.3 However, Safeguard recently reported that, between October 2011 and October 2015,  
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prior to completion of foreclosure;

(b) Safeguard’s common policies or practices vis-à-vis actions it takes upon the proposed Class Members’ properties;

(c) Safeguard’s common policies or practices for hiring agents to perform the actions it takes upon the proposed Class Members’ properties;

(d) the manner in which Safeguard instructs or trains its agents that take action upon the proposed Class Members’ properties;

(e) the level of supervision offered by Safeguard over its agents who take action on the proposed Class Members’ properties.

6.8 Additional common questions of law and fact are addressed below under *CR 23(b)(3)*:

*Predominance.*

**CR 23(a)(3): Typicality**

6.9 The claims of the Representative Plaintiffs are typical of the claims of the Class.

6.10 As to Representative Plaintiff Bund, the Estate owns the Bund Property, and Mr. Bund is the Executor of the Estate. As Executor, Mr. Bund stands in the shoes of the Property owner. *See, e.g.,* RCW 11.48.010; RCW 11.48.090; *Davenport*, 30 Wash. App. at 155; *Collins*, 180 Wash. at 351.

6.11 Likewise, Representative Plaintiffs Hanousek owned the Hanousek Property at the time it was entered upon by Safeguard.

6.12 As such, the Estate via Representative Plaintiff Bund, Representative Plaintiffs Hanousek, and all Members of the Class own or owned real property in Washington State, who, prior

1 to completion of any judicial or non-judicial foreclosure, had their property entered upon by  
2 Safeguard or its agents for purposes of conducting property preservation services upon their property,  
3 had their real or personal property located thereon damaged and/or removed by Safeguard or its  
4 agents, and were denied the full use and enjoyment of their real and/or personal property by  
5 Safeguard or its agents.  
6

7 6.13 As a result, the Estate via Representative Plaintiff Bund, Representative Plaintiffs  
8 Hanousek, and all putative Class Members have been damaged by Safeguard's actions, which actions  
9 constitute common violations of laws enacted for the protection of Washington State citizens.  
10

11 6.14 Furthermore, Safeguard's defenses to the claims of the Estate via Representative  
12 Plaintiff Bund, Representative Plaintiffs Hanousek, and the proposed Class Members will be identical  
13 due to: (i) Safeguard's reliance on a form of deed of trust provision purporting to allow so-called  
14 preservation services; and (ii) Safeguard's common policies and practices vis-à-vis its retention and  
15 supervision of subcontractors, performance of preservation services, scope of preservation services  
16 performed, its response to consumer complaints, and its response to borrower requests for repair to  
17 and return of their property and requests for restoration of full and unfettered access to their property.  
18  
19

20 6.15 In short, because all claims implicate common facts and questions of law, Safeguard's  
21 defenses will too.

22 **CR 23(a)(4): Adequacy of Representation**

23 6.16 The Estate via Mr. Bund and Representative Plaintiffs Hanousek will fairly and  
24 adequately protect the interests of the Class.  
25  
26



1 property located therein, and denying borrowers the full use and enjoyment of their real and/or  
2 personal property.

3  
4 6.20 Safeguard further has a common practice of not adequately training and supervising its  
5 agents in the performance of so-called property preservation services, and even instructing its agents  
6 to perform certain destructive and disruptive acts.

7  
8 6.21 Safeguard further has a common practice of not repairing, replacing, or reimbursing  
9 borrowers when they report property damage as a result of the above acts.

10 6.22 Safeguard has acted in such manners as applicable to Plaintiffs and all Class Members.

11 6.23 For these reasons, Plaintiffs seek class-wide injunctive relief against Safeguard to  
12 restrain and enjoin these behaviors.

13  
14 **CR 23(b)(3): Predominance**

15 6.24 “‘Considering whether ‘questions of law or fact common to class members  
16 predominate’ begins, of course, with the elements of the underlying cause of action.’” *Abdullah v.*  
17 *U.S. Sec. Assoc., Inc.*, 731 F.3d 952, 964 (9th Cir. 2013) (quoting *Erica P. John Fund, Inc. v.*  
18 *Halliburton Co.*, 563 U.S. 804, 131 S. Ct. 2179, 2184 (2011)).

19  
20 6.25 “A plaintiff class need not prove that each element of a claim can be established by  
21 classwide proof[.]” *In re Whirlpool Corp. Front-Loading Washer Prods. Liab. Litig.*, 722 F.3d 838,  
22 858 (6th Cir. 2013).

23  
24 6.26 Rather, the Court should “balance against the issues requiring individualized proof,  
25 any questions of law or fact common to . . . class members . . . .” *Kelly v. Microsoft Corp.*, 2010 WL  
26

1 3556196, at \*1 (9th Cir. Sept. 14, 2010) (quoting *In re Wells Fargo Home Mortg. Overtime Pay*  
2 *Litig.*, 571 F.3d 953, 959 (9th Cir. 2009): “it is reversible error to ‘rely[] on [one factor] to the near  
3 exclusion of other factors relevant to the predominance inquiry”).  
4

5 6.27 Thus, certification is appropriate unless individual questions “*overwhelm* questions  
6 common to the class.” *Amgen, Inc. v. Conn. Retirement Plans & Trust Funds*, --- U.S. ---, 133 S.Ct.  
7 1184, 1193, 1196, 1204, 185 L.Ed.2d 308 (2013) (emphasis added).  
8

9 6.28 Numerous legal and factual questions pertaining to the proposed Class Members  
10 predominate over any questions affecting only individual members, including but not limited to the  
11 following:

12 6.28.1 Form Contract Provisions. Plaintiffs will be able to establish the elements of  
13 the claims using evidence common to the Class because Safeguard finds its purported authority to  
14 enter upon borrowers’ properties from unlawful form contract provisions applicable to all borrowers’  
15 properties. These contract provisions are substantively identical in all cases. All such substantively  
16 identical form deed of trust provisions were found on July 7, 2016, to be “in direct conflict with state  
17 law and . . . unenforceable” by the Washington Supreme Court in *Jordan v. Nationstar Mortgage*.  
18 Exhibit M at p. 20. Such provisions are common to all putative Class Members and do not involve  
19 individualized inquiries.  
20  
21

22 6.28.2 The Identity of the Property Owner. Still another element subject to common  
23 proof is the identity of the property owner. As the proposed Class concerns only those properties  
24 entered upon by Safeguard prior to completion of any judicial or non-judicial foreclosure, there are  
25  
26

1 no individual questions concerning the identity of the rightful property owner—the borrower owned  
2 the property at the time of entry, not anyone else. This is further detailed in the *Jordan v. Nationstar*  
3 *Mortgage* opinion, in which the Washington Supreme Court reaffirmed the borrower’s right to  
4 exclusive possession of the property prior to the completion of any foreclosure proceedings. Exhibit  
5 M.

6  
7           6.28.3 Safeguard’s Relationship with its Subcontractors. Plaintiffs will be able to  
8 establish the elements of their claims using evidence common to the Class because the primary  
9 inquiries involve *Safeguard’s* conduct. That is, Safeguard has a common policy and practice of  
10 training and instructing its agents to enter properties prior to completion of any foreclosure.  
11 Safeguard further instructs its agents to use whatever means necessary to enter properties, including  
12 drilling out the borrower’s locks, and, once inside, agents are trained and instructed to, *inter alia*,  
13 “trash out” the premises by taking and carrying away personal property found therein. Thus,  
14 evidence common to all Members of the Class includes: Safeguard’s selection of subcontractors and  
15 screening of employees; Safeguard’s training of subcontractors; Safeguard’s instructions to its  
16 subcontractors; and Safeguard’s oversight of its subcontractors’ work. This theory is common to all  
17 putative Class Members and does not involve individualized inquiries.

18  
19           6.28.4 The Conduct of Safeguard’s Subcontractors in Entering and Damaging or  
20 Converting Borrowers’ Property. Plaintiffs will be able to establish the elements of their claims  
21 using evidence common to the Class because, as to all putative Class Members, Safeguard’s  
22 subcontractors acted similarly while on borrowers’ properties; namely, they committed unauthorized  
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1 entry upon borrowers' properties, conducted unlawful forcible entries involving damage to existing  
2 locks, doors and/or windows, damaged and converted personal property found thereon, and interfered  
3 with borrowers' full use and enjoyment of their property. This theory is common to all putative Class  
4 Members and does not involve individualized inquiries.  
5

6 6.28.5 Safeguard's Policies and Procedures for Responding to Customer Complaints.

7 Plaintiffs will be able to establish the elements of their claims using evidence common to the Class  
8 because Safeguard's policies and procedures for responding to customer complaints of its agents'  
9 entry, conversion of borrowers' property, and interference with borrowers' full use and enjoyment of  
10 their property are the same in all cases. That is, Safeguard does not immediately restore possession  
11 of the property to the owner, does not return or replace the property's original locks, does not remove  
12 its locks from the property upon demand, and does not return or replace personal property removed  
13 from the property. These facts are common to all putative Class Members and do not involve  
14 individualized inquiries.  
15  
16

17 6.28.6 Class Members' Damages. Plaintiffs will be able to establish the elements of

18 their claims using evidence common to the Class because all putative Class Members suffered the  
19 same type of damage; namely, injury to real and/or personal property from Safeguard's forcible  
20 entry, damage to, and/or conversion of personal property, and interference with the full use and  
21 enjoyment of the property by the borrower. This fact is common to all putative Class Members and  
22 will not require individualized inquiries.  
23  
24

25 6.29 As a result, the prosecution of a class action is superior to other available methods for  
26

1 the fair and efficient adjudication of this controversy.

2 6.30 Individual actions are not likely to seek sufficient damages to warrant assuming the  
3 cost of litigation. Here, the damages sustained by each putative Class Member are not large,  
4 generally including damage to doors, windows, and/or personal property within the residence. As  
5 recently admitted by Safeguard, many putative Class Members made claims against Safeguard for  
6 less than \$3,500. Therefore, each putative Class Member will have difficulty maintaining an  
7 individual action, and a class action is a superior method to adjudicate their claims.  
8  
9

10 6.31 In addition, tens of thousands of individual actions would greatly congest the  
11 Washington State courts.

12 6.32 A class action is the most cost-effective way for consumers to prevent future economic  
13 and pecuniary loss to tens of thousands of Washington citizens and members of the public at large by  
14 Safeguard.  
15

16 6.33 This action is superior to any other available method for the fair and efficient  
17 adjudication of the controversy.  
18

19 **VII. FIRST CAUSE OF ACTION:**  
20 **COMMON LAW TRESPASS**

21 7.1 Safeguard wrongfully and intentionally entered onto—and directed its agents to enter  
22 onto—the Bund Property, the Hanousek Property, and properties owned by borrowers throughout the  
23 state of Washington in advance of the conclusion of any foreclosure proceedings.

24 7.2 As detailed by the Washington Supreme Court in *Jordan v. Nationstar Mortgage*,  
25 prior to the completion of any foreclosure proceedings, the borrower has the exclusive right to  
26

1 possess their property, and Safeguard has no legal right to be there. Exhibit M. Therefore,  
2 Safeguard's entry upon borrowers' properties is an invasion that affects the borrower's interest in the  
3 exclusive possession of their property.  
4

5 7.3 Safeguard's intent to invade borrowers' possessory interests is demonstrated by its  
6 claimed authority purportedly granted in its form deed of trust provisions with lenders and loan  
7 servicers, which claim to permit such entries in the event of default or abandonment of properties—  
8 which the Washington Supreme Court recently invalidated.  
9

10 7.4 Such intent to enter is further evidenced by Safeguard's acts of changing borrowers'  
11 locks, performance of so-called "preservation services" on borrowers' properties, and the notices it  
12 left for homeowners to contact Safeguard to obtain entry to their properties.  
13

14 7.5 Safeguard remained on the Bund Property, on the Hanousek Property, and on  
15 borrowers' properties during the period of entry and thereafter by changing the locks and requiring  
16 borrowers to contact Safeguard in order to regain full access to their properties. For example, even  
17 when Mr. Bund contacted Safeguard and requested access to the Property and removal of the locks,  
18 that request was repeatedly denied. Likewise, Safeguard changed the locks on the Hanousek  
19 Property, leaving its own lock there. Other borrowers experienced the same results.  
20

21 7.6 It was reasonably foreseeable that Safeguard's unauthorized and unlawful entries onto  
22 borrowers' properties in advance of the conclusion of any foreclosure proceedings would invade  
23 borrowers' possessory interests in those properties.  
24

25 7.7 As a result of Safeguard's acts as detailed above, Representative Plaintiffs and  
26

1 Washington borrowers suffered the damages detailed herein in an amount to be proven at trial.

2  
3 **VIII. SECOND CAUSE OF ACTION:  
4 INTENTIONAL TRESPASS (RCW 4.24.630)**

5 8.1 Safeguard entered onto the Bund Property, the Hanousek Property, and properties  
6 owned by borrowers throughout the state of Washington.

7 8.2 Safeguard intentionally, unreasonably, and forcibly entered onto such properties, and  
8 intentionally and unreasonably damaged or removed property thereon.

9 8.3 For example, Safeguard damaged the lock on the door of the Bund Property, kept the  
10 lock, damaged the garage man door on the Bund Property, removed personal property from the Bund  
11 Property, and denied the Estate the full use and enjoyment of the personal property and the real  
12 property.

13 8.4 Likewise, Safeguard damaged the lock on the door of the Hanousek Property, kept the  
14 lock, removed personal property from the Hanousek Property, and denied Plaintiffs Hanousek the full  
15 use and enjoyment of their real and personal property.  
16

17 8.5 Safeguard intended to act in this manner, as evidenced by its instruction to its  
18 subcontractors to engage in these behaviors, and its deliberate acts to engage in these behaviors.  
19

20 8.6 Safeguard knew or had reason to know that it had no authorization to engage in such  
21 behaviors because the form contract provisions relied upon by Safeguard – while unlawful –  
22 nevertheless do not authorize damage to real or personal property, do not authorize conversion of  
23 personal property located upon or within a property, and do not authorize interference with the  
24 owner’s (or other lawful occupant’s) full use and enjoyment of the property.  
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8.7 Safeguard engaged in the above actions wholly without permission of Plaintiffs or other Washington borrowers.

8.8 It was substantially certain that Safeguard’s and/or its agents’ above-described actions would damage the Bund Property, the Hanousek Property, and the properties of other Washington borrowers.

8.9 Safeguard’s actions are part of its common practice relative to countless Washington borrowers.

8.10 As a result, Safeguard wrongfully caused waste or injury to these properties, or wrongfully injured personal property or improvements to real estate on land.

8.11 Safeguard’s actions above each constitute separate violations of RCW 4.24.630.

8.12 As a direct and proximate result of Safeguard’s and/or its agents’ violations of RCW 4.24.630, Plaintiffs have suffered damages to their real properties and the personal property located therein in an amount to be proven at trial.

8.13 Safeguard is liable to Plaintiffs for treble the amount of damages caused by its violations of RCW 4.24.630.

8.14 Safeguard is liable to Plaintiffs for their reasonable attorneys’ fees and costs pursuant to RCW 4.24.630.

8.15 Safeguard is liable to Plaintiffs for their reasonable attorneys’ fees and costs pursuant to RCW 4.24.630. Safeguard is similarly liable to the tens of thousands of Washington borrowers who experienced the same or similar wrongs as Plaintiffs.

**IX. THIRD CAUSE OF ACTION:  
VIOLATION OF CONSUMER PROTECTION ACT (RCW 19.86, et seq.)**

9.1 Safeguard Engaged in Unfair or Deceptive Acts and Practices.

9.1.1 The following actions of Safeguard constitute unfair *and* deceptive acts and practices for the purposes of RCW 19.86, *et seq.*: Safeguard’s common practices of unlawfully entering borrowers’ properties in advance of the conclusion of any foreclosure proceedings; forcible entries via drilling out existing door locks; keeping the locks; damaging doors and windows, removing personal property; refusing to refund, repair, or compensate for damage caused and property taken; denying owners or legal occupants the full use and enjoyment of their real and/or personal property; and failing to respond or timely respond to demands for repairs, return of property, and access to their property.

9.1.2 These acts are unfair because the Washington Supreme Court in *Jordan v. Nationstar Mortgage* recently deemed such practices a clear violation of Washington state law, and the deed of trust provisions purporting to authorize them unenforceable as contrary to law. These acts are further unfair because of the unequal bargaining power between the individual homeowner or occupant and a large, national company that forcibly enters properties, drills out the existing locks, places its own locks on the properties, interferes with owners’ or legal occupants’ full use and enjoyment of the properties, converts personal property located upon the properties, and refuses to return or replace damaged or converted property to the rightful owner.

9.1.3 These acts are deceptive because when Safeguard performs them, the property owner is unaware that they are occurring, and such acts are not authorized via any form deed of trust

1 provision.

2 9.1.4 Safeguard engaged in similar unfair and deceptive acts and practices vis-à-vis  
3 other Washington borrowers.  
4

5 9.2 Safeguard's Acts Occurred in Trade or Commerce. Safeguard's unfair and deceptive  
6 acts occurred in trade or commerce because Safeguard is the largest mortgage field services company  
7 in the country and was servicing the properties at the time of the challenged acts.  
8

9 9.3 Safeguard's Acts Impact the Public Interest.

10 9.3.1 Safeguard's unfair or deceptive acts impacted the public interest because they  
11 were committed in the course of Safeguard's business, Safeguard advertises similar services to the  
12 public in general, and Safeguard and Plaintiffs and Class Members (as individual consumers) occupy  
13 unequal bargaining positions.  
14

15 9.3.2 Safeguard engages in a course of conduct whereby the same or similar unfair  
16 or deceptive acts are repeated as to borrowers across Washington State. Indeed, Safeguard reports  
17 53,467 borrowers throughout the state of Washington whose properties may have been entered upon  
18 by Safeguard between October 2011 and October 2015. Exhibit L.  
19

20 9.3.3 There exists a real and substantial potential for repetition of Safeguard's  
21 conduct in the future because Safeguard is the largest mortgage field services company in the  
22 country.  
23

24 9.4 Causation.

25 9.4.1 Causation is satisfied through the common proof that Safeguard's policy and  
26

1 practice is to instruct its agents to enter borrowers' homes, to do so forcibly, to remove personal  
2 property therefrom, and to place and maintain its own locks and lock boxes on borrowers' properties.

3  
4 9.4.2 These common instructions proximately cause borrowers' damages because,  
5 *but for* Safeguard's instructions to its agents, there would be no entry, conversion, or interference  
6 resulting in damage to borrowers.

7 9.5 Injury to Business or Property. As a direct and proximate result of Safeguard's unfair  
8 or deceptive acts as set forth above, Plaintiffs suffered injury to their property in an amount to be  
9 proven at trial. Putative Class Members suffered similar injuries.

11 9.6 Safeguard's above-listed unfair or deceptive acts constitute violations of RCW 19.86,  
12 *et seq.*

13 9.7 Safeguard is liable to Plaintiffs for treble the amount of their damages, including those  
14 arising from the interference with the full use and enjoyment of their real properties and/or personal  
15 property, caused by the violations of RCW 19.86, *et seq.*

17 9.8 Safeguard is liable to Plaintiffs for their reasonable attorneys' fees and costs pursuant  
18 to RCW 19.86, *et seq.*

20 9.9 Safeguard is similarly liable to the countless Washington borrowers who experienced  
21 the same or similar wrongs as the Representative Plaintiffs.

22 **X. FOURTH CAUSE OF ACTION:**  
23 **CONVERSION**

24 10.1 Safeguard instructs its subcontractors to remove personal property and belongings  
25 from borrowers' residences in the course of "preservation services."  
26



1           10.2 Plaintiffs enjoyed a possessory property interest in the personal property that  
2 Safeguard removed from the Bund and Hanousek Properties, respectively, because the locks and  
3 other items that were taken belonged to Plaintiffs.  
4

5           10.3 Safeguard's removal was unjustified because Safeguard intentionally removed  
6 personal property belonging to Plaintiffs, without consent or permission of Plaintiffs and without  
7 authority of the court.  
8

9           10.4 Safeguard's acts constitute willful interference with chattel because Safeguard acted  
10 intentionally and its acts of removal deprived Plaintiffs of the possession and control of their personal  
11 property.  
12

13           10.5 To date, Safeguard has not returned the personal property it took from the Bund and  
14 Hanousek Properties to Plaintiffs, respectively, despite a demand that such personal property be  
15 returned.  
16

17           10.6 Such failure to return constitutes an unjustified and willful interference with Plaintiffs'  
18 personal property, and demonstrates an intent to exercise permanent dominion or control over  
19 Plaintiffs' personal property.  
20

21           10.7 Safeguard's unjustified interference with Plaintiffs' personal property with intent to  
22 exercise dominion and control of the personal property without lawful justification constitute acts of  
23 conversion.  
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25           10.8 As a direct and proximate result of Safeguard's conversion, Plaintiffs suffered  
26 damages in an amount to be proven at trial.



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**CERTIFICATE OF SERVICE**

I hereby certify that on January 4, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System. Notice of this filing will be sent to the parties listed below by operation of the Court’s electronic filing system. Parties may access this filing through the Court’s system.

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DATED at Wenatchee, Washington this 4th day of January, 2017.

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