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CLERK OF DISTRICT COURT
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FILED
BY _____
DEPUTY

MONTANA ELEVENTH JUDICIAL DISTRICT COURT
FLATHEAD COUNTY

<p>DENNIS THORNTON</p> <p>Plaintiffs,</p> <p>vs.</p> <p>WHITEFISH CREDIT UNION,</p> <p>Defendant.</p>	<p>Cause No.: DV-18-336 (D)</p> <p>Judge Dan Wilson</p> <p>MOTION TO VACATE JUDGMENT AND MEMORANDUM OF LAW</p>
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The undersigned has attached for filing with the Court, the following:

MOTION TO VACATE JUDGMENT
AND MEMORANDUM OF LAW

INTRODUCTION

COME NOW, Plaintiffs Dennis Thornton, appearing pro se, and respectfully move this Court, pursuant to Mont. R. Civ. P. 60(b)(2), (3), (4) and 60(d)(3), to vacate the Judgment entered on October 10, 2018 (ROA Doc. #57) in favor of

Defendant Whitefish Credit Union. This motion is based on (1) fraud, misrepresentation, and misconduct by Whitefish Credit Union; (2) newly discovered evidence adduced during Thorco, Inc.'s bankruptcy proceedings in 2025; (3) fraud upon the Court; and (4) voidness under Rule 60(b)(4) because the 2018 judgment (ROA Doc.57) was predicated on a foreclosure judgment that had already been vacated and the case dismissed with prejudice in 2016. Plaintiffs request an order compelling vacatur of the 2018 judgment (ROA Doc. #57).

This motion mandates vacatur of the October 10, 2018 judgment (ROA Doc. #57) in DV-18-336D, which was procured through fraud on the court. This motion proceeds under Rule 60(d)(3). Defendant Whitefish Credit Union ("WCU") wrongfully relied on a foreclosure judgment that had been vacated and dismissed with prejudice in 2016, in order to obtain the October 10, 2018 judgment (ROA Doc. #57). WCU's own admissions in federal court, along with regulatory findings and recorded satisfactions, confirm that no valid debt or lien existed at the time that they sought the October 10, 2018 judgment (ROA Doc. #57) from this court.

STATEMENT OF FACTS

1. On February 23, 2016, in Cause No. DV-12-174B, the Honorable Robert B. Allison entered a Judgment of Foreclosure and Order of Sale (ROA Doc. #217) in favor of Whitefish Credit Union against Thorco, Inc. and Dennis and Donna Thornton.

2. On August 16, 2016, pursuant to the parties' joint motion, Judge Allison entered an Order Vacating Judgment of Foreclosure and Order of Sale (ROA Doc. 231).
3. On August 24, 2016, the District Court dismissed DV-12-174B with prejudice (ROA Doc. #233). The dismissal with prejudice operated as a final adjudication on the merits as to all claims arising from that action.
4. On October 10, 2018, in Cause No. DV-18-336D, the Honorable Dan Wilson entered Judgment (ROA Doc. #57) granting Whitefish Credit Union's motion for summary judgment against Dennis and Donna Thornton.
5. The 2018 judgment (ROA Doc. #57) thus purported to revive or rely upon claims resolved by the 2016 vacatur and dismissal with prejudice (ROA Doc. 233), leaving no legal basis for such a judgment.
6. In Thorco, Inc.'s bankruptcy (Case No. 9:22-bk-90119-JMM), Whitefish Credit Union appeared as a purported creditor for \$7,479,975 on the debtor's schedules but did not file a proof of claim, while the United States Trustee represented that nearly three-quarters of claims were contingent on the Whitefish Credit Union dispute. Multiple lenders (EAB Holdings LLC, Farmers State Bank, First Interstate Bank, Valley Crest) denied credit to Thorco/the Thorntons due to the public record's lack of satisfactions of judgment.

7. Whitefish Credit Union has still not filed satisfactions of judgment in Flathead County, contrary to Montana statutes, leaving a false and injurious cloud on the public record.

IRREPARABLE HARM CAUSED BY THE FALSE JUDGMENT

8. Plaintiffs Dennis and Donna Thornton have suffered, and continue to suffer, irreparable harm as a direct and continuing result of the October 10, 2018 judgment (ROA Doc. #57) remaining in place. Because the judgment persists in the public record without statutory satisfactions, lenders and counterparties have denied credit and contracts, resulting in loss of business opportunities, injury to reputation, and impairment of the Thorntons' ability to operate and expand their business. Multiple lenders—including EAB Holdings LLC, Farmers State Bank, and First Interstate Bank, Valley Crest—issued denials referencing the unsatisfied judgment. These injuries are ongoing and not adequately compensable by money damages.

9. Binding and persuasive authority recognize that reputational injury, lost business opportunities, and ongoing credit impairment constitute irreparable harm warranting equitable relief. See Sampson v. Murray, 415 U.S. 61, 88 (1974) (irreparable harm is injury for which there is no adequate remedy at law); cf. FDIC v. Garner, 125 F.3d 1272, 1280 (9th Cir. 1997) (ongoing harm from invalid judgments clouding title/credit supports equitable relief). Montana law recognizes

equitable relief where economic and reputational harms persist absent an adequate legal remedy. See State v. Alpine Aviation, Inc., 2016 MT 283, ¶ 17, 385 Mont. 61, 380 P.3d 862 (equitable relief appropriate when legal remedies are inadequate). Because the 2018 judgment (ROA Doc. #57) is void and continues to inflict non-compensable injury, vacatur under Mont. R. Civ. P. 60(b)(4) and relief under 60(d)(3) are warranted.

10. Regarding the 2018 Judgment (ROA Doc. #57), it is unanimously agreed upon by all parties, and the United States Bankruptcy Court for the District of Montana, as a matter of record, that no debt was owed by Thorco, Inc. nor the Thorntons to Whitefish Credit Union after the entry of the 2016 vacatur and dismissal with prejudice (ROA Doc. #233). See Exhibit A: Record of US Bankruptcy Case No. 9:22-bk-90119-WLH, ECF Doc.#503, #370-28.

11. Based upon all of the foregoing, the 2018 Judgment (ROA Doc. #57) must be vacated as a matter of law in the interests of justice, fairness and equity.

ARGUMENTS

I. Standard under Mont. R. Civ. P. 60(b) and 60(d)(3).

Rule 60(b) permits relief from a final judgment for newly discovered evidence (60(b)(2)), fraud, misrepresentation, or misconduct (60(b)(3)), and voidness (60(b)(4)). Rule 60(d)(3) preserves the Court's inherent authority to set

aside a judgment for fraud on the court. Montana courts treat whether a judgment is void under Rule 60(b)(4) as a question of law reviewed de novo. See, e.g., Essex Ins. Co. v. Moose's Saloon, Inc., 2007 MT 202, ¶ 16, 338 Mont. 423, 166 P.3d 451.

II. The 2018 Judgment (ROA Doc. #57) is void because it rests on claims extinguished by a 2016 vacatur and dismissal with prejudice (ROA Doc. #233).

A dismissal with prejudice is an adjudication on the merits and bars relitigation of the same claims between the same parties. The Montana Supreme Court has repeatedly affirmed that effect. See, e.g., Brilz v. Metropolitan Gen. Ins. Co., 2012 MT 184, ¶ 22, 366 Mont. 78, 285 P.3d 494; Baltrusch v. Baltrusch, 2006 MT 51, ¶ 15, 331 Mont. 281, 130 P.3d 1267. Here, DV-12-174B's Judgment of Foreclosure (ROA Doc. #231) was expressly vacated on August 16, 2016, and the action was dismissed with prejudice (ROA Doc. #233) on August 24, 2016. The 2018 judgment (ROA Doc. #57) in DV-18-336D improperly revived previously extinguished claims and is void under Rule 60(b)(4).

III. Fraud, misrepresentation, and fraud upon the court warrant vacatur.

Whitefish Credit Union's failure to forthrightly acknowledge the 2016 vacatur and dismissal with prejudice and its presentation of a contrary narrative in 2018 constitute fraud and misrepresentation (Rule 60(b)(3)) and fraud upon the court (Rule 60(d)(3)). See In re Marriage of Broere, 2014 MT 101, ¶¶ 15–17, 374

Mont. 515, 323 P.3d 1114 (discussing relief for fraud and the court's inherent power to remedy fraud on the Court); Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238, 244-46 (1944) (fraud on the court justifies setting aside judgment).

WCU Relied on a Vacated Judgment to Obtain Summary Judgment. Exhibit B shows WCU's July 2018 motion falsely claimed Thorco Inc. owed "well over \$4 million."

Exhibit C and D show Judge Wilson's order and judgment relied on this claim.

Exhibit E shows Title Financial Specialty Services recorded a satisfaction of mortgage and quitclaim deed on May 12, 2022, pursuant to MCA § 71-1-308.

Exhibit F contains testimony from Commissioner Melanie Hall, the Commissioner of the Montana Division of Banking and Financial Institutions, and Kelly O'Sullivan, the current Chair of the NMLS Policy Committee and the Deputy Commissioner of the Montana Division of Banking and Financial Institutions confirming that the 2009 mortgage was extinguished when WCU vacated its foreclosure judgment and dismissed the case.

Exhibit G shows WCU's February 28, 2025 filing in federal court stating: *"There is not and has never been a monetary judgment in favor of WCU against either Thorco or Thorntons based on a mortgage foreclosure."*

Exhibit H shows the Chapter 7 trustee Christy Brandon's objection stating:
"The judgment entered in favor of WCU and against Thorco was vacated and the underlying debt... was satisfied."

The judgment in October 10, 2018 judgment (ROA Doc. #57) in case DV-18-336D was undeniably obtained through fraud on the court. Relief under Rule 60(d)(3) is warranted to preserve judicial integrity and prevent continued harm to the Plaintiffs.

IV. Statutory duties to record satisfactions corroborate the voidness/injustice.

Montana statutes require filing satisfactions of any judgment upon performance or discharge. See Mont. Code Ann. § 71-1-211 (satisfaction of mortgage), § 71-1-212 (penalties for failing to deliver discharge), 71-3-131. (Acknowledgment of lien satisfaction – penalty), and § 25-9-311 (satisfaction of judgment). Whitefish Credit Union's failure to do so perpetuated a misleading public record that harmed Plaintiffs' credit and business dealings and fueled the error leading to the 2018 judgment (ROA Doc. #57).

V. Void judgments: controlling principles and persuasive authority.

Courts across jurisdictions agree that a judgment entered without jurisdiction or in violation of due process—or procured by fraud—is a nullity and may be set aside at any time. See Lubben v. Selective Serv. Sys. Local Bd. No. 27, 453 F.2d 645, 649 (1st Cir. 1972) (void judgment is a nullity); Long v. Shorebank Dev.

Corp., 182 F.3d 548, 554 (7th Cir. 1999) (void judgment may be attacked at any time); Bulloch v. United States, 763 F.2d 1115, 1121 (10th Cir. 1985) (fraud on the court corrupts the judicial process).

VI. Newly discovered evidence from Thorco's bankruptcy supports relief.

The schedules, U.S. Trustee's representations, and lender denials (EAB Holdings LLC, Farmers State Bank, First Interstate Bank, Valley Crest) demonstrate ongoing reliance on a public record clouded by the absence of statutory satisfactions. This evidence—emerging in 2025—could not, with reasonable diligence, have been fully marshaled during the 2018 proceedings and supports relief under Rule 60(b)(2).

VII. Remedy.

Because the 2018 judgment (ROA Doc. #57) is void and the record shows fraud/misrepresentation and newly discovered evidence, the Court should vacate the judgment (ROA Doc. #57) under Rules 60(b)(4), 60(b)(3), and 60(b)(2), and exercise its inherent power under Rule 60(d)(3) to remedy fraud on the Court.

RELIEF REQUESTED

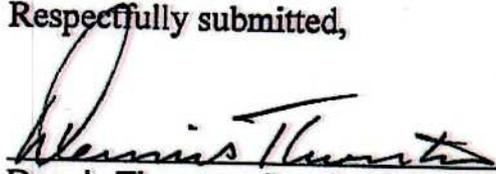
WHEREFORE, Plaintiffs respectfully pray that the Court enter an Order as follows:

1. VACATE the October 10, 2018 Judgment (ROA Doc. #57) in Cause No.

DV-18-336D under Mont. R. Civ. P. 60(b)(4), (3), and (2), and 60(d)(3);

DATED: 9-25-2025

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Dennis Thornton", is written over a solid horizontal line.

Dennis Thornton, Pro Se Plaintiff

151 Amatasia Lane

Kalispell, MT 59901

Telephone: (406) 261-6814

Email: thorcoinc@outlook.com

Ms O'Sullivan: The lawsuit is done. Yes that is correct. I'm sorry Mr. Chair, members of the committee, it's done.

**MEMORANDUM OF LAW IN SUPPORT
OF MOTION TO VACATE**

I. Standards Under Mont. R. Civ. P. 60(b)(2)-(4) and 60(d)(3)

Mont. R. Civ. P. 60(b) authorizes relief from a final judgment for: (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial; (3) fraud, misrepresentation, or misconduct; and (4) void judgments. Rule 60(d)(3) preserves the Court's inherent power to set aside a judgment for fraud on the court. Whether a judgment is void under Rule 60(b)(4) is a question of law reviewed de novo. Essex Ins. Co. v. Moose's Saloon, Inc., 2007 MT 202, ¶ 16, 338 Mont. 423, 166 P.3d 451 (voidness is a legal question).

II. The 2018 Judgment Is Void Under Rule 60(b)(4)

A dismissal with prejudice operates as a final judgment on the merits and precludes relitigation of the same claims between the same parties. Brilz v. Metropolitan Gen. Ins. Co., 2012 MT 184, ¶ 22, 366 Mont. 78, 285 P.3d 494;

Baltrusch v. Baltrusch, 2006 MT 51, ¶ 15, 331 Mont. 281, 130 P.3d 1267. Here, DV-12-174B's foreclosure judgment (ROA Doc. #231) was vacated on August 16, 2016, and the case was dismissed with prejudice on August 24, 2016. The 2018 judgment (ROA Doc. #57) in DV-18-336D impermissibly revived extinguished claims. A judgment entered without a legal predicate is void and must be vacated under Rule 60(b)(4). See also **Lubben v. Selective Serv. Sys. Local Bd. No. 27**, 453 F.2d 645, 649 (1st Cir. 1972) (void judgment is a complete nullity); **Long v. Shorebank Dev. Corp.**, 182 F.3d 548, 554 (7th Cir. 1999) (void judgment may be attacked at any time).

III. Fraud, Misrepresentation, and Fraud on the Court Warrant Relief

Rule 60(b)(3) provides relief for fraud and misrepresentation; Rule 60(d)(3) reaches fraud on the court—egregious conduct that corrupts the judicial process. **In re Marriage of Broere**, 2014 MT 101, ¶¶ 15–17, 374 Mont. 515, 323 P.3d 1114 (court has authority to remedy fraud upon the Court); **Hazel-Atlas Glass Co. v. Hartford-Empire Co.**, 322 U.S. 238, 244–46 (1944) (setting aside judgment procured by fraud on the court); **Bulloch v. United States**, 763 F.2d 1115, 1121 (10th Cir. 1985) (fraud on the court is fraud directed to the judicial machinery itself). Whitefish's failure to disclose the 2016 vacatur and dismissal with prejudice, and reliance on extinguished claims, satisfy Rule 60(b)(3); if proven

deliberate and calculated to mislead, this conduct also constitutes fraud on the court under Rule 60(d)(3).

IV. Montana's Statutory Duties to Record Satisfaction Support Relief

Montana law requires that a mortgagee and a judgment creditor record satisfactions once the obligation is performed or discharged. Mont. Code Ann. § 71-1-211; § 71-1-212; § 25-9-311. Whitefish's failure to file satisfactions left a misleading cloud on title and credit, which lenders and counterparties predictably relied upon, directly causing the Thorntons' injuries and compounding the 2018 error. This statutory framework corroborates that equity must intervene to correct the record and prevent further harm.

V. Newly Discovered Evidence Under Rule 60(b)(2)

Evidence from Thorco, Inc.'s bankruptcy in 2025—including schedules showing Whitefish as a purported creditor without a filed proof of claim, the U.S. Trustee's statements about claim contingencies, and denial letters from EAB Holdings, Farmers State Bank, First Interstate Bank and Valley Crest—was not reasonably available in 2018 and materially supports vacatur. This evidence demonstrates ongoing reliance on a false public record and the causal link to Plaintiffs' injuries.

VI. Irreparable Harm Necessitates Equitable Relief

Irreparable harm is injury that cannot be adequately remedied by money damages. *Sampson v. Murray*, 415 U.S. 61, 88 (1974). Courts recognize that continuing damage to creditworthiness and loss of business opportunities due to a tainted or invalid judgment are classic forms of irreparable injury warranting equitable relief. See *FDIC v. Garner*, 125 F.3d 1272, 1280 (9th Cir. 1997) (credit/title cloud from invalid judgment supports equitable relief). Montana law likewise authorizes equitable remedies where legal relief is inadequate to prevent continuing harm. *State v. Alpine Aviation, Inc.*, 2016 MT 283, ¶ 17, 385 Mont. 61, 380 P.3d 862.

VII. Remedy

The Court should vacate the October 10, 2018 judgment (ROA Doc. #57) pursuant to Rule 60(b)(4) and (b)(3), and, alternatively or additionally, under Rule 60(d)(3) for fraud on the court. Such relief will halt the ongoing irreparable harm and restore the integrity of the judicial process.

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CLERK OF DISTRICT COURT

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FILED

BY _____
DEPUTY

MONTANA ELEVENTH JUDICIAL DISTRICT COURT
FLATHEAD COUNTY

DENNIS THORNTON

Plaintiffs,

vs.

WHITEFISH CREDIT UNION,

Defendant.

Cause No.: DV-18-336 (D)

Judge Dan Wilson

**DECLARATION OF
DENNIS THORNTON**

The undersigned has attached for filing with the Court, the following:

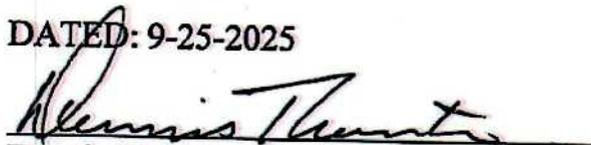
DECLARATION OF DENNIS THORNTON

I, Dennis Thornton, declare as follows:

1. I am the Plaintiff in the above-captioned matter. I have personal knowledge of the facts stated herein and could and would testify competently thereto.

2. I declare under penalty of perjury under the laws of the State of Montana the attached exhibits A through H are true and correct obtained from the record.

DATED: 9-25-2025



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**MONTANA ELEVENTH JUDICIAL DISTRICT COURT
FLATHEAD COUNTY**

**DENNIS THORNTON and
DONNA THORNTON**

Plaintiffs,

vs.

WHITEFISH CREDIT UNION,

Defendant.

Cause No.: DV-18-336 (D)

Judge Dan Wilson

PROPOSED ORDER

PROPOSED ORDER

THIS MATTER having come before the Court on Plaintiffs' Comprehensive Motion to Vacate Judgment and Memorandum of Law, and good cause appearing,

IT IS HEREBY ORDERED:

1. The Judgment (ROA Doc. #57) entered on October 10, 2018 in Cause No. DV-18-336D is VACATED pursuant to Mont. R. Civ. P. 60(b)(4), (3), and (2), and 60(d)(3).

DATED: _____

District Court Judge Dan Wilson

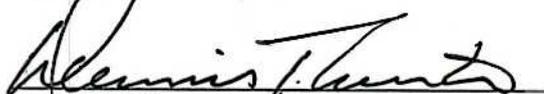
CERTIFICATE OF SERVICE

I certify that on the date below, I served a true and correct copy of the foregoing Comprehensive Motion to Vacate Judgment and Memorandum of Law *and Declaration of Dennis Thornton* upon the following by U.S. Mail and by Email:

Sean S. Frampton
Frampton Purdy Law Firm
530 West 19th St, #301
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Tel: (406) 862-9600
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Counsel for Whitefish Credit Union

DONNA Thornton
hand delivered
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DATED: 9-25-2025


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