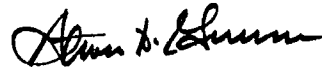


# **EXHIBIT 2**

# **EXHIBIT 2**

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CLERK OF THE COURT

1 OGM  
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13 *Attorneys for Defendant*  
14 *Bank of America, N.A.*

15  
16 DISTRICT COURT  
17 CLARK COUNTY, NEVADA

18 LAS VEGAS DEVELOPMENT GROUP, LLC,  
19 a Nevada limited liability company,

20 Plaintiff,

21 v.

22 BANK OF AMERICA, GENEVIEVE UNIZA-  
23 ENRIQUEZ, DOES 1 THROUGH 20; AND  
24 ROE CORPORATIONS 1 THROUGH 20,  
25 INCLUSIVE,

26 Defendants.

Case No.: A-12-654840-C  
Dept.: XXIII

27 **ORDER GRANTING BANK OF**  
28 **AMERICA, N.A.'S MOTION TO DISMISS**  
**SECOND AMENDED COMPLAINT**

29 Defendant Bank of America, N.A.'s (BANA) motion to dismiss plaintiff Las Vegas  
30 Development Group, LLC's (LVDG) second amended complaint, filed August 15, 2013, came on  
31 for hearing before the Court on September 17, 2013. Marilyn Fine, Esq. appeared on behalf of  
32 LVDG, and Natalie L. Winslow, Esq. appeared on behalf of BANA. The Court, having examined  
33 the pleadings and heard the arguments of counsel at the hearing on the motion, finds as follows:

34 **FINDINGS OF FACT**

35 A. On June 22, 2006, Genevieve Uniza-Enriquez (the borrower) purchased certain real  
36 property located at 6279 Downpour Court, Las Vegas, Nevada 89110.

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1 B. The borrower secured her purchase of the property with a deed of trust for  
2 \$360,000.00 against the property.

3 C. On June 25, 2010, the successor trustee under the deed of trust and/or agent of the  
4 beneficiary, ReconTrust Company, N.A. (**ReconTrust**) recorded a first notice of default against the  
5 property.

6 D. On June 30, 2010, an assignment of the deed of trust was recorded in favor of BAC  
7 Home Loans Servicing, LP.

8 E. ReconTrust rescinded the first notice of default on March 30, 2011.

9 F. On April 5, 2011, ReconTrust recorded a second notice of default.

10 G. On December 29, 2011, the Nevada Foreclosure Mediation Program recorded its  
11 certificate, indicating that "[t]he Beneficiary may proceed with the foreclosure process."

12 H. ReconTrust recorded a notice of trustee's sale on December 29, 2011, and additional  
13 notices of trustee's sale on April 12, 2012 and July 25, 2012.

14 I. On April 1, 2010, Absolute Collection Services, LLC (**ACS**), as agent for Palo Verde  
15 Ranch Homeowners' Association (**Palo Verde**), recorded a Notice of Delinquent Assessment Lien  
16 against the property in the amount of \$754.56.

17 J. The notice specifically stated that "[a]dditional monies shall accrue under this claim  
18 at the rate of the claimant's periodic assessments, *plus permissible late charges, costs of collection*  
19 *and interest and other charges*, if any, that shall accrue subsequent to the date of this notice."  
20 (Emphasis added).

21 K. The lien did not provide the amount attributable to assessments only – the only  
22 amount subject to Nevada's super priority lien statute.

23 L. On July 14, 2010, ACS recorded a notice of default against the property, stating that  
24 the amount owed as of July 13, 2010, totaled \$1,749.65.

25 M. On November 18, 2010, ACS recorded a notice of foreclosure sale, stating that  
26 \$2,873.86 was required to pay off the lien to avoid the HOA foreclosure sale.

27 N. On April 12, 2011, LVDG purchased the property at the HOA foreclosure sale.

28 ///

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1 O. A trustee's deed upon sale was recorded on April 13, 2011, in favor of LVDG, stating  
2 that LVDG purchased the property for the total amount of \$4,001.00.

3 P. On January 17, 2012, LVDG initiated this action, alleging, *inter alia*, that BANA's  
4 deed of trust was extinguished by virtue of the HOA foreclosure sale.

5 **CONCLUSIONS OF LAW**

6 1. Nevada Revised Statute 116.3116(1) grants a homeowners' association (HOA) a lien  
7 against a residential property for unpaid association dues, fines, and certain other assessments (HOA  
8 Lien).

9 2. A HOA Lien is junior in priority to "[a] first security interest recorded before the date  
10 on which the assessment sought to be enforced became delinquent. . . ." NRS 116.3116(2)(b).

11 3. However, a HOA Lien "is also prior to all security interests described in [NRS  
12 116.3116(2)(b)] to the extent of any charges incurred by the association on a unit pursuant to NRS  
13 116.310312 and to the extent of the assessment for common expenses based on the periodic budget  
14 adopted by the association pursuant to NRS 116.3115 which would have become due in the absence  
15 of acceleration during the 9 months immediately preceding institution of an action to enforce the  
16 lien. . . ." NRS 116.3116(2).

17 4. The plain language of NRS 116.3116 demonstrates that the super priority lien  
18 attaches once a lender forecloses under a first deed of trust.

19 5. Nevada's statutes governing homeowner associations, including NRS 116.3116, are  
20 based on the Uniform Common Interest Ownership Act (UCIOA). The UCIOA enacted the limited  
21 priority conferred to an HOA to "strike an equitable balance between the need to enforce collection  
22 of unpaid assessments and the obvious necessity for protecting the priority of the security interest of  
23 lenders." UCIOA § 3-116 cmt. 1.

24 6. UCIOA § 3-116, as adopted by the Nevada Legislature, balances two interests: the  
25 collection of unpaid HOA Assessments and the protection of the security interest of lenders.  
26 Therefore, the limited priority afforded by NRS 116.3116(2) is triggered when the holder of a first  
27 deed of trust (Holder) forecloses on the property. When foreclosure of the first deed of trust is  
28

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1 complete, the HOA would then be entitled to the priority amount owed on delinquent assessments  
2 pursuant to NRS 116.3116(2) before the Holder receives any of the proceeds.

3 **ORDER**

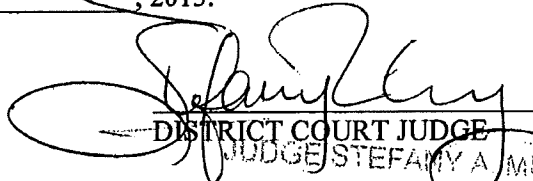
4 Based on the foregoing findings of fact and conclusions of law, the Court orders as follows:

5 Bank of America, N.A.'s motion to dismiss Las Vegas Development Group, LLC's second  
6 amended complaint is **GRANTED WITH PREJUDICE** with respect to Bank of America, N.A.  
7 because NRS 116.3116(2) creates a limited super priority lien for 9 months of HOA assessments  
8 leading up to the foreclosure of the first mortgage, but it does not eliminate the first security interest.

9 Bank of America, N.A.'s motion to dismiss Las Vegas Development Group, LLC's second  
10 amended complaint is **DENIED** with respect to the remaining defendant GENEVIEVE UNIZA-  
11 ENRIQUEZ. However, this Court determines that there are no claims remaining in this Case against  
12 Bank of America, N.A. and no just reason for delay in entry of a final appeal order in favor of Bank  
13 of America, N.A. pursuant to NRCP 54(b).

14 IT IS SO ORDERED.

15 Dated this 8 day of October, 2013.


16   
17 DISTRICT COURT JUDGE  
18 JUDGE STEFANY A. MILEY

19 Submitted by:


Approved as to Form and Content by:

20 AKERMAN SENTERFITT LLP

MEIER & FINE, LLC

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*Attorneys for Plaintiff*

# **EXHIBIT 1**

# **EXHIBIT 1**

1 **STIP**

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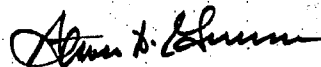
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13 Attorneys for Defendant Bank of America, N.A.

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CLERK OF THE COURT

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

14 LAS VEGAS DEVELOPMENT GROUP, LLC,  
15 a Nevada limited liability company,

16 Plaintiff,

17 v.

18 BANK OF AMERICA, N.A., GENEVIEVE  
19 UNIZA-ENRIQUEZ, *et al.*,

20 Defendants.

Case No.: A-12-654840-C

Dept. No.: XXIII

**STIPULATION REQUESTING THE  
COURT FOR RECONSIDERATION  
AND CERTIFICATION**

21 Pursuant to *Foster v. Dingwall*, 126 Nev. \_\_\_, 228 P.3d 453, 455 (2010) and NRCP 60(b)(1),  
22 defendant Bank of America, N.A., and plaintiff Las Vegas Development Group LLC (LVDG)  
23 hereby stipulate and agree to request that this court certify its intention to vacate or set aside the  
24 order granting Bank of America's motion to dismiss, certified as final and appealable pursuant to  
25 NRCP 54(b), entered on October 8, 2013, notice of which was served on October 10, 2013. After  
26 this Court denied a motion for reconsideration on January 23, 2014, LVDG appealed on February  
27 21, 2014. See Nevada Supreme Court Case No. 65083. Although briefing has already started, the  
28 certification will avoid unnecessary time and expense on both parties, as well as the court. A copy  
of the proposed certification is attached hereto as **Exhibit 1**.

The parties hereby stipulate and agree that:

1. The dismissal order was granted upon having heard arguments by counsel, having reviewed the respective motions, and "good cause appearing." The basis for granting BANA's Motion to

Dismiss was the court's interpretation of NRS 116.3116(2) – specifically that the nonjudicial foreclosure of a homeowners association (“HOA”) lien, which includes a “superpriority portion,” cannot extinguish an earlier-recorded first deed of trust

2. The dismissal order was entered on October 8, 2013, notice of which was served on October 10, 2013. After this Court denied LVDG's motion for reconsideration on January 23, 2014, LVDG appealed on February 21, 2014.

3. Plaintiff's appeal divested this Court of jurisdiction. However, under *Foster v. Dingwall*, 126 Nev. \_\_\_, 228 P.3d 453, 454-55 (2010), if a basis exists for a district court to vacate an appealed order, then a party can request “to have the district court certify its intent to grant the requested relief[.]” *Id.* at 455. District courts retain limited jurisdiction to resolve these requests for certification and if a “[c]ourt is inclined to grant the relief requested, then it may certify its intent to do so.” *Id.*<sup>1</sup>

4. Under 60(b)(1), district courts can relieve a party from an order because of “mistake.” “Mistake” includes “mistakes of law,” instances when a court misapplies a law. *O’Grady v. Sec’y of the Dep’t of Health & Human Services*, 661 F. Supp. 1030, 1034 (E.D.N.Y. 1987) (“A court’s mistaken application of law has been held to fall within the purview of clause 1 of Rule 60(b).”); see also *A-Mark Coin Co., Inc. v. Redfield*, 94 Nev. 495, 498, 582 P.2d 359, 360-61 (1978) (probate court annulled order authorizing private sale because public sale was better for estate).

5. The Nevada Supreme Court, on September 18th, issued its opinion in *SFR Investments Pool I, LLC v. U.S. Bank, N.A.*, concluding that NRS 116.3116(2) gives associations a true super-priority lien under Nevada State law, proper non-judicial foreclosure of which may extinguish a first deed of trust. *SFR Investments Pool I, LLC v. U.S. Bank, N.A.*, 130 Nev. \_\_\_, \_\_\_ P.3d \_\_\_, 2014 WL 4656471, \*3-10, 12 (Adv. Op. No. 75, Sept. 18, 2014). Accordingly, the stated basis for the order granting the motion to dismiss in this case constitutes a “mistake.” NRCP 60(b)(1).

<sup>1</sup> This process was developed in *Huneycutt v. Huneycutt*, 94 Nev. 79, 575 P.2d 585 (1978), disapproved on other grounds by *Foster*, 126 Nev. \_\_\_, 228 P.3d 453 and refined in *Foster*.

1        6. The parties stipulate and agree that certification promotes judicial economy by preserving  
2        judicial resources and allowing the case to move forward in light of the Nevada Supreme Court's  
3        *SFR* decision.

4        Accordingly, the parties request that this court certify its intent to vacate the order and to  
5        enter a new order denying Bank of America's motion to dismiss, as set forth in **Exhibit 1**, so that  
6        they may petition the Nevada Supreme Court for remand and proceed with litigation.

7  
8        DATED this \_\_\_\_ day of October, 2014

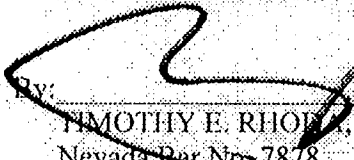
9        AKERMAN LLP

10       By: see next page  
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17       *Attorneys for Bank of America, N.A.*

18       DATED this 5<sup>TH</sup> day of October, 2014

19       ROGER P. CROTEAU & ASSOCIATES, LTD.

20       By:   
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25       *Attorneys for Plaintiff*

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6. The parties stipulate and agree that certification promotes judicial economy by preserving judicial resources and allowing the case to move forward in light of the Nevada Supreme Court's *SFR* decision.

Accordingly, the parties request that this court certify its intent to vacate the order and to enter a new order denying Bank of America's motion to dismiss, as set forth in **Exhibit 1**, so that they may petition the Nevada Supreme Court for remand and proceed with litigation.

DATED this \_\_\_\_ day of October, 2014

AKERMAN LLP

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*Attorneys for Bank of America, N.A.*

DATED this \_\_\_\_ day of October, 2014

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# EXHIBIT 1

# EXHIBIT 1

**CERT**

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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

LAS VEGAS DEVELOPMENT GROUP,  
LLC, a Nevada limited liability company,

Plaintiff,

v.

BANK OF AMERICA, N.A., GENEVIEVE  
UNIZA-ENRIQUEZ, *et al.*,

Defendants.

Case No.: A-12-654840-C

Dept. No.: XXIII

**CERTIFICATION OF INTENT TO VACATE  
ORDER GRANTING DEFENDANT BANK OF  
AMERICA'S MOTION TO DISMISS**

The court, upon the stipulated request of the parties has reviewed and considered the papers on file herein, pursuant to NRCP 60 and its inherent power to manage litigation, finds as follows:

1. The order granting defendant Bank of America, N.A.'s motion to dismiss was entered on October 8, 2013, and notice of the order was served on October 10, 2013. After this Court denied LVDG's motion for reconsideration on January 23, 2014, LVDG appealed on February 21, 2014.

2. The basis for granting the order was this court's determination that an association's foreclosure sale of a lien pursuant to NRS 116.3116 could not extinguish a first security interest.

3. Plaintiff's appeal divested this Court of jurisdiction unless remanded pursuant to *Humeycutt v. Humeycutt*, 94 Nev. 79, 575 P.2d 585 (1978), disapproved of on other grounds by *Foster v. Dingwall*, 126 Nev. \_\_\_, 228 P.3d 453 (2010).

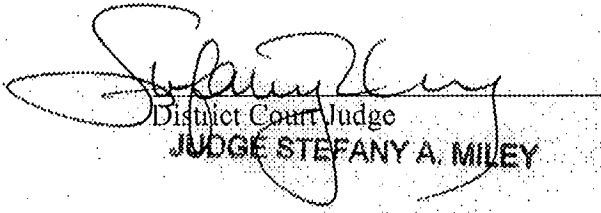
4. On September 18, 2014, the Nevada Supreme Court issued its opinion in *SFR Investments Pool I, LLC v. U.S. Bank, N.A.*, 130 Nev. \_\_\_, \_\_\_ P.3d \_\_\_, 2014 WL 4656471 (Adv. Op. No. 75,

1 Sept. 18, 2014). The Court held that NRS 116.3116(2) gives an association "a true superpriority  
2 lien, proper foreclosure of which may extinguish a first deed of trust." *SFR*, 2014 WL 4656471, at  
3 \*12.

4 5. Accordingly, the stated basis on which the order was granted is no longer valid.  
5 Good cause appearing, therefore,

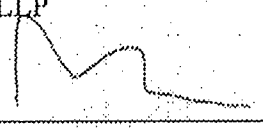
6 **THE COURT CERTIFIES** that if the case on appeal were remanded to this court, it would  
7 vacate its October 8, 2013 order dismissing plaintiff's claims against Bank of America and enter an  
8 order denying the motion to dismiss and, thereby, allow litigation to continue.

9  
10 DATED this 11 day of October, 2014.

  
District Court Judge  
JUDGE STEFANY A. MILEY

11  
12  
13  
14 RESPECTFULLY SUBMITTED BY  
15 AKERMAN LLP

APPROVED AS TO FORM AND CONTENT  
ROGER P. CROTEAU & ASSOCIATES, LTD.

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Las Vegas, Nevada 89148

*Attorneys for Bank of America, N.A.*

*Attorneys for Plaintiff*

1 Sept. 18, 2014). The Court held that NRS 116.3116(2) gives an association "a true superpriority  
2 lien, proper foreclosure of which may extinguish a first deed of trust." *SFR*, 2014 WL 4656471, at  
3 \*12.

4 5. Accordingly, the stated basis on which the order was granted is no longer valid.

5 Good cause appearing, therefore,

6 **THE COURT CERTIFIES** that if the case on appeal were remanded to this court, it would  
7 vacate its October 8, 2013 order dismissing plaintiff's claims against Bank of America and enter an  
8 order denying the motion to dismiss and, thereby, allow litigation to continue.

9 DATED this 4<sup>th</sup> day of November, 2014  
10 day of October, 2014.

11   
12 District Court Judge

13 JUDGE STEEANY A. MILEY

14 RESPECTFULLY SUBMITTED BY


15 AKERMAN LLP

16 APPROVED AS TO FORM AND CONTENT

17 ROGER P. CROTEAU & ASSOCIATES, LTD.

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**IN THE SUPREME COURT OF THE STATE OF NEVADA**

LAS VEGAS DEVELOPMENT  
GROUP, LLC, A NEVADA LIMITED  
LIABILITY COMPANY,

Appellant,

vs.

BANK OF AMERICA, N.A.,

Respondent.

Case No. 65083

Dist. Ct. Case No. A-12-65083-1

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Dec 09 2014 02:35 p.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

**JOINT MOTION FOR REMAND TO THE EIGHTH JUDICIAL DISTRICT  
COURT AND REQUEST FOR DISMISSAL OF APPEAL**

Appellant LAS VEGAS DEVELOPMENT GROUP, LLC (“Appellant”) by and through its counsel of record, ROGER P. CROTEAU & ASSOCIATES, LTD., and Respondent BANK OF AMERICA, N.A. (“Respondent”) by and through its counsel of record, AKERMAN, LLP, jointly move this Court, pursuant to *Foster v. Dingwall*, 228 P.3d 453 (2010), for an Order remanding this matter back to the District Court and dismissing the appeal. The parties also jointly move the Court to suspend the briefing schedule until it decides the Motion to Remand, as further briefing will be unnecessary if the Court remands the case.

///

This Motion is based on the Memorandum of Points and Authorities attached hereto and the certification of the District Court attached hereto as **Exhibit “1.”**

Dated this 9th day of December, 2014.

ROGER P. CROTEAU & ASSOCIATES

Dated this 9th day of December, 2014.

AKERMAN, LLP

/s/ Timothy E. Rhoda

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*Attorneys for Appellant*

/s/ Natalie L. Winslow

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Las Vegas, Nevada 89144  
*Attorneys for Respondent*

## **MEMORANDUM OF POINTS & AUTHORITIES**

### **I. FACTUAL BACKGROUND**

On January 17, 2012, Appellant filed a Complaint for Quiet Title and Declaratory/Injunctive relief against Respondent, seeking a judgment declaring it to be the legal title holder to the real property located at 6279 Downpour, Las Vegas, Nevada, bearing Assessor’s Parcel Number 140-34-413-075 (the “Property”). On August 1, 2013, Appellant filed an amended complaint; on August 15, 2013, Respondent moved to dismiss. Appellant filed its Opposition to the Motion to Dismiss on August 28, 2013. On September 17, 2013, the District Court heard arguments relating to the Motion to Dismiss and the Opposition

thereto, and granted the Respondent's Motion to Dismiss. The District Court memorialized its ruling in a written order entered on October 8, 2013. A notice of entry of that order was filed on October 10, 2014. **Exhibit "2."** This is the order upon which Appellant filed the instant appeal.

The District Court based its decision to grant the Respondent's Motion to Dismiss on a legal interpretation of NRS 116.3116. The District Court asserted that nonjudicial foreclosure of a homeowners association's superpriority lien portion could not extinguish an earlier-recorded first deed of trust. Since the District Court's decision, this Court issued its decision in *SFR Investments Pool 1, LLC v. U.S. Bank*, 130 Adv. Op. 75 (Nev. Sept. 18, 2014). Considering this Court's interpretation of NRS 116.3116 in *SFR Investments*, the parties agree that the District Court's interpretation of NRS 116.3116 is contradicted by the *SFR Investments* decision

On November 4, 2014, the District Court certified its intent to vacate the order granting Respondent's Motion to Dismiss. Ex. 1.

Respondent's brief in this case is currently scheduled to be filed by December 10, 2014.

## **II. LEGAL ARGUMENT**

The timely filing of a notice of appeal "divests the district court of jurisdiction to act and vests jurisdiction in this court." *See Foster v. Dingwell*, 126

Nev. at 454-55, 228 P.3d at 454-455, citing *Mack-Manley v. Manley*, 122 Nev. 849, 855, 138 P.3d 525, 529 (2006) (quoting *Rust v. Clark Cty. School District*, 103 Nev. 686, 688, 747 P.2d 1380, 1382 (1987)). A District Court, however, retains limited jurisdiction to review motions seeking to alter, vacate, or otherwise change or modify an order or judgment challenged on appeal. See *Foster*, 228 P.3d at 455 citing *Mack-Manley*, 122 Nev. at 855-56, 138 P.3d at 529-30 and *Huneycutt v. Huneycutt*, 94 Nev. 79, 80-81, 575 P.2d 585, 585-86 (1978). This limited jurisdiction allows the District Court to direct briefing on the motion, hold a hearing regarding the motion, and enter an order denying the motion, but does not allow it to enter an order granting such a motion. See *Foster*, 228 p.3d at 455 citing *Huneycutt*, 94 Nev. 79, 575 P.2d 585.

Where the District Court has exercised that limited jurisdiction and indicated its intention to grant the requested relief, the appropriate procedure is for the District Court to certify its intention to grant the requested relief. See *Foster*, 228 P.3d at 455 citing *Mack-Manley*, 122 Nev. at 855, 138 P.3d at 530 and *Huneycutt*, 94 Nev. at 81, 575 P.2d at 586. After the District Court certifies its intent to grant the requested relief, it is appropriate for the moving party to file a motion—to which the District Court’s certification of its intent to grant relief is attached—with this Court seeking remand to the District Court for entry of an order granting the

requested relief. *See Foster*, 228 P.3d at 455-56 citing *Mack-Manley*, 122 Nev. at 855-56, 138 P.3d at 530 and *Huneycutt*, 94 Nev. at 81, 575 P.2d at 586.

Here, Appellant filed a timely notice of appeal on February 21, 2014, after the District Court granted Respondent's Motion to Dismiss. After the release of the *SFR Investments* decision, the parties stipulated in the District Court that the District Court's order granting the Motion to Dismiss was based on a mistake of application of law. Considering this stipulation of the parties, the District Court's Certification of its intent to vacate the order granting the Motion to Dismiss and to enter an order denying the Motion to Dismiss was filed on November 4, 2014.

The parties recognize that it is within this Court's discretion to grant the instant Motion for Remand. In the interest of judicial economy, and for the reasons expressed in the District Court's Certification, the parties request this Court exercise that discretion and remand this matter back to the District Court so that the District Court may vacate its order granting Respondent's Motion to Dismiss.

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### III. CONCLUSION

This case is appropriate for remand based on *Huneycutt v. Huneycutt* and *Foster v. Dingwell, supra*. As the District Court has certified its intent to vacate its October 8, 2013 order granting Respondent's Motion to Dismiss, and would enter an order denying the Motion to Dismiss, allowing litigation to continue.

Dated this 9th day of December, 2014.

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Dated this 9th day of December, 2014.

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