

CLERK OF THE COURT

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2 Michael R. Brooks, Esq.
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10 Las Vegas, NV 89134
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13 *Attorneys for Defendant Green Tree Servicing, LLC*

8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

10 **SATICOY BAY LLC SERIES 133**
11 **MCLAREN**

12 **Plaintiff,**

13 **vs.**

14 **GREEN TREE SERVICING LLC; THE BANK**
15 **OF NEW YORK MELLON FKA THE BBANK**
16 **OF NEW YORK, AS SUCCESSOR TRUSTEE**
17 **TO JP MORGAN CHASE BANK, N.A., AS**
18 **TRUSTEE FOR THE CERTIFICATE HOLDERS**
19 **OF CWABS MASTER TRUST, REVOLVING**
20 **HOME EQUITY LOAN ASSET BACKED**
21 **NOTES, SERIES 2004-T; NATIONAL DEFAULT**
22 **SERVICING CORPORATION; CTC REAL**
23 **ESTATE SERVICES; CHARLES J. WIGHT; and**
24 **TARA J. WIGHT,**

25 **Defendants.**

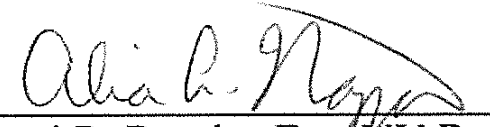
Case No.: A-14-693882-C
Dept.: II

NOTICE OF ENTRY OF ORDER

26 PLEASE TAKE NOTICE that the Order Granting Motion to Dismiss was entered in the
27 above-captioned matter on the 7th day of May, 2014, a copy of which is attached hereto.

28 DATED this 14th day of May, 2014.

BROOKS BAUER LLP

By: 
Michael R. Brooks, Esq. NV Bar No. 7287
Alia A. Najjar, M.D., Esq. NV Bar No. 12832
Attorneys for Defendant Green Tree Servicing, LLC

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am employed in the County of Clark, State of Nevada, am over the age of 18 years and not a party to this action. My business address is that of Brooks Bauer LLP, 1645 Village Center Circle, Suite 200, Las Vegas, Nevada 89134.

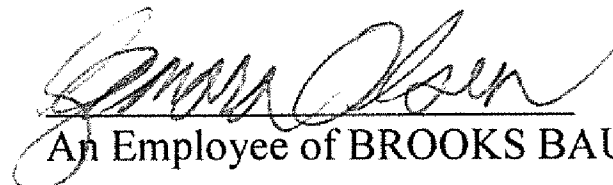
On this day, I served a copy of the foregoing **NOTICE OF ENTRY OF ORDER** on the parties in said action or proceeding by placing a true copy thereof enclosed in a sealed envelope, addressed as follows:

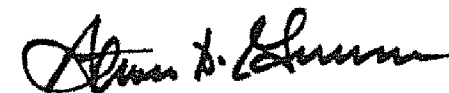
MICHAEL F. BOHN, ESQ.
mbohn@bohnlawfirm.com
LAW OFFICES OF MICHAEL F.
BOHN, ESQ., LTD.
376 East Warm Springs Road, Ste. 125
Las Vegas, Nevada 89119
Attorneys for Plaintiff
SATICOY BAY LLC SERIES 133
MCLAREN

and placing the envelope in the mail bin at the firm's office.

I am readily familiar with the firm's practice of collection and processing of correspondence for mailing. Under that practice, it is deposited with the U.S. Postal Service on the same day it is placed in the mail bin, with postage thereon fully prepaid at Las Vegas, Nevada, in the ordinary course of business.

I certify under penalty of perjury that the foregoing is true and correct and that this Certificate of Service was executed by me on the 14th day of May, 2014, at Las Vegas, Nevada.


An Employee of BROOKS BAUER LLP



CLERK OF THE COURT

ORDER

Michael R. Brooks, Esq.
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Christopher S. Connell, Esq.
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Attorneys for Defendant Green Tree Servicing LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY LLC DERIES 133 MCLAREN

Plaintiff,

vs.

GREEN TREE SERVICING LLC; THE BANK
OF NEW YORK MELLON FKA THE BBANK
OF NEW YORK, AS SUCCESSOR TRUSTEE
TO JP MORGAN CHASE BANK, N.A., AS
TRUSTEE FOR THE CERTIFICATE HOLDERS
OF CWABS MASTER TRUST, REVOLVING
HOME EQUITY LOAN ASSET BACKED
NOTES, SERIES 2004-T; NATIONAL DEFAULT
SERVICING CORPORATION; CTC REAL
ESTATE SERVICES; CHARLES J. WIGHT; and
TARA J. WIGHT,

Defendants.

Case No.: A-14-693882-C
Dept.: II

**ORDER GRANTING MOTION TO
DISMISS**

Defendant, Green Tree Servicing LLC's Motion to Dismiss Pursuant to NRCP 12(b)(5) having come before the Honorable Valorie Vega, on April 2, 2014, at 9:30 a.m.; Defendant was represented by and through Christopher S. Connell, Esq. of the law firm of Brooks Bauer LLP; Plaintiff was represented by Kelly M. Perry, Esq;

The Court, having reviewed Defendant's Motion and Plaintiff's Opposition, the representations of counsel, the papers and pleadings on file herein, and good cause appearing makes the following Findings and Orders:

1 The Court has considered the oral and written arguments of the parties. Based thereon, the
2 Court finds as follows:

- 3 1. Plaintiff has failed to state a claim upon which relief can be granted, pursuant to NRCP
4 12(b)(5).
- 5 2. Motion to Dismiss GRANTED pursuant to NRCP 12(b)(5) and Simpson v. Mars, 113
6 Nev. 188 (1991) and Vacation Village v. Hitachi America, 110 Nev. 481 (1994) and NRS
7 116.3116 and Diakonos Holdings, LLC v. Countrywide Home Loans, Inc. 2013,
8 WL531092, Dist. Nec 2/11/13.
- 9 3. Request for Judicial Notice taken pursuant to EDCR 2.20 and NRS 47.130.
- 10 4. Countermotion to Stay proceedings DENIED for lack of authority, this ruling will not
11 preclude Plaintiff's counsel from pursuing a stipulation and order for a stay should that be
12 warranted and oral request for 54(b) Certification GRANTED pursuant to EDCR 2.20.

13 NOW THEREFORE IT IS HEREBY ORDERED that Defendant Green Tree Servicing
14 LLC's Motion to Dismiss Pursuant to NRCP 12(b)(5) be, and is hereby GRANTED in its
15 entirety.

16 IT IS FURTHER ORDERED that all claims against Defendant Green Tree Servicing LLC
17 are adjudicated in favor of Defendant Green Tree Servicing LLC.

18 IT IS FURTHER ORDERED that Plaintiff's Countermotion to Stay Proceedings is
19 denied.

20 IT IS FURTHER ORDERED Plaintiff's request that the court's ruling on this matter be
21 certified under the provisions of NRCP 54(b) is also granted. The Court has made an express
22 determination that there is no just reason for delay and expressly directs entry of judgment in
23 favor of Defendant Green Tree Servicing LLC and against the Plaintiff.

24 IT IS SO ORDERED.

25 DATED this 29th day of April, 2014.

26 BY THE COURT:

27 
28 DISTRICT COURT JUDGE 

Submitted by:

BROOKS BAUER LLP

By:

Michael R. Brooks, Esq. NV Bar No. 7287
Christopher S. Connell, Esq. NV Bar No. 12720

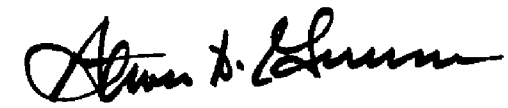
Attorneys for Defendant Green Tree Servicing LLC

Reviewed by:

By:

Michael F. Bohn, Esq.
Kelly M. Perri, Esq.

Attorneys for Plaintiff Saticoy Bay LLC Series 133 McLaren Street



CLERK OF THE COURT

1 **RTRAN**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA
5

6 SATICOY BAY LLC SERIES 133)
7 MCCLAREN,)

8 Plaintiff,)

CASE NO. A693882
DEPT. NO. 2

9 vs.)

10 GREEN TREE SERVICING LLC, ET)
11 AL.,)

12 Defendants.)

13
14 BEFORE THE HONORABLE VALORIE J. VEGA, DISTRICT JUDGE
15 WEDNESDAY, APRIL 2, 2014 AT 9:30 A.M.

16 **RECORDER'S TRANSCRIPT RE:**
17 **NOTICE OF MOTION AND MOTION TO DISMISS PURSUANT TO NRCP**
18 **12(b)(5); REQUEST FOR JUDICIAL NOTICE**
19 **OPPOSITION TO MOTION TO DISMISS AND COUNTERMOTION TO STAY**
20 **CASE**

21 **APPEARANCES:**

22 FOR THE PLAINTIFF:

KELLY M. PERRI, ESQ.

23 FOR THE DEFENDANT GREEN TREE
24 SERVICING LLC:

CHRISTOPHER S. CONNELL, ESQ.

25 Recorded by: LISA A. LIZOTTE, COURT RECORDER

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(WEDNESDAY, APRIL 2, 2014 AT 9:30 A.M.)

THE COURT: On Page 5, Satco Bay LLC Series 133 McClaren
versus Green Tree Servicing LLC, A-14-693882-C.

MS. PERRI: Good morning, Your Honor. Kelly Perri on behalf of
Plaintiff, Bar Number 13220.

THE COURT: Good morning.

MR. CONNELL: Good morning, Your Honor. Chris Connell on
behalf of Defendant, Bar Number 12720. We're back.

THE COURT: This is a continued time on a hearing on a motion
and a countermotion. Counsel was going to take a look at the facts of this case
and the changes that were made to the NRS effective October 1st of last year –

MR. CONNELL: Right.

THE COURT: -- and then see if you could come up with some kind
of an agreement.

MR. CONNELL: They weren't relevant.

MS. PERRI: Yeah. It didn't –

MR. CONNELL: There was a caveat in this specific instance which
prevented that from being effective, so it's like we're back here status quo without
that argument ever actually being presented, so –

THE COURT: Okay.

MR. CONNELL: -- my apologies (unintelligible) to the issue. It's just
one of those things where the new change in legislation has sort of made some
of these a lot easier to deal with because they could just be unwound and that
way it saves both – you know, it would be my client and their client the troubles of

1 having to litigate something that wouldn't be a factor in the first place, but being
2 that that's not the case we can proceed as we were.

3 THE COURT: Okay. Did you have additional arguments that you
4 wished to make beyond what you did on the prior occasion?

5 MR. CONNELL: No, Your Honor. I believe you're well-versed in this
6 matter and I believe that your previous decisions sort of outline where you stand
7 in this, and I think Michael and I have discussed it and so I think we sort of
8 understand what's going on.

9 MS. PERRI: Yeah. We submit on the record, Your Honor. We just
10 ask obviously if you're inclined to grant the motion to dismiss we ask for the stay,
11 and if you are not willing to have the stay that we ask for a 54(b) certification.

12 MR. CONNELL: And we would obviously not object to a 54(b)
13 certification.

14 THE COURT: The Court finds that there was inadequate notice.
15 The HOA didn't file suit or initiate a court action, and there's no set of facts upon
16 which the Plaintiff could prevail nor any cause of action or claim upon which relief
17 can be granted. The Court, therefore, grants the Defendant's motion to dismiss
18 pursuant to NRCP 12(b)(5), *Simpson versus Mars*, 113 Nev. 188 from 1997,
19 *Vacation Village versus Hitachi America*, 110 Nev. 481, 1994, NRS 116.3116
20 and *Diakonos Holdings, LLC versus Countrywide Home Loans, Inc.*, 2013 WL
21 531092 (D. Nev. 2/11/13).

22 The request to take judicial notice is granted as unopposed
23 pursuant to EDCR 2.20 and NRS 47.130. The Court denies the Plaintiff's
24 countermotion to stay the proceedings for lack of points and authorities. This
25 ruling will not preclude Plaintiff's counsel from pursuing a stipulation and order for

1 a stay at some future point should that be warranted, and the Court grants the
2 oral request for the 54(b) certification as being unopposed pursuant to EDCR
3 2.20.

4 MS. PERRI: Thank you, Your Honor.

5 THE COURT: You're welcome. Mr. Connell to prepare the order.

6 MR. CONNELL: Thank you, Your Honor.

7 THE COURT: You're welcome.

8 MR. CONNELL: Have a good afternoon.

9 (Whereupon, the proceedings concluded.)

10 * * * * *

11

12 ATTEST: I do hereby certify that I have truly and correctly transcribed the
13 audio/visual proceedings in the above-entitled case to the best of my
14 ability.

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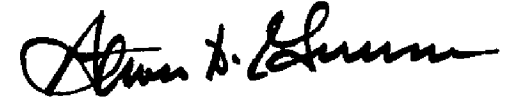
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25

A handwritten signature in cursive script, reading "Lisa A. Lizotte". To the right of the signature is a horizontal line.

LISA A. LIZOTTE
Court Recorder



CLERK OF THE COURT

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14 *Mellon fka The Bank of New York, as Successor*
15 *Trustee to JPMorgan Chase Bank, N.A., as*
16 *Trustee for the Certificateholders of CWABS*
17 *Master Trust, Revolving Home Equity Loan*
18 *Asset Backed Notes, Series 2004-T*

19 **EIGHTH JUDICIAL DISTRICT COURT**

20 **CLARK COUNTY, NEVADA**

21 SATICOY BAY LLC SERIES 133 MCLAREN
22
23 Plaintiff,

24 v.

25 GREEN TREE SERVICING, LLC; THE BANK
26 OF NEW YORK MELLON FKA THE BANK
27 OF NEW YORK, AS SUCCESSOR TRUSTEE
28 TO JPMORGAN CHASE BANK, N.A., AS
TRUSTEE FOR THE
CERTIFICATEHOLDERS OF CWABS
MASTER TRUST, REVOLVING HOME
EQUITY LOAN ASSET BACKED NOTES,
SERIES 2004-T; NATIONAL DEFAULT
SERVICING CORPORATION; CTC REAL
ESTATE SERVICES; CHARLES J. WIGHT;
AND TARA J. WIGHT

Defendants.

Case No.: A-14-693882-C
Dept.: XV

**NOTICE OF ASSOCIATION OF
COUNSEL**

PLEASE TAKE NOTICE that Ariel E. Stern, Esq. and Natalie L. Winslow, Esq. of the law firm of AKERMAN LLP have associated with the law firm of WRIGHT, FINLAY & ZAK, LLP for the purpose of representing defendant The Bank of New York Mellon fka The Bank of New York, as Successor Trustee to JPMorgan Chase Bank, N.A., as Trustee for the Certificateholders of CWABS

{29297147;1}

AKERMAN LLP

1160 Town Center Drive, Suite 330
LAS VEGAS, NEVADA 89144
TEL.: (702) 634-5000 – FAX: (702) 380-8572

Master Trust, Revolving Home Equity Loan Asset Backed Notes, Series 2004-T until such time as
AKERMAN LLP substitutes as counsel in place of WRIGHT, FINLAY & ZAK, LLP.

A substitution of counsel is forthcoming.

DATED this 28th day of July, 2014.

AKERMAN LLP

/s/ Natalie L. Winslow

ARIEL E. STERN, ESQ.

Nevada Bar No. 8276

NATALIE L. WINSLOW, ESQ.

Nevada Bar No. 12125

1160 Town Center Drive Suite 330

Las Vegas, Nevada 89144

*Attorneys for Defendant The Bank of New
York Mellon fka The Bank of New York, as
Successor Trustee to JPMorgan Chase Bank,
N.A., as Trustee for the Certificateholders of
CWABS Master Trust, Revolving Home Equity
Loan Asset Backed Notes, Series 2004-T*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Akerman LLP, and that on this 28th day of July, 2014 I caused to be served a true and correct copy of foregoing **NOTICE OF ASSOCIATION OF COUNSEL**, in the following manner:

(ELECTRONIC SERVICE) Pursuant to Administrative Order 14-2, the above-referenced document was electronically filed on the date hereof and served through the Notice of Electronic Filing automatically generated by the Court's facilities to those parties listed on the Court's Master Service List.

Michael F. Bohn, Esq.
LAW OFFICES OF MICHAEL F. BOHN, ESQ., LTD.
376 East Warm Springs Road, Suite 125
Las Vegas, NV 89119

Attorneys for Plaintiff

For those Parties not registered pursuant to Administrative Order 14-2, service was made in the following manner:

(UNITED STATES MAIL) By depositing a copy of the above-referenced document for mailing in the United States Mail, first-class postage prepaid, at Las Vegas, Nevada, to the parties listed below at their last-known mailing addresses, on the date above written:

Michael R. Brooks, Esq.
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1645 Village Center Circle, Suite 200
Las Vegas, NV 89134

Attorneys for Defendant Green Tree Servicing, LLC

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R. Samuel Ehlers, Esq.
Wright, Finlay & Zak, LLP
5532 South Fort Apache Road, Suite 110
Las Vegas, NV 89148

Attorneys for Defendant The Bank of New York Mellon

Gregory L. Wilde, Esq.
Matthew D. Dayton, Esq.
TIFFANY & BOSCO, P.A.
212 S. Jones Blvd.
Las Vegas, NV 89107

Attorneys for Defendant National Default Servicing Corporation

/s/ Lucille Chiusano

An employee of AKERMAN LLP

AKERMAN LLP

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12 Email: natalie.winslow@akerman.com

13 *Attorneys for Defendant The Bank of New*
14 *York Mellon fka The Bank of New York, as*
15 *Successor Trustee to JPMorgan Chase*
16 *Bank, N.A., as Trustee for the*
17 *Certificateholders of CWABS Master Trust,*
18 *Revolving Home Equity Loan Asset Backed*
19 *Notes, Series 2004-T*

DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 133 MCLAREN

Plaintiff,

v.

GREEN TREE SERVICING, LLC; THE BANK
OF NEW YORK MELLON FKA THE BANK
OF NEW YORK, AS SUCCESSOR TRUSTEE
TO JPMORGAN CHASE BANK, N.A., AS
TRUSTEE FOR THE
CERTIFICATEHOLDERS OF CWABS
MASTER TRUST, REVOLVING HOME
EQUITY LOAN ASSET BACKED NOTES,
SERIES 2004-T; NATIONAL DEFAULT
SERVICING CORPORATION; CTC REAL
ESTATE SERVICES; CHARLES J. WIGHT;
AND TARA J. WIGHT

Defendants.

Case No.: A-14-693882-C
Dept.: XV

SUBSTITUTION OF COUNSEL

The Bank of New York Mellon fka The Bank of New York, as Successor Trustee to JPMorgan Chase Bank, N.A., as Trustee for the Certificateholders of CWABS Master Trust, Revolving Home Equity Loan Asset Backed Notes, Series 2004-T consents to the substitution of AKERMAN LLP in the place and stead of WRIGHT, FINLAY & ZAK, LLP in the above-entitled matter.

{29331921;1}

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09/08/2014 05:13:02 PM

CLERK OF THE COURT

DATED this 1st day of August, 2014.

THE BANK OF NEW YORK MELLON FKA THE
BANK OF NEW YORK, AS SUCCESSOR TRUSTEE TO
JPMORGAN CHASE BANK, N.A., AS TRUSTEE FOR
THE CERTIFICATEHOLDERS OF CWABS MASTER
TRUST, REVOLVING HOME EQUITY LOAN ASSET
BACKED NOTES, SERIES 2004-T

By: [Signature] 8/7/14
Its: Jerry Beltran
AVP; Operations Team Manager

Dana Jonathon Nitz, Esq. and R. Samuel Ehlers, Esq. of the law firm WRIGHT, FINLAY &
ZAK, LLP consent to the substitution of Darren T. Brenner, Esq. and Natalie L. Winslow, Esq. of the
law firm of AKERMAN LLP in their place and stead on behalf of defendant The Bank of New York
Mellon fka The Bank of New York, as Successor Trustee to JPMorgan Chase Bank, N.A., as Trustee
for the Certificateholders of CWABS Master Trust, Revolving Home Equity Loan Asset Backed
Notes, Series 2004-T.

DATED this 13th day of August, 2014.

WRIGHT, FINLAY & ZAK, LLP

[Signature]
DANA JONATHON NITZ, ESQ.
Nevada Bar No. 0500
R. SAMUEL EHLERS, ESQ.
Nevada Bar No. 9313
3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169

1 Darren T. Brenner, Esq. and Natalie L. Winslow, Esq. of the law firm of AKERMAN LLP,
2 consent to their substitution on behalf of defendant The Bank of New York Mellon fka The Bank of
3 New York, as Successor Trustee to JPMorgan Chase Bank, N.A., as Trustee for the
4 Certificateholders of CWABS Master Trust, Revolving Home Equity Loan Asset Backed Notes,
5 Series 2004-T in the above-entitled matter.

6 DATED this 5th day of August, 2014.

7 AKERMAN LLP

8
9 
10 DARREN T. BRENNER, ESQ.

Nevada Bar No. 8386

NATALIE L. WINSLOW, ESQ.

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1160 Town Center Drive, Suite 330

Las Vegas, Nevada 89144

13 *Attorneys for Defendant The Bank of New York*
14 *Mellon fka The Bank of New York, as Successor*
15 *Trustee to JPMorgan Chase Bank, N.A., as*
16 *Trustee for the Certificateholders of CWABS*
17 *Master Trust, Revolving Home Equity Loan*
18 *Asset Backed Notes, Series 2004-T*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 8th day of September, 2014 and pursuant to NRCP 5(b), I served electronically through (Wiznet) and/or deposited for mailing in the U.S. Mail a true and correct copy of the **SUBSTITUTION OF COUNSEL**, postage prepaid and addressed to:

Michael F. Bohn, Esq.
LAW OFFICES OF MICHAEL F. BOHN, ESQ., LTD.
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Attorneys for Plaintiff

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Attorneys for Defendant National Default Servicing Corporation

Dana Jonathon Nitz, Esq.
R. Samuel Ehlers, Esq.
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Attorneys for Defendant The Bank of New York Mellon

/s/ Tilla Nealon

An employee of AKERMAN LLP

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7 Attorney for appellant

Electronically Filed
Oct 07 2014 03:37 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

8
9 SUPREME COURT COURT

10 STATE OF NEVADA

11
12 SATICOY BAY LLC SERIES 133 MCLAREN

CASE NO.: 65708

13 Appellant,

14 vs.

15 GREEN TREE SERVICING LLC,

16 Respondent.

17
18 JOINT APPENDIX 2

19
20 Michael F. Bohn, Esq.
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23 Attorney for Appellant
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Las Vegas, NV 89144

Attorney for Respondent

INDEX TO APPENDIX 2

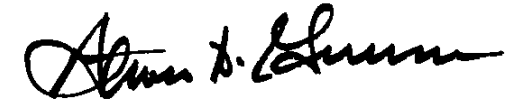
1		
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3	Default of Tara J. Wight.	APP000251
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6	Stipulation for non-monetary relief.	APP000260
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8	Order granting motion to dismiss.	APP000268
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CLERK OF THE COURT

RPLY

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Tel: (702) 851-1191
Fax: (702) 851-1198
Attorneys for Defendant Green Tree Servicing, LLC

DISTRICT COURT**CLARK COUNTY, NEVADA**

SATICOY BAY LLC SERIES 133
MCLAREN

Case No.: A-14-693882-C
Dept.: XV

Plaintiff,

vs.

**GREEN TREE SERVICING LLC'S
REPLY TO PLAINTIFF'S
OPPOSITION TO MOTION TO
DISMISS AND COUNTERMOTION
TO STAY CASE**

GREEN TREE SERVICING LLC; THE BANK
OF NEW YORK MELLON FKA THE BBANK
OF NEW YORK, AS SUCCESSOR TRUSTEE
TO JP MORGAN CHASE BANK, N.A., AS
TRUSTEE FOR THE CERTIFICATE HOLDERS
OF CWABS MASTER TRUST, REVOLVING
HOME EQUITY LOAN ASSET BACKED
NOTES, SERIES 2004-T; NATIONAL DEFAULT
SERVICING CORPORATION; CTC REAL
ESTATE SERVICES; CHARLES J. WIGHT; and
TARA J. WIGHT,

Defendants.

Green Tree Servicing LLC ("Green Tree"), by and through its counsel of record, Michael R. Brooks, Esq. and Alia A. Najjar, M.D., Esq. of Brooks Bauer, LLP submit the following Reply to Plaintiff, SATICOY BAY LLC SERIES 133 MCLAREN's ("Saticoy") Opposition to Motion to Dismiss and Countermotion to Stay Case (the "Opposition").

This pleading is based on following Memorandum of Points and Authorities, the exhibits and affidavit in support of this motion, the pleadings and papers on file herein, and any oral argument by counsel permitted at the hearing on this matter.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION.

In their Opposition papers, Saticoy creates the appearance of a credible argument, but fails to address the most basic of factual issues that underlie this matter. Saticoy attempts use Nevada's Common Interest Ownership Act, Nevada Revised Statute Chapter 116, to create opportunities to acquire real property for pennies on the dollar. In the process, Saticoy seeks to extinguish Green Tree's first security interest of \$220,000.00 based on its purchase price at the HOA sale of \$10,200.00. Nevada Revised Statute 116.3116 is clear on its face: the first deed of trust beneficiary has priority over an HOA's lien for common assessments. HOA's have very limited priority that is not applicable in this case.

As pointed out in the moving papers, not only does Nevada's legislative history support Green Tree's interpretation of NRS 116.3116, but so do the comments to the Uniform Common Interest Ownership Act (the act on which Nevada's Chapter 116 is based), scholars, and other states that have opined on the issue. Consequently, as result of the HOA foreclosure sale, Saticoy took title to the property subject to Green Tree's previously-recorded security interest. Additionally, even if NRS 116.3116 entitled an HOA to foreclose based on its superpriority lien status and extinguish a first deed of trust beneficiary's secured interest, the HOA must still comport with basic fundamental requirements of fairness. The HOA foreclosure sale failed to satisfy these requirements. Here, the HOA violated Green Tree's due process rights because the recorded notice of delinquent assessment lien, notice of default, and notice of trustee's sale failed to put Green Tree on any notice whatsoever that it initiated the foreclosure sale pursuant to the super-priority lien statute. Nor did the recorded notices properly apprise Green Tree of what amounts the HOA contended were part of its super-priority lien, and what amounts were purportedly required to pay off the super-priority lien. Saticoy's arguments are, then, unavailing and they fail to state a claim upon which relief can be granted, and the Motion to Dismiss should be granted in favor of Green Tree.

1 II. ARGUMENT.

2 A. Saticoy supports its Position in its Opposition with Inapposite Case
3 Law and Decisions.

4 Saticoy's opposition is based in large part to its citation to (1) case law, (2) advisory
5 opinions; and (3) commentary that should not be considered by this Court.

6 First, Plaintiff argues that non-judicial foreclosure of the underlying HOA lien acted to
7 extinguish Green Tree's lien. This assertion is based on the case and ruling that Judge Tao handed
8 down on May 30, 2013: "Order Denying Defendant's Motion to Dismiss, rendered in *First 100*
9 *LLC v. Burns*, Case No. A677693 (the "First 100" case) that Plaintiff references (*See Opposition*
10 at pp. 21-22). Judge Tao's most recent opinion, appended hereto as Exhibit 1, makes it clear that
11 he repudiates his ruling in the First 100 case on a myriad of grounds that mirror many of the
12 arguments that Green Tree has asserted in its motion to dismiss. Far from supporting Plaintiff's
13 position, then, the most recent ruling in the First 100 case makes it clear that Green Tree should
14 prevail here.

15 Second, Saticoy recites the case of *Summerhill Village Homeowners Association v.*
16 *Roughley*, 289 P.3d 645 (Wash. Ct. App. 2012), for the proposition that the HOA lien should
17 vanquish Greed Tree's Deed of Trust. (*See Opposition* at pp. 9-11.) That authority is misplaced.
18 First, the issue in *Summerhill* was whether a lender has a right of redemption after a judicial
19 foreclosure sale. *Summerhill*, 270 P.3d at 646 ("A condominium homeowners' association enjoys
20 a statutory super priority lien for certain delinquent assessments. *Where such a lien is foreclosed,*
21 *Washington's redemption statute offers no safe haven to mortgage lenders who ignore the*
22 *proceedings.* Here, the trial court properly ruled the lender is not a proper redemptioner. We
23 affirm.") (emphasis added). Second, the opinion does not interpret Nevada's super-priority lien
24 statute. See *generally id.* Third, the dispute in *Summerhill* arose out of an HOA judicial
25 foreclosure and not a nonjudicial foreclosure, such as is the case here. Fourth, if an HOA attempts
26 to foreclose non-judicially under Washington statutory law, the HOA loses its superpriority
27 rights. RCW 64.34.364(5) ("If an association forecloses its lien under this section nonjudicially . .
28

1 . the association shall not be entitled to the lien priority provided for under subsection (3) of this
2 section."). *Summerhill* cannot support Saticoy's theory.

3 Third, Saticoy's repeated reliance on, and recitation to, the Nevada Real Estate Division
4 Advisory Opinion 13-01 is misplaced. (See Opposition at pp. 4, 5-7, 9, 11, 13 and 35-55) The
5 three issues addressed in that advisory opinion are: (1) whether the super-priority amount includes
6 collection costs; (2) whether the super-priority amount can ever exceed the amount of the specific
7 expenses enumerated in NRS 116.3116(2); and (3) whether an HOA must file a civil action in
8 order for the super-priority amount to come into existence. See *id.* at 1. It was not necessary for
9 the Real Estate Division to address whether an HOA super-priority lien may be foreclosed as
10 senior to a mortgage deed of trust. In *dictum* then, the Real Estate Division addressed the issue,
11 but it did not explain its reasoning and failed to analyze NRS 116.3116(2) under the principles of
12 statutory construction employed by the Nevada Supreme Court. Moreover, even if this Court
13 found the *dicta* persuasive, the advisory opinion— particularly as to an issue which the Real Estate
14 Division did not fully rationalize – is not binding on this Court. See *State Indus. Ins. Sys. v.*
15 *Campbell*, 109 Nev.997, 999, 862 P.2d 1184, 1185 (1993) ("[T]his court may undertake
16 independent review of the administrative construction of a statute.") (internal quotation omitted);
17 *UMC Physicians' Bargaining Unit of Nev. Serv. Emples. Union, SEIU Local 1107 v. Nev. Serv.*
18 *Emples. Union/SEIU Local 1107*, 124 Nev. 84, 88, 178 P.3d 709, 712 (2008) ("Although we give
19 deference to an administrative body's conclusions of law when they are closely related to the
20 facts, we *independently review purely legal issues including matters of statutory and regulatory*
21 *interpretation.*") (emphasis added). The issues in this case – related solely to interpretation of
22 NRS 116.3116 – are legal issues. Despite Nevada law stating otherwise, Saticoy contends that the
23 Real Estate Division opinion's *dicta* is dispositive of this case. Because: (1) the Court may
24 independently interpret advisory opinions of the Real Estate Division; (2) the advisory opinion
25 addressed three discrete issues not present in this case; and (3) the advisory opinion failed to
26 explain its position or apply the statutory interpretation case law of this Court in its dicta, the
27 advisory opinion is irrelevant to this matter.

28

1 Fourth, and finally, according to Saticoy, comments from the UCIOA drafters support its
2 position that a super-priority lien foreclosure eliminates a first deed of trust. (Opposition at p. 8.)

3 These comments include:

4 [As] to prior first mortgages, the association's lien does have
5 priority for 6 months' assessments based on the periodic budget. A
6 significant departure from existing practice, the 6 months' priority
7 for the assessment lien strikes an equitable balance between the
8 need to enforce collection of unpaid assessments and the obvious
9 necessity for protecting the priority of the security interests of
lenders. As a practical matter, secured lenders will most likely pay
the 6 months' assessments demanded by the association rather than
having the association foreclose on the unit. If the lender wishes, an
escrow for assessments can be required.

10 UCIOA § 3-116 cmt. 2. As a threshold matter, the UCIOA drafters did not, as Saticoy suggests,
11 state that an assessment lien can extinguish a first deed of trust. Saticoy is assuming a purpose of
12 the part of the drafters without any textual evidence. That, as a practical matter, the first deed of
13 trust beneficiary may wish to prevent an HOA foreclosure does not mean that an HOA
14 foreclosure extinguishes the first deed of trust beneficiary's secured interest. This is so
15 particularly given the comment also provides that the super-priority lien seeks to "strike[] an
16 equitable balance between the need to enforce collection of unpaid assessments and the obvious
17 necessity for protecting the priority of the security interests of lenders." *Id.* The Trust's
18 interpretation of the comment disrupts this balance, as it would allow the HOA to wipe out Green
19 Tree's security interest without ever telling it what it must do to protect its interest. Tellingly,
20 other than espouse rhetorical questions as to the meaning of comment 2, such as "Why else
21 would the mortgage lender pay the assessments rather than have the unit go to foreclosure?" and
22 "Why else would the various state statutes have to be amended when necessary?", Saticoy
23 provides no support that the HOA foreclosure sale extinguished Green Tree's first deed of trust.
24 The Trust's position is grossly inequitable and undercuts the UCIOA's purpose.

**B. Saticoy's Interpretation of the Law Violate Elementary Precepts of Due Process.
The Hoa's Must Adopt Periodic Budgets and Notify the First Position Security
Interest Holder that the HOA is Foreclosing on the Statutory Portion of the Lien
Before it comes into Existence.**

Saticoy's interpretation of NRS 116.3116(2) does not comport with due process concerns. A first deed of trust beneficiary must receive notice of the super-priority amount so that it may cure and protect its interest in the property. It is plainly a violation of due process to declare that a first deed of trust beneficiary's secured interest can be extinguished for not paying nine months of assessments without ever receiving notice of how to protect its interest in the property. Nevada Revised Statute 116.3116 is clear that a first position deed of trust has priority over an assessment lien. The *only* portion of an HOA assessment lien that is prior to a first position deed of trust is an amount equal to nine times the common assessments. NRS 116.3116(2)(c). Accordingly, this amount should not change over time (unless the common assessment amount changes). Here, as is the case in most HOA foreclosure sales, the HOA notice of delinquent assessment lien, the HOA notice of default, and the HOA notice of sale did not specify the amount of the super-priority component. It did not identify super-priority component. By the time the HOA recorded its notice of default, the lien amount had purportedly increased and again, the default did not identify the super-priority portion. When the HOA recorded its notice of sale, the lien had purportedly increased again and, again, the notice of sale did not parse out the super-priority portion of the HOA lien. If NRS Chapter 116 allowed HOA foreclosure sales to eliminate first deeds of trust, it would require, at a bare minimum, that the HOA foreclosure notices identify the claimed super-priority amount and the first deed of trust beneficiary's options for paying off the lien. See *J.D. Constr. V. IBEX Int'l Group, LLC*, 240 P.3d 1033, 1040 (Nev. 2010) (a mechanic's lien is a taking that entitles a first deed of trust beneficiary to federal and state due process protection because the lien seeks to deprive the property owner of a significant property interest). This is so because due process requires actual notice and an opportunity to be heard. *Id.* Procedural due process also requires that the notice given be of a quality actually intended to accomplish notice. *Kotecki v. Augsztiny*, 87 Nev. 393, 395, 487 P.2d 925, 926 (1971).

1 None of the HOA foreclosure notices identifies which portion of the claimed lien
2 constituted the super-priority component. The notices did not even enable Green Tree to calculate
3 the super-priority component itself, as the notices do not identify the monthly common
4 assessment amount. Accordingly, although the HOA did foreclose on a lien, it did not foreclose
5 on a *super-priority* lien.

6 Moreover, NRS 116.3116(2)(c) states that a periodic budget “adopted pursuant to NRS
7 116.3115” is a necessary condition to a super-priority lien because this budget is required to
8 determine what amounts are owed by each homeowner. There is no evidentiary presumption in
9 favor of compliance with the provisions of NRS 116.3115. HOA’s are not free from scrutiny and
10 a unilateral declaration that certain amounts are owed on HOA assessments without supporting
11 documentation does not comport with due process and “traditional notions of fair play and
12 substantial justice.” *Cf., International Shoe v. State of Washington*, 326 U.S. 310 (1945). All of
13 this adds up to a difficult challenge for Saticoy – the burden of alleging compliance with NRS
14 116.3115 and the adequacy of notice of such compliance.

15 The fact is that Saticoy cannot argue that those entitled to notice received proper notice in
16 the HOA foreclosure at issue. Accordingly, Saticoy’s reliance on inapposite authority is
17 misplaced and actually supports Green Tree’s reading of the statute.

18 **C. Nothing in the Opposition Papers Alters the Fact that there the Foreclosed Upon**
19 **HOA Lien was not a “Superpriority” Lien under NRS §116.3116(2)(c).**

20 Saticoy purchased the Property through a non-judicial foreclosure auction conducted by
21 the HOA. Nothing that Saticoy has stated in its opposition papers alters the fact that the HOA
22 Lien that was foreclosed upon had not garnered “super-priority” status.

23 Nevada's Legislature enacted NRS 116.3116(2)(b) in 1991, which establishes the priority
24 of title for first deeds of trust as compared to HOA liens. The statute unequivocally provides that
25 a first deed of trust is senior to an HOA lien, and that the super-priority HOA lien does not attach
26 until after a first deed of trust beneficiary forecloses. The statute specifically states:

2. A lien under this section is prior to all other liens and encumbrances on a unit except:

(a) Liens and encumbrances recorded before the recordation of the declaration and, in a cooperative, liens and encumbrances which the association creates, assumes or takes subject to;

(b) A first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent or, in a cooperative, the first security interest encumbering only the unit's owner's interest and perfected before the date on which the assessment sought to be enforced became delinquent; and

(c) Liens for real estate taxes and other governmental assessments or charges against the unit or cooperative.

The lien is also prior to all security interests described in paragraph (b) to the extent of any charges incurred by the association on a unit pursuant to NRS 116.310312 and to the extent of the assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien . .

NRS 116.3116(2) (emphasis added). Plaintiff concedes that ordinary statutory rules of interpretation are at play here: "When the language of a statute is plain and unambiguous, a court should give that language its ordinary meaning and not go beyond it." *City Council of City of Reno v. Reno Newspapers, Inc.*, 105 Nev. 886, 784 P.2d 974, 977 (1989) (citation omitted); see also *Diaz v. Eighth Judicial Dist. Court ex rel. County of Clark*, 116 Nev. 88, 94, 993 P.2d 50 (2000) ("[W]here a statute is clear on its face, a court may not go beyond the language of the statute in determining the legislature's intent.").

Parsing NRS 116.3116(2), an HOA lien is prior to most other liens, "*except . . . [a] first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent. . . .*" NRS 116.3116(2)(b) (emphasis added). Here, because Green Tree's Deed of Trust was recorded well before the delinquent HOA's assessments, its deed of trust was prior to the HOA lien.

Subsection (2)(c) of NRS 116.3116 carved out a narrow exception to a first deed of trust's priority. It gives an HOA "prior[ity] to [the first deed of trust beneficiary's security interest] . . . to the extent of the assessments for common expenses . . . which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to

1 enforce the lien. . . ." NRS 116.3116(2)(c). Accordingly, an HOA's nine months of unpaid charges
2 and assessments continue to encumber the property after the foreclosure of a first deed of trust
3 beneficiary. See *id.* No part of a statute should be construed to render another void. See *Harris*
4 *Assocs. v. Clark County Sch. Dist.*, 119 Nev. 638, 642, 81 P.3d 532, 534 (2003) (quoting *Glover*
5 *v. Concerned Citizens for Fuji Park & Fairgrounds*, 118 Nev.488, 492, 50 P.3d 546, 548 (2002)),
6 overruled in part on other grounds by *Garvin v. Dist. Ct.*, 118 Nev. 749, 765 n.71, 59 P.3d 1180,
7 1190 n.71 (2002) ("No part of a statute should be rendered meaningless and its language "should
8 not be read to produce absurd or unreasonable results."). As conceded by Saticoy in its
9 opposition, "courts must construe statutes to give meaning to all of their parts and language. . . .
10 (Plaintiff's Opposition at p. 4, 3-5) (citing *Board of County Comm'rs v. CMC of Nev.*, 99 Nev.
11 739, 744, 670 P.2d 102, 105 (1983)). Saticoy's interpretation of the interplay between NRS
12 116.3116(2)(b) and (c) is demonstrably incorrect: it causes a conflict between the two
13 subsections. The only way to read the subsections in harmony is to construe (2)(b) as providing
14 priority to the first deed of trust, and (2)(c) as an order of payment schedule to be used when the
15 first deed of trust beneficiary forecloses. Applying Saticoy's reading of NRS 116.3116(2), if an
16 HOA foreclosure sale could extinguish a first deed of trust under (2)(c), there would be no
17 purpose for granting the first deed of trust priority under (2)(b): subsection (2)(b) would be
18 rendered void. Because Saticoy misconstrues NRS 116.3116(2) – effectively asking the district
19 court to ignore parts of the statute in favor of others – the district court can correctly deny
20 Plaintiff's claims of relief and grant Green Tree its motion to dismiss.

21 **D. Nothing in the Opposition Papers Would Allow Plaintiff to Obtain a "Stay" of**
22 **this Matter.**

23 Lastly, Plaintiff requests a "stay of proceedings" in this matter. Opposition, pp. 21 – 22.
24 There is no authority provided for such a request only a litany of other cases where the Supreme
25 Court has ordered a stay. This matter is *not* before the Supreme Court. Moreover, Plaintiff has not
26 even begun to satisfy the extraordinary burden of a party who has requested a fully noticed
27 application for a preliminary injunction. NRS §33.010 "authorizes [a temporary restraining order
28 and a preliminary injunction] when it appears from the complaint that the plaintiff is entitled to

1 the relief requested and at least part of the relief consists of restraining the challenged act.” *Univ.*
2 *and Cmty. Coll. Sys. of Nev. v. Nevadans for Sound Gov’t*, 120 Nev. 712, 721, 100 P.3d 179, 187
3 (2004). To warrant such injunctive relief, this Court must find “(1) a likelihood of success on the
4 merits[] and (2) a reasonable probability that the non-moving party's conduct, if allowed to
5 continue, will cause irreparable harm for which compensatory damage is an inadequate remedy.”
6 *Id.* This Court must also “weigh the potential hardships to the relative parties and others, and the
7 public interest.” *Id.* “The decision whether to grant [a temporary restraining order and a
8 preliminary injunction] is within the sound discretion of [this Court], whose decision will not be
9 disturbed on appeal absent an abuse of discretion.” *Dangberg Holdings Nev., LLC v. Douglas*
10 *County*, 115 Nev. 129, 142-43, 978 P.2d 311, 319 (1999).

11 As such, Plaintiff’s request for a “stay” must be summarily denied.

12 III. CONCLUSION

13 Each of Saticoy’s arguments must necessarily fail. The Legislative history is clear that the
14 original intent of NRS 116.3116(2)(c) was not to bestow upon HOA’s the power to create
15 windfalls, but only to protect them in the wake of rising assessment delinquencies. There is
16 nothing that precludes this Court from determining that Saticoy purchased the HOA lien subject
17 to Green Tree’s first position security interest. Green Tree’s Motion to Dismiss should be granted.

18 DATED this 11 day of March, 2014.

19 BROOKS BAUER LLP

20 By: 

21 Michael R. Brooks, Esq. NV Bar No. 7287

22 Alia A. Najjar, M.D., Esq. NV Bar No. 12832

23 1645 Village Center Circle, Suite 200

24 Las Vegas, NV 89134

25 Attorneys for Defendant Green Tree Servicing, LLC

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am employed in the County of Clark, State of Nevada, am over the age of 18 years and not a party to this action. My business address is that of Brooks Bauer LLP, 1645 Village Center Circle, Suite 200, Las Vegas, Nevada 89134.

On this day, I served a copy of the foregoing **GREEN TREE SERVICING LLC'S REPLY TO PLAINTIFF'S OPPOSITION TO MOTION TO DISMISS AND COUNTERMOTION TO STAY CASE** on the parties in said action or proceeding by placing a true copy thereof enclosed in a sealed envelope, addressed as follows:

MICHAEL F. BOHN, ESQ.
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LAW OFFICES OF MICHAEL F.
BOHN, ESQ., LTD.
376 East Warm Springs Road, Ste. 125
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Attorneys for Plaintiff
SATICOY BAY LLC SERIES 133
MCLAREN

and placing the envelope in the mail bin at the firm's office.

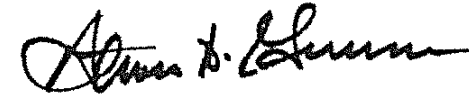
I am readily familiar with the firm's practice of collection and processing of correspondence for mailing. Under that practice, it is deposited with the U.S. Postal Service on the same day it is placed in the mail bin, with postage thereon fully prepaid at Las Vegas, Nevada, in the ordinary course of business.

I certify under penalty of perjury that the foregoing is true and correct and that this Certificate of Service was executed by me on the 11th day of March, 2014, at Las Vegas, Nevada.


An Employee of BROOKS BAUER LLP

EXHIBIT 1

EXHIBIT 1



CLERK OF THE COURT

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6 DISTRICT COURT
7 CLARK COUNTY, NEVADA
8
9

10 FIRST 100, LLC,

11 Plaintiff,

CASE NO.: A677693
DEPARTMENT NO. XX

12 v.

13 RONALD BURNS, et al.,

14 Defendants.
15

ORDER DENYING
DEFENDANT'S MOTION
TO DISMISS

16 This matter having come on for hearing on the 8th day of May, 2013; Luis A.
17 Ayon, Esq., and Margaret E. Schmidt, Esq., appearing for and on behalf of Plaintiff;
18 Chelsea A. Crowton, Esq., appearing for and on behalf of Defendant, U.S. Bank; Karl
19 L. Nielson, Esq., appearing for and on behalf of Defendant, Ronald Burns; Gregory L.
20 Wilde, Esq., appearing for and on behalf of Defendant, National Default Servicing
21 Corporation; and the Court having hearing arguments of counsel, and being fully
22 advised in the premises, finds:

23 (1) This matter comes before the Court on a Motion by Defendant U.S. Bank
24 NA to dismiss the Complaint pursuant to Rule 12(b)(5) of the Nevada Rules of Civil
25 Procedure ("NRCP").

26 (2) This dispute arises from foreclosure proceedings conducted against a
27 residential property located at 3055 Key Largo Drive, Unit #101, Las Vegas, Nevada
28 89120, identified by APN 162-25-614-153 ("the Subject Property"). The Subject

1 Property is located within a common-interest community governed by a homeowners'
2 association as defined in NRS Chapter 116, known as the Canyon Willows Owners
3 Association (HOA). The prior owners of the property (who are not parties to this
4 action) failed to pay all monthly assessments due under the operating documents of the
5 common-interest community. In response, the HOA asserted a lien against the Subject
6 Property and initiated foreclosure proceedings pursuant to NRS 116.3116 et seq. which
7 culminated in a foreclosure sale conducted on February 2, 2013.

8 (3) The Plaintiff is First 100 LLC, a Nevada limited-liability corporation,
9 which alleges that it acquired the Subject Property at the February 2, 2013 public
10 auction. According to the allegations of the Complaint, the Plaintiff properly recorded
11 a Deed on February 4, 2013 reflecting its purchase of the Subject Property. However,
12 two days later, on February 6, 2013, the Subject Property was re-sold by way of
13 foreclosure and Trustee's Sale initiated by Defendant National Default Servicing
14 Corporation, who asserted that it was the named trustee under Deed of Trust previously
15 recorded against the Subject Property on October 30, 2006, as Instrument No.
16 200610300002548 (and referred to in the pleadings as the "BNC Mortgage Deed of
17 Trust"). Defendant Robert Burns purchased the Subject Property at the February 6,
18 2013 Trustee's Sale.

19 (4) The Plaintiff's Complaint asserts three causes of action: (First) Wrongful
20 Foreclosure against Defendant National Default Servicing Corporation; (Second)
21 Declaratory Relief/Quiet Title against all Defendants; and (Third) Injunctive Relief
22 against Defendant Burns.

23 (5) As framed by the parties' briefing and oral arguments, the issue before the
24 Court is a straightforward question of law. The Plaintiff contends that the February 2
25 foreclosure sale conducted pursuant to NRS 116.3116 et seq. and based upon a lien
26 asserted by a homeowner's association for unpaid assessments automatically
27 extinguished, by operation of law, any and all prior encumbrances upon the Subject
28 Property. Thus, according to the Plaintiff, the subsequent Trustee's Sale conducted on

1 February 6 was unlawful because the October 30, 2006 Deed of Trust against the
2 Subject Property had been extinguished in its entirety by the February 2 foreclosure
3 sale. Therefore, the Plaintiff alleges that it is the rightful and legal owner of the Subject
4 Property via its purchase of the Subject Property on February 2 free and clear of all
5 prior encumbrances.

6 (6) In considering a Motion to Dismiss pursuant to NRCP 12(b)(5), the Court
7 must accept all factual allegations of the pleadings to be true and view those allegations
8 both liberally and in the light most favorable to the non-moving party. However, the
9 Court need not accept the parties' assertions of law as true. The Court's analysis is
10 limited to the factual allegations contained within the four corners of the Complaint and
11 all inferences reasonably arising therefrom. A claim can only be dismissed if it is clear
12 beyond any reasonable doubt that the plaintiff cannot prove any set of facts at trial that
13 would entitle it to relief. Furthermore, a complaint can be dismissed even if all of the
14 elements of a cause of action have been technically pled so long as the Court, relying
15 on "judicial experience and common sense," finds that the allegations of the complaint
16 are "conclusory" or "implausible." *Ashcroft v. Iqbal*, 129 S.Ct. 1937 (2009)¹.

17 (7) In this case, the parties do not appear to dispute that the February 2, 2013
18 foreclosure sale was properly conducted in accordance with all of the legal
19 requirements of NRS Chapter 116. The parties also do not appear to dispute that the
20 BNC Mortgage Deed of Trust was a perfected legal encumbrance upon the Subject
21 Property properly recorded on October 30, 2006. The parties also do not appear to
22 dispute that the lien asserted against the Subject Property by the HOA was proper and
23 legal under the provisions of NRS Chapter 116. The parties also do not appear to
24 dispute that, if the Plaintiff's interpretation of the legal consequences of NRS Chapter
25 116 is correct, the Plaintiff has properly pled the elements supporting its causes of
26

27 ¹ *Ashcroft* was decided pursuant to FRCP 12(b)(6). However, where the Nevada Rules of Civil Procedure parallel
28 the Federal Rules of Civil Procedure, rulings of federal courts interpreting and applying the federal rules are
persuasive authority for this Court in applying the Nevada Rules. *E.g., Executive Management Ltd. v. Ticor Title
Ins.*, 118 Nev. 46, 53 (2002). NRCP 12(b)(5) is identical to FRCP 12(b)(6).

1 action.

2 (8) Therefore, the question before the Court is a straightforward question of
3 statutory interpretation: whether a foreclosure sale properly initiated and conducted
4 pursuant to NRS Chapter 116 automatically extinguishes all prior encumbrances on the
5 property such that a bona fide purchaser at the foreclosure sale acquires the property
6 free and clear of all prior encumbrances.

7 (9) In interpreting the scope and meaning of a statute, the Court looks first to
8 the words of the statute. The words of a statute are assigned their ordinary meaning
9 unless it is clear from the face of the statute that the Legislature intended otherwise.
10 When "the language of a statute is plain and unmistakable, there is no room for
11 construction, and the courts are not permitted to search for its meaning beyond the
12 statute itself." *Estate of Smith v. Mahoney's Silver Nugget*, 127 Nev. Adv. Op. 76
13 (November 23, 2011). If the Legislature has independently defined any word or phrase
14 contained within a statute, the Court must apply the definition created by the
15 Legislature. If, and only if, the Court determines that the words of the statute are
16 ambiguous when given their ordinary and plain meaning, then reference may be made
17 to other sources such as the legislative history of the statute in order to clarify the
18 ambiguity. An "ambiguity" exists where a provision is susceptible to two reasonable
19 interpretations.

20 (10) A threshold question in this case is whether the security interest
21 represented by the BNC Mortgage Deed of Trust is senior or junior to the lien asserted
22 by the HOA. NRS 116.3116 states in part as follows:

23 2. A lien under this section is prior to all other liens and
24 encumbrances on a unit except...

25 (b) A first security interest on the unit recorded before the date on
26 which the assessment sought to be enforced became delinquent or, in a
27 cooperative, the first security interest encumbering only the unit's
28 owner's interest and perfected before the date on which the assessment
sought to be enforced became delinquent....

1 ↳ The lien is also prior to all security interests described in paragraph (b)
2 to the extent of...the assessments for common expenses based on the
3 periodic budget adopted by the association pursuant to NRS 116.3115
4 which would have become due in the absence of acceleration during the 9
5 months immediately preceding institution of an action to enforce the lien,
6 unless federal regulations adopted by the Federal Home Loan Mortgage
7 Corporation or the Federal National Mortgage Association require a
8 shorter period of priority for the lien. If federal regulations adopted by the
9 Federal Home Loan Mortgage Corporation or the Federal National
10 Mortgage Association require a shorter period of priority for the lien, the
11 period during which the lien is prior to all security interests described in
12 paragraph (b) must be determined in accordance with those federal
13 regulations, except that notwithstanding the provisions of the federal
14 regulations, the period of priority for the lien must not be less than the 6
15 months immediately preceding institution of an action to enforce the lien.
16 This subsection does not affect the priority of mechanics' or
17 materialmen's liens, or the priority of liens for other assessments made by
18 the association.

19 (11) Thus, under NRS 116.3116, a previously perfected first security interest
20 retains its seniority over a subsequent lien asserted by a homeowners' association
21 except to the extent that the subsequent association lien is based upon unpaid regular
22 periodic assessments for common expenses. In that event, notwithstanding that the
23 association's lien was asserted subsequently in time, a portion of the homeowners'
24 association lien (limited to what was unpaid during the nine months immediately
25 preceding the lien) is given artificial priority over a previously perfected first security
26 interest. The portion of the association lien equating to what was unpaid during those
27 nine months is commonly said to have "super-priority" status over other prior
28 encumbrances. If the association claims that more than nine months' assessments stand
29 unpaid, then the amount unpaid during the nine months immediately preceding the lien
30 is entitled to "super priority" status over other encumbrances, but any assessments
31 remaining unpaid for more than nine months would be subordinate to other previously
32 perfected encumbrances.

33 (12) The parties do not appear to dispute that the lien asserted by the HOA in
34 this case was based upon regular periodic assessments that were unpaid during the nine
35 months immediately preceding the institution of the action to enforce the lien.

1 months immediately preceding the imposition of the lien. Therefore, as a matter of
2 law, the lien asserted by the HOA is deemed to be senior to the security interest created
3 by the BNC Mortgage Deed of Trust even though the HOA lien was asserted
4 subsequently in time. The parties do not appear to dispute this legal conclusion.

5 (13) Thus, the parties appear to agree that the HOA lien was senior to the
6 BNC Mortgage Deed of Trust at the instant in time immediately before the property
7 was sold via foreclosure sale to the Plaintiff on February 2, 2013. However, what the
8 parties vigorously dispute is whether the junior security interest (the BNC Mortgage
9 Deed of Trust) was extinguished by operation of law as a result of the February 2
10 foreclosure sale.

11 (14) NRS 116.31162 states that, after a lien is asserted by a homeowner's
12 association and certain procedures are followed, the association "may foreclose its lien
13 by sale." If the association chooses to proceed with a non-judicial foreclosure sale,
14 then NRS 116.31164 governs how the foreclosure sale is to occur. After the
15 foreclosure sale is completed, NRS 116.31164 governs how the proceeds of the sale
16 must be allocated. In particular, NRS 116.31164(3) states:

17 3. After the sale, the person conducting the sale shall....

18 (c) Apply the proceeds of the sale for the following purposes in the
following order:

19 (1) The reasonable expenses of sale;

20 (2) The reasonable expenses of securing possession before sale,
holding, maintaining, and preparing the unit for sale, including payment
21 of taxes and other governmental charges, premiums on hazard and
liability insurance, and, to the extent provided for by the declaration,
22 reasonable attorney's fees and other legal expenses incurred by the
association;

23 (3) Satisfaction of the association's lien;

24 (4) Satisfaction in the order of priority of any subordinate claim of
record; and

25 (5) Remittance of any excess to the unit's owner.

26 (15) Thus, the plain language of NRS 116.31164 expressly contemplates that
27 the proceeds must first used to pay the expenses of the sale, taxes and other
28 governmental charges, legal expenses, and the association's lien, and then to satisfy

1 "subordinate claim[s] of record."

2 (16) In this case, the parties agree that the proceeds of the sale totaled only
3 approximately \$2,000.00, far less than what would have been required to pay off all of
4 the liens and security interests that existed against the Subject Property prior to the
5 foreclosure sale. Accordingly, the question before the Court can be phrased as follows:
6 when the proceeds from a foreclosure sale conducted pursuant to NRS 116.31164 are
7 inadequate to satisfy all of the various lienholders when distributed as required in NRS
8 116.31164(3), does the failure to satisfy the subordinate interests mean that those
9 subordinate interests survive the foreclosure sale to the extent that they remain
10 unsatisfied, or instead that those subordinate interests are extinguished by operation of
11 law such that a bona fide third-party purchaser at the foreclosure sale takes the property
12 free and clear of any unsatisfied subordinate encumbrances?

13 (17) The Plaintiff avers that the latter case is true. Consequently, the Plaintiff
14 asserts that because all subordinate interests were extinguished on February 2 when it
15 acquired the Subject Property, the subsequent foreclosure sale conducted on February 6
16 based upon an unpaid subordinate security interest was unlawful. On the other hand,
17 the Defendant avers that the former must be true. Consequently, the Defendant avers
18 that its subordinate security interest survived the February 2 sale because the interest
19 remained unsatisfied from the proceeds of that sale, and accordingly it possessed the
20 legal right to foreclose upon the Subject Property and trigger a second foreclosure sale
21 in order to satisfy its subordinate interests. In effect, the Defendant argues that the
22 Plaintiff, by purchasing the Subject Property for an amount insufficient to pay off all
23 existing encumbrances, only acquired the property "subject to" those unsatisfied
24 encumbrances.

25 (18) The Court has reviewed the entirety of NRS Chapter 116, and there
26 appears to be no statutory provision that expressly states that an unsatisfied junior lien
27 either is, or is not, extinguished by operation of law as a consequence of a foreclosure
28 sale conducted pursuant to NRS 116.31164. In their briefs, the parties are also unable

1 to identify any particular provision expressly on point. Therefore, in analyzing the
2 answer to this question, the Court must consider other sources, such as the legislative
3 history of NRS 116.31164, and other similar statutes contained within the NRS.

4 (19) NRS Chapter 116 was originally introduced in 1991 as Assembly Bill
5 221, with the stated purpose of "adopt[ing] the Uniform Common-Interest Ownership
6 Act," or UCIOA (Preamble of AB 221, introduced January 24, 1991; statement of
7 introduction of AB 221, Minutes of the Assembly Committee on Judiciary, February
8 20, 1991). At the time, the UCIOA had already been adopted in several other states
9 and was under consideration in at least 3 others. (Memorandum dated March 13, 1991
10 from Uniform Common Interest Ownership Act Subcommittee, in the legislative record
11 as an exhibit to Minutes of the Assembly Committee on Judiciary, March 20, 1991).
12 NRS 116.3116 originally corresponded to Section 100 of AB 221, and NRS 116.31164
13 originally corresponded to Section 102 of AB 221. The "super priority" lien verbiage
14 included within Section 100 of AB 221 is identical to NRS 116.3116 as it exists today,
15 except that the original "super priority" lien was limited to assessments unpaid during
16 the six months (rather than 9 months) immediately preceding the lien. The time period
17 was expanded to nine months in 2009 by Assembly Bill 204.

18 (20) NRS 116.3116 was subjected to various technical amendments in 1993
19 through AB 612 (which did not affect the "super priority" language at issue here).
20 During testimony in support of the technical amendments, one of the drafters of the
21 original bill testified that:

22 "As a general proposition, it makes good sense to follow a uniform law as
23 closely as possible, utilizing the optional suggestions in the uniform act to
24 customize the law as necessary. The corresponding benefit -- especially
25 important in a small state like Nevada -- is our own version of a uniform law
26 with precedent in other uniform law jurisdictions. Maintaining the uniform law
27 also makes available the very helpful explanatory comments, some of which
28 contain illustrative examples, and all of which, like the act itself, represent not
only very careful draftsmanship, but the input of all of the different groups
involved in the homeowner association process; that is, developers, consumers,
lenders, local governmental authorities, state regulators, managers and other

1 professionals, as well as homeowners associations themselves." (Testimony of
2 Michael Buckley, Chairman of the Uniform Common-Interest Ownership Act
Subcommittee, before the Assembly Judiciary Committee on May 20, 1993).

3 (21) Thus, one of the principal drafters of the bill expressly urged that the
4 Nevada Legislature adhere as closely as practicable to the uniform version of the
5 UCIOA, and the Nevada Legislature did so by enacting the "super priority" language
6 originally included in the UCIOA into NRS 116.3116 without any amendment (and
7 with virtually no debate). Consequently, the legislative history surrounding AB 221
8 contains virtually nothing useful to the Court's analysis in the case at hand. However,
9 the Legislature apparently contemplated that adoption of the uniform language without
10 amendment would enable Nevada courts to look to "precedent in other uniform law
11 jurisdictions" as well as the background and explanatory comments accompanying the
12 UCIOA in resolving questions relating to the scope and meaning of NRS 116.3116.

13 (22) Indeed, the Nevada Supreme Court regularly looks outside the confines
14 of NRS Chapter 116 and to the Uniform Act (as well as other sources) in interpreting
15 various provisions of NRS Chapter 116. *E.g., Holcomb Condominium HOA v. Stewart*
16 *Venture LLC*, 129 Nev. Adv. Op. 18 (April 4, 2013) ("the term 'separate instrument' is
17 not defined in NRS Chapter 116 or the Uniform Common-Interest Ownership Act
18 (UCIOA)"); *Beazer Homes Holding Corp. v. District Court*, 128 Nev. Adv. Op. 66
19 (Dec. 27, 2012) (citing "the commentary to the Restatement (Third) of Property,
20 section 6.11, which mirrors section 3-102 of the Uniform Common Interest Ownership
21 Act, upon which NRS 116.3102 is based"); *Boulder Oaks Community Association v.*
22 *B&J Andrews*, 169 P.3d 1155 (2007) (unpublished) ("NRS Chapter 116 is Nevada's
23 version of the Uniform Common-Interest Ownership Act and largely mirrors the
24 uniform act [and citing to] the commentary to [the UCIOA]").

25 (23) NRS 116.3116 is modeled upon Section 3-116 of the 1982 version of the
26 UCIOA, which was originally drafted by the National Conference of Commissioners
27 on Uniform State Laws. NRS 116.3116 deviates from Section 3-116 in expanding the
28 period of "super priority" to include unpaid assessments occurring during the preceding

1 9 months instead of merely 6 months, but otherwise NRS 116.3116 is identical to
2 UCIOA Section 3-116.

3 (24) Official Comment 1 to Section 3-116 describes the purpose of the section
4 as follows:

5 "To ensure prompt and efficient enforcement of the association's lien for unpaid
6 assessments, such liens should enjoy statutory priority over most other liens. ...
7 A significant departure from existing practice, the 6 months' priority for the
8 assessment lien strikes an equitable balance between the need to enforce
9 collection of unpaid assessments and the obvious necessity of protecting the
10 priority of the security interests of lenders. As a practical matter, mortgage
11 lenders will most likely pay the 6 months' assessments demanded by the
12 association rather than having the association foreclose on the unit. If the lender
wishes, an escrow for assessments can be required. Since this provision may
conflict with the provision of some state statutes which forbid some lending
institutions from making loans not secured by first priority liens [state law
should be consulted]."

13 (25) Thus, the drafters of the UCIOA expressly contemplated that, as a
14 practical matter in most cases, the holder of the first security interest would seek to
15 protect its interest from subordination to a "super priority" lien by simply paying the
16 unpaid assessments. However, the Comment does not expressly specify whether, if a
17 lender chooses not to do so and instead permits the property to proceed to foreclosure,
18 the lender's first security interest is thereby extinguished. Furthermore, nothing else in
19 either the plain text or comments of UCIOA appear to relate specifically to the question
20 of whether a foreclosure sale initiated due to unpaid assessments extinguishes all other
21 junior liens, including a first security interest rendered junior because of the "super
22 priority" provision. Quite to the contrary, Comment 1 suggests that the drafters of the
23 UCIOA intended to leave this question to state law rather than establishing uniform
24 national standards.

25 (26) In Opposition to the Motion, the Plaintiff notes that, as a general
26 principle of Nevada law, foreclosure of a superior security interest extinguishes all
27 junior interests that did not participate in the foreclosure process. *E.g., Brunzell v.*
28

1 *Lawyers Title Ins. Co.*, 101 Nev. 395 (1985); *Erickson Construction Co. v. Nevada*
2 *National Bank*, 89 Nev. 350 (1973). The Plaintiff also notes that the Nevada
3 Department of Business and Industry has issued an administrative opinion, dated
4 December 12, 2012, that interprets NRS Chapter 116.3116 such that a foreclosure
5 based upon a "super priority" lien extinguished a first security interest made junior only
6 due to the "super priority" statute. The Plaintiff also cites to an opinion by a
7 Washington State appellate court (interpreting a statute identical to the UCIOA) finding
8 that a foreclosure based upon a "super priority" lien extinguished a first security interest
9 that was given notice of the pending foreclosure and yet chose not to participate.
10 *Summerhill Village HOA v. Roughly*, 270 P.2d 639 (Wash.Ct.App. 2012). The Plaintiff
11 also notes that some Judges of this Judicial District have resolved this question in favor
12 of the Plaintiff's argument. The Court also notes that at least one scholarly
13 commentator has opined that a non-judicial foreclosure sale under the UCIOA
14 extinguishes all junior liens that did not participate in the foreclosure process as
15 "necessary parties." See, Winokur, "Meaner Lienor Community Associations: The
16 'Super Priority' Lien and Related Reforms Under The UCIOA," 27 Wake Forest Law
17 Review 353, 378 n.106 (1992) ("foreclosure extinguish[es] the Less-Prioritized Lien").

18 (27) In support of its Motion, the Defendant cites to an opinion issued by
19 Judge Dawson of the U.S. District Court, *Diakonos Holdings LLC v. Countrywide*
20 *Home Loans*, 2013 WL 531092 (D.Nev. February 11, 2013), rejecting the reasoning of
21 the Washington court in *Summerhill*. The Defendant also cites to various unpublished,
22 non-precedential Orders issued by other Judges of this Judicial District that have found
23 that a foreclosure sale based upon a "super priority" lien does not extinguish a first
24 security interest upon the property. (See, Defendant's Motion, pages 11-14).

25 (28) In short, the situation before this Court appears to be as follows. By this
26 Motion, this Court is asked to interpret the scope and meaning of a statute that was
27 enacted by the Nevada Legislature after virtually no meaningful debate, that was
28 modeled on a broad uniform act that specifically left unanswered the question raised by

1 this Motion, whose legislative sponsor urged the Legislature not to deviate from the
2 text of the uniform act so that the courts of this State could rely upon precedent from
3 other states, and upon which the courts of different states, and the Judges of this
4 Judicial District, have taken different positions.

5 (29) In the absence of clear guidance from the text of the statute or its
6 legislative history, this Court is left to examine other sources for guidance. One such
7 source consists of other statutes that relate to matters similar to those addressed by NRS
8 116.3116.

9 (30) In Nevada, holders of security interests against real property may initiate
10 foreclosure through multiple statutory avenues. For example, the holder of a mortgage
11 may initiate a judicial foreclosure via NRS 40.430 et seq. The holder of a deed of trust
12 may also initiate a non-judicial foreclosure (commonly known as a "Trustee's Sale")
13 pursuant to NRS 107.080 et seq. A landlord (or other assignee of the right to receive
14 rent from real property) may also seek the appointment of a receiver to initiate a
15 foreclosure upon a security instrument pursuant to NRS 107A.260.

16 (31) It is well-settled that any foreclosure sale conducted pursuant to NRS
17 40.462, 107.080, or 107A.260 automatically extinguishes all junior security interests
18 against the property. *E.g., Brunzell v. Lawyers Title Ins. Co.*, 101 Nev. 395 (1985);
19 *Erickson Construction Co. v. Nevada National Bank*, 89 Nev. 350 (1973). Thus, the
20 Defendant is essentially arguing that a foreclosure conducted pursuant to NRS
21 116.3116 is something wholly unique under Nevada law, because it would represent
22 the only type of foreclosure permitted in Nevada under which junior liens would not be
23 automatically extinguished.

24 (32) However, if the Defendant is correct that foreclosures conducted pursuant
25 to NRS 116.3116 are unique under Nevada law, then there must exist something in the
26 text or legislative history of NRS 116.3116 that says so. Under settled rules of
27 statutory interpretation, the Court cannot read NRS 116.3116 as a unique,
28 unprecedented, and *sui generis* departure from long-established norms relating to

1 foreclosure sales in Nevada unless there is some indication in the text or legislative
2 history that the Legislature intended this to be the case. There is not. Quite to the
3 contrary, the complete absence of anything within NRS Chapter 116 regarding the
4 question of extinguishment suggests that the Legislature intended that Chapter 116
5 foreclosures would be handled as any other type of foreclosure.

6 (33) Notably, NRS 40.462 was enacted in 1989, and NRS 107.080 was
7 originally enacted in 1927. In other words, both NRS 40.462 and 107.080 pre-date the
8 enactment of NRS 116.3116, as does the opinion of the Nevada Supreme Court in
9 *Erickson Construction Co. v. Nevada National Bank*, 89 Nev. 350 (1973) (holding that
10 non-judicial foreclosure sales automatically extinguish junior liens). Thus, the
11 Legislature must be presumed to have known when NRS 116.3116 was enacted that the
12 normal consequence of a foreclosure sale in Nevada would be that all junior liens are
13 automatically extinguished. Had the Legislature intended that NRS 116.3116 represent
14 a singular departure from established legal norms, the Legislature certainly could have
15 included language to that effect. The Court notes that the Legislature utilizes a variety
16 of common phrases throughout the NRS when it intends to create exceptions to other
17 statutes; *see, for example*, NRS 78.090(1) ("Notwithstanding the provisions of NRS
18 77.300..."); NRS 62B.390(1) ("Except as otherwise provided in NRS 62B.400...");
19 NRS 62E.010(2) ("Except as otherwise provided by specific statute..."); NRS
20 78.120(1) ("Subject only to such limitations as may be provided by this chapter...");
21 NRS 48.025 ("All relevant evidence is admissible, except as otherwise provided by this
22 title..."); NRS 51.075(2) ("The provisions of NRS 51.085 to 51.305, inclusive, are...not
23 restrictive of the exception provided by this section"). Yet none of these phrases are
24 contained anywhere within NRS Chapter 116 in any context that suggests an intention
25 to depart from the ordinary rule that, in Nevada, foreclosure sales extinguish junior
26 liens. The absence of any language to this effect suggests that this was not the
27 intention of the Legislature.

28

1 (34) Moreover, NRS 116.3116 et seq. contains a series of specific departures
2 and deviations from the foreclosure proceedings established in NRS 40.462 and
3 107.080, but none that relate to the extinguishment or non-extinguishment of junior
4 liens. For example, the idea of "super priority" exists nowhere in NRS Chapter 40 or
5 107. Similarly, neither NRS 40.462 nor 107.080 include the kinds of specific notice
6 provisions required by NRS Chapter 116 before a foreclosure sale can be initiated. Yet
7 the Legislature included no language in NRS 116.3116 that can be read as departing
8 from the principle of extinguishment. It is well-settled that the inclusion of one thing
9 must be read as the implying the omission of another ("*expressio unius est exclusio*
10 *alterius*"). Thus, when the Legislature chose to include language designed to deviate in
11 certain specific ways from established foreclosure practices, but not language that
12 changes whether junior liens are extinguished, that choice must be deemed by this
13 Court to have been intentional and deliberate.

14 (35) Furthermore, not only did the Legislature include no language departing
15 from the principle of extinguishment under NRS Chapter 40 and 107, it included
16 language in NRS Chapter 116 highly similar to language contained in NRS Chapter
17 107 that expressly recites that junior liens are extinguished. NRS 107.080(5) recites
18 that a Trustee's Sale "vests in the purchaser the title of the grantor...without equity or
19 right of redemption." NRS 116.3116(3) recites that a foreclosure sale initiated
20 pursuant to NRS 116.3116 "vests in the purchaser the title of the unit's owner without
21 equity or right of redemption." This similarity suggests that the Legislature intended
22 that a purchaser at a NRS Chapter 116 foreclosure sale acquires exactly the same title
23 as he would have acquired had the foreclosure been a NRS Chapter 107 Trustee's Sale,
24 i.e., title free and clear of junior encumbrances. Moreover, the words "without equity
25 or right of redemption" were defined long ago by the Nevada Supreme Court, which
26 held that a sale "without equity or right of redemption" is one that vests the purchaser
27 with "absolute legal title as complete, perfect and indefeasible as can exist...and a sale,
28 upon due notice to the mortgagor, whether at public or private sale, forecloses all

1 equity of redemption as completely as a decree of court." *Bryant v. Carson River*
2 *Lumbering Co.*, 3 Nev. 313, 317-18 (1867), quoted in *In re Grant*, 303 B.R. 205, 209
3 (Bankr.D.Nev. 2003).

4 (36) Thus, the operation of NRS 116.3116 appears to be as follows. NRS
5 116.316 creates a series of specific and unique requirements when an HOA imposes a
6 lien against a property and wishes to initiate a foreclosure sale to satisfy unpaid
7 assessments. Where NRC Chapter 116 is silent, the Court must presume that the
8 Legislature intended that the ordinary and established principles governing the conduct
9 of foreclosure sales in Nevada apply to "fill in the gaps."

10 (37) Accordingly, when a homeowners' association imposes a lien for unpaid
11 assessments, a portion of the unpaid assessments (not exceeding nine months) are
12 entitled to "super priority" status over existing liens and mortgages. NRS 116.3116(2).
13 However, in order to perfect this "super priority" lien, the association must give proper
14 notice to all parties including any holders of first security interests whose priority will
15 have been adversely affected. NRS 116.31163(2). Furthermore, if the association
16 wishes to foreclose upon the property in order to satisfy its lien, it may do so, but only
17 after given specific notice to all subordinate lienholders of record. NRS
18 116.311635(1)(a)(2). As expressly contemplated by Comment 1 to UCIOA Section 3-
19 116, most subordinate lienholders would likely protect their interest from
20 extinguishment by simply paying off the unpaid assessments. Indeed, that appears to
21 be the specific purpose of requiring that those lienholders be given notice under NRS
22 116.31163(2) and NRS 116.311635(1)(a)(2). But if those subordinate lienholders fail
23 to stave off foreclosure by paying off the assessment, then their subordinate claims are
24 paid off with any surplus proceeds of the foreclosure sale. NRS 116.31164(3)(c)(4).
25 After the sale is completed, any subordinate claims are automatically extinguished by
26 operation of law. *Erickson Construction Co. v. Nevada National Bank*, 89 Nev. 350
27 (1973) (holding that non-judicial foreclosure sales automatically extinguish junior
28 liens). If the lender's mortgage remains unsatisfied after the foreclosure sale, it may be

1 able to pursue a deficiency action against the mortgagor of record (the original
2 defaulting party), but not any claim against the property itself or against new bona fide
3 third-party who purchased the property at the foreclosure sale.

4 (38) In their briefs, both parties advance various policy and "fairness"
5 arguments in support of their respective positions. For example, the Defendant argues
6 that permitting a bona-fide third-party purchaser to procure a property for a mere
7 \$2,000 while extinguishing a mortgage worth many times that amount is "unfair".
8 However, any junior lienholder has a simple remedy for this unfairness -- as expressly
9 contemplated by Comment 1 to UCIOA Section 3-116, a lender can avoid foreclosure
10 and protect its interest from extinguishment by simply intervening to pay off the
11 assessments.

12 (39) Moreover, the Court notes that the Defendant's argument would lead to
13 an equally "unfair" result. In this case, if the Defendant's argument were adopted, then
14 the net result would be that the Plaintiff will have paid \$2,000 to satisfy the
15 association's lien, yet does not own the Subject Property. In effect, the Plaintiff paid
16 off the lien asserted by the HOA and acquired nothing in return, because immediately
17 after it acquired the Subject Property, the property was taken by the Defendant and sold
18 to someone else for more money. This result appears fundamentally unfair to bona fide
19 third-party purchasers who will have paid off the assessments that the lender failed to
20 pay despite having been given specific notice of the existence of the unpaid
21 assessments, and despite the obvious intent of the drafters of the UCIOA that, in most
22 cases, the lender would protect its own interest by paying off the assessments. This
23 result would achieve the perverse outcome of actually rewarding sloth and inaction on
24 the part of the lender, who, as expressly recognized by Comment 1 to UCIOA Section
25 3-116, is the one party (other than the defaulting owner) in a position to stop the
26 foreclosure, protect its own interests, and make the association whole by paying the
27 assessments. Instead, the Defendant's interpretation of NRS 116.3116 would result in
28 the association and the lender being made whole at the expense of bona fide third-party

1 purchasers, a result that is quite obviously absurd.

2 (40) The Defendant appears to suggest this outcome, however unfair, is the
3 natural consequence of the fact that the Plaintiff attempted to purchase the Subject
4 Property for less than the cumulative total of all existing encumbrances upon the
5 Subject Property, and "buyer beware" because, had the Plaintiff properly done its
6 homework, it should have known that it might stand to lose the Subject Property unless
7 it purchased the Subject Property for an amount sufficient to pay off all existing liens.

8 (41) But, as noted, the party best-positioned to protect its interests (and
9 incidentally to protect any innocent third parties) is the lender whose interests are
10 directly at stake. It is a well-recognized principle of Nevada law that when both
11 potential interpretations of a statute or rule are unfair to someone, the brunt of any
12 unfairness should not fall on innocent third parties. *E.g., NC-DSH Inc. v. Garner*, 125
13 Nev. 647, 656 (2009) (in choosing who should suffer from the fraudulent actions of an
14 agent, "ordinarily, the sins of an agent are visited upon his principal, not the innocent
15 third party with whom the dishonest agent dealt"); *Rothman v. Fillette*, 469 A.2d 543,
16 545 (Pa. 1983) (cited approvingly in *NC-DSH Inc. v. Garner*, 125 Nev. 647, 656
17 (2009)) ("a principal acting through an agent in dealing with an innocent third party
18 must bear the consequences of the agent's fraud" because of "the long recognized
19 principle that where one of two innocent persons must suffer because of the fraud of a
20 third...the loss should be borne by him who put the wrongdoer in a position of trust and
21 confidence and thus enabled him to perpetrate the wrong"). *See also, Tri-County*
22 *Equipment & Leasing v. Klinke*, 128 Nev. Adv. Op. 33 (June 28, 2012) (Gibbons, J.,
23 concurring) (when one party is likely to receive a windfall, it should be the party who
24 lacks any responsibility for the situation) (relevant citations omitted). In this case, it is
25 true that the lender cannot be said to bear responsibility for the non-payment of
26 assessments by the record owner. However, the lender is in a far better position to
27 protect its interests, make the association whole, and eliminate the need for foreclosure
28 than a third-party purchaser at the foreclosure sale with no connection to the lender, the

1 HOA, or the previous owner. Yet, accepting the Defendant's argument in this case
2 would result in the Plaintiff being the only party who suffers any monetary loss from
3 the non-payment of assessments, as both the HOA and the Defendant have been made
4 whole. That result is fundamentally unfair and could not have been what the
5 Legislature intended.

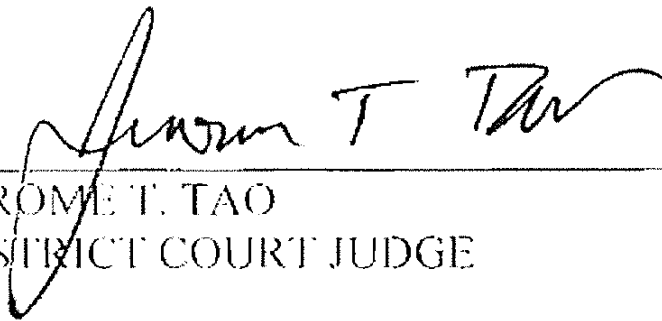
6 (42) In a sense, this outcome can be seen as unfair to the lender whose interest
7 in this case was extinguished by the purchase of the Subject Property for a mere
8 \$2,000. However, Comment 1 to UCIOA Section 3-116 proposes two simple
9 solutions. First, the lender (having been given specific notice of the association's
10 "super priority" lien) can protect its interest by paying the unpaid assessments before
11 foreclosure is initiated by the association, thereby removing the "super priority" lien
12 and ensuring that its security interest is the most senior one remaining. Alternatively,
13 and more proactively, as noted by Comment 1 the lender can ensure that there can
14 never be a default or a "super priority" lien by simply impounding money in advance
15 and paying the assessments itself, much as lenders now commonly impound money to
16 pay tax bills in order to prevent tax liens and government tax foreclosures. In either
17 case, the association will have been made whole, thus accomplishing the fundamental
18 purpose of NRS 116.3116, and the lender can seek to satisfy its own security by
19 initiating its own foreclosure at which its security interest would be the most senior
20 encumbrance.

21 (43) In general, however, questions regarding the fairness of any public policy
22 are for the Legislature to resolve, not for the Judiciary. The Legislature is entitled to
23 enact legislation that may, in some instances, be unfair to some parties. But the
24 Judiciary cannot substitute its own judgment for that of the Legislature and read a
25 statute in a manner other than as it is drafted merely because the application of the
26 statute might seem unwise. In this case, the disposition of this Motion is based upon
27 the application of clear principles of statutory interpretation. In the complete absence
28 of any language in NRS Chapter 116 reflecting a Legislative intent to depart from the

1 established principle that subordinate liens are extinguished by foreclosure sales, the
2 Court must assume that the Legislature intended that Chapter 116 foreclosures operate
3 precisely in the same manner.

4 (44) For the foregoing reasons, the Defendant's Motion to Dismiss is
5 DENIED.

6 DATED: May 30, 2013

7 
8 JEROME T. TAO
9 DISTRICT COURT JUDGE

1 CERTIFICATE OF SERVICE

2 I hereby certify that I served a copy of the foregoing, by mailing, by placing
3 copies in the attorney folder's in the Clerk's Office or faxing as follows:

4 Luis A. Ayon, Esq., and Margaret E. Schmidt, Esq. - Via Facsimile: 792-9002

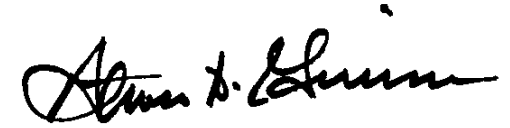
5 Karl L. Nielson, Esq. - Via Facsimile: 692-8099

6 Gregory L. Wilde, Esq. - Via Facsimile: 258-8787

7 Chelsea A. Crowton, Esq. - Via Facsimile: 946-1345

8 

9 Paula Walsh, Executive Assistant
10
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28



CLERK OF THE COURT

1 **DFLT**
MICHAEL F. BOHN, ESQ.
2 Nevada Bar No.: 1641
mbohn@bohnlawfirm.com
3 KELLY M. PERRI, ESQ.
Nevada Bar No.: 13220
4 kperri@bohnlawfirm.com
LAW OFFICES OF
5 MICHAEL F. BOHN, ESQ., LTD.
376 East Warm Springs Road, Ste. 140
6 Las Vegas, Nevada 89119
(702) 642-3113/ (702) 642-9766 FAX
7 Attorney for plaintiff

8 DISTRICT COURT

9 CLARK COUNTY, NEVADA

10 SATICOY BAY LLC SERIES 133 MCLAREN,

11 Plaintiff,

12 vs.

13 GREEN TREE SERVICING LLC; THE BANK
14 OF NEW YORK MELLON FKA THE BANK
OF NEW YORK, AS SUCCESSOR TRUSTEE
15 TO JPMORGAN CHASE BANK, N.A., AS
TRUSTEE FOR THE
16 CERTIFICATEHOLDERS OF CWABS
MASTER TRUST, REVOLVING HOME
17 EQUITY LOAN ASSET BACKED NOTES,
SERIES 2004-T; NATIONAL DEFAULT
18 SERVICING CORPORATION; CTC REAL
ESTATE SERVICES; CHARLES J. WIGHT;
19 AND TARA J. WIGHT,

20 Defendants.

CASE NO.: A693882
DEPT NO.: XV

21 **DEFAULT**

22 It appearing from the files and records in the above entitled action that **Tara J. Wight**, Defendant
23 herein, being duly served with a copy of the Summons and Complaint on January 26th, 2014, that more
24 than 20 days, exclusive of the day of service, having expired since service upon the Defendant;

25 ///

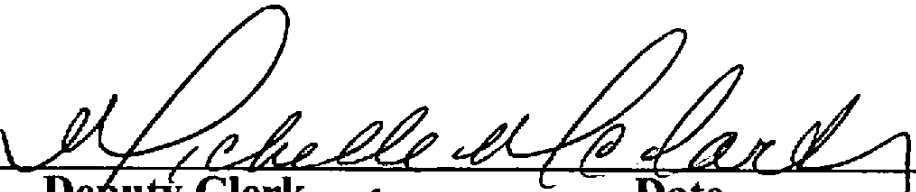
26 ///

RECEIVED
MAR 26 2014

CLERK OF THE COURT


1 that no answer or other appearance having been filed and no further time having been granted, the default
2 of defendant **Tara J. Wight**, for failing to answer or other wise plead to Plaintiff's Complaint is hereby
3 granted.

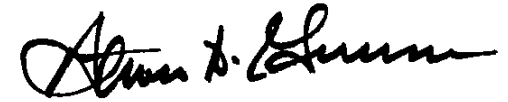
4 **STEVEN D. GRIERSON, CLERK OF THE COURT**

5
6 BY: 
7 Deputy Clerk Date
8 MICHELLE MCCARTHY AC 93882 MAR 28 2014

8 Submitted By:

9 LAW OFFICES OF
10 MICHAEL F. BOHN, ESQ., LTD.

11 By: 
12 Michael F. Bohn, Esq.
13 Nevada Bar No: 1641
14 376 East Warm Springs Road, Ste. 140
15 Las Vegas, Nevada 89119
16 Attorney for plaintiff
17
18
19
20
21
22
23
24
25
26
27
28



CLERK OF THE COURT

1 **DFLT**
MICHAEL F. BOHN, ESQ.
2 Nevada Bar No.: 1641
mbohn@bohnlawfirm.com
3 KELLY M. PERRI, ESQ.
Nevada Bar No.: 13220
4 kperri@bohnlawfirm.com
LAW OFFICES OF
5 MICHAEL F. BOHN, ESQ., LTD.
376 East Warm Springs Road, Ste. 140
6 Las Vegas, Nevada 89119
(702) 642-3113/ (702) 642-9766 FAX
7 Attorney for plaintiff

8 DISTRICT COURT

9 CLARK COUNTY, NEVADA

10 SATICOY BAY LLC SERIES 133 MCLAREN,

CASE NO.:A693882
DEPT NO.:XV

11 Plaintiff,

12 vs.

13 GREEN TREE SERVICING LLC; THE BANK
14 OF NEW YORK MELLON FKA THE BANK
OF NEW YORK, AS SUCCESSOR TRUSTEE
15 TO JPMORGAN CHASE BANK, N.A., AS
TRUSTEE FOR THE
16 CERTIFICATEHOLDERS OF CWABS
MASTER TRUST, REVOLVING HOME
17 EQUITY LOAN ASSET BACKED NOTES,
SERIES 2004-T; NATIONAL DEFAULT
18 SERVICING CORPORATION; CTC REAL
ESTATE SERVICES; CHARLES J. WIGHT;
19 AND TARA J. WIGHT,

20 Defendants.

21 **DEFAULT**

22 It appearing from the files and records in the above entitled action that **Charles J Wight**, Defendant
23 herein, being duly served with a copy of the Summons and Complaint on February 1st, 2014, that more
24 than 20 days, exclusive of the day of service, having expired since service upon the Defendant;

25 //
26 ///
27
28
29
30

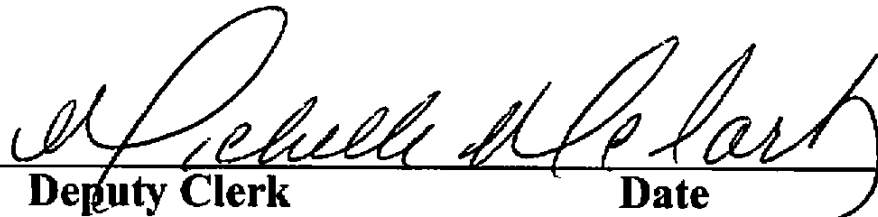
RECEIVED

MAR 26 2014

CLERK OF THE COURT


1 that no answer or other appearance having been filed and no further time having been granted, the default
2 of defendant **Charles J Wight**, for failing to answer or other wise plead to Plaintiff's Complaint is hereby
3 granted.

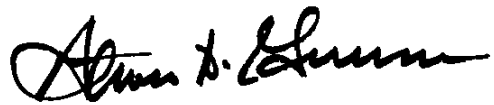
4 **STEVEN D. GRIERSON, CLERK OF THE COURT**

5
6 BY: 
Deputy Clerk Date

7
8 Submitted By: AL693882 MAR 28 2014
MICHELLE MCCARTHY

9 LAW OFFICES OF
10 MICHAEL F. BOHN, ESQ., LTD.

11 By: 
12 Michael F. Bohn, Esq.
13 Nevada Bar No: 1641
14 376 East Warm Springs Road, Ste. 140
Las Vegas, Nevada 89119
Attorney for plaintiff



CLERK OF THE COURT

GREGORY L. WILDE, ESQ.
Nevada Bar No. 4417
MATTHEW D. DAYTON, ESQ.
Nevada Bar No. 11552
TIFFANY & BOSCO, P.A.
212 S. Jones Blvd.
Las Vegas, NV 89107
Tel: (702) 258-8200
Fax: (702) 258-8787
Attorney for Defendants
National Default Serving Corporation
14-70735

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 133
MCLAREN,

Plaintiff(s),

vs.

GREEN TREE SERVICING LLC; THE
BANK OF NEW YORK MELLON FKA THE
BANK OF NEW YORK, AS SUCCESSOR
TRUSTEE TO JPMORGAN CHASE BANK,
N.A., AS TRUSTEE FOR THE
CERTIFICATEHOLDERS OF CWABS
MASTER TRUST, REVOLVING HOME
EQUITY LOAN ASSET BACKED NOTES,
SERIES 2004-T; NATIONAL DEFAULT
SERVICING CORPORATION; CTC REAL
ESTATE SERVICES; CHARLES J. WIGHT;
AND TARA J. WIGHT,

Defendant(s).

Case No.: A-14-693882-C
Dept No.: XV

**DEFENDANT NATIONAL DEFAULT
SERVICING CORPORATION'S
ANSWER TO PLAINTIFF'S
COMPLAINT**

COMES NOW, Defendant, NATIONAL DEFAULT SERVICING CORPORATION
(hereinafter "NDSC"), by and through its counsel of record, Gregory L. Wilde, Esq., and in
Answer to the Complaint of Plaintiff Saticoy Bay LLC Series 133 McLaren, (hereinafter
"Plaintiff"), on file herein, denies and alleges as follows:

TIFFANY & BOSCO, P.A.
212 S. Jones Blvd.
Las Vegas, NV 89107
Tel 258-8200 Fax 258-8787

TIFFANY & BOSCO, P.A.
212 S. Jones Blvd.
Las Vegas, NV 89107
Tel 258-8200 Fax 258-8787

Answering paragraphs 1, 2, 3, and 8 of the Complaint on file herein, Defendant NDSC admits that the documents maintained by the Clark County Recorder demonstrate the veracity of these allegations on their face but denies any further implications or allegations therein for Plaintiff may be interpreting said documents in a manner inconsistent with Defendant and/or the terms and meanings of the documents.

Answering paragraphs 4 and 6 of the Complaint on file herein, Defendant NDSC admits the allegations contained therein.

Answering paragraphs 5 and 7 of the Complaint on file herein, Defendant states that it is without sufficient knowledge or information to form an opinion as to the truth or veracity of the allegations contained therein and therefore denies the same in its entirety.

Answering paragraphs 9, 10, 12, 13, 15 and 16 of the Complaint on file herein, Defendant NDSC denies the allegations contained therein.

Answering paragraph 11 of the Complaint on file herein, Defendant NDSC repeats, realleges, and incorporates their responses to the allegations of paragraphs 1 through 10 of the Complaint as if fully set forth herein.

Answering paragraph 14 of the Complaint on file herein, Defendant NDSC repeats, realleges, and incorporates their responses to the allegations of paragraphs 1 through 13 of the Complaint as if fully set forth herein.

AFFIRMATIVE DEFENSES

1. That the allegations contained in Plaintiff's Complaint fail to state a claim for relief upon which relief can be granted.

2. That Plaintiff's claims are barred by the statute of limitations.

3. That Plaintiff's claims are barred by the equitable doctrines of waiver,

1 release, laches, unclean hands and equitable estoppel.

2 4. That Plaintiff has failed to comply with the necessary requirements in order
3 to maintain any action against Defendant NDSC.

4 5. That any claims of damages suffered by Plaintiff, if any, were directly and
5 proximately caused by the actions of the Plaintiff or forces of nature over which Defendant
6 NDSC had no control.

7
8 6. That the damages and injuries, if any, suffered by Plaintiff, as set forth in the
9 Complaint, were caused in whole or in part by the negligence of third parties over whom
10 Defendant NDSC had no control.

11
12 7. That the damages and injuries, if any, incurred by Plaintiff are not
13 attributable to any act, conduct or omission on the part of Defendant NDSC.

14 8. That Plaintiff did not exercise ordinary care, caution or prudence in order to
15 avoid the events alleged in the Complaint, and the resulting damages and injuries, if any,
16 complained of were directly and proximately contributed to, and caused by, the fault,
17 carelessness, and negligence of Plaintiff.

18
19 9. That Plaintiff has failed to mitigate their damages, if any, and thus, its
20 recovery, if any, should be reduced accordingly.

21 10. That Defendant NDSC denies each and every allegation of Plaintiff's
22 Complaint which is not specifically admitted or otherwise pleads to herein.

23
24 11. That Plaintiff's claims, if any be valid, are subject to offsets and credits,
25 which are not reflected in the amount claimed due by Plaintiff.

26 12. That Defendant NDSC hereby incorporates by reference those affirmative
27 defenses enumerated in Rule 8 of the Federal Rules of Civil Procedure as if fully set forth
28

TIFFANY & BOSCO, P.A.
212 S. Jones Blvd.
Las Vegas, NV 89107
Tel 258-8200 Fax 258-8787

1 herein. In the event further investigation or discovery reveals the applicability of any such
2 defenses, Defendant NDSC reserves the right to seek leave of the Court to amend its Answer to
3 Plaintiff's Complaint to specifically assert the same. Such defenses are herein incorporated by
4 reference for the specific purpose of not waiving the same.

5 13. That it has been necessary for Defendant NDSC to employ the services of an
6 attorney to defend this action and a reasonable sum should be allowed as and for attorney's fees,
7 together with the costs expended in this action.

8 14. That Defendant NDSC hereby reserves the right to add additional affirmative
9 defenses as discovery progresses.

10 WHEREFORE, the Defendant NDSC prays for the following:

11 1. That Plaintiff take nothing by way of their Complaint;
12 2. That Plaintiff's Complaint be dismissed in its entirety;
13 3. That Defendant NDSC be awarded reasonable attorney's fee and the cost of suit
14 incurred in defending this action; and
15

16 4. For such other relief as this Court may deem just and proper in the premises.

17 DATED this 7th day of April, 2014.

18 **TIFFANY & BOSCO, P.A.**

19
20
21
22 /s/ Gregory L. Wilde
23 GREGORY L. WILDE, ESQ.
24 Nevada Bar No. 4417
25 MATTHEW D. DAYTON, ESQ.
26 Nevada Bar No. 11552
27 212 S. Jones Blvd.
28 Las Vegas NV 89107
Counsel for Defendant
National Default Serving Corporation

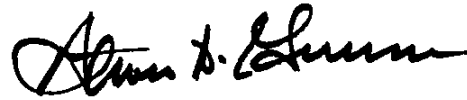
TIFFANY & BOSCO, P.A.
212 S. Jones Blvd.
Las Vegas, NV 89107
Tel 258-8200 Fax 258-8787

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 7th day of April, 2014, she served a copy of
DEFENDANT NATIONAL DEFAULT SERVICING CORPORATION'S ANSWER TO
PLAINTIFF'S COMPLAINT via United States mail, postage pre-paid, addressed as follows:

Michael F. Bohn, Esq.
Michael F. Bohn, Esq., Ltd
376 E. Warm Springs Road Ste. 125
Las Vegas, NV 89119
Counsel for Plaintiff
Saticoy Bay LLC Series 133 McLaren

/s/ Sheena Christmas
An employee of Tiffany & Bosco, P.A.



CLERK OF THE COURT

1 SAO
2 MICHAEL F. BOHN, ESQ.
3 Nevada Bar No.: 1641
4 mbohn@bohnlawfirm.com
5 KELLY M. PERRI, ESQ.
6 Nevada Bar No. 13220
7 kperri@bohnlawfirm.com
8 LAW OFFICES OF
9 MICHAEL F. BOHN, ESQ., LTD.
10 376 East Warm Springs Road, Ste. 125
11 Las Vegas, Nevada 89119
12 (702) 642-3113/ (702) 642-9766 FAX

13 Attorney for plaintiff Saticoy Bay LLC Series 133 McLaren

14 DISTRICT COURT

15 CLARK COUNTY, NEVADA

16 SATICOY BAY LLC SERIES 133 MCLAREN,
17 Plaintiff,

18 vs.

19 GREEN TREE SERVICING LLC; THE BANK
20 OF NEW YORK MELLON FKA THE BANK
21 OF NEW YORK, AS SUCCESSOR TRUSTEE
22 TO JPMORGAN CHASE BANK, N.A., AS
23 TRUSTEE FOR THE CERTIFICATEHOLDERS
24 OF CWABS MASTER TRUST, REVOLVING
25 HOME EQUITY LOAN ASSET BACKED
26 NOTES, SERIES 2004-T; NATIONAL
27 DEFAULT SERVICING CORPORATION; CTC
28 REAL ESTATE SERVICES; CHARLES J.
WIGHT; AND TARA J. WIGHT,

Defendants.

CASE NO.: A693882
DEPT NO.: XV 2

STIPULATION FOR NON-MONETARY RELIEF

Plaintiff, Saticoy Bay LLC Series 133 McLaren, and Defendant, National Default Servicing Corporation, by and through their respective counsel of record, hereby stipulate as follows:

1. Plaintiff acknowledges and stipulates that National Default Servicing Corporation has been named as a defendant in this litigation, solely in its capacity as trustee and that it has not been named as a defendant due to any acts or omissions on its part in the performance of its duties as trustee.

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1 2. National Default Servicing Corporation agrees to be bound by whatever final order or final
2 judgment is issued by the Court relating to the Deed of Trust (unless said order or judgment is
3 successfully appealed by another party hereto) and shall not be subject to any monetary awards for
4 damages, attorneys's fees or costs.

5 3. National Default Servicing Corporation will not be required to participate further in this action,
6 will not be required to respond to any of the pleadings in this action, and will not be required to appear
7 at any hearings or the trial of this action.

8 4. The filing of this stipulation is not intended to and shall not prejudice the rights of any trustor,
9 beneficiary, or assignee under the Deed of trust, and shall not constitute a waiver of any other person or
10 entity's rights or obligations under the Deed of Trust.

11 5. The Stipulation shall inure the benefits of the parties and their successors and/or assigns.

12 6. The parties to this Stipulation agree and request that the Court issue an Order consistent with
13 the terms of the Stipulation.

14 DATED this 9th day of ~~February~~ ^{APRIL}, 2014.

15 LAW OFFICES OF
16 MICHAEL F. BOHN, ESQ., LTD.

17
18 By: Kelly P. Bar No. 13220
19 Michael F. Bohn, Esq.
20 376 E. Warm Springs Road, Ste. 125
21 Las Vegas, Nevada 89119
22 Attorney for Saticoy Bay LLC
23 Series 133 McLaren

TIFFANY & BOSCO P.A.

By: [Signature]
Gregory L. Wilde, Esq.
212 South Jones Boulevard
Las Vegas, NV 89107
Attorney for National Default Servicing
Corporation

22 ///

23 ///

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27

28

ORDER

Pursuant to the above stipulation of the parties, It is ORDERED that:

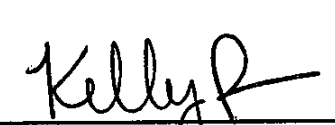
1. National Default Servicing Corporation shall be bound by whatever final order or final judgment is issued by the Court relating to the Deed of Trust (unless said order or judgment is successfully appealed by another party hereto), and shall not be subject to any monetary awards for damages, attorney's fees or costs
2. National Default Servicing Corporation will not be required to participate further in this action, will not be required to respond to any of the pleadings in this action, and will not be required to appear at any hearings or the trial of this action.

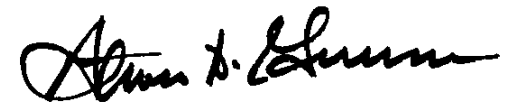
IT IS SO ORDERED this 21st day of April, 2014.


DISTRICT COURT JUDGE 

Respectfully submitted by:

LAW OFFICES OF
MICHAEL F. BOHN, ESQ., LTD.

By:  Bar No. 13220
MICHAEL F. BOHN, ESQ.
376 E. Warm Springs Road, Ste. 125
Las Vegas, NV 89119
Attorney for plaintiff



CLERK OF THE COURT

1 **NEO**
2 MICHAEL F. BOHN, ESQ.
3 Nevada Bar No.: 1641
4 mbohn@bohnlawfirm.com
5 KELLY M. PERRI, ESQ.
6 Nevada Bar No.: 13220
7 kperri@bohnlawfirm.com
8 LAW OFFICES OF
9 MICHAEL F. BOHN, ESQ.
10 376 East Warm Springs Road, Ste. 140
11 Las Vegas, Nevada 89119
12 (702) 642-3113/ (702) 642-9766 FAX
13 Attorney for plaintiff

14 DISTRICT COURT
15 CLARK COUNTY NEVADA

16 SATICOY BAY LLC SERIES 133 MCLAREN,
17 Plaintiff,

18 vs.

19 GREEN TREE SERVICING LLC; THE BANK OF
20 NEW YORK MELLON FKA THE BANK OF NEW
21 YORK, AS SUCCESSOR TRUSTEE TO
22 JPMORGAN CHASE BANK, N.A., AS
23 TRUSTEE FOR THE CERTIFICATEHOLDERS OF
24 CWABS MASTER TRUST, REVOLVING HOME
25 EQUITY LOAN ASSET BACKED NOTES, SERIES
26 2004-T; NATIONAL DEFAULT SERVICING
27 CORPORATION; CTC REAL ESTATE SERVICES;
28 CHARLES J. WIGHT; AND TARA J. WIGHT,

Defendants.

CASE NO.: A693882
DEPT NO.: II

NOTICE OF ENTRY OF ORDER

TO: Parties above-named; and

TO: Their Attorney of Record

///

///

///

1
2
3 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that an **STIPULATION AND**
4 **ORDER** has been entered on the 23rd day of April, 2014, in the above captioned matter, a copy of which
5 is attached hereto.

6 Dated this 24th day of April, 2014.

7
8 LAW OFFICES OF
MICHAEL F. BOHN, ESQ., LTD.

9
10 By: /s/ /Michael F. Bohn, Esq./
MICHAEL F. BOHN, ESQ.
11 376 E. Warm Springs Rd., Ste. 140
12 Las Vegas, NV 89119
Attorney for plaintiff

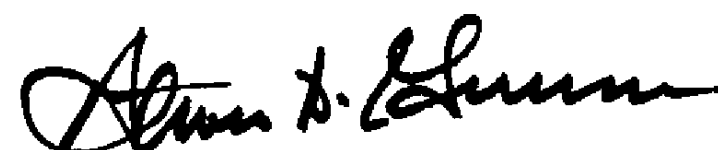
13 **CERTIFICATE OF MAILING**

14 I HEREBY CERTIFY that on the 24th day of April 2014, I served a photocopy of the
15 foregoing **NOTICE OF ENTRY OF ORDER** by placing the same in a sealed envelope with first-class
16 postage fully prepaid thereon and deposited in the United States mails addressed as follows:

17
18 Gregory L. Wilde, Esq.
TIFFANY & BOSCO P.A.
19 212 S. Jones Boulevard
Las Vegas, Nevada 89107

Michael R. Brooks, Esq.
BROOKS BAUER LLP
1645 Village Center Circle, Suite 200
Las Vegas, NV 89134

20
21
22
23 By: /s/ /Marc Sameroff /
An Employee of the LAW OFFICES OF
24 MICHAEL F. BOHN, ESQ.



CLERK OF THE COURT

1 SAO
2 MICHAEL F. BOHN, ESQ.
3 Nevada Bar No.: 1641
4 mbohn@bohnlawfirm.com
5 KELLY M. PERRI, ESQ.
6 Nevada Bar No. 13220
7 kperri@bohnlawfirm.com
8 LAW OFFICES OF
9 MICHAEL F. BOHN, ESQ., LTD.
10 376 East Warm Springs Road, Ste. 125
11 Las Vegas, Nevada 89119
12 (702) 642-3113/ (702) 642-9766 FAX

Attorney for plaintiff Saticoy Bay LLC Series 133 McLaren

DISTRICT COURT
CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 133 MCLAREN,
Plaintiff,

vs.

GREEN TREE SERVICING LLC; THE BANK
OF NEW YORK MELLON FKA THE BANK
OF NEW YORK, AS SUCCESSOR TRUSTEE
TO JPMORGAN CHASE BANK, N.A., AS
TRUSTEE FOR THE CERTIFICATEHOLDERS
OF CWABS MASTER TRUST, REVOLVING
HOME EQUITY LOAN ASSET BACKED
NOTES, SERIES 2004-T; NATIONAL
DEFAULT SERVICING CORPORATION; CTC
REAL ESTATE SERVICES; CHARLES J.
WIGHT; AND TARA J. WIGHT,

Defendants.

CASE NO.: A693882
DEPT NO.: XV 2

STIPULATION FOR NON-MONETARY RELIEF

Plaintiff, Saticoy Bay LLC Series 133 McLaren, and Defendant, National Default Servicing Corporation, by and through their respective counsel of record, hereby stipulate as follows:

1. Plaintiff acknowledges and stipulates that National Default Servicing Corporation has been named as a defendant in this litigation, solely in its capacity as trustee and that it has not been named as a defendant due to any acts or omissions on its part in the performance of its duties as trustee.

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APR 10 2014

1 2. National Default Servicing Corporation agrees to be bound by whatever final order or final
2 judgment is issued by the Court relating to the Deed of Trust (unless said order or judgment is
3 successfully appealed by another party hereto) and shall not be subject to any monetary awards for
4 damages, attorneys's fees or costs.

5 3. National Default Servicing Corporation will not be required to participate further in this action,
6 will not be required to respond to any of the pleadings in this action, and will not be required to appear
7 at any hearings or the trial of this action.

8 4. The filing of this stipulation is not intended to and shall not prejudice the rights of any trustor,
9 beneficiary, or assignee under the Deed of trust, and shall not constitute a waiver of any other person or
10 entity's rights or obligations under the Deed of Trust.

11 5. The Stipulation shall inure the benefits of the parties and their successors and/or assigns.

12 6. The parties to this Stipulation agree and request that the Court issue and Order consistent with
13 the terms of the Stipulation.

14 DATED this 9th day of ~~February~~ ^{APRIL}, 2014.

15 LAW OFFICES OF
16 MICHAEL F. BOHN, ESQ., LTD.

17
18 By: Kelly R Bar No. 13220
19 Michael F. Bohn, Esq.
20 376 E. Warm Springs Road, Ste. 125
21 Las Vegas, Nevada 89119
Attorney for Saticoy Bay LLC
Series 133 McLaren

TIFFANY & BOSCO P.A.

By: [Signature]
Gregory L. Wilde, Esq.
212 South Jones Boulevard
Las Vegas, NV 89107
Attorney for National Default Servicing
Corporation

22 ///

23 ///

24 ///

25

26

27

28

ORDER

Pursuant to the above stipulation of the parties, It is ORDERED that:

1. National Default Servicing Corporation shall be bound by whatever final order or final judgment is issued by the Court relating to the Deed of Trust (unless said order or judgment is successfully appealed by another party hereto), and shall not be subject to any monetary awards for damages, attorney's fees or costs
2. National Default Servicing Corporation will not be required to participate further in this action, will not be required to respond to any of the pleadings in this action, and will not be required to appear at any hearings or the trial of this action.

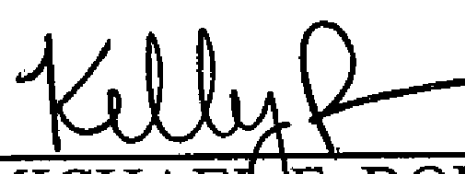
IT IS SO ORDERED this 21st day of April, 2014.

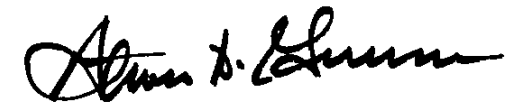


DISTRICT COURT JUDGE 

Respectfully submitted by:

LAW OFFICES OF
MICHAEL F. BOHN, ESQ., LTD.

By:  Bar No. 13220
MICHAEL F. BOHN, ESQ.
376 E. Warm Springs Road, Ste. 125
Las Vegas, NV 89119
Attorney for plaintiff



CLERK OF THE COURT

ORDR

Michael R. Brooks, Esq.
Nevada Bar No. 7287
mbrooks@brooksbaauer.com
Christopher S. Connell, Esq.
Nevada Bar No. 12720
cconnell@brooksbaauer.com
BROOKS BAUER LLP
1645 Village Center Circle, Suite 200
Las Vegas, NV 89134
Tel: (702) 851-1191
Fax: (702) 851-1198
Attorneys for Defendant Green Tree Servicing LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY LLC DERIES 133 MCLAREN

Plaintiff,

vs.

GREEN TREE SERVICING LLC; THE BANK
OF NEW YORK MELLON FKA THE BBANK
OF NEW YORK, AS SUCCESSOR TRUSTEE
TO JP MORGAN CHASE BANK, N.A., AS
TRUSTEE FOR THE CERTIFICATE HOLDERS
OF CWABS MASTER TRUST, REVOLVING
HOME EQUITY LOAN ASSET BACKED
NOTES, SERIES 2004-T; NATIONAL DEFAULT
SERVICING CORPORATION; CTC REAL
ESTATE SERVICES; CHARLES J. WIGHT; and
TARA J. WIGHT,

Defendants.

Case No.: A-14-693882-C

Dept.: II

**ORDER GRANTING MOTION TO
DISMISS**

Defendant, Green Tree Servicing LLC's Motion to Dismiss Pursuant to NRCP 12(b)(5) having come before the Honorable Valorie Vega, on April 2, 2014, at 9:30 a.m.; Defendant was represented by and through Christopher S. Connell, Esq. of the law firm of Brooks Bauer LLP; Plaintiff was represented by Kelly M. Perry, Esq;

The Court, having reviewed Defendant's Motion and Plaintiff's Opposition, the representations of counsel, the papers and pleadings on file herein, and good cause appearing makes the following Findings and Orders:

1 The Court has considered the oral and written arguments of the parties. Based thereon, the
2 Court finds as follows:

- 3 1. Plaintiff has failed to state a claim upon which relief can be granted, pursuant to NRCP
4 12(b)(5).
- 5 2. Motion to Dismiss GRANTED pursuant to NRCP 12(b)(5) and Simpson v. Mars, 113
6 Nev. 188 (1991) and Vacation Village v. Hitachi America, 110 Nev. 481 (1994) and NRS
7 116.3116 and Diakonos Holdings, LLC v. Countrywide Home Loans, Inc. 2013,
8 WL531092, Dist. Nec 2/11/13.
- 9 3. Request for Judicial Notice taken pursuant to EDCR 2.20 and NRS 47.130.
- 10 4. Countermotion to Stay proceedings DENIED for lack of authority, this ruling will not
11 preclude Plaintiff's counsel from pursuing a stipulation and order for a stay should that be
12 warranted and oral request for 54(b) Certification GRANTED pursuant to EDCR 2.20.

13 NOW THEREFORE IT IS HEREBY ORDERED that Defendant Green Tree Servicing
14 LLC's Motion to Dismiss Pursuant to NRCP 12(b)(5) be, and is hereby GRANTED in its
15 entirety.

16 IT IS FURTHER ORDERED that all claims against Defendant Green Tree Servicing LLC
17 are adjudicated in favor of Defendant Green Tree Servicing LLC.

18 IT IS FURTHER ORDERED that Plaintiff's Countermotion to Stay Proceedings is
19 denied.

20 IT IS FURTHER ORDERED Plaintiff's request that the court's ruling on this matter be
21 certified under the provisions of NRCP 54(b) is also granted. The Court has made an express
22 determination that there is no just reason for delay and expressly directs entry of judgment in
23 favor of Defendant Green Tree Servicing LLC and against the Plaintiff.

24 **IT IS SO ORDERED.**

25 DATED this 30th day of April, 2014.

26 BY THE COURT:

27 
28 DISTRICT COURT JUDGE 

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