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**CERTIFICATE OF SERVICE**

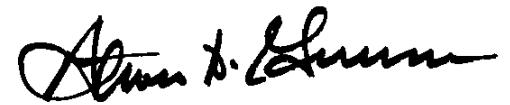
Pursuant to NRCP 5, NEFCR 9, and EDCR 8.05, I hereby certify that I am an employee of NOGGLE LAW PLLC, and on the 15<sup>th</sup> day of December, 2014, an electronic copy of the foregoing **OPPOSITION TO MOTION TO DISMISS** was served on opposing counsel via the Court's electronic service system to the following counsel of record:

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DATED this 15<sup>th</sup> day of December, 2014.

By: 

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An Employee of Noggle Law PLLC



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*Attorneys for Defendant  
Lakeview Loan Servicing, LLC*

DISTRICT COURT  
CLARK COUNTY, NEVADA

KENNETH RENFROE,  
  
Plaintiff,  
  
v.  
LAKEVIEW LOAN SERVICING, LLC;  
RECONTRUST COMPANY, N.A.; BRIAN J.  
FERGUSON AND JENNIFER L. FERGUSON,  
  
Defendants.

Case No.: A-14-700520-C  
Dept. No. III

**LAKEVIEW LOAN SERVICING, LLC'S  
REPLY IN SUPPORT OF MOTION TO  
DISMISS COMPLAINT BASED ON THE  
SUPREMACY AND PROPERTY  
CLAUSES OF THE U.S. CONSTITUTION**

Defendant Lakeview Loan Servicing, LLC replies in support of its motion to dismiss.

**I. LAKEVIEW HAS STANDING TO ARGUE THE HOA FORECLOSURE IS PREEMPTED BY  
FEDERAL LAW.**

Plaintiff claims that Lakeview lacks standing assert that the HOA foreclosure sale is preempted by federal law. The concept of standing is "an essential and unchanging part of the case-or-controversy requirement of Article III [of the U.S. Constitution]." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). The "irreducible constitutional minimum" of standing requires that a plaintiff has suffered an "injury in fact" that is not merely conjectural or hypothetical, that there be a causal connection between the injury and the conduct complained of, and it must be likely that the

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1 injury will be redressed by a favorable decision. *Id.*

2 Plaintiff's argument is circular, and specious, for multiple reasons. **First**, if Lakeview lacks  
3 standing to assert federal preemption, then the problem is not Lakeview. The problem is that  
4 plaintiff did not join a necessary party to this action by failing to join HUD in this dispute. **Second**,  
5 plaintiff fails to direct the Court to any authority that suggests preemption is applicable. Plaintiff  
6 sued to extinguish Lakeview's interest in the deed of trust— an interest that is indisputably governed  
7 by federal law, what leads to preemption. The purpose of the FHA Mortgage Insurance Programs  
8 (“FHA Programs”) is to permit at-risk borrowers to purchase homes by providing mortgage  
9 insurance to those who otherwise cannot secure mortgage financing. To promote its homeownership  
10 goals and manage the federal insurance, the FHA Programs also include guidelines and directives  
11 that limit and control foreclosures on insured mortgages.

12 Under the Supremacy Clause, state law that conflicts with federal law—including federal  
13 regulations—is preempted. *Crosby v. Nat’l Foreign Trade Council*, 530 U.S. 363, 372 (2000); *Fid.*  
14 *Fed. Savings & Loan Ass’n v. De la Cuesta*, 458 U.S. 141, 153–54 (1982) (holding that federal  
15 regulations have same preemptive force as federal statutes). Federal conflict preemption applies if  
16 the challenged [state] law “‘stands as an obstacle to the accomplishment and execution of the full  
17 purposes and objectives of Congress.’” *Id.* at 372–73 (quoting *Hines v. Davidowitz*, 312 U.S. 52, 67  
18 (1941)). Preemption occurs, for example, “whether that ‘obstacle’ goes by the name of ‘...  
19 inconsistency ... interference,’ or the like.” *Geier v. Am. Honda Motor Co.*, 529 U.S. 861, 873  
20 (2000) (quoting *Hines*, 312 U.S. at 67).

21 Applying these principles immediately after the Nevada Supreme Court’s *SFR* decision,  
22 Chief Judge Navarro of the U.S. District Court in Nevada held that, “[b]ecause a homeowners  
23 association’s foreclosure under Nevada Revised Statutes § 116.3116 on a Property with a mortgage  
24 insured under the FHA insurance program would have the effect of limiting the effectiveness of the  
25 remedies available to the United States, the Supremacy Clause bars such foreclosure sales.” *See*  
26 *Washington & Sandhill Homeowners Ass’n v. Bank of Am., N.A.*, No. 2:13-CV-01845-GMN, 2014  
27 WL 4798565, at \*7 (D.Nev. Sept. 25, 2014). Plaintiff’s request that this Court reject this federal  
28 court Supremacy Clause holding, and sustain the HOA’s wrongful foreclosure, is without merit.

1           **1.     FHA Insurance Exists to Promote Homeownership for Lower-Income**  
2           **Borrowers and Foreclosure Avoidance Is an Essential Part of that Program.**

3           The FHA’s mission is as broad as it is essential: “the Federal Government expands  
4 homeownership opportunities for first time homebuyers and other borrowers who would not  
5 otherwise qualify for conventional mortgages on affordable terms, as well as for those who live in  
6 underserved areas where mortgages may be harder to get.”<sup>1</sup> “[FHA] is the largest insurer of  
7 mortgages in the world, insuring over 34 million properties since its inception in 1934.”<sup>2</sup> “FHA  
8 provides a huge economic stimulation to the country in the form of home and community  
9 development, which trickles down to local communities in the form of jobs, building suppliers, tax  
10 bases, schools, and other forms of revenue.”<sup>3</sup> “Section 203(b) is the centerpiece of FHA’s single  
11 family mortgage insurance programs, the successor of the program that helped save homeowners  
12 from default in the 1930s, that helped open the suburbs for returning veterans in the 1940s and  
13 1950s, and that helped shape the modern mortgage finance system.”<sup>4</sup>

14           Courts recognize that “HUD has very broad discretion in order to achieve national housing  
15 objectives,” *United States v. Antioch Found.*, 822 F.2d 693, 695 (7th Cir. 1987), especially because  
16 administration of FHA insurance involves “economic and managerial decisions” about which  
17 “courts are ill-equipped to superintend,” *Hahn v. Gottlieb*, 430 F.2d 1243, 1249–51 (1st Cir. 1970).  
18 Day-to-day decisions concerning, for instance, whether and when to foreclose or forbear from  
19 foreclosing, “involve[ ] a balancing of factors and a consideration of complex financial data.”  
20 *Falzarano v. United States*, 607 F.2d 506, 512 (1st Cir. 1979).

21  
22           <sup>1</sup> *Mortgage Insurance for One to Four Family Homes Section 203(b)*, HUD.gov,  
23 [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/housing/sfh/ins/203b--df](http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/sfh/ins/203b--df) (last visited  
Jan. 13, 2015)

24           <sup>2</sup>       The       Federal       Housing       Administration       (FHA),       HUD.gov,  
25 [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/housing/fhahistory](http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/fhahistory) (last visited Jan. 13,  
2015).

26           <sup>3</sup> *Id.*

27           <sup>4</sup> *Mortgage Insurance for One to Four Family Homes Section 203(b)*, HUD.gov,  
28 [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/housing/sfh/ins/203b--df](http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/sfh/ins/203b--df) (last visited  
Jan. 13, 2015).

1 Under the FHA Programs at issue, the federal government insures certain residential  
2 mortgage loans originated by private lenders for at-risk borrowers who qualify for assistance under  
3 FHA criteria. *See, e.g.*, 12 U.S.C. § 1701t (“[T]here should be the fullest practicable utilization of  
4 the resources and capabilities of private enterprise and of individual self-help techniques.”).<sup>5</sup> These  
5 loans are issued to borrowers who might otherwise not qualify for conventional mortgages due, for  
6 example, to their inability to make more than a minimal down payment or their having significantly  
7 lower credit scores than banks would otherwise approve.<sup>6</sup> The mortgage that plaintiff claims to  
8 have acquired was made under the FHA Programs and its repayment was insured by the federal  
9 government.

10 Further, in managing the FHA Programs, HUD has enacted a comprehensive set of servicing  
11 guidelines that are aimed at keeping at-risk borrowers in their homes to the extent possible, including  
12 in circumstances where the borrowers are in financial distress. For example, before claiming a  
13 default and initiating foreclosure proceedings, the FHA Programs’ regulations require that  
14 mortgagees consider forbearance and pre-foreclosure counseling<sup>7</sup>—which can take six months or

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15 <sup>5</sup> *See also* Housing Act of 1949, § 2, 42 U.S.C. § 1441 (policy of Housing Act of 1949 is to  
16 encourage private enterprise “to serve as large a part of the total need as it can”); Department of  
17 Housing and Urban Development Act of 1965, §§ 2, 3(a), 42 U.S.C. §§ 3531 (HUD to “encourage  
18 the maximum contributions that may be made by vigorous private home-building and mortgage  
lending institutions to housing, urban development, and the national economy”), 3532(b) (Secretary  
of HUD to do the same).

19 <sup>6</sup> *See supra* and accompanying text; Mortgage Credit Analysis for Mortgage Insurance on One- to  
20 Four-Unit Mortgage Loans (4155.1), ch. 4, § 2.A.2.a, *available at*  
21 <http://www.hud.gov/offices/adm/hudclips/handbooks/hsg/4155.1/41551HSGH.pdf> (last visited Jan.  
22 13, 2015) (“In order for FHA to insure this maximum loan amount, the borrower must make a  
required investment of at least 3.5% of the lesser of the appraised value or the sales price of the  
property.”). *Id.* § 4.A.1.c (showing that borrowers with credit scores between 500 and 579 are  
eligible for a maximum Loan-To-Value ratio of 90%).

23 <sup>7</sup> *See* 24 C.F.R. § 203.501 (requiring that mortgagees “must consider” actions such as “special  
24 forbearance,” meaning in cases where the mortgagor does not own other FHA-insured property and  
the default was caused by circumstances beyond the mortgagor’s control, the forbearance agreement  
will not require increased payments before the original maturity date of the mortgage); HUD  
25 Administration of Insured Home Mortgages Handbook 4330.1, ch. 7, §§ 7-3, 7-6, *available at*  
26 <http://portal.hud.gov/hudportal/documents/huddoc?id=43301c7HSGH.pdf> (last visited Jan. 13,  
27 2015) (requiring that servicers “make a concerted effort to help the mortgagor resolve his/her  
28 financial problems,” specifically addressing that a mortgage servicer must be aware of marital  
difficulties, substance abuse, excessive gambling, loss of income, loss of employment, illness, and  
other factors, and then refer borrowers to counseling before foreclosure).

1 more<sup>8</sup>—and provide that noncompliance may result in a civil monetary penalty and withdrawal of  
2 HUD’s approval of the mortgagee as a program participant, 24 C.F.R. § 230.500. In addition to  
3 forbearance,<sup>9</sup> FHA regulations require that mortgagees consider or attempt other forms of relief short  
4 of foreclosure, including modifications to the terms of the loan to make the loan more affordable, *id.*  
5 §§ 203.357, 203.370, 203.608, 203.616. Moreover, even where foreclosure is inevitable, FHA  
6 regulations identify a lengthy and exhaustive process that details the level and form of borrower  
7 communications required before foreclosure may begin.<sup>10</sup>

8 In sum, federal regulators have marshalled many decades of expertise to enact a  
9 comprehensive and detailed approach to foreclosure and foreclosure forbearance on FHA-insured  
10 mortgages, the goal of which is to expand the housing market for those who would otherwise not be  
11 able to purchase a home.

12 **2. As Applied to FHA-Insured Mortgages, N.R.S. § 116.3116 Is Preempted Because**  
13 **It Frustrates FHA’s Foreclosure-Avoidance Efforts.**

14 By allowing HOAs to foreclose on distressed borrowers, Nevada law conflicts with FHA  
15 regulations specifying foreclosure as a “last resort” for this potentially vulnerable category of  
16 borrowers.<sup>11</sup> As Chief Judge Navarro found in *Washington*, “a homeowner[] association’s  
17 foreclosure under Nevada Revised Statute § 116.3116 on a Property with a mortgage insured under  
18 the FHA insurance program would have the effect of limiting the effectiveness of the remedies  
19 available to the United States,” and, thus, “the Supremacy Clause bars such foreclosure sales.” 2014  
20

21  
22 <sup>8</sup> HUD Administration of Insured Home Mortgages Handbook 4330.1 app. 18, at 2, *available at*  
23 <http://portal.hud.gov/hudportal/documents/huddoc?id=43301x18HSGH.pdf> (last visited Jan. 13,  
2015).

24 <sup>9</sup> *See* 24 C.F.R. §§ 203.471, 204.614.

25 <sup>10</sup> *See generally* HUD Administration of Insured Home Mortgages Handbook 4330.1, ch. 7, § 7-7,  
26 *available at* <http://portal.hud.gov/hudportal/documents/huddoc?id=43301c7HSGH.pdf> (last visited  
Jan. 13, 2015).

27 <sup>11</sup> HUD Administration of Insured Home Mortgages Handbook 4330.1, ch. 9, § 9-3, *available at*  
28 <http://portal.hud.gov/hudportal/documents/huddoc?id=43301c9HSGH.pdf> (last visited Jan. 13,  
2015) (“Foreclosure should be considered only as a last resort and shall not be initiated until all other  
relief options have been exhausted.”).

1 WL 4798565, at \*7.<sup>12</sup> After all, whereas the policy of federal law as administered by HUD is to  
2 keep borrowers in their homes as long as possible—as evidenced by the numerous guidelines and  
3 regulations that require servicers to explore alternatives to foreclosure<sup>13</sup>—Nevada Revised Statute §  
4 116.3116 obstructs that policy by permitting HOAs to foreclose (and dispossess the homeowners)  
5 even while the mortgagees are working with the borrowers as required by HUD’s guidelines.

6 Further, Nevada Revised Statute 116.3116 interferes with the insurance component that is the  
7 centerpiece of the FHA Programs and HUD’s interest in obtaining title to FHA-insured properties  
8 upon default. “The purpose of the Single Family Property Disposition (SFPD) Program is to reduce  
9 the inventory of acquired properties in a manner that expands home ownership opportunities,  
10 strengthens neighborhoods and communities, and ensures a maximum return to the mortgage  
11 insurance fund.” 24 C.F.R. § 291.1. To achieve these goals, HUD exercises discretion to pay claims  
12 and take title to insured properties after default, even if the mortgagee has not complied with all  
13 regulatory requirements or paid off all HOA claims.<sup>14</sup> As the federal district court recently found,  
14 “state laws cannot operate to undermine the federal agency’s ability to obtain title after foreclosure  
15 and resell the propert[ies].” *Washington*, 2014 WL 4798565, at \*6.

16 Even Nevada has recognized that HOA foreclosures interfere with mortgagees’ efforts to  
17 keep borrowers in their homes and has made some—albeit insufficient—effort to mitigate the  
18

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19 <sup>12</sup> See, e.g., 12 U.S.C. 1710 authorizing HUD, at its discretion and upon presentation of a claim, to:  
20 (A) obtain an assignment of the mortgage/deed of trust; (B) a conveyance of title to the property;  
21 (C) obtain an assignment of claims against the mortgagee; or (D) direct the mortgagor to sell the  
property, among other remedies.

22 <sup>13</sup> See, e.g., HUD Administration of Insured Home Mortgages Handbook 4330.1, ch. 7, § 7-1,  
23 available at <http://portal.hud.gov/hudportal/documents/huddoc?id=43301c7HSGH.pdf> (last visited  
24 Jan. 13, 2015) (“HUD does not expect to see a delinquent mortgage foreclosed if there is a  
reasonable chance of saving the mortgage.”); 24 CFR § 203.501 (requiring mortgagees to consider  
alternatives to foreclosure such as special forbearance and mortgage modifications).

25 <sup>14</sup> For instance, 24 CFR § 203.363 provides that HUD, in its discretion, may grant extra time to a  
26 lender to cure any regulatory non-compliance, and 24 CFR § 203.402(k), HUD may curtail the  
27 insurance pay-out, but need not entirely decline to pay at all, due to the failure to meet a number of  
28 regulatory requirements. See also HUD Administration of Insured Home Mortgages Handbook  
4330.1, ch. 7, § 7-12(D), available at  
<http://portal.hud.gov/hudportal/documents/huddoc?id=43301c7HSGH.pdf> (last visited Dec. 29,  
2014); HUD Mortgagee Letter 2013-38, at 2 (Oct. 28, 2013),  
<http://portal.hud.gov/hudportal/documents/huddoc?id=13-38ml.pdf>.

1 controversial rush to foreclose by HOAs and their collection agents. In 2013, Nevada changed its  
2 law to bar HOAs from initiating non-judicial foreclosure proceedings after the mortgagee has  
3 recorded a notice of default and before it complies with Nevada’s own foreclosure avoidance  
4 procedures (which generally require pre-foreclosure mediation). *See* N.R.S. § 116.31162(6)(b).  
5 Although this amendment reflects the Nevada Legislature’s own recognition of the harm caused by  
6 HOA foreclosures, the amendment is not sweeping enough to avoid federal preemption as applied to  
7 FHA-insured loans because Nevada law still frustrates federal foreclosure forbearance objectives.  
8 As the Supreme Court has recognized, a “[c]onflict in technique can be fully as disruptive to the  
9 system Congress enacted as conflict in overt policy.” *Motor Coach Employees v. Lockridge*, 403  
10 U.S. 274, 287 (1971). For example, under the 2013 amendment, nothing impedes the HOA from  
11 pursuing foreclosure and removing the borrower from the home where the mortgagee has not issued  
12 a notice of default; indeed, if anything, Nevada law works directly at cross purposes with federal law  
13 by encouraging mortgagees to issue a notice of default and initiate foreclosure at the earliest possible  
14 time in order to at least temporarily prevent the HOA from proceeding with its own foreclosure. In  
15 contrast, the FHA Programs direct mortgagees on insured loans to work with the borrower and to  
16 evaluate modification and other alternatives *before* taking steps toward foreclosure.

17 The U.S. Supreme Court and other federal courts have found preemption of state law under  
18 the Supremacy Clause in much less compelling circumstances than those presented here. For  
19 instance, in *De la Cuesta*, the Supreme Court held that a Federal Home Loan Bank Board regulation  
20 permitting—but not requiring—federal savings and loan associations to include “due-on-sale”  
21 clauses in their mortgage contracts preempted state law that restricted the use of such clauses. “By  
22 further limiting the availability of an option the Board considers essential to the economic soundness  
23 of the thrift industry, the State has created ‘an obstacle to the accomplishment and execution of the  
24 full purposes and objectives’ of the due-on-sale regulation.” 458 U.S. at 156 (citations omitted).  
25 Here, HUD explicitly directs servicers to exercise restraint in proceeding with foreclosures to help  
26 keep borrowers in their homes. *See supra* note 14.

27 Plaintiff’s argument that HUD did not own the property also misses the mark. Numerous  
28 courts have applied the Supremacy Clause to preempt state law where the federal government did



1 not have a property interest. *See, e.g., Crosby*, 530 U.S. at 372–73; *Geier*, 529 U.S. at 873; *Hines*,  
2 312 U.S. at 67. Similarly, in finding NRS 116.3116 preempted under the Supremacy Clause to the  
3 extent it allows an HOA to foreclose ahead of an FHA-insured mortgagee, Chief Judge Navarro did  
4 not rely on the existence of a vested federal property interest. While the federal court considered  
5 whether the Property Clause of the U.S. Constitution applied, it saw no reason to “make such a  
6 finding” in that case given that the mortgage interest was only “insured by HUD at the time of the  
7 foreclosure”—*i.e.*, the court explicitly recognized that HUD was neither the mortgagee nor the title-  
8 holder. 2014 WL 4798565, at \*6. Rather, the court held that “extinguish[ment] of a first secured  
9 interest” of a mortgagee where the mortgage is insured by HUD “would ‘operate[ ] to impede or  
10 condition the implementation of federal policies and programs’ and therefore ‘must yield under the  
11 supremacy clause of the Constitution to the interests of the federal government.’” *Id.* (quoting *Rust*  
12 *v. Johnson*, 597 F.2d 174, 179 (9th Cir. 1979)).<sup>15</sup> Because neither the Supremacy Clause nor  
13 *Washington* rely on the existence of a vested federal property interest, *Washington* applies here and  
14 preempts the HOA’s attempt to foreclose on the FHA-insured property at issue ahead of Lakeview.

15 Because NRS § 116.3116 impermissibly restricts the discretion of both the servicer and  
16 HUD in addressing borrower default, it is preempted under the Supremacy Clause as applied to FHA  
17 insured mortgages.<sup>16</sup>

### 18 3. Plaintiff is Wrong That There is No Insurable Interest at Issue.

19 Plaintiff next claims that preemption does not apply because Lakeview is barred from  
20 making a claim to FHA. This argument fails, again for several reasons.

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23 <sup>16</sup> Similarly, in *Forest Park II v. Hadley*, 336 F.3d 724 (8th Cir. 2003), a state statute required  
24 owners of federally subsidized low-income housing to comply with prepayment requirements and  
25 schedules that differed from those imposed under federal law and HUD regulations. The Court in  
26 *Forest Park II* noted it was possible to comply with both laws. At issue were conflicting notice  
27 requirements and “Forest Park could give 365 days notice to the state and 250 days notice to HUD.”  
28 *Id.* at 732. But by requiring more notice under state law, the private entity would be required to wait  
longer than it otherwise would have before it could prepay its loans. While the Eighth Circuit  
recognized that compliance with both statutes was possible, it reasoned that such an argument did  
“not address the principal problem with these state statutes—they fly in the face of the Constitution’s  
Supremacy Clause.” *Id.*

1       **First**, plaintiff has no standing or basis to challenge Lakeview’s compliance with HUD’s  
2 regulations and program guidance. Plaintiff is not a beneficiary of the HUD program and is not in  
3 the class of persons HUD seeks to protect through FHA insurance. *See, e.g., Cantrell v. City of Long*  
4 *Beach*, 241 F.3d 674, 679 (9th Cir. 2001) (in order to have standing, party asserting injury must  
5 argue that such injury falls within the “zone of interests” the statute was designed to protect).  
6 Moreover, plaintiff has no authority or right to exercise HUD’s regulatory discretion and subject  
7 matter expertise concerning the FHA Programs.

8       **Second**, even assuming there was some noncompliance with FHA guidelines—which has not  
9 been shown—nowhere do HUD regulations allow for the cancellation of FHA insurance under these  
10 circumstances. To the contrary, HUD has made clear that “[f]ailure to comply with [Part 203] shall  
11 not be a basis for denial of insurance benefits, 24 C.F.R. § 203.500, and HUD has promulgated  
12 multiple regulations that explicitly give HUD the discretion to pay insurance claims even where  
13 statutory requirements are not met.

14       **Third**, FHA is not analogous to a private insurer, who can attempt to deny a claim for  
15 insurance benefits. As a federal agency—acting under its congressional directive— “FHA insures  
16 mortgages so that lenders will be encouraged to make more mortgages available for people.”<sup>17</sup> And  
17 HUD, which oversees FHA, has a significant interest in promoting and ensuring housing for all,  
18 including low-income families.<sup>18</sup> This strong federal interest encompasses keeping borrowers in  
19 their homes for some period of time during default as lender and borrower try to resolve the  
20 delinquency.<sup>19</sup>

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22       <sup>17</sup> *Discontinuing Monthly Mortgage Insurance Premium Payments*, HUD.gov,  
23 [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/housing/comp/premiums/prem2001](http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/comp/premiums/prem2001) (last  
visited Jan. 13, 2015).

24       <sup>18</sup> *See* HUD’s Mission Statement, *available at*  
25 <http://portal.hud.gov/hudportal/HUD?src=/about/mission> (last visited, Jan. 13, 2015) (“HUD’s  
26 mission is to create strong, sustainable, inclusive communities and quality affordable homes for  
all.”).

27       <sup>19</sup> *See* HUD Mortgagee Letter 2010-04, at 1 (Jan. 22, 2010),  
28 <http://portal.hud.gov/hudportal/documents/huddoc?id=10-04ml.pdf> (“Loss Mitigation is critical to  
both borrowers and FHA because it works to fulfill the goal of helping borrowers retain  
homeownership while protecting the FHA Insurance Fund from unnecessary losses.”).

### III. PLAINTIFF'S TITLE IS VOID UNDER THE PROPERTY CLAUSE OF THE U.S. CONSTITUTION.

The Property Clause provides a separate basis to grant the motion to dismiss. The Property Clause provides: "The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting . . . Property belonging to the United States. . . ." U.S. CONST. ART. IV, §3, cl. 2. According to plaintiff, the Property Clause is inapplicable because three cases that opined on the Property Clause, *Rust*,<sup>20</sup> *Sky Meadows*,<sup>21</sup> and *Sandhill*,<sup>22</sup> are inapplicable to this case. Those cases—and any distinguishable features notwithstanding—offer no support for plaintiff's contention that the Property Clause does not apply to this case.

First, plaintiff argues that *Rust* is distinguishable because Fannie Mae was the beneficiary under the deed of trust; presumably, then, *Rust* is dissimilar from this case because Lakeview, a non-government entity, is the deed of trust beneficiary. See Opp'n at 6:8-11. In *Rust*, the appellants challenged the district court's determination that the city exercised power over government property in part on the assumption that government property only includes property actually owned by the United States. 507 F.2d at 177. The Ninth Circuit expanded the definition of federal property, holding that there was "no basis in law" to treat mortgage interests of federal instrumentalities differently from other property of the government. *Id.* (citing *City of New Brunswick v. United States*, 276 U.S. 547 (1927); *United States v. Roessling*, 280 F.2d 933, 936 (5th Cir. 1960); *Branden v. Driver*, 293 F. Supp. 871, 872-73 (N.D. Cal. 1968), *aff'd* 441 F.2d 1171 (9th Cir. 1971); *Clark Inv. Co. v. United States*, 364 F.2d 7, 9 (9th Cir. 1966)).

There is no basis to argue that *Rust* stands for the proposition that federally-insured deeds of trust are not property interests held by the federal government. Rather, under *Rust*, the Ninth Circuit broadened the definition of what constitutes a federal interest in the property, holding that a mortgage that the United States has an interest in is property protected by the Property Clause. *Rust*,

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<sup>20</sup> *Rust v. Johnson*, 507 F.2d 174 (9th Cir. 1979).

<sup>21</sup> *Secretary of Housing and Urban Dev. v. Sky Meadow Ass'n*, 117 F. Supp. 2d 970 (C.D. Cal. 2000).

<sup>22</sup> *Washington & Sandhill Homeowners Ass'n v. Bank of Am., N.A.*, No. 2:13-cv-01845-GMN-GWF, 2012 WL 4798565 (D. Nev. Sept. 25, 2014).

1 597 F.2d at 177-78. Here, the federal government has an interest in Lakeview's federally insured  
2 deed of trust. The Property Clause applies to this action.

3 **Second**, plaintiff argues *Sky Meadow* is distinguishable because HUD owned the property at  
4 the time the HOA foreclosed; presumably, then, because HUD was not the owner of the property in  
5 this case when the HOA foreclosed, this Court should disregard the Property Clause's applicability to  
6 Lakeview's federally insured deed of trust. *See* Opp'n at 6:12-14. In *Sky Meadow*, the district court  
7 "agreed with the United States that its property could not be sold through a non-judicial foreclosure  
8 proceeding to collect homeowner association assessment fees without specific congressional  
9 authorization." 117 F. Supp. 2d at 972. As the Ninth Circuit held in *Rust*, federal government  
10 property is not limited to merely property held in the federal government's name. Accordingly, *Sky*  
11 *Meadows* supports Lakeview's position that the property in this case, of which the federal  
12 government has an interest, is subject to the mandates of the Property Clause.

13 **Third**, plaintiff misstates the *Sandhill* decision. *See* Opp'n at 6:15-7:14. That case is on all  
14 fours with this case. In *Sandhill*, the HOA purchased the property at an HOA foreclosure sale on  
15 May 23, 2012—prior to the transfer from Bank of America to HUD on October 1, 2013. 2012 WL  
16 4798565 at \*2-3. Accordingly, then, almost identical to this case, at the time of the HOA  
17 foreclosure, the first deed of trust beneficiary was *not* the federal government, and the federal  
18 government held an interest in the property *pursuant to the federally-insured deed of trust*. *See id.*  
19 Bank of America and HUD asserted in *Sandhill* that HUD's interest was protected by the Property  
20 Clause; the HOA argued "that its foreclosure was against the private interests of the [borrowers] and  
21 BOA, and that this case is distinguishable from all the cases lied upon by BOA because the federal  
22 property interest here did not arise until after HOA's foreclosure and extinguishment of the  
23 mortgage." *Id.* at \*5. And, similar to plaintiff's arguments above, the HOA argued the HOA's  
24 "foreclosure extinguished BOA's interest in the Property [because] HOA claims BOA never could  
25 have transferred its interest to HUD in the first place." *Id.*

26 The district court held that although title was in the first deed of trust beneficiary's name at  
27 the time of the HOA foreclosure, Bank of America's "mortgage interest in the property was already  
28 insured by HUD at the time of the foreclosure." *Id.* at \*6. Accordingly, applying *Rust* and *Sky*

1 *Meadow*, the district court held it was not a "significant extension" of the Property Clause to "hold  
2 that HUD's insurance of a mortgage under the FHA insurance program created a federal property  
3 interest that can only be divested by an act of Congress." *Id.*

4 Despite plaintiff's contentions otherwise, *Rust*, *Sky Meadow*, and *Sandhill* do not stand for  
5 the proposition that the Property Clause is inapplicable to this case. Rather, these cases demonstrate  
6 a willingness on the part of the courts to expand the definition of a federal property interest, and in  
7 the recent *Sandhill* case, a Nevada federal court included a HUD-insured deed of trust as property  
8 subject to the Property Clause of the U.S. Constitution.

9 The Property Clause applies to this case.

10 **III. CONCLUSION.**

11 Plaintiff's title is void under the Supremacy and Property Clauses of the U.S. Constitution.  
12 This Court should dismiss plaintiff's complaint with prejudice.

13 DATED this 14th day of January, 2015.

14 **AKERMAN LLP**

15 /s/ Natalie L. Winslow

16 DARREN T. BRENNER, ESQ.

17 Nevada Bar No. 8386

NATALIE L. WINSLOW, ESQ.

Nevada Bar No. 12125

1160 Town Center Drive, Suite 330

Las Vegas, Nevada 89144

19 *Attorneys for Defendant Lakeview Loan Servicing, LLC*

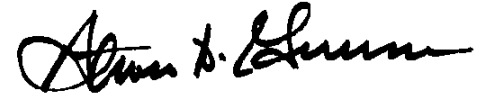
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 14th day of January, 2015 and pursuant to NRCP 5(b), I served through the electronic filing system (Wiznet) and/or deposited for mailing in the U.S. Mail a true and correct copy of the **LAKEVIEW LOAN SERVICING, LLC'S REPLY IN SUPPORT OF MOTION TO DISMISS COMPLAINT BASED ON THE SUPREMACY AND PROPERTY CLAUSES OF THE U.S. CONSTITUTION**, postage prepaid and addressed to:

Robert B. Noggle, Esq.  
Noggle Law PLLC  
376 East Warm Springs Rd., Ste. 140  
Las Vegas, NV 89119  
office@nogglelaw.com  
processing@nogglelaw.com

*Attorneys for Plaintiff*

/s/ Debbie Julien  
\_\_\_\_\_  
An employee of AKERMAN LLP



CLERK OF THE COURT

MRCN  
Robert B. Noggle, Esq.  
Nevada Bar No.: 11427  
Paul R.M. Cullen, Esq.  
Nevada Bar No.: 12355  
NOGGLE LAW PLLC  
376 E. Warm Springs Rd., Ste. 140  
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(702) 450-6300 | (702) 642-9766 FAX  
*Attorney for Plaintiff*

DISTRICT COURT  
CLARK COUNTY, NEVADA

KENNETH RENFROE,

Plaintiff,

vs.

LAKEVIEW LOAN SERVICING, LLC;  
RECONTRUST COMPANY, N.A.; BRIAN J.  
FERGUSON AND JENNIFER L. FERGUSON;

Defendants.

CASE NO.: A-14-700520-C  
DEPT NO.: III

**MOTION FOR RECONSIDERATION ON ORDER SHORTENING TIME**

Plaintiff, Kenneth Renfroe, by and through his attorneys, Noggle Law, PLLC, hereby submits the following Motion for Reconsideration on Order Shortening Time.. This motion is based upon the points and authorities contained herein, and the affidavit attached hereto.

Dated this 26<sup>th</sup> day of January, 2015

By: / s / Paul R.M. Cullen, Esq. /  
Robert B. Noggle, Esq.  
Paul R.M. Cullen, Esq.  
376 East Warm Springs Road, Ste. 140  
Las Vegas, Nevada 89119  
*Attorneys for Plaintiff*

**ORDER SHORTENING TIME**

UPON THE DECLARATION OF PAUL R.M. CULLEN, ESQ., and good cause appearing therefore,

IT IS HEREBY ORDERED, ADJUDGED and DECREED that the time for hearing of the above matter shall be shortened and will be heard on the 04 day of March, 2015 at the hour of 9:00 A.m. in Department III of the above entitled case.

Any opposition is due: \_\_\_\_\_ with courtesy copies by: \_\_\_\_\_

Any Reply is due: \_\_\_\_\_ with courtesy copies by: \_\_\_\_\_

DATED this \_\_\_\_ day of \_\_\_\_\_, 2015

\_\_\_\_\_  
UN S I G N E D

DISTRICT COURT JUDGE

Submitted by:

NOGGLE LAW, PLLC

By: / s / Paul R.M. Cullen, Esq. /  
Robert B. Noggle, Esq.  
Paul R.M. Cullen, Esq.  
376 East Warm Springs Road, Ste. 140  
Las Vegas, Nevada 89119  
*Attorney for Plaintiff*



1 **DECLARATION OF PAUL R.M. CULLEN, ESQ. IN SUPPORT OF ORDER SHORTENING**  
2 **TIME.**

3 PAUL R.M. CULLEN, ESQ., being first duly sworn under oath, deposes and states:

4 1. That I am an attorney at law duly licenced to practice before this Court and make this  
5 Declaration of fact from personal knowledge which is known to me, except for those mattes stated  
6 upon information and belief, and to those matters, I believe the same to be true.

7 2. That Noggle Law, PLLC is counsel of record for Plaintiff Kenneth Renfroe in the  
8 above captioned proceeding.

9 3. This case concerns title to real property located at 7736 Beach Falls Court, Las Vegas,  
10 Nevada 89149, APN:125-28-816-020 ("The Property"). The property is owned by Kenneth Renfroe.  
11 Upon information and belief, Mr. Renfroe pays all appropriate taxes, utilities, and homeowners'  
12 association assessments. He acquired title by virtue of a homeowners' association foreclosure sale  
13 and through a conveyance from the foreclosure deed.

14 4. Upon information and belief, prior to initiating his Complaint, Plaintiff was unaware  
15 the loan formerly secured to the property by way of a deed of trust could potentially be insured by  
16 FHA/HUD<sup>1</sup>

17 5. Lakeview Loan Servicing has challenged the legality of the foreclosure sale. To this  
18 end, Lakeview filed a motion to dismiss based upon the argument that the loan was insured by the  
19 Federal Housing Administration (FHA). Lakeview argued the Supremacy Clause and Property  
20 Clause barred the HOA foreclosure.

21 6. On January 21, 2015, this Court granted Lakeview's Motion.

22 7. During oral argument, counsel for Mr. Renfroe raised the issue that Lakeview had  
23 failed to prove FHA insured the loan. This argument however did not appear to be addressed by the  
24 Court.

25 8. As the Court is well aware, a motion for reconsideration does not toll the time Plaintiff  
26 has to file his appeal based upon the Courts ruling. As such, time is of the essence in resolving all

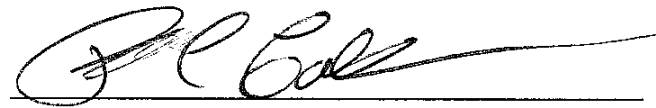
27  
28 <sup>1</sup> FHA insured loans are backed by the Department of Housing and Urban Development ("HUD"). As such, the terms  
FHA and HUD may be used interchangeably but reference the interest HUD may have in an FHA insured loan.

1 issues related to Lakeview's argument and requires an order shortening time for Plaintiff to have the  
2 ability to timely file his appeal should that be necessary.

3 9. Good cause exists for reconsideration on an order shortening time.

4 10. Pursuant to NRS § 53.045, I declare under penalty of perjury under the laws of the  
5 State of Nevada that the foregoing is true and correct.

6 DATED this 26<sup>th</sup> day of January, 2015

7  
8 

9 PAUL R.M. CULLEN, ESQ.  
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This Court granted Defendant Lakeview's motion to dismiss on January 21, 2015. To date,  
4 no order, or notice of entry of order has been filed in this case. Plaintiff requests, pursuant to EDCR  
5 2.24(b), that this Court reconsider the motion prior to entry of order.

6 EDCR 2.24 states in pertinent part:

7 (b) A party seeking reconsideration of a ruling of the court, other than any  
8 order which may be addressed by motion pursuant to N.R.C.P.  
9 50(b), 52(b), 59 or 60, must file a motion for such relief within 10 days  
10 after service of written notice of the order or judgment unless the time is  
11 shortened or enlarged by order. A motion for rehearing or reconsideration  
must be served, noticed, filed and heard as is any other motion. A motion  
for reconsideration does not toll the 30-day period for filing a notice of  
appeal from a final order or judgment.

12 Plaintiff's request for reconsideration falls squarely within EDCR 2.24(b). At this time, no  
13 order or notice of entry of order have been filed in this case, therefore the 10 days to file a motion to  
14 reconsider has not yet begun. EDCR 2.24(b), does allow the Court discretion to shorten or enlarge  
15 the time allotted to reconsider a motion and Plaintiff respectively requests the Court allow  
16 reconsideration of the motion on an order shortening time.

17 **II. STATEMENT OF FACTS**

18 On May 9, 2014, plaintiff, Kenneth Renfroe, filed the complaint which initiated this matter.

19 Plaintiff alleged that he purchased the home located at 7736 Beach Falls Court, Las Vegas,  
20 Nevada 89149 through a home owner's association foreclosure and, as a result of the foreclosure,  
21 Defendants' interest in the property had been extinguished.

22 On September 18, 2014, the Nevada Supreme Court released its opinion in SFR Investments  
23 Pool 1, LLC v. US Bank, N.A. whereby the Supreme Court held that a properly conducted  
24 foreclosure sale would extinguish a deed of trust.

25 On November 20, 2014, Defendant Lakeview Loan Servicing filed its motion to dismiss  
26 alleging the foreclosure was barred by the Supremacy clause and Property clause because the loan  
27 was insured by the Department of Housing and Urban Development ("HUD").  
28

1 On December 15, 2014 Plaintiff filed his opposition, indicating Lakeview had no standing to  
2 argue on behalf of HUD because Lakeview was not a federal agency and did not hold any federal  
3 property.

4 On January 14, 2015, Defendant filed its reply brief.

5 A hearing was held on January 21, 2015 whereby the Court granted the motion to dismiss  
6 citing to the Washington & Sandhill case recently decided by Judge Navaro in the United States  
7 District Court for the District of Nevada.

8 Plaintiff requests this Court reconsider the holding from January 21, 2015 as Defendant  
9 Lakeview has failed meet its burden at the motion to dismiss stage to provide any admissible  
10 evidence to support its claim that HUD actually insures the loan.

11 **A. Lakeview's Motion to Dismiss Should Have Been Converted to a Rule 56 Motion**  
12 **for Summary Judgment For Which It Cannot Succeed.**

13 Lakeview filed a 12(b)(5) motion to dismiss. In order to prevail at the motion to dismiss  
14 stage, all facts alleged by the Plaintiff must be construed as true and the complaint should not be  
15 dismissed unless Plaintiff could prove no set of facts which, if true, would entitle him to relief.

16 In the case of Vacation Village, Inc. v. Hitachi America, Ltd., 110 Nev. 481, 874 P.2d 744  
17 (1994) the Supreme Court stated:

18 The standard of review for a dismissal under NRCP 12(b)(5) is rigorous as  
19 this court "must construe the pleading liberally and draw every fair  
20 intendment in favor of the [non-moving party]." Squires v. Sierra Nev.  
21 Educational Found., 107 Nev. 902, 905, 823 P.2d 256, 257 (1991) (quoting  
22 Merluzzi v. Larson, 96 Nev. 409, 411, 610 P.2d 739, 741 (1980)). All factual  
23 allegations of the complaint must be accepted as true. Capital Mortgage  
24 Holding v. Hahn, 101 Nev. 314, 315, 705 P.2d 126 (1985). A complaint will  
25 not be dismissed for failure to state a claim "unless it appears beyond a doubt  
26 that the plaintiff could prove no set of facts which, if accepted by the trier of  
27 fact, would entitle him [or her] to relief." Edgar v. Wagner, 101 Nev. 226,  
28 228, 699 P.2d 110, 112 (1985) (citing Conley v. Gibson, 355 U.S. 41, 45-46,  
78 S.Ct. 99, 102, 2 L.Ed.2d 80 (1957)).

29 Additionally, Rule 12(b) provides that, "If, on a motion asserting the defense numbered (5) to  
30 dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside  
31 the pleading are presented to and not excluded by the court, the motion shall be treated as one for

1 summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable  
2 opportunity to present all material made pertinent to such a motion by Rule 56.” NRCP 12(b)  
3 (emphases added).

4 Lakeview’s motion to dismiss is not an attack upon the pleadings, but an argument that  
5 reaches outside of the pleadings and alleges FHA insures the loan. As such, the motion to dismiss  
6 should have been converted into one for summary judgment pursuant to NRCP 56. When the Court  
7 granted the motion to dismiss, it did so following the incorrect legal standard.

8 In order to succeed in a Rule 56 motion for summary judgement, Defendant must show there  
9 is no genuine issue of material fact. *Woods v. Safeway*, 121 P.3d 1026, 1031 (Nev. 2005). Rule 56(c)  
10 provides, “Motions for summary judgment and responses thereto shall include a concise statement  
11 setting forth each fact material to the disposition of the motion which the party claims is or is not  
12 genuinely in issue, citing the particular portions of any pleading, affidavit, deposition, interrogatory,  
13 answer, admission, or other evidence upon which the party relies.” NRCP 56(c), (emphases added).

14 Although Lakeview has produced an unauthenticated deed of trust<sup>2</sup>, which purports to indicate  
15 the loan previously secured to the property was an FHA loan, it has provided no actual admissible  
16 evidence to substantiate that claim. Lakeview has also failed to show that no genuine issue of  
17 material fact remains. In order for Defendant’s theory on the Supremacy Clause and Property Clause  
18 to have any weight, it must first show, by admissible evidence, that the loan was actually insured by  
19 FHA and that no other issues of fact remain. It has failed to do so.

20  
21 If the party moving for summary judgment will bear the burden of  
22 persuasion at trial, that party ‘must present evidence that would entitle it to  
23 a judgment as a matter of law in the absence of contrary evidence.’ *Cuzze*  
24 *v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 602, 172 P.3d 131, 134  
25 (2007). If the nonmoving party will bear the burden of persuasion, the  
26 moving party ‘may satisfy the burden of production by either (1)  
submitting evidence that negates an essential element of the nonmoving  
party's claim, or (2) ‘pointing out ... that there is an absence of evidence to  
support the nonmoving party's case.’ *Id.* at 602–03, 172 P.3d at 134  
(citation omitted) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 325,  
106 S.Ct. 2548, 91 L.Ed.2d 265 (1986)).

27 <sup>2</sup> Lakeview will undoubtedly request judicial notice of the deed of trust as a recorded document. However, a stamp on a  
28 deed of trust recorded in 2008 does not prove the loan is currently insured by HUD. Furthermore, any document may be  
recorded with the Clark County Recorder without proof as to authenticity. The Recorder simply records documents  
provided to it so long as the applicable fees are paid.

1 *Francis v. Wynn Las Vegas Llc*, 262 P.3d 705, 127 Nev. Adv. Op. 60 (Nev., 2011) (emphases added).

2 Lakeview has failed to provide admissible evidence to support its claim. An unauthenticated  
3 copy of a deed of trust is not sufficient for purposes of summary judgment to render a decision in  
4 favor of Lakeview. The case law above shows that admissible evidence must be put forth to show  
5 Lakeview is entitled to judgment as a matter of law. At this stage of litigation, no answer has been  
6 filed, no early case conference has occurred and discovery has not commenced. Plaintiff has had no  
7 opportunity to investigate the allegation that the loan is insured by FHA or obtain evidence to refute  
8 the claim as provided under Rule 56(c). Summary Judgment is only proper when, “the pleadings,  
9 depositions, answers to interrogatories, and admission on file, together with the affidavits, if any,  
10 show there is no genuine issue as to any material fact”. NRCP 56(c). Here, Defendant has failed to  
11 establish by admissible evidence FHA actually insures the loan and that no genuine issue of material  
12 fact remains. As such, they cannot prevail on an argument based upon the Supremacy Clause and  
13 Property Clause when those arguments require a finding that the federal government is involved in  
14 the case.

15 A motion to dismiss attacks the sufficiency of the pleadings. Lakeview has not attacked the  
16 pleadings at all but instead asks this Court to make a finding of fact that the loan is FHA insured  
17 without actually providing any admissible evidence to support that “fact”. The request to find the  
18 loan was insured by FHA converts the motion to a Rule 56 motion for summary judgment. A Rule 56  
19 motion can only succeed where there is no genuine issue of material fact. Here, there is a significant  
20 issue of material fact that must first be decided because there is no admissible evidence to prove the  
21 loan is actually insured by FHA and no discovery has commenced to ascertain the validity of that  
22 claim. Plaintiff respectfully requests that the Court reconsider its previous ruling on this issue and  
23 deny the motion.

24 **B. Renfore’s Action is Not Barred by the Supremacy Clause**

25 Defendant has argued, and this Court agreed, that plaintiff’s quiet title action is preempted by  
26 the Supremacy Clause of the U.S. Constitution. To support this claim, Defendant cites the opinion by  
27 Judge Navarro in the case of Washington & Sandhill Homeowners Association v. Bank of America,  
28

1 2013 WL 4798565 (D. Nev. 2014), and this Court agreed. It is important to reiterate for the Court  
2 though, that unlike the present case, in the Washington & Sandhill case, Bank of America completed  
3 a foreclosure of its trust deed and acquired title to the property, which Bank of America then assigned  
4 by grant deed to the Department of Housing and Urban Development (“HUD”). Id. at 1-2. The court  
5 also ordered “the parties to file supplemental briefing regarding the applicability, or lack thereof, of  
6 the Property and Supremacy Clauses of the Constitution of the United States **due to the involvement**  
7 **of HUD in this case.**” Id. at 3. (emphasis added)

8 In Washington & Sandhill, Bank of America transferred title to HUD as required by the HUD  
9 regulations found in 24 CFR §§ 203.355-203.371 and HUD was a party to the action. In the present  
10 case, on the other hand, HUD is not a party to this case, and Defendant has failed to prove that  
11 Lakeview has conveyed title to the Property to HUD. At page 2 of its reply brief, Defendant quotes  
12 from the Washington & Sandhill case that the Supremacy Clause bars HOA foreclosure sales which  
13 “would have the effect of limiting the effectiveness of the remedies available to the United States.”  
14 Reply at 2:24-25.

15 Defendant has failed to produce evidence that the United States will ever have an interest in  
16 the Property involved in this case. At page 9 of its Reply, Defendant cites 24 C.F.R. § 203.500 as  
17 providing that noncompliance with HUD servicing guidelines “shall not be a basis for denial of  
18 insurance benefits, 24 C.F.R. § 203.500, and HUD has promulgated multiple regulations that  
19 explicitly give HUD the discretion to pay insurance claims even where statutory requirements are not  
20 met”. Reply at 9:10-13.

21 Defendant fails to mention 24 C.F.R. § 203.315, which is titled “Termination by conveyance  
22 to other than Commissioner” and provides as follows:

23 (a) For those mortgages to which the provisions of § 203.368 apply, **the**  
24 **contract of insurance shall be terminated under the following**  
**circumstances:**

25 (1) The mortgagee notifies the Commissioner that it will not convey  
26 title to the Commissioner and will not file a claim for the insurance  
benefits when:

27 (i) The mortgagee either acquires the property by any means, or  
28

1 (ii) Acquires the property and gives such notice during the  
2 redemption period; or

3 (2) The mortgagee notifies the Commissioner that it will not file a  
4 claim for the insurance benefits when:

5 (i) **The property is bid in and acquired at foreclosure by a  
6 party other than the mortgagee, or**

7 (ii) After foreclosure of the mortgaged property by the  
8 mortgagee the property is redeemed.

9 (b) For those mortgages to which the provisions as set forth in § 203.368 do  
10 not apply, **the contract of insurance shall be terminated under the  
11 following circumstances:**

12 (1) The mortgagee acquires the mortgaged  
13 property but does not  
14 convey it to the  
15 Commissioner;

16 (2) **The property is bid in and acquired at a foreclosure sale by a  
17 party other than the mortgagee;**

18 (3) After foreclosure the property is redeemed;

19 (4) After foreclosure and during the redemption period the mortgagee  
20 gives notice that it will not tender the property to the Commissioner.  
21 (emphasis added)

22 Moreover, 24 C.F.R. § 203.353 provides in relevant part:

23 **At the time of assignment of the mortgage,** the mortgagee shall certify to  
24 the Commissioner that:

25 (a) *Priority of mortgage to liens.* The mortgage is prior to all mechanics' and  
26 materialmen's liens filed of record, regardless of when such liens attach, **and  
27 prior to all liens and encumbrances,** or defects which may arise except  
28 such liens or other matters as my have been approved by the Commissioner .  
... (emphasis added)

Defendant has produced no evidence that it has submitted an application for insurance  
benefits or that the federal government has any obligation to insure Defendant's loan now that  
Defendant has allowed the Property to be foreclosed and its deed of trust to be extinguished.  
Defendant's failure to pay the super priority lien amount owed to the HOA means that Defendant can  
never comply with the requirements of 24 C.F.R. § 203.353.



1 At page 6, footnote 14 of its motion, Defendant asserts that 24 C.F.R. § 203.363 gives HUD  
2 the discretion to grant Defendant extra time to cure any regulatory non-compliance, but this section  
3 requires that the Property be conveyed to HUD while the Secretary “holds processing of the  
4 application for insurance benefits in abeyance” because it expressly provides that “in the alternative,  
5 **the Secretary may reconvey title to the property to the mortgagee, in which event the**  
6 **application for insurance benefits shall be considered as cancelled** without prejudice to the rights  
7 of the mortgagee to reapply for insurance benefits at a subsequent date.” (emphasis added)

8 Because the HOA foreclosure sale extinguished the deed of trust, Defendant can never  
9 foreclose its deed of trust and convey title to the Property to HUD as occurred in the Washington &  
10 Sandhill case. Defendant has produced no evidence that it has submitted an insurance claim or that  
11 the federal government has accepted, or would have any obligation to accept, Defendant’s insurance  
12 claim. Unless and until the Property is conveyed to the federal government, the HOA foreclosure  
13 sale in this case cannot possibly impair any “remedies available to the United States.” Defendant has  
14 also failed to prove its standing to make this argument on behalf of a federal agency that is not a party  
15 to this action. Consequently, the HOA foreclosure sale in this case did not violate the Supremacy  
16 Clause or Property Clause.

17 **C. If FHA Insurance is Deemed a Property Right, HUD Must Be Joined as a Necessary And**  
18 **Indispensable Party.**

19 If it is the Court’s ultimate ruling that FHA does insure the loan and that insurance means the  
20 federal government has a property interest in the Subject Property, HUD must be joined as a  
21 necessary and indispensable party under Rule 19.

22 Rule 19 provides,

23 A person who is subject to service of process and whose joinder will not  
24 deprive the court of jurisdiction over the subject matter of the action shall  
25 be joined as a party in the action if (1) in the person’s absence complete  
26 relief cannot be accorded among those already parties, or (2) the person  
27 claims an interest relating to the subject of the action and is so situated that  
28 the disposition of the action in the person’s absence may (i) as a practical  
matter impair or impede the person’s ability to protect that interest or (ii)  
leave any of the persons already parties subject to a substantial risk of  
incurring double, multiple, or otherwise inconsistent obligations by reason  
of the claimed interest. If the person has not been so joined, the court shall

1 order that the person be made a party. If the person should join as a  
2 plaintiff but refuses to do so, the person may be made a defendant, or, in a  
proper case, an involuntary plaintiff.

3 NRCP 19(a) (emphases added).

4 Lakeview has asserted that the loan which was previously secured to the property by way of a  
5 deed of trust was insured by FHA/HUD. See generally Motion to Dismiss and Reply to Motion to  
6 Dismiss. Lakeview further claims that FHA insurance barred the foreclosure from extinguishing  
7 Lakeview's deed of trust because it would impair FHA's federal property rights. Id. Pursuant to Rule  
8 19, HUD is a necessary and indispensable party which must be joined to the case.

9 Rule 19 requires joinder of a necessary and indispensable party where "complete relief cannot  
10 be accorded among those already parties" or "leave any of the persons already parties subject to a  
11 substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the  
12 claimed interest". Rule 19(a). There is no way to grant complete relief in the instant case without  
13 HUD as a party if it is determined that the FHA insurance is a property right. HUD is the only party  
14 who may determine what it intends on doing, or not doing with that property right. Lakeview does  
15 not hold HUD's property right, does not represent HUD and may not make that decision for HUD. In  
16 fact, if this Court denies the request to join HUD as a necessary and indispensable party, HUD is at  
17 risk of being subject to a significant financial burden it may otherwise not be subject to.

18 A person must be joined as a party where, "the person claims an interest relating to the subject  
19 of the action and is so situated that the disposition of the action in the person's absence may (i) as a  
20 practical matter impair or impede the person's ability to protect that interest...". Rule 19(a). If HUD  
21 is not brought into this action, it is at risk of being severely disadvantaged in that it cannot decide  
22 how it wishes to address the alleged property rights claimed by Lakeview. HUD is the only party  
23 who is able to choose how it wishes to deal with the instant action and should not be left to the whim  
24 of Lakeview to argue on its behalf. Especially considering Lakeview's interest in the instant action is  
25 to make a claim against the FHA insurance policy, something that will unquestionably cost HUD  
26 money. Lakeview's position as to the alleged property right may leave HUD with an obligation to  
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1 pay an insurance claim it would have otherwise not been required to pay if it could assert its own  
2 rights.

3 As plaintiff has fully briefed in its opposition already, Lakeview does not have standing to  
4 argue what HUD may or may not do with its property right. The property right, if any, rests only  
5 with HUD and HUD is the only party who can make a determination as to whether it chooses to  
6 exercise those rights or disclaim any interest in the Subject Property.

7 Plaintiff has only learned of HUD's potential involvement with this loan by way of  
8 Defendant's motion to dismiss. As such, he had no way of knowing HUD potentially insured the  
9 loan and would not have known to name the Secretary of Housing and Urban Development as a party  
10 to the action.

11 Defendant Lakeview should not be permitted to assert HUD's rights as HUD itself is the only  
12 entity that can decide which property it has an interest in and which property it does not.

13 However, it has become apparent that not only does Defendant Lakeview assert the loan is  
14 insured by FHA/HUD, but following the January 21, 2015 hearing, this Court also believes the loan is  
15 HUD insured and that interest would bar Renfroe from his claim. Therefore, Plaintiff requests this  
16 Court order HUD to be joined as a party to this action given all the allegations HUD is being deprived  
17 of property.

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1 **CONCLUSION**

2 Based upon the foregoing, the recent Nevada Supreme Court decision and current Nevada Law,  
3 Plaintiff respectfully requests that this Honorable Court:

- 4 1) Grant Plaintiff's request for reconsideration;  
5 2) Deny Defendants Motion to Dismiss;  
6 3) Grant leave to add HUD as a party to this action;  
7 4) Such other relief as the Court may deem appropriate.  
8

9 DATED this 26<sup>th</sup> day of January, 2015.

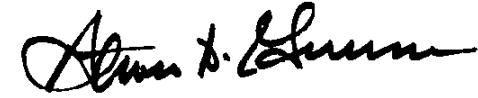
10 NOGGLE LAW PLLC  
11

12 By: / s / Paul R.M. Cullen, Esq. /  
13 Robert B. Noggle, Esq.  
14 Paul R.M. Cullen, Esq.  
15 376 East Warm Springs Road, Ste. 140  
16 Las Vegas, Nevada 89119  
17 *Attorney for Plaintiff*  
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Darren T. Brenner, Esq.  
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By: / s / Alexandra Hoops /  
An Employee of NOGGLE LAW PLLC



CLERK OF THE COURT

1 **SAO**

2 Robert B. Noggle, Esq.  
3 Nevada Bar No.: 11427  
4 NOGGLE LAW PLLC  
5 376 East Warm Springs Rd., Ste. 140  
6 Las Vegas, Nevada 89119  
7 Ph.: 702-450-6300 | Fax: 702-642-9766  
8 *Attorney for Plaintiff*

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

11 **KENNETH RENFROE,**  
12 **Plaintiff,**

CASE NO.: A-14-700520-C  
DEPT NO.: III

13 **vs.**

14 **LAKEVIEW LOAN SERVICING, LLC;**  
15 **RECONTRUST COMPANY, N.A.; BRIAN J.**  
16 **FERGUSON AND JENNIFER L. FERGUSON,**  
17 **Defendants.**

18 **STIPULATION AND ORDER**

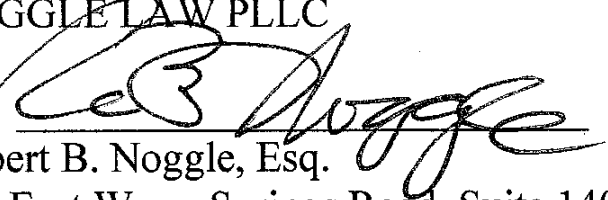
19 Plaintiff, Kenneth Renfroe ("Plaintiff"), by and through his counsel of record, Robert B.  
20 Noggle, Esq. of Noggle Law PLLC, and defendant, ReconTrust Company, N.A. ("ReconTrust"), by  
21 and through its counsel of record, Natalie L. Winslow, Esq. of Akerman LLP, hereby stipulate and  
22 agree as follows:

23 **WHEREAS:**

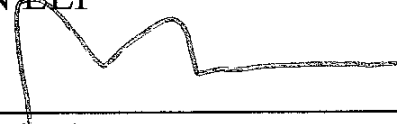
- 24 1. On May 9, 2014, Plaintiff filed its Complaint in this action seeking to quiet title to the  
25 property commonly known as 7736 Beach Falls Court, Las Vegas, Nevada ("Property").  
26 2. Plaintiff named ReconTrust as a defendant in this action.

27 **IT IS HEREBY STIPULATED AND AGREED** that ReconTrust has no claim to or interest in  
28 the Property.

1 NOGGLE LAW PLLC

2 By:   
3 Robert B. Noggle, Esq.  
4 376 East Warm Springs Road, Suite 140  
5 Las Vegas, Nevada 89119  
6 Attorney for Plaintiff

AKERMAN LLP

By:   
Natalie L. Winslow, Esq.  
1160 Town Center Drive, Suite 330  
Las Vegas, Nevada 89144  
Attorney for ReconTrust Company, N.A.

7 **ORDER**

8 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that ReconTrust Company,  
9 N.A. ("ReconTrust") has no claim to or interest in the property located at 7736 Beach Falls Court,  
10 Las Vegas, Nevada.

11 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that ReconTrust shall be  
12 dismissed from this action, without prejudice, because it has no claim to or interest in the Property.


13 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that each party shall bear its  
14 own attorney's fees and costs.

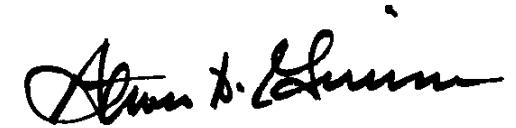
15 DATED this 13 day of January, 2015.

17   
18 DISTRICT COURT JUDGE

19 Respectfully submitted by:

20 NOGGLE LAW PLLC

21 By:   
22 ROBERT B. NOGGLE, ESQ.  
23 376 E. Warm Springs Road, Ste. 140  
24 Las Vegas, NV 89119  
25 Attorney for Plaintiff  
26  
27  
28



CLERK OF THE COURT

**NEO**  
Robert B. Noggle, Esq.  
Nevada Bar No.: 11427  
NOGGLE LAW PLLC  
376 East Warm Springs Rd., Ste. 140  
Las Vegas, Nevada 89119  
Ph.: 702-450-6300 | Fax: 702-642-9766  
Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

KENNETH RENFROE,  
Plaintiff,

CASE NO.: A-14-700520-C  
DEPT NO.: III

vs.

LAKEVIEW LOAN SERVICING, LLC;  
RECONTRUST COMPANY, N.A.; BRIAN J.  
FERGUSON AND JENNIFER L. FERGUSON,  
Defendants.

**NOTICE OF ENTRY OF ORDER**

TO: ALL INTERESTED PARTIES:

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that a **STIPULATION AND ORDER** has been entered on the 31<sup>st</sup> day of January, 2015, in the above captioned matter, a copy of which is attached hereto.

DATED this 2<sup>nd</sup> day of February, 2015.

NOGGLE LAW PLLC

By: / s / Robert B. Noggle, Esq. /  
Robert B. Noggle, Esq.  
376 East Warm Springs Road, Ste. 140  
Las Vegas, Nevada 89119  
Attorney for Plaintiff



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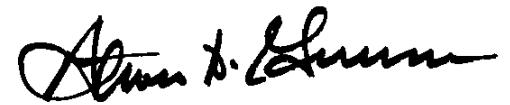
**CERTIFICATE OF MAILING**

I HEREBY CERTIFY that on the 2<sup>nd</sup> day of February, 2015, I served a photocopy of the foregoing **NOTICE OF ENTRY OF STIPULATION AND ORDER** by placing the same in a sealed envelope with first-class postage fully prepaid thereon and deposited in the United States mails addressed as follows:

Darren Brenner, Esq.  
Natalie Winslow, Esq.  
AKERMAN LLP  
1160 Town Center Dr., Ste. 330  
Las Vegas, NV 89144

DATED this 2<sup>nd</sup> day of February, 2015.

By: /s/ Jenna Lavecchia /  
An Employee of Noggle Law PLLC



CLERK OF THE COURT

**RIS**  
DARREN T. BRENNER, ESQ.  
Nevada Bar No. 8386  
NATALIE L. WINSLOW, ESQ.  
Nevada Bar No. 12125  
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natalie.winslow@akerman.com

*Attorneys for Defendant*  
*Lakeview Loan Servicing, LLC*

**EIGHTH JUDICIAL DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

KENNETH RENFROE,  
  
Plaintiff,  
  
v.  
LAKEVIEW LOAN SERVICING, LLC;  
RECONTRUST COMPANY, N.A.; BRIAN J.  
FERGUSON AND JENNIFER L. FERGUSON,  
  
Defendants.

Case No.: A-14-700520-C  
Dept. No. III

**LAKEVIEW LOAN SERVICING, LLC'S  
OPPOSITION TO MOTION FOR  
RECONSIDERATION**

Defendant Lakeview Loan Servicing, LLC opposes plaintiff Kenneth Renfroe's motion for reconsideration.

**I. INTRODUCTION.**

Absent limited circumstances, "[n]o motion once heard and disposed of may be renewed in the same cause." EDCR 2.24(a). The Court disposed of this case after a hearing on Lakeview's motion to dismiss on January 21, 2015. Renfroe had the opportunity to argue, both in the briefing of the motion and at the hearing, all reasons why he believed Lakeview's motion should be denied. Now, after the Court, being fully apprised of the position of the parties, has made its ruling, Renfroe

1 attempts to re-litigate the motion to dismiss. In doing so, Renfroe's motion ignores the standard  
2 required for reconsideration. Reconsideration is only appropriate where new issues of law or fact are  
3 raised that the parties were unable to raise at the time of the initial motion. Here, Renfroe fails to  
4 raise any new issues of law or fact that were not previously available to the parties or the Court. The  
5 Court should deny the motion.

6 **II. RELEVANT BACKGROUND.**

7 Renfroe filed his complaint on May 9, 2014. On November 20, 2014, Lakeview moved to  
8 dismiss the complaint based on the Supremacy and Property Clauses of the U.S. Constitution. The  
9 Court held a hearing on January 21, 2015. Lakeview requested the Court find that a Chapter 116  
10 foreclosure does not apply to FHA loans because FHA loans are governed by federal law. The Court  
11 granted Lakeview's motion. A written order has not yet issued.

12 On January 26, 2015, Renfroe moved the Court to reconsider its order on shortened time.  
13 But Renfroe does not point to any new issues of law or fact that would warrant the Court to grant  
14 the motion. Because the Court's order granting Lakeview's motion was not in error, the Court should  
15 deny Renfroe's motion for reconsideration.

16 **III. LEGAL STANDARD.**

17 A motion for reconsideration may only be brought in accordance with Rule 13(7) of the  
18 Rules of the District Courts for the State of Nevada, and EDCR 2.24, which both state:

19 No motion once heard and disposed of shall be renewed in the same cause, nor  
20 shall the same matters therein embraced be reheard, unless by leave of the court  
granted upon motion therefor, after notice of such motion to the adverse parties.

21 D.C.R. 13(7); E.D.C.R. 2.24(a).

22 "Only in very rare instances in which *new issues of fact or law are raised* supporting a ruling  
23 contrary to the ruling already reached should a motion for rehearing be granted." *Moore v. City of*  
24 *Las Vegas*, 92 Nev. 402, 404, 551 P.2d 244 (1976) (emphasis added). In *Moore*, the defendant  
25 moved for summary judgment, which the court denied. *Id.* The defendant then moved for a  
26 rehearing, which the court also denied. *Id.* The defendant filed a second motion for rehearing,  
27 which cited authorities previously overlooked by the defendant. *Id.* The court granted the motion  
28 for rehearing. *Id.* The Supreme Court reversed the district court, opining:

1  
2 The only feature which distinguishes the second motion for rehearing from the  
3 two previous motions is the citation of additional authorities for a proposition of  
4 law already set forth and adequately supported by reference to relevant authorities  
5 in the earlier motions. We note particularly that the second motion for rehearing  
6 raised no new issues of law and made reference to no new or additional facts.  
7 Under such circumstances the motion was superfluous and, in our view, it was an  
8 abuse of discretion for the district court to entertain it.

9 *Id.* at 405, 551 P.2d at 246.

10 The Nevada Supreme Court has also held that "[a] district court may reconsider a previously  
11 decided issue if substantially different evidence is subsequently introduced or the decision is clearly  
12 erroneous." *Masonry and Tile Contractors Assoc. of S. Nevada v. Jolley, Urga & Wirth, Ltd.*, 113  
13 Nev. 737, 741, 941 P.2d 486, 489 (1997). But the "clearly erroneous" standard is *not* a separate  
14 avenue for reconsideration in and of itself. In *Masonry*, the Nevada Supreme Court determined the  
15 district court properly decided that a previous judge's ruling in the case was "clearly erroneous"  
16 solely because the district court's decision was made "in light of what he considered to be new  
17 clarifying case law." *Id.* In other words, before a court may reconsider a prior ruling, there must  
18 *always* be "new issues of law or fact" supporting a contrary ruling.

19 Just as the defendant in *Moore*, Renfroe fails to identify any new issues of law or fact, which  
20 could not have been previously raised, warranting a motion for reconsideration. Instead, Renfroe  
21 argues the following:

- 22 • The Court applied the Rule 56 summary judgment standard, instead of the Rule 12(b)(5)  
23 motion to dismiss standard, because Lakeview argued FHA insures the loan in this case.  
24 Mot. at 7:4-7 ("Lakeview's motion to dismiss is not an attack upon the pleadings, but an  
25 argument that reaches outside of the pleadings and alleges FHA insures the loan. As such,  
26 the motion to dismiss should have been converted into one for summary judgment pursuant  
27 to NRCP 56."). The recorded deed of trust was not sufficient to show that the loan was  
28 subject to FHA statutes and regulations. Mot. at 8:2-4. The Court already disagreed with  
this argument.
- The Supremacy Clause does not bar Renfroe's claim because Lakeview did not produce  
evidence the United States will ever have a property interest in this case. Mot. at 9:15-16.

Renfroe, as before, conflates a supremacy (aka preemption) analysis with a property clause analysis.

- Reconsideration is appropriate because HUD must be joined as a party if FHA insurance is deemed a property right. Mot. at 11:19-21. Renfroe already failed to direct the Court to any viable authority or analysis that would require joinder of HUD in order to demonstrate that state law is preempted by federal law.

Each of these arguments were either argued during the briefing on the motion to dismiss, or Renfroe *could* have made these arguments during the briefing on the motion to dismiss. None of these "new" arguments are based on new issues of law or fact. Reconsideration is not appropriate.

#### IV. THE COURT APPLIED THE CORRECT STANDARD.

Even if the Court decided that argument related to the Rule 12(b)(5) standard, as opposed to the Rule 56 standard, is a new issue of law or fact appropriate for reconsideration, the Court applied the correct standard in this case. "If a motion to dismiss for failure to state a claim upon which relief can be granted has been filed, and matters outside the pleadings are presented to and not excluded by the trial court, the motion shall be treated as a motion for summary judgment." *Cummings v. City of Las Vegas Mun. Corp.*, 88 Nev. 479, 481, 499 P.2d 650, 651 (1972). "[T]he court may take into account *matters of public record*, orders, items present in the record of the case, and any exhibits attached to the complaint when ruling on a motion to dismiss for failure to state a claim upon which relief can be granted." *Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 858 P.2d 1258 (1993) (emphasis added).

Here, Lakeview argued in its motion to dismiss that the deed of trust indicates the loan was subject to FHA regulation and authority. Mot. at 3:10-17. By definition, the recorded deed of trust is a *matter of public record*. It was proper for the Court to consider the recorded deed of trust and its contents when deciding Lakeview's motion to dismiss.

And, Renfroe's assertion in the motion for reconsideration that Lakeview's argument regarding FHA "reaches outside of the pleadings" is incorrect. "Argument" in a motion to dismiss does not convert a motion to dismiss into a motion for summary judgment. Because the Court did

1 not rely on documents and facts outside the scope of the pleadings, the Court applied the correct  
2 standard when it granted Lakeview's motion to dismiss under Rule 12(b)(5).

3 **V. THE SUPREMACY CLAUSE BARS RENFROE'S LAWSUIT.**

4 Renfroe already argued in his opposition to the motion to dismiss that the Supremacy Clause  
5 did not bar his claim because Lakeview did not produce evidence the United States will ever have a  
6 property interest in this case. Opp. at 4:19-26 ("Lakeview cannot raise arguments reserved to  
7 someone else. There is no federal property that can be taken from Lakeview because they [*sic*] are  
8 not the federal government, nor do they [*sic*] represent them [*sic*].").

9 **First**, this issue was already raised by Renfroe and decided by this Court. Reconsideration  
10 should be denied on that basis alone.

11 **Second**, as Lakeview argued in its reply in support of the motion to dismiss, it is not the  
12 existence of a vested federal property interest that is at issue—rather, the issue is that extinguishment  
13 of a first secured interest of a mortgagee where the mortgage is governed by FHA statutes and  
14 regulations would operate to impede or condition the implementation of federal policies and  
15 programs and therefore must yield under the Supremacy Clause to the interests of the federal  
16 government. *Washington & Sandhill Homeowners Ass'n v. Bank of Am., N.A.*, No. 2:13-CV-01845-  
17 GMN, 2014 WL 4798565, at \*6 (D. Nev. Sept. 25, 2014) (quoting *Rust v. Johnson*, 597 F.2d 174,  
18 179 (9th Cir. 1979)).

19 Because the Supremacy Clause bars Renfroe's lawsuit, the Court should deny Renfroe's  
20 motion for reconsideration of its order granting Lakeview's motion to dismiss.

21 **VI. HUD IS NOT A NECESSARY PARTY.**

22 Renfroe could have moved on the basis that HUD was a necessary party to this action—he  
23 chose not to. Now that the Court ruled on the merits of the lawsuit, Renfroe attempts to argue he  
24 should have added HUD as a defendant in this action. But HUD is not a necessary party to decide  
25 the issues between Renfroe and Lakeview—HUD's presence is unnecessary to provide complete  
26 relief to the parties. See NRCP 19; *Humphries v. Eighth Judicial Dist. Court*, 129 Nev. Adv. Op. 85,  
27 at \*15 (Nov. 7, 2013). Rather, as this Court found, Lakeview's deed of trust remains against the  
28

1 property because the HOA's foreclosure interfered with the federal FHA program; therefore, the  
2 Supremacy Clause barred the sale.

3 And, in any event, Renfroe appears to attempt to repackage the "standing" argument he made  
4 in his opposition to the motion to dismiss—that Lakeview does not have standing to assert certain  
5 defenses in this case. That argument was already considered and rejected by the Court. It does not  
6 provide a basis for reconsideration of the Court's order granting Lakeview's motion to dismiss.

7 **V. CONCLUSION.**

8 The Court should deny Renfroe's motion for reconsideration.

9 DATED this 9th day of February, 2015.

10 **AKERMAN LLP**

11 /s/ Natalie L. Winslow

12 **DARREN T. BRENNER, ESQ.**

13 Nevada Bar No. 8386

14 **NATALIE L. WINSLOW, ESQ.**

15 Nevada Bar No. 12125

16 1160 Town Center Drive, Suite 330

17 Las Vegas, Nevada 89144

18 *Attorneys for Defendant Lakeview Loan Servicing, LLC*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of Akerman LLP, and that on this 9th day of February, 2015 I caused to be served a true and correct copy of foregoing **LAKEVIEW LOAN SERVICING, LLC'S OPPOSITION TO MOTION FOR RECONSIDERATION**, 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.

Robert B. Noggle, Esq.  
LAW OFFICES OF NOGGLE LAW PLLC  
376 E. Warm Springs Rd., Suite 140  
Las Vegas, NV 89144

*Attorneys for Plaintiff, Kenneth Renfroe*

*/s/ Lucille Chiusano*  
\_\_\_\_\_  
An employee of AKERMAN LLP



1 RPLY

2 Robert B. Noggle, Esq.

3 Nevada Bar No.: 11427

4 Paul R.M. Cullen, Esq.

5 Nevada Bar No.: 12355

6 NOGGLE LAW PLLC

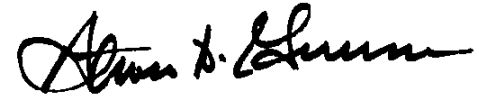
7 376 E. Warm Springs Rd., Ste. 140

8 Las Vegas, Nevada 89119

9 (702) 450-6300 | (702) 642-9766 FAX

10 Attorney for Plaintiff

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CLERK OF THE COURT

DISTRICT COURT  
CLARK COUNTY, NEVADA

KENNETH RENFROE,

Plaintiff,

vs.

LAKEVIEW LOAN SERVICING, LLC;  
RECONTRUST COMPANY, N.A.; BRIAN J.  
FERGUSON AND JENNIFER L. FERGUSON;

Defendants.

CASE NO.: A-14-700520-C  
DEPT NO.: III

**REPLY TO LAKEVIEW'S OPPOSITION TO PLAINTIFF'S MOTION FOR**  
**RECONSIDERATION ON ORDER SHORTENING TIME**

Plaintiff, Kenneth Renfroe, by and through his attorneys, Noggle Law, PLLC, hereby submits the following Reply to Lakeview's Opposition to Plaintiff's Motion for Reconsideration on Order Shortening Time. This reply is based upon the points and authorities contained herein together with attached exhibits as well as any argument requested by the Court at the time of hearing.

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 Plaintiff's argument that Lakeview's Motion to Dismiss should have been determined based  
4 upon a motion for summary judgment standard rather than a motion to dismiss is an issue ripe for  
5 rehearing. Rehearing is inherently within the discretion of the court. Bates v. Nev. Sav. & Loan  
6 Ass'n, 85 Nev. 441, 443-44, 456 P.2d 450, 452 (1969). Further, the Nevada Supreme Court has given  
7 leeway in rehearing of new issues should the District Court entertain them. See Tuxedo Int'l Inc. v.  
8 Rosenberg, 251 P.3d 690, 700 (Nev. 2011).

9 Here, Renfroe is contending the wrong legal standard was used in hearing the motion to  
10 dismiss and should be reheard on that ground. This is different than re-litigating the issues presented  
11 in Lakeview's motion to dismiss. The motion to dismiss argued that because it was an FHA loan, the  
12 case should be dismissed based upon the Washington & Sandhill case. This motion for  
13 reconsideration instead discusses that the motion to dismiss itself was decided based upon the wrong  
14 standard. Additionally, since argument on this issue, two Nevada district court judges have ruled  
15 opposite of Washington & Sandhill creating a new legal consideration.

16 **A. Legal Standard**

17 Lakeview cites to Moore v. city of Las Vegas for the proposition that the instant motion for  
18 reconsideration should be denied. Moore however is factually different than the instant case. Moore  
19 involved a case where a motion for summary judgment was denied followed by a motion for  
20 rehearing which was denied. Moore v. Las Vegas, 92 Nev. 402, 405, 551 P.2d 244, 246 (1976).  
21 After both of those events, elections took place and the judge who previously heard the motions lost  
22 the election. Id. The case was re-assigned and the party filed a new motion for reconsideration which  
23 was granted and the new judge granted summary judgment. Id. In filing the second motion for  
24 reconsideration, the Nevada Supreme Court noted that the argument in the second motion for  
25 reconsideration was virtually identical to the prior one and only referenced a few additional  
26 authorities for law already argued and was therefore improper. Id. Here, Renfroe's motion for  
27 reconsideration makes three arguments not previously addressed or briefed. First, the standard for  
28

1 review should have been based upon Rule 56 rather than Rule 12(b)(5). Second, Lakeview failed to  
2 prove the loan was actually insured by HUD. And third, if the Court determines FHA insurance is a  
3 property right, HUD is a necessary and indispensable party. None of those issues were presented or  
4 argued in the motion to dismiss. As such, each issue is ripe for rehearing.

5 Finally, rehearing is inherently within the discretion of the court. Should the Court decide to  
6 rehear the issue, it is permitted to do so. "The power to grant a rehearing, whether it be at the  
7 appellate level, SCR 34; or at the trial level, DCR 20; or whether it be in law or in equity, Grant  
8 Inventions Co. v. Grand Oil Burner Corporation, 145 A. 721 (N.J. 1929), is inherent and  
9 discretionary with the courts. Bates v. Nev. Sav. & Loan Ass'n, 85 Nev. 441, 443-44, 456 P.2d 450,  
10 452 (1969). The Nevada Supreme Court has also ruled that where the District Court rules on a  
11 motion for rehearing based upon new evidence, the Supreme Court may look at the new arguments  
12 on appeal. See Tuxedo Int'l Inc. v. Rosenberg, 251 P.3d 690, 700 (Nev. 2011).

13 **B. Lakeview's Reliance on a Recorded Deed Of Trust Does Not Prove The Loan Is**  
14 **Insured By FHA.**

15 In order for any of Lakeview's federal arguments to stand any weight and even be considered,  
16 Lakeview must prove the loan is actually insured by FHA. Not only have they failed to do so, but in  
17 order to prove it is insured by FHA outside evidence must be considered which converts the motion  
18 to dismiss into a motion for summary judgment.

19 Lakeview's only evidence the loan is insured by FHA was by way of attaching a copy of a  
20 recorded deed of trust to its motion to dismiss and stating, "the deed of trust indicates it is an FHA  
21 insured mortgage, and contains an FHA case number". Motion to Dismiss at 3:12-13. Lakeview  
22 then attempts to avoid the issue that it presented evidence outside of the pleadings to avoid deciding  
23 this issue based upon Rule 56 by arguing that the court may take into account matters of public  
24 record. It then contends the deed of trust recorded in 2008 is a matter of public record such that it is  
25 undeniable proof the loan is insured by FHA. Opposition to Motion for Reconsideration at 4:21-24.

26 The Breliant v. Preferred Equities Corp. case cited by Lakeview directs the Court to  
27 circumstances where it is appropriate to rule on outside evidence in a motion to dismiss. Here, there  
28

1 were no exhibits attached to the Complaint the Court could rely upon regarding FHA insurance.  
2 Further, there are no orders indicating the loan is insured by FHA or other items present in the record  
3 to suggest it is an FHA loan other than Lakeview's Motion to Dismiss. The only exception left is a  
4 "matter of public record". Although a recorded document may be a matter of public record, the  
5 contents of those documents are never reviewed by anyone. The Clark County Recorder merely  
6 records any document provided so long as the appropriate fee is paid. A recorded document in no  
7 way proves the contents are accurate simply because it is recorded. In the dispute at hand, the  
8 Recorder hasn't reviewed whether the loan is actually insured by FHA.

9 The deed of trust put forth by Lakeview was recorded in 2008, and although it contains an  
10 FHA case number, there is no evidence to support the contention the loan was actually insured by  
11 FHA at the time of the HOA foreclosure. Lakeview's own motion states that premiums must be paid  
12 under the purported FHA insurance. "The deed of trust states that mortgage insurance premiums  
13 must be paid to the Department of Housing and Urban Development (HUD) and provides for how  
14 those payments will be applied in the order of payments section of the deed of trust." Opposition to  
15 Motion for Reconsideration at 3:13-16. Lakeview has provided no evidence that such insurance  
16 premiums were paid. Additionally, HUD's own guidelines provide for circumstances where FHA  
17 loans are rejected after their issuance and the lender is required to refund mortgage insurance  
18 premiums. See Exhibit 1<sup>1</sup>, page 8-C-8. HUD's guidelines provide circumstances in which issued  
19 loans may be rejected. Therefore, although the deed of trust contains an FHA case number, there is  
20 still no evidence the loan is currently insured by FHA or was insured at the time of the HOA  
21 foreclosure. In order to make a finding the loan was insured by FHA this court must still look outside  
22 the pleadings (and recorded documents). As such, the motion should have been converted to a  
23 motion for summary judgment, which again, fails to prove the loan is FHA insured.

24 ///

25 ///

26 ///

---

27 <sup>1</sup> The Guidelines provided are in excess of 450 pages. Only the first page and relevant portions relating to situations and  
28 procedures where HUD would reject insuring a loan were provided. Should the Court desire a complete copy of the  
guidelines, Renfroe will provide it upon request.

1           **C. Other District Courts Have Rejected Washington & Sandhill**

2           Following the hearing on the motion to dismiss and Plaintiff's filing for the motion for  
3 reconsideration, two District Court judges have specifically rejected Lakeview's position and ruled  
4 that FHA Insurance does not invoke the federal Supremacy Clause.

5           On January 29, 2015, Judge Crockett, in Case Number A-14-706874-C rejected Lakeview's  
6 argument. No order has yet been issued but the minutes reflect Judge Crockett's ruling. They state,

7           BANK OF AMERICA, N.A.'s OPPOSITION TO PLTF'S MOTION TO  
8 DISMISS AND COUNTERMOTION FOR SUMMARY JUDGMENT BASED ON  
9 THE SUPREMACY AND PROPERTY CLAUSES OF THE U.S.  
10 CONSTITUTION...DEFT'S MOTION TO DISMISS The Court read all of the  
11 paperwork, and it is the Court's inclination to grant TRP Fund IV, LLC's motion to  
12 dismiss. It is the Court's take on this that the Bank has not taken steps to invoke the  
13 HUD insurance claim so there is no actual federal property interest and no conflict  
14 between State and Federal Law. The Bank says they tendered with no time line for  
15 performance. Nothing can happen until the Bank forecloses first. Argument by Mr.  
16 Shevorski in support of his motion i.e. and inquired if the Court is saying that the  
17 Supremacy Clause is not ripe because the Bank has not foreclosed. Court concurred  
18 and stated it cannot be ripe at this juncture. Steps would have had to have happened  
19 for this to apply. Since the First Trust exists, the Court does not think it can be done.  
20 You cannot invoke HUD's Insurance coverage after the fact. Further argument by Mr.  
21 Shevorski. The Court does not see any overt conduct by the Bank of America, and  
22 they did not demonstrate any intent to invoke HUD coverage. Further argument by  
23 Mr. Shevorski. Court queried Mr. Shevorski regarding the Supremacy and Property  
24 Clauses, and for them to be pertinent, where is the harm to the Federal Government,  
25 and further, what he is saying is that no matter how bad the Bank messes up, the  
26 Federal Government will come in and pay up under section 204. Mr. Shevorski  
27 concurred and further argued his position, and requested the Court if it is going to  
28 grant summary judgment that it be without prejudice. The Court feels that the Bank of  
America needs to find out from HUD if they were to turn in a claim at this point  
would it be honored. Further, HUD has gone to great lengths to address the language  
of various funds with regard to liens. Thereafter, COURT ORDERED, countermotion  
for summary judgment is DENIED, and the motion to dismiss is GRANTED WITH  
PREJUDICE as to commercial reasonableness, Supremacy and Property Clauses. Mr.  
Shevorski stated his point of concern is that the HOA lien is inchoate as he wants the  
right to refile his lawsuit, and requested leave to amend. Court informed Mr.  
Shevorski that he has to file a motion, and he cannot reassert these claims. This case  
is DISMISSED. The Court FINDS that the Supremacy and Property Clauses do not  
apply to this case. Those issues are foreclosed and cannot be brought up again. Mr.  
Wright stated Pltf would have to amend their Complaint. Court advised counsel that  
he cannot file a motion to amend his Complaint in this case because this case is  
dismissed. Court directed Mr. Wright to prepare the Order and submit to counsel to  
approve as to form and content. CLERK'S NOTE: 2/11/15 Minute Order AMENDED  
to correct the verbiage from "right" to "ripe" in two places. (tl)

Minutes from Case Number A-14-706874-C, January 29, 2015.

Following that decision, Judge Leavitt, in case number A-14-694471-C, ruled that SFR  
Investments applied in a case involving FHA Insurance. Judge Leavitt was not nearly as explicit in

1 her ruling as Judge Crockett, but the result is the same. She rejected Washington & Sandhill in favor  
2 of SFR Investments. No Order has yet been filed but the minutes reflect her ruling.

3 MIDFIRST BANK'S MOTION FOR SUMMARY JUDGMENT Mr. Beckom argued  
4 in support of NRS 117 applying, instead of NRS 116. Further arguments as to  
5 grandfather clause, and super priority lien. Mr. Cullen opposed the Motion; and  
6 argued NRS 116.1206 is the correct statute. Additional arguments were made as to  
Washington vs. Sandhill case law, and Gloria Navarro's findings. COURT  
ORDERED, Motion DENIED as SFR applies. Mr. Cullen to prepare the joint order.

Minutes from Case Number A-14-694471-C, February 9, 2015.


7 Renfroe urges the Court to reconsider its position regarding Washington and Sandhill based  
8 upon recent decisions by other District Court Judges.

9 **CONCLUSION**

10 Based upon the foregoing, Renfroe requests this court vacate its prior ruling on Lakeview's motion to  
11 dismiss and deny the motion.

12  
13 DATED this 13<sup>th</sup> day of February, 2015.

14 NOGGLE LAW PLLC

15  
16 By:   
17 Robert B. Noggle, Esq.  
18 Paul R.M. Cullen, Esq.  
19 376 East Warm Springs Road, Ste. 140  
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21 *Attorney for Plaintiff*  
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**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5, NEFCR 9, and EDCR 8.05, I hereby certify that I am an employee of  
NOGGLE LAW PLLC, and on the 13<sup>th</sup> day of February, 2015, an electronic copy of the foregoing  
**REPLY TO LAKEVIEW'S OPPOSITION TO PLAINTIFF'S MOTION FOR**  
**RECONSIDERATION ON ORDER SHORTENING TIME** was served on opposing counsel via  
the Court's electronic service system to the following counsel of record:

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DATED this 13<sup>th</sup> day of February, 2015.

By: / s / Alexandra Hoops /  
An Employee of Noggle Law PLLC

# Exhibit 1

# Exhibit 1



# HUD 4155-2, Lender's Guide to the Single Family Mortgage Insurance Process

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## Chapter 1. Mortgage Insurance Program Overview

### Section A. General Information on FHA Mortgage Insurance Programs and the Mortgage Insurance Process, and Loan Origination Requirements/Restrictions

Overview.....	1-A-1
1. Overview of FHA Single Family Mortgage Insurance Programs .....	1-A-2
2. Overview of the Mortgage Loan Application and Insurance Endorsement Process .....	1-A-7
3. Restrictions on the Use of Sponsored Third-Party Originators .....	1-A-11

### Section B. Fair Housing and Other Regulatory Requirements

Overview.....	1-B-1
1. General Information on Fair Housing and Other Regulatory Requirements .....	1-B-2
2. The Fair Housing Act.....	1-B-4
3. Affirmative Fair Housing Marketing.....	1-B-6
4. Fair Credit Reporting Act (FCRA) .....	1-B-8
5. Equal Credit Opportunity Act (ECOA) .....	1-B-9
6. Executive Order 11063 (as Amended by Executive Order 12259) .....	1-B-12
7. Helping Families Save Their Homes Act and Other Housing Act Requirements....	1-B-13
8. Reporting Fraud and Abuse .....	1-B-21

### Section C. Home Mortgage Insurance Programs

Overview.....	1-C-1
1. General Information on Home Mortgage Insurance Programs.....	1-C-2
2. Section 203(b) Home Mortgage Insurance.....	1-C-3
3. Section 203(h) Home Mortgage Insurance for Disaster Victims.....	1-C-6
4. Section 203(i) Home Mortgage Insurance for Outlying Areas .....	1-C-9
5. Section 203(k) Rehabilitation Home Mortgage Insurance and Streamlined Limited Repair Program .....	1-C-11
6. Section 203(n) Single Family Cooperative Program .....	1-C-17
7. Section 220(d)(3)(A) Urban Renewal Mortgage Insurance.....	1-C-19
8. Section 220(h) Insured Improvement Loans-Urban Renewal Areas .....	1-C-23
9. Section 223(e) Miscellaneous Housing Insurance .....	1-C-25
10. [TBD].....	1-C-27
11. Section 234(c) Mortgage Insurance for Condominium Units.....	1-C-28
12. Section 238(c) Mortgage Insurance in Military Impacted Areas (MIAs).....	1-C-31
13. Section 245(a) Graduated Payment Mortgage (GPM) and Growing Equity Mortgage (GEM).....	1-C-32

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*Continued on next page*

## 2. Overview of the Mortgage Loan Application and Insurance Endorsement Process, Continued

### 4155.2 1.A.2.a Loan Application and Endorsement Process Overview (continued)

Stage	Description
9	<p>Upon receipt of the case binder from a non-LI lender, the HOC</p> <ul style="list-style-type: none"> <li>• logs the closing package into FHAC</li> <li>• performs a pre-endorsement review, and</li> <li>• issues the <ul style="list-style-type: none"> <li>– Mortgage Insurance Certificate (MIC), or</li> <li>– Non-Endorsement Notice/Notice of Rejection (NOR).</li> </ul> </li> </ul>
10	<p>The HOC completes insurance endorsement processing using the logging and endorsement functions in FHAC.</p> <p><b>Result:</b> Once the loan is endorsed, FHAC generates an <u>MIC</u> for the lender to download.</p> <p><b>References:</b> For more information on</p> <ul style="list-style-type: none"> <li>• the MIC, see <u>HUD 4155.2 8.C.6</u>, and</li> <li>• FHA Connection, see <ul style="list-style-type: none"> <li>– <u>HUD 4155.2 1.D</u>, and</li> <li>– the <i>FHA Connection Guide</i>.</li> </ul> </li> </ul>
11	<p>To ensure that mortgage lenders understand and comply with FHA requirements, selected case binders are chosen for PETR by the HOCs.</p> <p><b>Reference:</b> For more information on PETRs, see <u>HUD 4155.2 9.C</u>.</p>

## 1. Overview of the Loan Submission and Endorsement Process, Continued

### Loan Submission and Endorsement Process for Non-LI Lenders (continued)

Stage	Description
4	<p>If the loan/case binder is</p> <ul style="list-style-type: none"> <li>• <i>acceptable</i>, the <u>HOC</u> issues an electronic Mortgage Insurance Certificate (MIC) in FHAC that the lender may print as needed, or</li> <li>• <i>unacceptable/ineligible</i> for insurance endorsement as received, the <u>HOC</u> <ul style="list-style-type: none"> <li>– issues an electronic <i>Non-Endorsement Notice</i>, (commonly known as the Notice of Return (NOR)) to the lender</li> <li>– prints a copy for the FHA case binder, and</li> <li>– mails the case binder back to the lender for corrective action.</li> </ul> </li> </ul> <p><b>Note:</b> The lender may resubmit the case binder for insurance endorsement reconsideration, in which case the process would begin again at Stage 2.</p> <p><b>Reference:</b> For more information on the</p> <ul style="list-style-type: none"> <li>• <u>MIC</u>, see <u>HUD 4155.2 8.C.6</u></li> <li>• <u>FHA Connection</u>, see <ul style="list-style-type: none"> <li>– <u>HUD 4155.2 1.D</u>, and</li> <li>– the <u>FHA Connection User Guide</u>, available at <a href="https://entp.hud.gov/idapp/html/mrtg-pkg.cfm">https://entp.hud.gov/idapp/html/mrtg-pkg.cfm</a>.</li> </ul> </li> </ul>
5	<p>To ensure that lenders understand and comply with FHA requirements, the <u>HOC</u> chooses selected case binders for post endorsement technical review (PETR) by HOC staff.</p> <p><b>References:</b> For more information on <u>PETRs</u>, see</p> <ul style="list-style-type: none"> <li>• <u>HUD 4155.2 8.C.1.e</u>, and</li> <li>• <u>HUD 4155.2 9.B.1</u></li> </ul>

*Continued on next page*

## 1. Overview of the Loan Submission and Endorsement Process, Continued

### Loan Submission and Endorsement Process for LI Lenders (continued)

Stage	Description
6	<p>If, upon review, the case binder is</p> <ul style="list-style-type: none"> <li>• <i>acceptable</i>, the <u>HOC</u> issues an electronic <u>MIC</u> in the <u>FHAC</u> that the lender may print as needed, or</li> <li>• <i>unacceptable/ineligible</i> for insurance endorsement as received, the HOC <ul style="list-style-type: none"> <li>– issues an electronic <i>Non-Endorsement Notice</i>, (commonly known as the Notice of Return (NOR)) to the lender</li> <li>– prints a copy for the FHA case binder, and</li> <li>– mails the case binder back to the lender for corrective action.</li> </ul> </li> </ul> <p><b>Note:</b> The lender may resubmit the case binder for insurance endorsement reconsideration, in which case the process would begin again at Stage 2.</p> <p><b>References:</b> For more information on the</p> <ul style="list-style-type: none"> <li>• MIC, see <u>HUD 4155.2 8.C.5</u></li> <li>• FHA Connection, see <ul style="list-style-type: none"> <li>– <u>HUD 4155.2 1.D</u>, and</li> <li>– the FHA User Guide on the FHA Connection, available at <a href="https://entp.hud.gov/idapp/html/mrtg-pkg.cfm">https://entp.hud.gov/idapp/html/mrtg-pkg.cfm</a>, and</li> </ul> </li> <li>• Lender Insurance Guide, see <a href="http://www.hud.gov/offices/hsg/sfh/lender/guide071907.pdf">http://www.hud.gov/offices/hsg/sfh/lender/guide071907.pdf</a>.</li> </ul>
7	<p>To ensure that lenders understand and comply with FHA requirements, the <u>HOC</u> chooses selected case binders for post endorsement technical review (PETR) by its staff.</p> <p><b>References:</b> For more information on PETRs, see</p> <ul style="list-style-type: none"> <li>• <u>HUD 4155.2 8.C.1.e</u>, and</li> <li>• <u>HUD 4155.2 9.B.1</u></li> </ul>

# 1. General Information on FHA Loan Processing and Review, Continued

## 4155.2 8.C.1.b HOC Actions Upon Receipt and Review of the Uniform Case Binder

Upon receipt of the uniform case binder, the HOC conducts a pre-endorsement review to determine if

- the request for endorsement and the case binder are complete, and
- all of the necessary documents are present and signed.

The table below indicates the ~~actions that~~ the HOC takes upon completing the pre-endorsement review.

If the uniform case binder ...	Then the HOC ...
<i>meets</i> FHA guidelines	<ul style="list-style-type: none"> <li>• completes endorsement processing, and</li> <li>• issues an electronic Mortgage Insurance Certificate (eMIC), acknowledging that FHA has insured the mortgage.</li> </ul> <p><b>Note:</b> The lender may print or download the MIC from the FHA Connection (FHAC).</p>
<i>does not meet</i> FHA guidelines	<ul style="list-style-type: none"> <li>• issues a <i>Non-Endorsement Notice/Notice of Return</i> (NOR) to the lender, specifying the deficiencies and corrective action needed, and</li> <li>• returns the case binder to the lender reflected in the <u>FHAC</u> unless special circumstances have been specified.</li> </ul>

*Continued on next page*

## 2. Non-LI Loan Endorsement Processing, Continued

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### 4155.2 8.C.2.c Handling Loans That Are Ineligible for Endorsement

If the HOC determines that the mortgage is ineligible for insurance endorsement, FHA issues an electronic *Non-Endorsement Notice/Notice of Return* (NOR) on the Case Query screen in the FHAC, which includes

- the reasons for non-endorsement, and
- any corrective actions that the lender must take.

If the case is permanently rejected for insurance endorsement, the NOR must include instructions to the lender to notify the borrower

- that he/she does not have an FHA-insured loan, and
- of the circumstances that made the loan ineligible for FHA insurance.

The lender must also

- obtain a refund of both the upfront mortgage insurance premium (UFMIP) and any periodic mortgage insurance premium (MIP) paid by or on behalf of the borrower, and
- apply the refund to the principal balance of the loan.

**Note:** Space is limited on the Case Query screen, so it is possible that the complete reason for the NOR may not be visible. The lender must wait to receive the return case binder prior to responding to the NOR. Responses are not acceptable without the case binder. In some instances, the HOC may retain the case binder and provide guidance to the lender on how to submit a response.

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## 5. Excessive Loan Amounts, Continued

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**4155.2 8.C.5.b**  
**Loans That**  
**Exceed the**  
**Statutory Loan**  
**Limit**

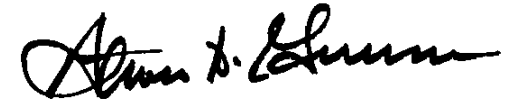
If a loan amount exceeds the statutory limit

- FHA Connection/Computerized Homes Underwriting System (FHAC/CHUMS), automatically rejects the case for endorsement
- FHA
  - issues a Non-Endorsement Notice, commonly known as a Notice of Rejection (NOR), to the lender, and
  - returns the case binder and NOR to the lender with instructions to provide evidence of a principal reduction to an insurable amount, and
- FHA issues the MIC electronically, with the reduced mortgage amount, upon receipt of evidence of the principal reduction to an insurable amount.

**Note:** Depending upon the size of the principal reduction, the monthly principal and interest payment amount on the MIC may or may not match the note. The MIC must *not* be manually changed to agree with the note. If the lender wants the MIC to match the note, it must re-close the loan or amend it to an insurable amount.

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*Continued on next page*



CLERK OF THE COURT

**ORDR**

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*Attorneys for Defendant  
Lakeview Loan Servicing, LLC*

DISTRICT COURT  
CLARK COUNTY, NEVADA

KENNETH RENFROE,

Plaintiff,

v.

LAKEVIEW LOAN SERVICING, LLC;  
RECONTRUST COMPANY, N.A.; BRIAN J.  
FERGUSON AND JENNIFER L. FERGUSON,

Defendants.

Case No.: A-14-700520-C

Dept. No. III

**ORDER GRANTING LAKEVIEW LOAN  
SERVICING, LLC'S MOTION TO  
DISMISS**

This Court heard Lakeview Loan Servicing, LLC's motion to dismiss complaint based on the Supremacy and Property Clauses of the U.S. Constitution on January 21, 2015. The Court granted the motion and Plaintiff filed a motion for reconsideration. On February 18, 2015, the court granted reconsideration and maintained its initial ruling by granting dismissal. Natalie Winslow appeared on behalf of Lakeview Loan Servicing, LLC, and Paul Cullen appeared on behalf of Kenneth Renfroe.

Plaintiff's motion for reconsideration was based upon the argument that the Court's ruling on the motion to dismiss was in error due to a misapplication of law. Plaintiff argued that the motion to dismiss should have been converted to a motion for summary judgment because there was no admissible evidence to show the loan in question was an FHA insured loan at the time of the foreclosure sale. Plaintiff argued the only evidence Lakeview provided to support the allegation the

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1 loan was FHA insured was the deed of trust recorded on the property at the time the former owner  
2 purchased the property. Plaintiff argued FHA has regulations that permit it to reject loans after a  
3 loan is issued and that the recorded deed of trust was insufficient evidence to show FHA actually  
4 insured the loan. Plaintiff argued that, at a minimum, Lakeview should be required to provide some  
5 admissible evidence to support FHA actually insured the loan at the time of foreclosure. Such  
6 evidence would convert the motion to dismiss into a motion for summary judgment which would  
7 require some discovery to ascertain whether FHA insured the loan. Defendant argued the court  
8 could take judicial notice of recorded documents and offered the Deed of Trust with an FHA case  
9 number as evidence that the loan was insured by FHA. Lastly, Plaintiff pointed to other State  
10 district Courts that had ruled the FHA insurance was not a bar to HOA foreclosure.

11 The Court granted rehearing based upon the theory there was a misapplication of law. The  
12 Court then found that the deed of trust was sufficient evidence the loan was insured by  
13 FHA. Further, the Court did not consider other state district courts' rulings persuasive and  
14 maintained its stance that *Washington & Sandhill* applied barring the foreclosure based upon the  
15 Supremacy Clause and Property Clause.

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**ORDER**

**IT IS ORDERED** that Plaintiff's motion for reconsideration is **GRANTED**.

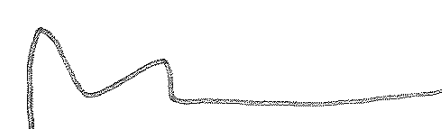
**IT IS FURTHER ORDERED** that Lakeview Loan Servicing, LLC's motion to dismiss complaint based on the Supremacy and Property Clauses of the U.S. Constitution is **GRANTED**.

DATED this 18 day of August, 2015.

  
DISTRICT COURT JUDGE

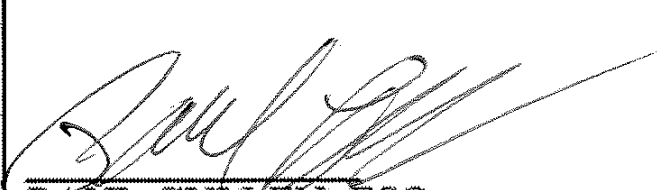
Submitted by:

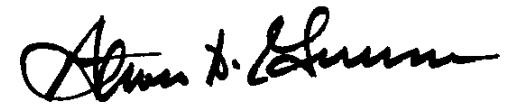
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CLERK OF THE COURT

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15  
16 **EIGHTH JUDICIAL DISTRICT COURT**  
17 **CLARK COUNTY, NEVADA**

18 **KENNETH RENFROE,**

19 Plaintiff,

20 v.

21 **LAKEVIEW LOAN SERVICING, LLC;**  
22 **RECONTRUST COMPANY, N.A.; BRIAN J.**  
23 **FERGUSON AND JENNIFER L. FERGUSON,**

24 Defendants.

Case No.: A-14-700520-C

Dept. No. III

**NOTICE OF ENTRY OF ORDER  
GRANTING LAKEVIEW LOAN  
SERVICING, LLC'S MOTION TO  
DISMISS**

25 PLEASE TAKE NOTICE that the Order Granting Lakeview Loan Servicing, LLC's Motion  
26 To Dismiss has been entered on August 27, 2015, a copy of which is attached hereto.

27 DATED this 8th day of October, 2015.

28 **AKERMAN LLP**

/s/ Natalie L. Winslow

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**CERTIFICATE OF SERVICE**

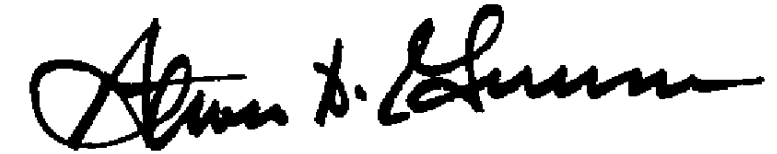
I HEREBY CERTIFY that I am an employee of Akerman LLP, and that on this 8th day of October, 2015 and pursuant to NRCP 5, I caused to be served a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER GRANTING LAKEVIEW LOAN SERVICING, LLC's MOTION TO DISMISS**, in the following manner:

**(ELECTRONIC SERVICE)** Pursuant to Administrative Order 14-2, the above-referenced document was electronically filed on the date hereof & 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.

Robert B. Noggle, Esq.  
LAW OFFICES OF NOGGLE LAW PLLC  
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Las Vegas, Nevada 89144

*Attorneys for Plaintiff Kenneth Renfroe*

/s/ Allen G. Stephens  
An employee of AKERMAN LLP



CLERK OF THE COURT

**ORDR**

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*Attorneys for Defendant  
Lakeview Loan Servicing, LLC*

DISTRICT COURT  
CLARK COUNTY, NEVADA

KENNETH RENFROE,

Plaintiff,

v,

LAKEVIEW LOAN SERVICING, LLC;  
RECONTRUST COMPANY, N.A.; BRIAN J.  
FERGUSON AND JENNIFER L. FERGUSON,

Defendants.

Case No.: A-14-700520-C

Dept. No. III

**ORDER GRANTING LAKEVIEW LOAN  
SERVICING, LLC'S MOTION TO  
DISMISS**

This Court heard Lakeview Loan Servicing, LLC's motion to dismiss complaint based on the Supremacy and Property Clauses of the U.S. Constitution on January 21, 2015. Darren Brenner appeared on behalf of Lakeview Loan Servicing, LLC, and Paul Cullen appeared on behalf of Kenneth Renfroe. The Court, having read the briefing and heard the arguments of counsel, finds as follows:

**FINDINGS OF FACT**

1. Brian and Jennifer Ferguson (the **borrowers**) purchased property located at 7736 Beach Falls Court, Las Vegas, Nevada 89149 in May of 2008.
2. The borrowers borrowed \$172,296.00 from Countrywide Bank, FSB to finance the purchase.
3. The deed of trust indicates it is an FHA insured mortgage, and contains an FHA case number.

1 4. The deed of trust states that mortgage insurance premiums must be paid to the Department of  
2 Housing and Urban Development (**HUD**) and provides for how those payments will be applied in  
3 the order of payments section of the deed of trust.

4 5. The FHA insured deed of trust was eventually assigned to Lakeview on August 1, 2013.

5 6. On June 5, 2013, Nevada Association Services, Inc. (**NAS**), as agent for Desert Creek HOA,  
6 recorded a notice of delinquent assessment lien against the property.

7 7. On October 11, 2013, NAS, as agent for the HOA, recorded a notice of default.

8 8. NAS, as agent for the HOA, recorded a notice of foreclosure sale on February 25, 2014.

9 9. On April 18, 2014, NAS sold the property to Renfroe.

10 10. Per the foreclosure deed, Renfroe purchased the property for \$20,000.00.

11 11. The taxable value of the property at the time of the sale was \$135,580.00

## 12 CONCLUSIONS OF LAW

13 A. The Supremacy Clause bars Nevada law from allowing an HOA foreclosure to extinguish a  
14 federally insured security interest. *See, e.g., Washington & Sandhill Homeowners Ass'n v. Bank of*  
15 *Am., N.A.*, No. 2:13-cv-01845-GMN-GWF, 2012 WL 4798565 (D. Nev. Sept. 25, 2014).

16 B. Chapter 116 of the Nevada Revised Statutes impairs federal law in the context of FHA loans  
17 in at least two respects. **First**, Chapter 116, per *SFR Investments*, purports to create a lien that is  
18 superior to the deed of trust and the FHA's interest in the property. *SFR Invs. Pool 1 v. U.S. Bank*,  
19 130 Nev. Adv. Op. 75, 334 P.3d 408 (2014). The lien—by its nature as a purported senior lien—  
20 diminishes the value of the FHA's interest, which is not permitted under the Supremacy Clause.  
21 **Second**, a foreclosure that purports to extinguish the deed of trust does not just diminish the FHA's  
22 interest, it nullifies the FHA's interest. The Supremacy Clause does not allow state law to operate in  
23 that manner.

24 C. Accordingly, the HOA's lien was not superior, and the foreclosure sale, even if valid under  
25 Nevada law, does not extinguish the deed of trust.

26 D. The Property Clause of the U.S. Constitution provides an independent basis for the Court to  
27 grant Lakeview's motion to dismiss.


28 E. The FHA insurance on Lakeview's deed of trust causes the security interest to be property of

1 the United States. The mortgage interest, combined with the mortgagee's obligation to convey title  
2 to the federal government if the borrower defaults, creates a federal protected by the Property  
3 Clause. *Washington & Sandhill Homeowners Ass'n v. Bank of America, N.A.*, No. 2:13-cv-01845-  
4 GMN-GWF, 2014 WL 4798565, at \*6 (D. Nev. Sept. 25, 2014). An HOA cannot foreclose on the  
5 property, including the FHA's property interest in the deed of trust.

6 **ORDER**

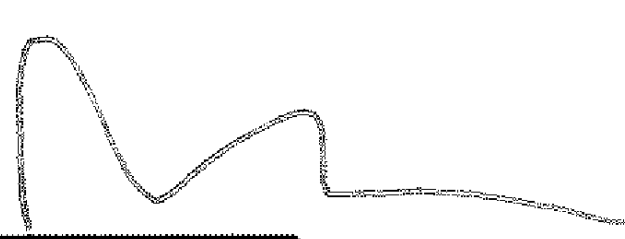
7 **IT IS ORDERED** that Lakeview Loan Servicing, LLC's motion to dismiss complaint based  
8 on the Supremacy and Property Clauses of the U.S. Constitution is **GRANTED**.

9 DATED this 27 day of August, 2015.

10  
11   
12 DISTRICT COURT JUDGE


13 Submitted by:

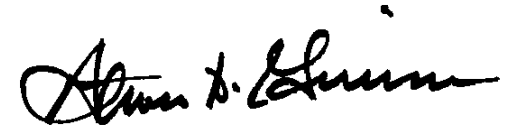
14 **AKERMAN LLP**

15   
16 DARREN T. BRENNER, ESQ.  
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*Attorneys for Lakeview Loan Servicing, LLC*

20 Approved as to Form and Content by:

21 **NOGGLE LAW**

22   
23 PAUL CULLEN, ESQ.  
24 Nevada Bar No. 12355  
25 376 E. Warm Springs Road  
26 Suite 140  
Las Vegas, Nevada 89119  
*Attorneys for Plaintiff*



CLERK OF THE COURT

TRAN

**EIGHTH JUDICIAL DISTRICT COURT  
CIVIL/CRIMINAL DIVISION  
CLARK COUNTY, NEVADA**

KENNETH RENFROE,	)	CASE NO.	A-14-700520
	)		
Plaintiff,	)	DEPT. NO.	III
	)		
vs.	)		
	)		
LAKEVIEW LOAN SERVICING, LLC, et al,	)		
	)		
Defendants.	)		

BEFORE THE HONORABLE DOUGLAS W. HERNDON, DISTRICT COURT JUDGE  
WEDNESDAY, JANUARY 21, 2015

**TRANSCRIPT RE:**  
LAKEVIEW LOAN SERVICING, LLC'S MOTION TO DISMISS COMPLAINT  
BASED ON THE SUPREMACY AND PROPERTY CLAUSES  
OF THE U.S. CONSTITUTION

**APPEARANCES:**

For the Plaintiff:	PAUL CULLEN, ESQ.
For Defendant Lakeview Loan Servicing, LLC:	DARREN T. BRENNER, ESQ.

RECORDED BY: Sara Richardson, Court Recorder



1 CLARK COUNTY, NEVADA

WEDNESDAY, JANUARY 21, 2015

2 **PROCEEDINGS**

3 (PROCEEDINGS BEGAN AT 9:37:25 A.M.)

4 THE COURT: Okay, back to the Lakeview matter. All right, this is on  
5 defendant's motion.

6 MR. BRENNER: Good morning, Your Honor. Darren Brenner for Lakeview.

7 THE COURT: Thank you.

8 MR. CULLEN: Good morning, Your Honor. Paul Cullen for Kenneth Renfroe.

9 THE COURT: Thank you. All right, this is on for Lakeview's motion to  
10 dismiss. Mr. Brenner.

11 MR. BRENNER: May I take the podium?

12 THE COURT: Yeah.

13 MR. BRENNER: So my eyes are closer to my notes. We're asking essentially  
14 that this Court adopt the opinion of Judge Navarro in the Washington & Sandhill case  
15 that was issued one week after the SFR opinion came out. As I'm sure the Court is  
16 now aware, under the Washington & Sandhill opinion, Judge Navarro's opinion found  
17 that the SFR decision in a Chapter 116 foreclosure really the super priority doesn't  
18 apply to FHA loans because FHA loans, as the name implies, a Federal Housing  
19 Authority loan is governed by federal law. And under the supremacy clause, a state  
20 law that conflicts with a federal law is preempted.

21 We briefed in detail the reasons why the federal program conflicts with  
22 the state law, so I won't go into great detail, but I did want to just highlight a couple  
23 of the issues that we have that we've put in our briefs.

24 THE COURT: Okay.

1 MR. BRENNER: Obviously the mission of FHA is to put people into homes.  
2 And again, as we've briefed based on FHA's own publications, it's to put a specific  
3 subset of the population in homes, first-time buyers and those who otherwise  
4 couldn't afford to make their down payment, so they need FHA. The congressional  
5 mandate in creating this is to put people in homes. So we already right there have  
6 a congressional intent behind these statutes of putting people in homes.

7 Per HUD's publications, which we've also briefed, there's also an  
8 intent of economic stimulus. The more lenders are encouraged to lend because  
9 they feel confident in their loans, the more money that there is that's infused into  
10 the economy. These are the stated objectives. It's really not our role here today  
11 to question these objectives, only recognize that they are congressional objectives  
12 that they attempt to achieve with the statute.

13 We can see in the HUD regulations themselves how they regulate  
14 exactly what a bank can do when it comes to foreclosure. For example, as we  
15 briefed I think in greater detail in our reply, a lender can't just foreclose, a lender  
16 has to engage in pre-foreclosure activity such as forbearance, financial counseling,  
17 loan modification attempts. On top of that, even if there is going to be a foreclosure,  
18 FHA regulations have a strict and explicit regime of what you have to do before  
19 foreclosure; another example where you don't default to Nevada law, you default to  
20 HUD regulations on what you have to do before you can foreclose on one of these  
21 properties.

22 Even beyond that, if you have to foreclose on one of these properties,  
23 the federal statutes give HUD the right at that point in time to take title to the  
24 property. And I think what I've just described goes a little bit beyond Washington

1 & Sandhill, but it's additional reasoning as to why the Federal Government occupies  
2 this particular space. I think what Judge Navarro focused on was the fact that HUD  
3 can never take title to the property if the HOA is allowed to strip HUD of its ability to  
4 take title to the property, which is in and of itself a valid reason, but we can see that  
5 the reasons go beyond that.

6           You know, I think the relevant section of Washington & Sandhill is  
7 the quote, if I may read it: "Because a homeowners association foreclosure under  
8 Nevada Revised Statute 116.3116 on a property with a mortgage insured under the  
9 FHA program would have the effect of limiting the effectiveness of the remedies  
10 available to the United States, the supremacy clause bars such foreclosure sales."  
11 And that's exactly what we have. Everything I just got done describing, all of the  
12 efforts that the lender must take to keep the borrower in the home, out the door.  
13 That congressional intent of keeping borrowers in the home, out the door. The  
14 lender can't do that because the home is now taken out from under them, which  
15 I think in addition to Judge Navarro's opinion logic and common sense dictates that  
16 can't have been the congressional objective, that the lender just has to sit on this  
17 and try to keep the homeowner in the home just so an HOA can come out from  
18 under them and take the home from them.

19           In addition, we have the property clause. Judge Navarro, in all candor,  
20 did not find that the property clause was a bar. She said it probably would be a bar;  
21 I don't have to reach that conclusion, though, because the supremacy clause is a  
22 bar. But if Your Honor for some reason finds that the supremacy clause is not a bar,  
23 the property clause is a bar. Under Ninth Circuit precedent in Rust, an interest in  
24 a mortgage, a federal interest in a mortgage is federal property. And under the

1 property clause, only an act of Congress can be used to divest the Federal  
2 Government of an interest in property.

3 Real briefly, going over plaintiff's arguments, they argue we don't  
4 have standing. I don't believe they cited a case that says you need standing to raise  
5 preemption. But regardless, this is our FHA loan that plaintiff is trying to extinguish.  
6 And the statutes, and I think that plaintiff pointed this out in their briefs, the statutes  
7 specifically say one of the obligations HUD places on the lender is you have to clear  
8 title, lender, before we will pay your claim. So the congressional statutes actually  
9 specifically give us standing and tell us we have to do this.

10 Plaintiff claims there's no insurable interest. The allegation is that we  
11 dropped the ball somehow along the way and so HUD isn't going to pay on a claim.  
12 First of all, this is not a private insurer, this is a federally mandated program. And  
13 the plaintiff is unable to point to any HUD regulation that says we don't get benefits.  
14 In contrast, in our reply brief we've pointed to the regulations that effectively say  
15 we can be fined, we can be dropped from the FHA program, but there's nothing  
16 that says other than the Secretary's general discretion to do whatever it wants,  
17 which Congress does empower it with, which is another reason why we've got a  
18 supremacy issue. There's nothing in the statutes that say that we don't have a right  
19 to present a claim.

20 Finally, plaintiff tries to distinguish Washington & Sandhill because  
21 in that case HUD took title to the property. Really we're dealing with the same fact  
22 pattern. In Washington & Sandhill it was first the HOA foreclosure, then the bank  
23 foreclosure, then the transfer of title to HUD as required under the statutes. The  
24 only difference here is that we haven't made it to the point where the bank has

1 foreclosed and then transferred the property to HUD. Judge Navarro's opinion  
2 wasn't based, again, on a property clause finding, her opinion was solely based  
3 on under the supremacy clause that initial foreclosure sale by the HOA cannot be  
4 construed to wipe out an FHA loan. And I'll rest on that.

5 THE COURT: On behalf of Mr. Renfroe.

6 MR. CULLEN: Your Honor, I think there's such a distinguishment between  
7 all the cases that have found for federal preemption and the case we have here.  
8 In each and every single case it was the United States versus somebody or it was  
9 Fannie Mae owned property or HUD was on title or something. We don't have that  
10 here. If HUD wants to raise the argument -- and we didn't even know HUD was  
11 involved until we got the motion to dismiss, we'd be happy to amend our pleadings  
12 and add HUD and bring them in here if they want to raise their federal preemption.  
13 In our experience dealing with HUD, they've disclaimed their interest on a lot of  
14 these properties because they don't want to be involved in these cases. They're  
15 not at risk of losing anything if Renfroe wins his case because they're not going to  
16 pay a claim.

17 I know opposing counsel believes that we don't have standing to argue  
18 that they can't make a claim, but the regulations are clear, before they can make  
19 a claim they have to foreclose. They're not permitted to foreclose, so HUD is not  
20 going to lose any money. There's no property being taken from HUD. In fact, if  
21 Lakeview does win, HUD will end up having to make a claim and they're going to be  
22 out millions of dollars in all of these FHA cases. The reality is -- and like I said, we'd  
23 be happy to bring them in. HUD probably needs to be a party so we can resolve  
24 this issue. But the supremacy clause, whether HUD is even involved in this case,

1 we don't know. We have a deed of trust from 2008. What happened between 2008  
2 and now regarding that policy, we don't know. This is a motion to dismiss, it's not  
3 a motion for summary judgment. We don't have any authenticated documents to  
4 show HUD is --

5 THE COURT: But you're not challenging that it was an FHA mortgage that  
6 got assigned to Lakeview?

7 MR. CULLEN: We know that it got assigned to Lakeview. We don't know if  
8 FHA is still involved. I mean, there's no -- there's a recorded document from 2008  
9 and there's an assignment to Lakeview after that. We don't know if that terminated  
10 the insurance policy. We don't know if there's still an insurance policy. We don't  
11 have any facts to support it one way or the other. They haven't filed an answer  
12 yet, we haven't entered discovery. I mean, it's just so early on in this process to  
13 understand what actually happened, who has an interest in the property and where  
14 we need to go.

15 So I truly believe we need to do something to sort this FHA issue out,  
16 but at this stage of the game we really don't know if FHA is involved and to what  
17 extent, if they even want to argue this issue. Lakeview is not FHA. Lakeview  
18 doesn't have a federal interest. They have an insurance policy, but there's not a  
19 single case in Nevada or elsewhere that has held that FHA insurance means you  
20 have a federal property right. There's not one case out there. And Judge Navarro  
21 explicitly said that in her decision when she said, "While no courts have ever directly  
22 addressed the question of whether a federal agency's insurance of a mortgage  
23 creates a federal property interest" -- you know, it's clear no one has ever made that  
24 determination. And Lakeview is asking the Court to extend federal property rights

1 to an insurance policy, and I don't believe that that's appropriate. And at a  
2 minimum, it should be HUD making that determination and HUD was the party  
3 making that argument in the Washington & Sandhill case.

4 THE COURT: Only because HUD, between the foreclosure and the litigation,  
5 got into that position.

6 MR. CULLEN: But the point is they were in that position.

7 THE COURT: They weren't in there at the time of the foreclosure, which  
8 was BofA.

9 MR. CULLEN: It was at the time of foreclosure, but they are -- they were a  
10 party to that action. They were the ones raising the supremacy clause. There's no  
11 case law on point and no statute that says that the servicer or the beneficiary of the  
12 deed of trust is entitled to argue for federal preemption. There's no case on point  
13 that says that; not one.

14 THE COURT: Okay. Mr. Brenner.

15 MR. BRENNER: There is a case, Washington & Sandhill. It says that we get  
16 to do it. And it also cites to authority. The problem here is that plaintiff is conflating  
17 property clause and supremacy clause. Plaintiff just got done talking about how  
18 Judge Navarro said, well, there's no case establishing whether or not there was a  
19 property clause -- or whether this is federal property, but it's not a leap to assume it  
20 is since a federal interest in a loan is federal property. But the next sentence says,  
21 however, I don't need to rule on that basis because we have a supremacy clause  
22 issue.

23 There is no obligation that you have to be the Federal Government to  
24 argue that Congress intended to preempt this. It preempted the field. It occupies

1 the space of the FHA loans. It governs what happens within reference to FHA  
2 loans. That's why FHA exists. That's why we have this plan that exists. All we  
3 have to show is standing and we have standing because it is our loan, it is insured  
4 by FHA. We have an actual injury here because they're trying to wipe the property  
5 from us. There's no way to get around the fact that we have to decide whether  
6 or not the supremacy clause bars Chapter 116 as applied under SFR. That's a  
7 decision that we have to make. I honestly don't recall seeing plaintiff brief that  
8 there was any question about whether or not this was an FHA loan, but it is certainly  
9 an FHA deed of trust. I'll rest with that.

10 THE COURT: All right. Well, I'm going to grant the motion to dismiss. I  
11 mean, these homeowners or HOA foreclosure cases are kind of like all rabbit holes,  
12 it seems like. But I agree with Judge Navarro. I think Judge Crockett has ruled on  
13 this issue in the same manner as I just did as well. You know, the issue in Sandhill  
14 is the foreclosure, not who has it now. The issue that Judge Navarro is focusing on  
15 is what occurred at the time of the foreclosure, especially with her supremacy clause  
16 analysis, and whether that would have extinguished the rights of the United States  
17 and the remedies of the United States, in violation of the supremacy clause, such  
18 that NRS Chapter 116 can't override the supremacy clause.

19 So, I mean, certainly if she felt that, gee, at the time of the foreclosure  
20 since it was in the possession of BofA, who later transferred it to HUD, then if there  
21 was no supremacy clause argument to be made she would have said so. But quite  
22 frankly, I agree with her that the argument can still be made at that time because  
23 there was still a Federal Government interest in it. And it's the same thing here.  
24 Even though Lakeview had it at the time, the Federal Government still has an



1 interest in the mortgage, in my mind. There's a federal property interest in that.  
2 When you have federally insured mortgages there's still a federal property interest.  
3 I mean, I would probably go a step further than Judge Navarro. I agree with her  
4 not only on the supremacy clause argument, I think she could have ruled on the  
5 property clause argument as well, even though she said she doesn't need to reach  
6 that. But both of those things.

7 This isn't a factual thing where we need to do discovery and we're  
8 talking about a summary judgment. This is a purely legal issue. I do think there is  
9 standing to bring it and I'm going to grant the motion. Okay?

10 MR. CULLEN: Thank you, Your Honor.

11 MR. BRENNER: We'll prepare an order. Thank you.

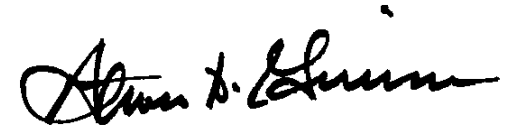
12 THE COURT: All right guys. Thank you.

13 (PROCEEDINGS CONCLUDED AT 9:52 A.M.)

14 \* \* \* \* \*

15  
16 ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-  
17 video recording of this proceeding in the above-entitled case to the best of my ability.

18   
19 Liz Garcia, Transcriber  
20 LGM Transcription Service  
21  
22  
23  
24



CLERK OF THE COURT

1 **TRAN**

2  
3 **EIGHTH JUDICIAL DISTRICT COURT**  
4 **CIVIL/CRIMINAL DIVISION**  
5 **CLARK COUNTY, NEVADA**

6 KENNETH RENFROE, ) CASE NO. A-14-700520  
7 Plaintiff, ) DEPT. NO. III  
8 vs. )  
9 LAKEVIEW LOAN SERVICING, LLC, et al, )  
10 Defendants. )  
11

12 BEFORE THE HONORABLE DOUGLAS W. HERNDON, DISTRICT COURT JUDGE  
13 WEDNESDAY, FEBRUARY 18, 2015

14 **TRANSCRIPT RE:**  
15 **PLAINTIFF'S MOTION FOR RECONSIDERATION**  
16 **ON ORDER SHORTENING TIME**

17 **APPEARANCES:**

18 For the Plaintiff: PAUL CULLEN, ESQ.  
19 For Defendant Lakeview Loan Servicing, LLC: NATALIE L. WINSLOW, ESQ.  
20  
21  
22  
23

24 **RECORDED BY:** Sara Richardson, Court Recorder

1 CLARK COUNTY, NEVADA

WEDNESDAY, FEBRUARY 18, 2015

2 **PROCEEDINGS**

3 (PROCEEDINGS BEGAN AT 10:45:50 A.M.)

4 THE COURT: Okay. Renfroe/Lakeview Loan Servicing.

5 MR. CULLEN: Good morning, Your Honor. Paul Cullen on behalf of the  
6 plaintiff.

7 THE COURT: Thank you.

8 MS. WINSLOW: Natalie Winslow for Lakeview Loan Servicing.

9 THE COURT: Thank you. All right. This is on for plaintiff's motion for  
10 reconsideration. Yes, sir.

11 MR. CULLEN: Good morning, Your Honor. Your Honor, we were here  
12 before a couple weeks ago on plaintiff's (sic) motion to dismiss.

13 THE COURT: Right.

14 MR. CULLEN: As you recall, the allegations had to do with FHA insurance  
15 on the loan. Does FHA insurance bar the HOA foreclosure? And your ruling at the  
16 time was the FHA insurance bars the HOA foreclosure pursuant to Washington &  
17 Sandhill.

18 THE COURT: Right.

19 MR. CULLEN: The issue is the motion was brought as a motion to dismiss.  
20 There are no facts alleged in the complaint that said this is an FHA loan. It was  
21 just a simple --

22 THE COURT: Let me interrupt you. Tell me first off, before you argue the  
23 motion, what grounds there are to reconsider it. What is new factually, legally, I  
24 mean, that I should grant reconsideration? Because you've got to get reconsideration

1 granted before we re-argue everything on the merits.

2 MR. CULLEN: Well, Your Honor, it was decided under the wrong basis. It  
3 was decided under basically a motion for summary judgment but we weren't there  
4 on a motion for summary judgment. We weren't hearing -- they presented evidence  
5 outside the pleadings and they weren't entitled to do so under a motion to dismiss.  
6 And that evidence -- they never provided any factual, admissible evidence to  
7 support that it's an FHA loan. That's the difference between here and the --

8 THE COURT: All right. So you're basically saying there isn't anything new;  
9 you just think that I got it wrong.

10 MR. CULLEN: Well, Your Honor, additionally --

11 THE COURT: Which is fine, you can say that. It's okay.

12 MR. CULLEN: Well, the new issues are also that other courts -- other judges  
13 in this court have found opposite. I mean, at the time we heard Washington &  
14 Sandhill --

15 THE COURT: Yeah. I care not about what everybody else does. I'm just  
16 trying to make the best decision I can.

17 MR. CULLEN: I understand, Your Honor.

18 THE COURT: I'm not going to be guided by any other judge's decision, okay,  
19 in terms of trying to say, well, because such and such did it, you should do it as well.  
20 I mean, look, we had the whole FHA foreclosure thing for forever where we were all  
21 split on that. You know, you had twenty of us saying this, ten of saying that, five of  
22 us saying this. So we're not kind of governed by that.

23 But, I mean, look, if your argument is just you misapplied the law, I get  
24 that; that's a ground to re-argue it, but I'm just --

1 MR. CULLEN: And that is the majority of the argument, Your Honor.

2 THE COURT: Okay. All right.

3 MR. CULLEN: There are multiple factors. But if we want to focus on that,  
4 I can focus on that.

5 THE COURT: Okay, go ahead.

6 MR. CULLEN: So, the motion to dismiss was granted solely on the fact  
7 that it was an FHA loan. The FHA loan, as you decided it, was a bar to the FHA  
8 foreclosure because of the supremacy clause and the property clause, if I remember  
9 correctly.

10 THE COURT: Right.

11 MR. CULLEN: In order to get to that point, in order to rule that there's a  
12 supremacy clause and a property clause, we have to first make a finding that the  
13 FHA actually insured the loan. And in order to get there, there needs to be some  
14 sort of evidence. And under a motion to dismiss we're looking at the pleading --  
15 at the complaint. The complaint does not allege FHA insured the loan. There's no  
16 factual claims anywhere regarding insurance in the complaint. Defendants have  
17 argued that you can look at matters outside of the pleadings and the complaint if it's  
18 a matter of public record. And the only evidence that they're supporting that it's an  
19 FHA loan is a deed of trust recorded in 2008 that says FHA case number on the top.

20 And I put in my -- I believe my reply brief some FHA guidelines. Just  
21 because a deed of trust, which, first of all, isn't authenticated in any way, shape or  
22 form as to its contents, says FHA case number, doesn't mean at the time of the  
23 foreclosure FHA insured the loan. There are numerous factual circumstances that  
24 could have occurred between 2008 and the foreclosure sale which FHA could have

1 not insured the loan. We don't know if they ever insured the loan. Some of the  
2 guidelines say -- and I provided to the Court in my exhibit in my reply, page 8, C-8,  
3 it provides for circumstances where FHA can kick back a loan to the lender and  
4 basically deny coverage for a variety of circumstances. We don't have any evidence  
5 that supports an FHA insurance loan. There's no certificate from FHA that says it's  
6 insured. There's no affidavit that says at the time of foreclosure the loan was insured  
7 by FHA. And if --

8 THE COURT: But part of the argument, as we were discussing it previously,  
9 isn't that you know at that very point in time that the interest is already vested, it's  
10 that extinguishing these things prohibits the Federal Government's ability to do  
11 those things.

12 MR. CULLEN: But in order to make that finding, you have to find that there is  
13 a federal interest. I understand the difference between the supremacy clause and  
14 the property clause. I don't want to go down that path. But in order to say you can't  
15 foreclose because of the federal interest, there has to be a federal interest. I don't  
16 think the Court would disagree that not every single loan in the country is insured by  
17 the Federal Government. So some finding has to be made that there is a federal  
18 interest.

19 THE COURT: Okay.

20 MR. CULLEN: And I'm just saying that under a motion to dismiss it's not  
21 appropriate to make that finding without some sort of factual evidence that we don't  
22 have in this case.

23 THE COURT: What does the deed of trust itself provide?

24 MR. CULLEN: The deed of trust is just a deed of trust. It says FHA case

1 number on the top. It doesn't say that it's insured. It doesn't -- we don't know what  
2 happened from 2008 forward, whether or not someone didn't pay the premiums,  
3 whether or not it was kicked back from FHA. We don't have any evidence to  
4 support that it's an actual FHA insured loan at the time of foreclosure. Otherwise  
5 it doesn't matter. If it was insured in 2008 and someone, the bank or whoever  
6 stopped paying the premiums and it's no longer insured by FHA, which we don't  
7 know because we haven't gotten into discovery to know anything, then it's not  
8 possible for it to be preempted by federal law because there would have been no  
9 federal law to preempt. We need something to show that there was an FHA loan,  
10 and we just don't have that and we certainly don't have it for purposes of a motion  
11 to dismiss.

12 THE COURT: Okay.

13 MR. CULLEN: Thank you.

14 THE COURT: Ms. Winslow.

15 MS. WINSLOW: Your Honor, respectfully, this is an attempt by the plaintiff to  
16 re-litigate issues that were already decided by the motion to dismiss. To the extent  
17 that the Court wants to entertain the actual arguments that are outlined in the motion  
18 for reconsideration, even though our position is that there's not a legal basis for  
19 the Court to do so because there's no new issue of law or fact that could not --  
20 that wasn't already raised in the motion to dismiss or could have been raised in the  
21 motion to dismiss, the opposition or at the hearing, we can do so.

22 The main argument that plaintiff makes here today and also in his  
23 motion in the reply is that the Court erred in considering the deed of trust when  
24 deciding Lakeview's motion to dismiss, and that's incorrect. There's a long-standing

1 rule in this jurisdiction and in other jurisdictions that this Court can take judicial  
2 notice of matters of public record. The deed of trust in this case is a matter of public  
3 record. And it's particularly interesting in this case that plaintiff is arguing that the  
4 Court shouldn't look at the deed of trust because plaintiff's entire lawsuit was an  
5 attempt to extinguish the deed of trust, of which now this plaintiff is saying this Court  
6 cannot consider.

7           The deed of trust in this case contains much more than just an FHA  
8 case number, as plaintiff represented here today. Yes, it has an FHA case number.  
9 It only would have been assigned an FHA case number if it was an FHA loan. But  
10 in addition to it having the FHA case number on the first page of the deed of trust,  
11 the deed of trust on every page says that it's an FHA Nevada deed of trust. It  
12 contains several provisions that talk about what happens with respect to payment of  
13 mortgage insurance proceeds to HUD. Those are found in paragraph 2, paragraph  
14 3, application of payments. Paragraph 9 talks about in the event of a default that  
15 the first deed of trust beneficiary can't just foreclose, it needs to comply with HUD  
16 regulations, and it sets forth those in Section 9 of the deed of trust.

17           The Court correctly took into account the deed of trust, what the  
18 contents of the deed of trust said in deciding the motion to dismiss. To the extent the  
19 Court wants to go down the road of re-litigating the issues related to the supremacy  
20 clause, respectfully, all arguments related to the supremacy clause were already  
21 raised in plaintiff's opposition to the motion to dismiss and at the hearing on the  
22 motion to dismiss. And the fact that one of the arguments, as we just talked about,  
23 that was raised that other judges are now deciding this issue and deciding differently  
24 from Your Honor really does not provide a basis for reconsideration.



1                   But if you want to look at the substance of the supremacy clause,  
2 Lakeview is not arguing that there is a vested property interest by the Federal  
3 Government. That's not what the supremacy clause argument is about. It's really  
4 about two points. Number one, if we allow an HOA to divest HUD of its interest in  
5 the deed of trust, you limit the options Congress explicitly gave to HUD for FHA  
6 loans to obtain title after default. Number two, and perhaps more importantly with  
7 respect to policy concerns, the FHA program was designed to put people into  
8 homes that would perhaps not normally qualify for home ownership, people that  
9 have lower credit scores or people who cannot come up with a twenty percent down  
10 payment. And how does the Federal Government put these people into homes?  
11 What they do is they insure these mortgages. But with that insurance comes a  
12 robust and comprehensive set of guidelines by which the lender must comply with  
13 in order to obtain insurance proceeds.

14                   For example, you can't just -- a lender can't just foreclose out a  
15 homeowner who is in default, not only based on the HUD regulations but based  
16 on Section 9 of the deed of trust. It has to go through several pre-foreclosure  
17 alternatives prior to foreclosing out a homeowner. And allowing an HOA to come  
18 in, swoop in and divest the homeowner of his home while potentially he's going  
19 through this pre-foreclosure scenario with the first deed of trust beneficiary thwarts  
20 the purpose of the FHA program. And for those reasons NRS 116 and an FHA  
21 foreclosure on an FHA loan is preempted by federal law.

22                   There's also the property clause issue, which plaintiff does not really  
23 go into in his motion for reconsideration. It's a separate basis for this Court to have  
24 granted the motion to dismiss. And it's basically -- the argument there is that HUD's

1 insurance of the mortgage under the FHA program creates a property interest,  
2 perhaps not vested, perhaps just contingent, but it still is a property interest that  
3 can only be divested by an act of Congress. And Judge Navarro in the Washington  
4 v. Sandhill decision outlined that pretty clearly that it doesn't have to be a vested  
5 property interest that we're talking about for the property clause to potentially apply.

6 Finally, in the motion for reconsideration plaintiff makes an argument  
7 that reconsideration is appropriate because HUD is somehow an indispensable  
8 party. Respectfully, plaintiff could have added HUD as a defendant to this lawsuit  
9 when he initiated the lawsuit. He could have moved to amend to add HUD as a  
10 defendant to this lawsuit. Plaintiff didn't, and instead waited until after this Court  
11 decided the motion to dismiss to now argue that HUD is an indispensable party,  
12 but that really is a reiteration of plaintiff's argument in his opposition to the motion  
13 to dismiss where he talked about we don't have standing to assert claims under  
14 the supremacy clause and property clause of the U.S. Constitution. The Court has  
15 already looked at that issue and has already decided that issue against plaintiff.

16 And substantively, complete -- HUD is not an indispensable party  
17 because complete relief can be provided by this Court. Complete relief as to these  
18 parties can be provided by this Court by determining that -- either one way or  
19 the other that Lakeview's deed of trust remains or it does not remain against the  
20 property.

21 THE COURT: Anything further?

22 MR. CULLEN: Your Honor, I'll just be brief and I'll touch on HUD for about  
23 five seconds. We couldn't have added them to the complaint. We didn't know they  
24 existed at the time, so it only came up as part of the motion to dismiss. And I'll just

1 leave it at that because I know that's not the significant issue here.

2 Defendant has just basically made my point for me, though, that the  
3 supremacy clause applies because it would divest HUD's interest in the loan. But  
4 in order to divest HUD's interest, they have to have an interest. Whether it's vested  
5 now or vested later, the supremacy clause only exists if it's a HUD insured loan.  
6 And we still have no evidence it's a HUD insured loan. A 2008 deed of trust does  
7 not show that it is a HUD insured loan at the time of foreclosure. There are factors  
8 that could have come into play between the recording of that document and now  
9 or at the time of foreclosure which could have altered whether it was ever a HUD  
10 insured loan. I mean, there's factors that come in. HUD could have rejected it at  
11 the time it was recorded and we wouldn't have known. We just don't know because  
12 we have no information and they have provided no evidence other than a recorded  
13 deed of trust to support that it's a HUD insured loan.

14 And I'll rest with that, Your Honor.

15 THE COURT: Well, look, first of all, I'll grant reconsideration. I mean, to the  
16 extent the argument is the Court made an improper ruling, I get that. I mean, that  
17 happens on occasion and I've had occasion to reverse myself when motions for  
18 reconsideration come up. But I think really the meat of the argument here is simply  
19 the Court didn't have factual information available to it to have made the legal  
20 ruling that I made, and I disagree. I think that the public record, the deed of trust  
21 documents, the information that was available to the Court established sufficient  
22 factual evidence upon which the Court could decide that Washington & Sandhill  
23 applied and that the federal law argument was favorable to the defense. I mean,  
24 it's that simple.

1                   Whether Judge Crockett in some case found it different, whether he  
2 decided something wasn't ripe on whatever facts were in front of him, whether  
3 Judge Leavitt did anything in line with what Judge Crockett did, whether anybody  
4 does something in line with what I do, you know, isn't the point. We're all kind of  
5 autonomous as judges and we try and make the best decision we can based upon  
6 what we have in front of us. We follow whatever rulings we can find from the  
7 appellate courts up above us, but I can't be governed by what somebody down the  
8 hall from me is doing. So I still think my ruling was appropriate, so I'm going to allow  
9 the motion to dismiss granting to stand. Okay?

10               MR. CULLEN: Thank you, Your Honor.

11               MS. WINSLOW: Thank you, Your Honor.

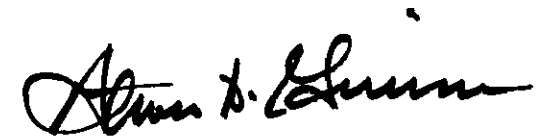
12               THE COURT: All right, guys. Thank you very much.

13                               (PROCEEDINGS CONCLUDED AT 11:01:40 A.M.)

14   \* \* \* \* \*

15  
16       ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-  
17 video recording of this proceeding in the above-entitled case to the best of my ability.

18     
19   \_\_\_\_\_  
20   Liz Garcia, Transcriber  
21   LGM Transcription Service  
22  
23  
24



CLERK OF THE COURT

1 **NOAS**  
Robert B. Noggle, Esq.  
Nevada Bar No.: 11427  
2 Paul R.M. Cullen, Esq  
Nevada Bar No.: 12355  
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376 E. Warm Springs Rd., Ste. 140  
4 Las Vegas, Nevada 89119  
(702) 450-6300 | (702) 642-9766 FAX  
5 *Attorney for Plaintiff*

6 **DISTRICT COURT**  
7 **CLARK COUNTY, NEVADA**

8 **KENNETH RENFROE,**

9  
10 **Plaintiff,**

11 **vs.**

12 **LAKEVIEW LOAN SERVICING, LLC;**  
13 **RECONTRUST COMPANY, N.A.; BRIAN J.**  
**FERGUSON AND JENNIFER L. FERGUSON;**

14 **Defendants.**

CASE NO.: A-14-700520-C  
DEPT. NO.: III

15 **NOTICE OF APPEAL**

16 NOTICE IS HEREBY GIVEN that Plaintiff, KENNETH RENFROE, by and through his  
17 counsel of record, Noggle Law, PLLC, hereby appeals to the Supreme Court of Nevada from the  
18 Order Granting Defendant Lakeview Loan Servicing, LLC's Motion to Dismiss filed in this action on  
19 August 26, 2015 and Order Granting Lakeview Loan Servicing, LLC's Motion to Dismiss filed on  
20 August 27, 2015.  
21

22 DATED this 24<sup>th</sup> day of September, 2015.

23 **NOGGLE LAW PLLC**

24 By: /s/ /Paul R.M. Cullen, Esq./  
25 Paul R.M. Cullen, Esq.  
26 376 East Warm Springs Road, Ste. 140  
27 Las Vegas, Nevada 89119  
*Attorney for plaintiff*

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 24<sup>th</sup> day of September, 2015, an electronic copy of the foregoing  
**NOTICE OF APPEAL** was served on opposing counsel via the Court's electronic service system to  
the following counsel of record:

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Natalie L. Winslow, Esq.  
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Las Vegas, NV 89144  
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Darren.brenner@akerman.com  
Natalie.winslow@akerman.com

By: Paul R.M. Cullen, Esq.  
An Employee of Noggle Law PLLC

1 ROBERT B. NOGGLE, ESQ.  
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4 PH: 702-450-6300/Fax: 702-642-9766  
*Attorney for Appellant*

Electronically Filed  
Aug 30 2016 03:44 p.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

SUPREME COURT

STATE OF NEVADA

9 KENNETH RENFROE,

CASE NO.: 68907  
DC CASE NO.: A700520

Appellant,

11 vs.

12 LAKEVIEW LOAN SERVICING, LLC;  
13 RECONTRUST COMPANY, N.A.; BRIAN J.  
FERGUSON AND JENNIFER L. FERGUSON;

14 Respondents.

**JOINT APPENDIX**

19 ROBERT B. NOGGLE, ESQ.  
20 Nevada Bar No.: 11427  
NOGGLE LAW PLLC  
21 376 East Warm Springs Road, Suite 140  
22 Las Vegas, Nevada 89119  
*Attorney for Appellant*

NATALIE L. WINSLOW , ESQ.  
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*Attorney for Respondent*

**INDEX TO JOINT APPENDIX**

Complaint .....	APP000001
Affidavit of Service .....	APP000007
Declaration of Service .....	APP000008
Affidavit of Attempts.....	APP000009
Default .....	APP000010
Default .....	APP000012
Stipulation and Order to Set Aside Default .....	APP000014
Affidavit of Due Diligence .....	APP000016
Affidavit of Due Diligence .....	APP000024
Affidavit of Publication .....	APP000029
Affidavit of Publication .....	APP000030
Default .....	APP000031
Amended Affidavit of Publication .....	APP000033
Lakeview Loan Servicing, LLC's Motion to Dismiss Plaintiff's Complaint.....	APP000034
Default .....	APP000071
Plaintiff's Opposition to Motion to Dismiss .....	APP000073
Lakeview Loan Servicing, LLC's Reply in Support of Motion to Dismiss .....	APP000082
Plaintiff's Motion for Reconsideration .....	APP000095
Stipulation and Order Disclaiming Recontrust Company, N.A.....	APP000110
Notice of Entry of Order .....	APP000112
Lakeview Loan Servicing, LLC's Opposition to Motion for Reconsideration .....	APP000114
Reply to Lakeview's Opposition to Plaintiff's Motion for Reconsideration .....	APP000121



1	Order Granting Lakeview Loan Servicing, LLC's Motion to Dismiss .....	APP000136
2	Notice of Entry of Order .....	APP000139
3	Transcript RE: January 21, 2015 Hearing .....	APP000144
4	Transcript RE: February 18, 2015 Hearing .....	APP000154
5	Notice of Appeal .....	APP000165

**ALPHABETICAL INDEX TO JOINT APPENDIX**

8	Affidavit of Attempts.....	APP000009
9	Affidavit of Due Diligence .....	APP000016
10	Affidavit of Due Diligence .....	APP000024
11	Affidavit of Publication .....	APP000029
12	Affidavit of Publication .....	APP000030
13	Affidavit of Service .....	APP000007
14	Amended Affidavit of Publication .....	APP000033
15	Complaint .....	APP000001
16	Declaration of Service .....	APP000008
17	Default .....	APP000010
18	Default .....	APP000012
19	Default .....	APP000031
20	Default .....	APP000071
21	Lakeview Loan Servicing, LLC's Motion to Dismiss Plaintiff's Complaint.....	APP000034
22	Lakeview Loan Servicing, LLC's Opposition to Motion for Reconsideration .....	APP000114
23	Lakeview Loan Servicing, LLC's Reply in Support of Motion to Dismiss .....	APP000082
24	Notice of Appeal .....	APP000165
25	Notice of Entry of Order .....	APP000112
26	Notice of Entry of Order .....	APP000139

1	Order Granting Lakeview Loan Servicing, LLC’s Motion to Dismiss .....	APP000136
2	Plaintiff’s Motion for Reconsideration .....	APP000095
3	Plaintiff’s Opposition to Motion to Dismiss .....	APP000073
4	Reply to Lakeview’s Opposition to Plaintiff’s Motion for Reconsideration .....	APP000121
5	Stipulation and Order Disclaiming Recontrust Company, N.A.....	APP000110
6	Stipulation and Order to Set Aside Default .....	APP000014
7	Transcript RE: February 18, 2015 Hearing .....	APP000154
8	Transcript RE: January 21, 2015 Hearing .....	APP000144
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## CIVIL COVER SHEET A-14-700520-C

Clark County, Nevada

III

Case No. \_\_\_\_\_

(Assigned by Clerk's Office)

**I. Party Information**

Plaintiff KENNETH RENFROE

Attorney Robert Noggle, Esq.

376 E. Warm Springs Road, Ste. 140

Las Vegas NV 89119 (702) 450-6300

Defendants LAKEVIEW LOAN SERVICING, LLC;  
RECONTRUST COMPANY, N.A.; BRIAN J.  
FERGUSON and JENNIFER L. FERGUSON

Attorney N/A

**II. Nature of Controversy** EXEMPTION FROM ARBITRATION Title to Real Property**Civil Cases**

Real Property	Torts	
<input type="checkbox"/> <b>Landlord/Tenant</b> <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> <b>Title to Property</b> <input type="checkbox"/> Foreclosure <input type="checkbox"/> Liens <input checked="" type="checkbox"/> <b>Quiet Title</b> <input type="checkbox"/> Specific Performance <input type="checkbox"/> <b>Condemnation/Eminent Domain</b> <input type="checkbox"/> <b>Other Real Property</b> <input type="checkbox"/> Partition <input type="checkbox"/> Planning/Zoning	<b>Negligence</b> <input type="checkbox"/> <b>Negligence – Auto</b> <input type="checkbox"/> <b>Negligence – Medical/Dental</b> <input type="checkbox"/> <b>Negligence – Premises Liability</b> (Slip/Fall) <input type="checkbox"/> <b>Negligence – Other</b>	<input type="checkbox"/> <b>Product Liability</b> <input type="checkbox"/> Product Liability/Motor Vehicle <input type="checkbox"/> Other Torts/Product Liability <input type="checkbox"/> <b>Intentional Misconduct</b> <input type="checkbox"/> Torts/Defamation (Libel/Slander) <input type="checkbox"/> Interfere with Contract Rights <input type="checkbox"/> <b>Employment Torts</b> (Wrongful termination) <input type="checkbox"/> <b>Other Torts</b> <input type="checkbox"/> Anti-trust <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Insurance <input type="checkbox"/> Legal Tort <input type="checkbox"/> Unfair Competition
Probate	Other Civil Filing Types	
Estimated Estate Value: _____ <input type="checkbox"/> <b>Summary Administration</b> <input type="checkbox"/> <b>General Administration</b> <input type="checkbox"/> <b>Special Administration</b> <input type="checkbox"/> <b>Set Aside Estates</b> <input type="checkbox"/> <b>Trust/Conservatorships</b> <input type="checkbox"/> Individual Trustee <input type="checkbox"/> Corporate Trustee <input type="checkbox"/> <b>Other Probate</b>	<input type="checkbox"/> <b>Construction Defect</b> <input type="checkbox"/> Chapter 40 <input type="checkbox"/> General <input type="checkbox"/> <b>Breach of Contract</b> <input type="checkbox"/> Building & Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Other Contracts/Acct/Judgment <input type="checkbox"/> Collection of Actions <input type="checkbox"/> Employment Contract <input type="checkbox"/> Guarantee <input type="checkbox"/> Sale Contract <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> <b>Civil Petition for Judicial Review</b> <input type="checkbox"/> Foreclosure Mediation <input type="checkbox"/> Other Administrative Law <input type="checkbox"/> Department of Motor Vehicles <input type="checkbox"/> Worker's Compensation Appeal	<input type="checkbox"/> <b>Appeal from Lower Court</b> (also check applicable civil case box) <input type="checkbox"/> Transfer from Justice Court <input type="checkbox"/> Justice Court Civil Appeal <input type="checkbox"/> <b>Civil Writ</b> <input type="checkbox"/> Other Special Proceeding <input type="checkbox"/> <b>Other Civil Filing</b> <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Conversion of Property <input type="checkbox"/> Damage to Property <input type="checkbox"/> Employment Security <input type="checkbox"/> Enforcement of Judgment <input type="checkbox"/> Foreign Judgment – Civil <input type="checkbox"/> Other Personal Property <input type="checkbox"/> Recovery of Property <input type="checkbox"/> Stockholder Suit <input type="checkbox"/> Other Civil Matters

**III. Business Court Requested** (Please check applicable category; for Clark or Washoe Counties only.)

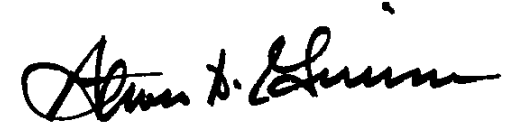
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| <input type="checkbox"/> NRS Chapters 78-88   | <input type="checkbox"/> Investments (NRS 104 Art. 8)        | <input type="checkbox"/> Enhanced Case Mgmt/Business  |
| <input type="checkbox"/> Commodities (NRS 90) | <input type="checkbox"/> Deceptive Trade Practices (NRS 598) | <input type="checkbox"/> Other Business Court Matters |
| <input type="checkbox"/> Securities (NRS 90)  | <input type="checkbox"/> Trademarks (NRS 600A)               |   |

May 9, 2014

Date

/ S / Robert Noggle, Esq. /

Signature of initiating party or representative



CLERK OF THE COURT

**COMP**

Robert B. Noggle, Esq.  
Nevada Bar No.: 11427  
LAW OFFICES OF  
NOGGLE LAW PLLC  
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Las Vegas, Nevada 89119  
PH: 702-450-6300/Fax: 702-642-9766  
Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

KENNETH RENFROE,

Plaintiff,

vs.

LAKEVIEW LOAN SERVICING, LLC;  
RECONTRUST COMPANY, N.A.; BRIAN J.  
FERGUSON and JENNIFER L. FERGUSON,

Defendants.

CASE NO.: A-14-700520-C

DEPT NO.: III

**Exempt From Arbitration: Concerns Title to  
Property**

**COMPLAINT**

Plaintiff, Kenneth Renfroe, by and through his attorney, Robert B. Noggle, Esq., alleges as follows:

1. Plaintiff is the owner of the real property commonly known as 7736 Beach Falls Court, Las Vegas, Nevada.

2. Plaintiff obtained title by way of foreclosure deed recorded on April 21, 2014.

3. The plaintiff's title derives from a foreclosure deed arising from a delinquency in assessments due from the former owner to the Desert Creek HOA, pursuant to NRS Chapter 116.

4. Defendant Lakeview Loan Servicing, LLC is the current beneficiary of a deed of trust which was recorded as an encumbrance to the subject property on May 27, 2008.

5. Defendant Recontrust Company, N.A. is the trustee on the deed of trust.

1           6. Brian J. Ferguson and Jennifer L. Ferguson are the former owners of the subject real  
2 property.

3           7. The interest of each of the defendants has been extinguished by reason of the foreclosure  
4 sale resulting from a delinquency in assessments due from the former owners, Brian J. Ferguson and  
5 Jennifer L. Ferguson to the Desert Creek HOA, pursuant to NRS Chapter 116.  
6

7           8. The plaintiff is entitled to an award of attorney's fees and costs.

8                           **FIRST CLAIM FOR RELIEF**

9           9. Plaintiff repeats the allegations contained in paragraphs 1 through 8.

10          10. Plaintiff is entitled to a determination from this court, pursuant to NRS 40.010 that the  
11 plaintiff is the rightful owner of the property and that the defendants have no right, title, interest or  
12 claim to the subject property.  
13

14          11. The plaintiff is entitled to an award of attorney's fees and costs.

15                           **SECOND CLAIM FOR RELIEF**

16          12. Plaintiff repeats the allegations contained in paragraphs 1 through 11.

17          13. Plaintiff seeks a declaration from this court, pursuant to NRS 40.010, that title in the  
18 property is vested in plaintiff free and clear of all liens and encumbrances, that the defendants herein  
19 have no estate, right, title or interest in the property, and that defendants are forever enjoined from  
20 asserting any estate, title, right, interest, or claim to the subject property adverse to the plaintiff.  
21

22          14. The plaintiff is entitled to an award of attorney's fees and costs.

23          WHEREFORE, plaintiff prays for Judgment as follows:  
24

25          1. For a determination and declaration that plaintiff is the rightful holder of title to the  
26 property, free and clear of all liens, encumbrances, and claims of the defendants.  
27  
28

2. For a determination and declaration that the defendants have no estate, right, title, interest or claim in the property.

3. For a judgment forever enjoining the defendants from asserting any estate, right, title, interest or claim in the property; and

4. For such other and further relief as the Court may deem just and proper.

DATED this 9<sup>th</sup> day of May, 2014.

NOGGLE LAW PLLC

By: / s / Robert B. Noggle, Esq. /  
Robert B. Noggle, Esq.  
376 East Warm Springs Road, Ste. 140  
Las Vegas, Nevada 89119  
Attorney for Plaintiff

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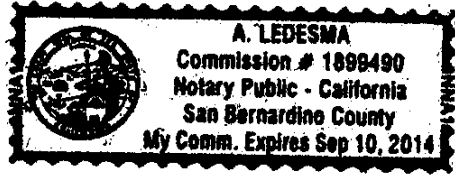
VERIFICATION

STATE OF CALIFORNIA )  
 ) ss:  
COUNTY OF SAN BERNARDINO )

KENNETH RENFROE, being first duly sworn, deposes and says: that he is the Plaintiff in the above-entitled action. He has read the foregoing complaint and knows the contents thereof; that the same is true of his own knowledge, except as to those matters therein alleged on information and belief, and as to those matters, he believes them to be true.

Dated this 9<sup>th</sup> day of April, 2014

Kenneth Renfro  
By: KENNETH RENFROE



SUBSCRIBED and SWORN to before me  
this 9 day of April, 2014  
A. Ledesma  
NOTARY

1 **IAFD**  
2 Robert B. Noggle, Esq.  
3 Nevada Bar No.: 11427  
4 LAW OFFICES OF  
5 NOGGLE LAW PLLC  
6 376 East Warm Springs Rd., Ste. 140  
7 Las Vegas, Nevada 89119  
8 PH: 702-450-6300/Fax: 702-642-9766  
9 Attorney for Plaintiff

6 DISTRICT COURT  
7 CLARK COUNTY, NEVADA

8 KENNETH RENFROE,  
9 Plaintiff,

CASE NO.:  
DEPT NO.:

10 vs.

11 LAKEVIEW LOAN SERVICING, LLC;  
12 RECONTRUST COMPANY, N.A.; BRIAN J.  
13 FERGUSON AND JENNIFER L. FERGUSON,  
14 Defendants

15 **INITIAL APPEARANCE FEE DISCLOSURE**

16 Pursuant to NRS Chapter 19, filing fees are submitted for the party appearing in the above  
17 entitled action as indicated below:

18 KENNETH RENFROE, plaintiff \$270  
19 TOTAL REMITTED: \$270

20 DATED this 9<sup>th</sup> day of May, 2014.

21 LAW OFFICE OF  
22 NOGGLE LAW PLLC

23 By: / s / Robert B. Noggle, Esq. /  
24 Robert B. Noggle, Esq.  
25 376 East Warm Springs Road, Ste. 140  
26 Las Vegas, Nevada 89119  
27 Attorney for Plaintiff  
28



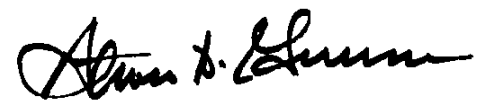
DISTRICT COURT  
CLARK COUNTY, NEVADA

KENNETH RENFROE  
Plaintiff

CASE NO.:A700520  
DEPT NO.:III

Electronically Filed  
06/13/2014 10:45:37 AM

LAKEVIEW LOAN SERVICING, LLC.;  
RECONTRUST COMPANY, N.A.; et.al.  
Defendants.

  
CLERK OF THE COURT

AFFIDAVIT OF SERVICE

SATE OF NEVADA )  
COUNTY OF CLARK) SS:

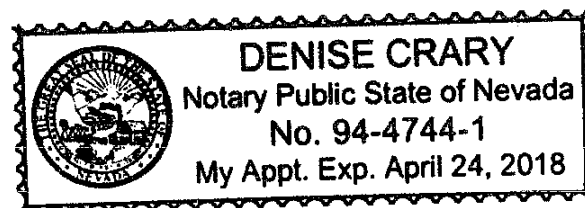
MAURIZIO MAZZA, being duly sworn, says: That at all times herein affiant was and is citizen of the United States, over 18 years of age, not a party to nor interested in the proceeding in which this affidavit is made. **The affiant received 1 copy of the Summons, and Complaint, on the 10<sup>th</sup> day of June, 2014 and served the same on the 11<sup>th</sup> day of June, 2014, on defendant Recontrust Company, N.A., C/O Bank of America by personally delivering and leaving a copy, at, 300 South 4<sup>th</sup> Street, 2<sup>nd</sup> floor, Las Vegas, NV 89101, with Judy McNutt, as Assistant Vice President, an agent lawfully designated by statue to accept service of process**  
I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

EXECUTED this 13<sup>th</sup> day of June, 2014

By:   
Maurizio Mazza

SUBSCRIBED and SWORN to before me  
this 13 day of June, 2014.

  
NOTARY PUBLIC in and for said  
County and State



EIGHTH JUDICIAL DISTRICT COURT  
STATE OF NEVADA, CLARK COUNTY

*Allen D. Quinn*

CLERK OF THE COURT

KENNETH RENFROE

Plaintiff,

Case No:A-14-700520-C

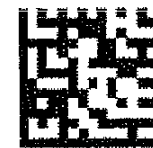
vs.

LAKEVIEW LOAN SERVICING, LLC, ET  
AL

Defendant

Declaration of Service

STATE OF NEVADA  
COUNTY OF CARSON CITY ss.:



**WADE MORLAN**, being duly sworn says: That at all times herein affiant was and is a citizen of the United States over 18 years of age, not a party to nor interested in the proceedings in which this affidavit is made.

The affiant received copy(ies) of the **SUMMONS; COMPLAINT; CIVIL COVER SHEET; INITIAL APPEARANCE FEE DISCLOSURE** on 06/13/2014 and served the same on 06/13/2014 at 2:34 PM by delivering and leaving a copy with:

**HEATHER MATTSON, PROCESS SPECIALIST**, pursuant to NRS 14.020 as a person of suitable age and discretion, of the office of **THE CORPORATION TRUST COMPANY OF NEVADA**, resident agent for **LAKEVIEW LOAN SERVICING, LLC**, at the registered address of:

**Service address: 311 S. DIVISION ST, Carson City, NV 89703**

A description of **HEATHER MATTSON** is as follows:

Sex	Color of skin/race	Color of hair	Age	Height	Weight
Female	Caucasian	Blonde	30-40	5ft 5in	131-140lbs
Other Features:					

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

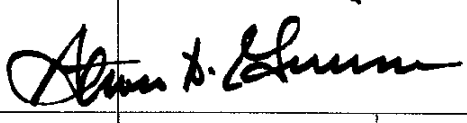
Executed on: 06/17/2014  
by **WADE MORLAN**

*WADE MORLAN*  
**WADE MORLAN**  
Registration#: R-006823  
Reno/Carson Messenger Service, Inc. (Lic# 322)

No Notary is Required per NRS 53.045 185 Martin Street  
Reno, NV 89509  
775.322.2424  
Atty File#: A-14-700520-C



\*50372\*

<b>AFAS</b>		PHONE NUMBER		FOR COURT USE ONLY	
ATTORNEY OR PARTY WITHOUT ATTORNEY (NAME AND ADDRESS)		702-450-6300			
NOGGLE LAW, PLLC					
376 E. WARM SPRINGS RD #140		REFERENCE NUMBER			
LAS VEGAS NV 89119		EP105603			
NAME OF COURT, JUDICIAL DISTRICT OR BRANCH COURT, IF ANY, AND POST OFFICE AND STREET ADDRESS					
District Court III					
200 S. THIRD STREET					
LAS VEGAS NV 89101					
SHORT NAME OF CASE					
KENNETH RENFROE v. LAKEVIEW LOAN SERVICING, LLC; ET AL					
<b>AFFIDAVIT OF ATTEMPTS</b>		DATE/TIME		CLERK OF THE COURT	
				Electronically Filed 07/18/2014 12:45:16 PM  III CASE NUMBER A-14-700520-C	

I am and was on the dates herein mentioned over the age of eighteen years and not a party to this action;

I received the following documents:

SUMMONS; COMPLAINT; CIVIL COVER SHEET; INITIAL APPEARANCE FEE DISCLOSURE

After due search, careful inquiry and diligent attempts at the following address(es), I have been unable to effect service of said process on:

Name: BRIAN J. FERGUSON

Address(es): 10818 PARK ST.  
MANTUA OH 44255

Process is being returned without service for the following reason(s):

2014-07-08 10:00:00 Bad address NO ANSWER AT THE DOOR. THERE WERE NO CARS AT THE RESIDENCE. THE SERVER CONTACTED THE POSTMASTER AND THEY DO NOT RECOGNIZE THAT NAME TO THE ADDRESS. LASTLY, THE SERVER STOPPED BY THE POLICE DEPARTMENT AND WAS TOLD THAT THE RESIDENCE HAS BEEN VACANT FOR A WHILE AND HAVE NOT HAD CONTACT WITH THE SUBJECT.

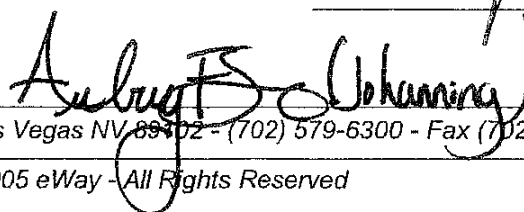
**Pursuant to NRS 53.045**

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

EXECUTED this 10<sup>th</sup> day of June, 20 14.



Aubrey F. Johanning  
Notary Public, State of Ohio



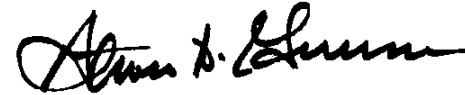
  
RUSS DEAN

My Commission Expires 08-21-2017  
Legal Services 1000 South Main Street - Suite B - Las Vegas NV 89102 - (702) 579-6300 - Fax (702) 259-6249 - Toll Free (888) 56Junes

EP105603

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Process License #1068



CLERK OF THE COURT

**DFLT**  
Robert B. Noggle, Esq.  
Nevada Bar No.: 11427  
NOGGLE LAW PLLC  
376 East Warm Springs Rd., Ste. 140  
Las Vegas, Nevada 89119  
PH: 702-450-6300/Fax: 702-642-9766  
Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

KENNETH RENFROE,  
Plaintiff,

CASE NO.: A-14-700520-C  
DEPT NO.: III

vs.

LAKEVIEW LOAN SERVICING, LLC;  
RECONTRUST COMPANY, N.A.; BRIAN J.  
FERGUSON and JENNIFER L. FERGUSON,  
Defendants.

**DEFAULT**

It appearing from the files and records in the above entitled action that Lakeview Loan Servicing, LLC, defendant herein, being duly served with a copy of the Summons and Complaint on June 13, 2014, that more than 20 days, exclusive of the day of service, having expired since service upon the defendant:

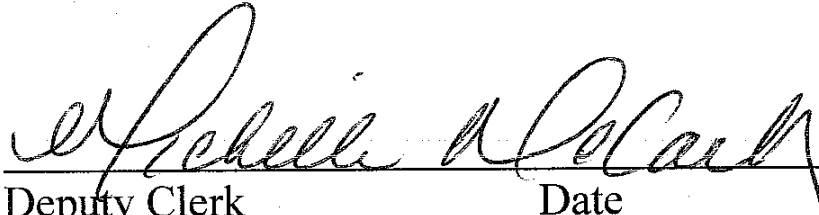
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1 That no Answer or other appearance having been filed and no further time having been  
2 granted, the default of the above named defendant for failing to answer or otherwise plead to  
3 plaintiff's Complaint is hereby granted.

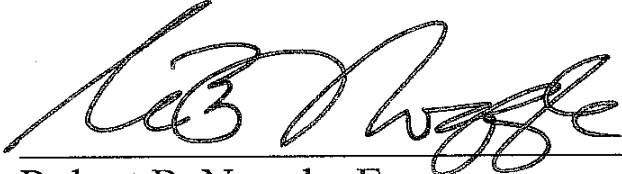
4 STEVEN D, GRIERSON, CLERK OF THE COURT

5  
6   
7 Deputy Clerk Date

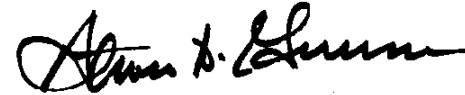
8 MICHELLE MCCARTHY

9 A 700520  
10 JUL 18 2014

11 NOGGLE LAW PLLC

12 

13 Robert B. Noggle, Esq.  
14 376 East Warm Springs Road, Ste. 140  
15 Las Vegas, Nevada 89119  
16 Attorney for Plaintiff  
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28



CLERK OF THE COURT

1 **DFLT**

2 Robert B. Noggle, Esq.

3 Nevada Bar No.: 11427

4 NOGGLE LAW PLLC

5 376 East Warm Springs Rd., Ste. 140

6 Las Vegas, Nevada 89119

7 PH: 702-450-6300/Fax: 702-642-9766

8 Attorney for Plaintiff

9  
10  
11 DISTRICT COURT  
12 CLARK COUNTY, NEVADA

13 KENNETH RENFROE,

14 Plaintiff,

CASE NO.: A-14-700520-C

DEPT NO.: III

15 vs.

16 LAKEVIEW LOAN SERVICING, LLC;  
17 RECONTRUST COMPANY, N.A.; BRIAN J.  
18 FERGUSON and JENNIFER L. FERGUSON,

19 Defendants.

20 **DEFAULT**

21 It appearing from the files and records in the above entitled action that Recontrust Company,  
22 N.A., defendant herein, being duly served with a copy of the Summons and Complaint on June 11,  
23 2014, that more than 20 days, exclusive of the day of service, having expired since service upon the  
24 defendant:

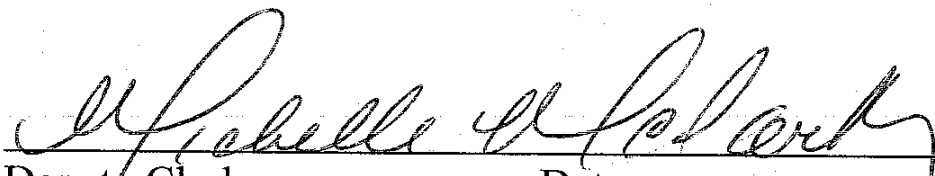
25 //

26 //

27 //

1 That no Answer or other appearance having been filed and no further time having been  
2 granted, the default of the above named defendant for failing to answer or otherwise plead to  
3 plaintiff's Complaint is hereby granted.

4 STEVEN D, GRIERSON, CLERK OF THE COURT

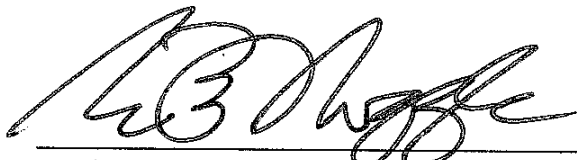
5  
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7   
8 Deputy Clerk Date

A 100520

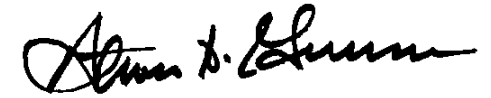
JUL 13 2014

MICHELLE MCCARTHY

9 NOGGLE LAW PLLC

10  
11 

12 Robert B. Noggle, Esq.  
13 376 East Warm Springs Road, Ste. 140  
14 Las Vegas, Nevada 89119  
15 Attorney for Plaintiff  
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27  
28



CLERK OF THE COURT

1 **SAO**  
2 ROBERT B. NOGGLE, ESQ.  
3 Nevada Bar No.: 11427  
4 [robert@nogglelaw.com](mailto:robert@nogglelaw.com)  
5 NOGGLE LAW PLLC  
6 376 East Warm Springs Road, Suite 140  
7 Las Vegas, Nevada 89119  
8 (702) 450-6300 / (702) 642-9766 FAX  
9  
10 Attorney for plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

10 KENNETH RENFROE,  
11 Plaintiff,

CASE NO.: A-14-700520-C  
DEPT NO.: III

12 vs.

13 LAKEVIEW LOAN SERVICING, LLC;  
14 RECONTRUST COMPANY, N.A.; BRIAN J.  
15 FERGUSON and JENNIFER L. FERGUSON,  
16 Defendants.

**STIPULATION AND ORDER TO SET ASIDE DEFAULT**  
**OF RECONTRUST COMPANY, N.A.**

18 Plaintiff, Kenneth Renfroe, by and through his attorney, Robert B. Noggle Esq., and defendant  
19 Recontrust Company, N.A., by and through it's attorney Darren T. Brenner, Esq., stipulate and agree  
20 as follows:

21 1. That the default entered against Defendant Recontrust Company, N.A. on July 24, 2014 be  
22 set aside; and

23 ///

24 ///

25 ///



1 2. Recontrust Company, N.A. will file an answer to the complaint within 20 days from the  
2 date of the entry of this stipulation and order.

3  
4 DATED THIS 14<sup>th</sup> day of August, 2014

DATED THIS 7 day of August, 2014

5 NOGGLE LAW PLLC

AKERMAN LLP

6  
7 By: 

8 Robert B. Noggle, Esq.  
9 376 East Warm Springs Road, Suite 140  
10 Las Vegas, Nevada 89119  
11 Attorney for plaintiff

By: 

Darren T. Brenner, Esq.  
1160 Town Center Drive, Suite 330  
Las Vegas, Nevada 89144  
Attorney for defendant,  
Recontrust Company, N.A.

12 IT IS SO ORDERED this 18 day of August, 2014

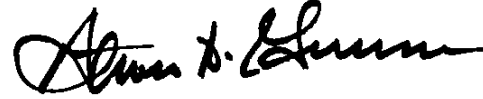
13  
14   
DISTRICT COURT JUDGE

15  
16  
17 Respectfully submitted by:

18 NOGGLE LAW PLLC

19  
20 By: 

21 Robert B. Noggle, Esq.  
22 376 East Warm Springs Road, Suite 140  
23 Las Vegas, Nevada 89119  
24 Attorneys for Plaintiff  
25  
26  
27  
28



CLERK OF THE COURT

1 **AFDD**  
2 **ROBERT B. NOGGLE, ESQ.**  
3 **Nevada Bar No. 11427**  
4 **LAW OFFICES OF**  
5 **NOGGLE LAW PLLC**  
6 **376 East Warm Springs Rd., Ste. 125**  
7 **Las Vegas, Nevada 89119**  
8 **Telephone: (702) 450-6300**  
9 **Facsimile: (702) 642-9766**

10 **Attorney for Plaintiff**

11 **DISTRICT COURT**  
12 **CLARK COUNTY, NEVADA**

13 **KENNETH RENFROE** ) **Case No.: A-14-700520-C**  
14 )  
15 **Plaintiff,** ) **Dept. No.: III**  
16 **vs.** )  
17 )  
18 **LAKEVIEW LOAN SERVICING, LLC, ET** )  
19 **AL** )  
20 **Defendant(s).** )  
21 )  
22 )  
23 )  
24 )  
25 )

26 **AFFIDAVIT OF DUE DILIGENCE**

27 **I, MAYRA SAENZ, being first duly sworn, deposes and says:**

28 That I am an employee of Junes Legal Service, Inc., located at 630 South Tenth  
29 Street, Ste. B, Las Vegas, Nevada 89101. I am a person over the age of eighteen and not a party  
30 to, nor interested in the above-cited action. **I hereby certify and return that:**

31 On or about July 7, 2014, I received instructions to conduct a skip trace to locate a  
32 possible address for Defendant, **BRIAN J. FERGUSON**. The information provided to me was  
33 the Defendant's full name and last known address of 7736 Beach Falls Ct., Las Vegas, Nevada  
34 89149.

35 The following is a summary of our office's efforts to locate an address for defendant  
36 Brian J. Ferguson:

- 37 1. On or about July 7, 2014, I conducted a search through the Clark County Records  
38 Marriage records by Brian J. Ferguson and found 1 recording.

- 1           A. Brian Joseph Ferguson married Jennifer Lynn Kish, recorded 6/14/2005
- 2           2. On or about July 7, 2014, I conducted a search through the Clark County Records
- 3           Foreclosure records by Brian J. Ferguson and found 7 recordings.
- 4           A. (7) recordings for parcel #125-28-816-020 at 7736 Beach Falls Ct., Las Vegas,
- 5           Nevada 89149
- 6           3. On or about July 7, 2014, I conducted a search through the Clark County Records
- 7           Ownership records by Brian J. Ferguson and found 3 recordings.
- 8           A. (3) recordings for parcel #125-28-816-020 at 7736 Beach Falls Ct., Las Vegas,
- 9           Nevada 89149
- 10           4. On or about July 7, 2014, I conducted a search through the Clark County Records
- 11           Lien records by Brian J. Ferguson and found 8 recordings.
- 12           A. (8) recordings for parcel #125-28-816-020 at 7736 Beach Falls Ct., Las Vegas,
- 13           Nevada 89149
- 14           5. On or about July 7, 2014, I conducted a search through the Clark County Assessors
- 15           by Brian J. Ferguson and found no results.
- 16           6. On or about July 7, 2014, I conducted a search through the Clark County Assessors
- 17           by last known address of 7736 Beach Falls Ct., Las Vegas, Nevada 89149 and found
- 18           this property listed for Kenneth Renfroe. Defendant is listed as the previous owner.
- 19           7. On or about July 7, 2014, I conducted a search through the Clark County Court Ticket
- 20           system by Brian J. Ferguson and found no cases.
- 21           8. On or about July 7, 2014, I conducted a search through the Clark County Family
- 22           Court system by Brian J. Ferguson and found no cases.
- 23           9. On or about July 7, 2014, I conducted a search through the Clark County Justice
- 24           Court system by Brian J. Ferguson and found 9 cases. Please see Exhibit "A" for
- 25           details.
10. On or about July 7, 2014, I conducted a search through the Clark County District
- Court system by Brian J. Ferguson and found 3 cases including this current case.
- A. Case #02A444641, Brian J. Ferguson, filed 1/4/2002, Type/Status: Other
- Torts/Closed
- B. Case #A-11-636885-C, Brian Ferguson, filed 3/11/2011, Type/Status:
- Negligence-Auto/Closed

11. On or about July 7, 2014, I conducted a search through the Clark County Voter's Registrar by Brian J. Ferguson and found that the defendant is not a registered voter.
12. On or about July 7, 2014, I conducted an Internet search through a National Database by name Nationwide and found a possible match for Brian J. Ferguson, age: 44, date of birth: 5/1970. Current address listed at 10818 Park St., Mantua, OH 44255 from 10/2000 to 6/2/2014. Previous address listed at 1160 Sparrow Run, Streetsboro, OH 44241 from 5/2010 to 6/11/2013.
13. On or about July 7, 2014, I conducted a search through the Nevada Secretary of State website by Brian J. Ferguson and found no record.
14. On or about July 7, 2014, I conducted a search through the City of Las Vegas Business License website by Brian J. Ferguson and found no record.
15. On or about July 7, 2014, I conducted a search through the City of Henderson Business License website by Brian J. Ferguson and found no record.
16. On or about July 7, 2014, I conducted a search through the Nevada Department of Corrections by Brian J. Ferguson and found no record.
17. On or about July 7, 2014, I conducted a search through Nevada Department of Motor Vehicles (DMV) who provided a matching record for Brian J. Ferguson, date of birth 5/15/1970. Description: male, 5'8" tall, 190 lbs., brown hair and hazel eyes. Defendant holds a surrendered class C license (#1703004393) with a last transaction date of 10/6/2009 and an expiration date of 5/15/2011. The address DMV shows on this record is 7736 Beach Falls Ct., Las Vegas, Nevada 89149. **This license was surrendered to the state of Ohio according to DMV record.**
18. Postal inquiries were submitted to the US Postmaster in an effort to verify/obtain forwarding address of 7736 Beach Falls Ct., Las Vegas, Nevada 89149. To date the US Postmaster has not replied to our inquiries.
19. Utility companies refuse to release any information on customers, past or present.
20. Based on the foregoing information, Junes Legal Services, Inc. was unable to locate a possible address for said Defendant(s), **BRIAN J. FERGUSON** in the County of Clark, State of Nevada.

1 I affirm that all attempts to serve the defendant at the last known addresses of 10818 Park  
2 St., Mantua, OH 44255 and 468 Santa Barbara Dr., Pataskala, OH 43062 were to no avail. See  
3 Affidavit of Attempts for details.

4 Pursuant to NRS 53.045

5  
6 I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct

7 5 day of September 2014

8  
9  
10   
11 Mayra Saenz  
12 Junes Legal Service, Inc.  
13 630 S. 10th St. #B  
14 Las Vegas, NV 89101  
15 702-579-6300 ph  
16 702-259-6249 fx  
17 NV - Process Servers License # 1068  
18  
19  
20  
21  
22  
23  
24  
25

<b>AFAS</b>		<b>PHONE NUMBER</b>		<b>FOR COURT USE ONLY</b>	
ATTORNEY OR PARTY WITHOUT ATTORNEY (NAME AND ADDRESS)		702-450-6300			
NOGGLE LAW, PLLC					
376 E. WARM SPRINGS RD #140		<b>REFERENCE NUMBER</b>			
LAS VEGAS NV 89119		EP105603			
NAME OF COURT, JUDICIAL DISTRICT OR BRANCH COURT, IF ANY, AND POST OFFICE AND STREET ADDRESS					
District Court III					
200 S. THIRD STREET					
LAS VEGAS NV 89101					
SHORT NAME OF CASE					
KENNETH RENFROE v. LAKEVIEW LOAN SERVICING, LLC; ET AL					
<b>AFFIDAVIT OF ATTEMPTS</b>		DATE/TIME		DEPT/DIV III	
				CASE NUMBER A-14-700520-C	

I am and was on the dates herein mentioned over the age of eighteen years and not a party to this action;

I received the following documents:

SUMMONS; COMPLAINT; CIVIL COVER SHEET; INITIAL APPEARANCE FEE DISCLOSURE

After due search, careful inquiry and diligent attempts at the following address(es), I have been unable to effect service of said process on:

Name: BRIAN J. FERGUSON

Address(es): 10818 PARK ST.  
MANTUA OH 44255

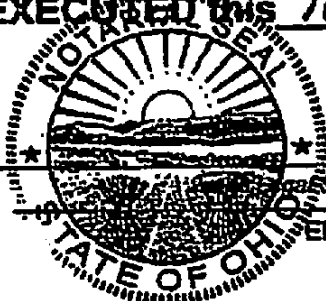
Process is being returned without service for the following reason(s):

2014-07-08 10:00:00 Bad address NO ANSWER AT THE DOOR. THERE WERE NO CARS AT THE RESIDENCE. THE SERVER CONTACTED THE POSTMASTER AND THEY DO NOT RECOGNIZE THAT NAME TO THE ADDRESS. LASTLY, THE SERVER STOPPED BY THE POLICE DEPARTMENT AND WAS TOLD THAT THE RESIDENCE HAS BEEN VACANT FOR A WHILE AND HAVE NOT HAD CONTACT WITH THE SUBJECT.

Pursuant to NRS 53.045

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

EXECUTED this 10<sup>th</sup> day of June, 2014.



Aubrey F. Johanning  
Notary Public, State of Ohio

*Aubrey F. Johanning*

*Russ Dean*  
RUSS DEAN

My Commission Expires 05-21-2017  
Suite B - Las Vegas NV 89102 • (702) 578-6300 • Fax (702) 269-6249 • Toll Free (888) 58 Junes  
EP105603 Copyright 2005 aWay - All Rights Reserved Process License #1068

<b>AFAS</b>		<b>PHONE NUMBER</b>		<b>FOR COURT USE ONLY</b>	
ATTORNEY OR PARTY WITHOUT ATTORNEY (NAME AND ADDRESS)		702-450-6300			
NOGGLE LAW, PLLC					
376 E. WARM SPRINGS RD #140		<b>REFERENCE NUMBER</b>			
LAS VEGAS NV 89119		EP105603			
NAME OF COURT, JUDICIAL DISTRICT OR BRANCH COURT, IF ANY, AND POST OFFICE AND STREET ADDRESS					
District Court III					
200 S. THIRD STREET					
LAS VEGAS NV 89101					
SHORT NAME OF CASE					
KENNETH RENFROE v. LAKEVIEW LOAN SERVICING, LLC; ET AL					
<b>AFFIDAVIT OF ATTEMPTS</b>		DATE/TIME		DEPT/DIV III	
				CASE NUMBER A-14-700520-C	

I am and was on the dates herein mentioned over the age of eighteen years and not a party to this action;

I received the following documents:

SUMMONS; COMPLAINT; CIVIL COVER SHEET; INITIAL APPEARANCE FEE DISCLOSURE

After due search, careful inquiry and diligent attempts at the following address(es), I have been unable to effect service of said process on:

Name: BRIAN J. FERGUSON

Address(es): 468 SANTA BARBARA DR.  
PATASKALA OH 43062

Process is being returned without service for the following reason(s):

2014-08-07 18:10:00 Attempted (But unable to serve) THE GIVEN ADDRESS IS AN APARTMENT COMPLEX. NO ANSWER, FRONT BLIND IS OPEN BUT INSIDE SHOWS STAIRS TO A DOOR FOR THE UPSTAIRS APARTMENT. 2 VEHICLES IN PARKING LOT (FFP643 AND FTH8125)

2014-08-08 09:00:00 Attempted (But unable to serve) NO ANSWER AGAIN, KNOCKED ON NEIGHBORS DOOR BUT COULDN'T GET AN ANSWER.

2014-08-10 20:05:00 Attempted (But unable to serve) NO ANSWER, LIGHTS OFF, SPOKE TO NEIGHBOR WHO SAID HE JUST RECENTLY MOVED IN AND WASN'T SURE IF ANYONE WAS LIVING THERE.

2014-08-12 11:00:00 Unable to serve/return NO ANSWER, SPOKE TO A WOMAN IN THE LEASING OFFICE WHO CONFIRMED TO ME THAT THE PROPERTY IS UNOCCUPIED. SHE WOULD NOT PROVIDE ANY INFORMATION ABOUT ANY PREVIOUS TENANTS.

### Pursuant to NRS 53.045

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

EXECUTED this 2 day of Sept, 2014.



DUSTIN RINE

# EXHIBIT “A”



## Civil Case Records Search Results

[Skip to Main Content](#) [Logout My Account](#) [Search Menu](#) [New Justice](#) [Civil Search](#) [Refine Search](#) Location : [Justice Court](#) [Criminal/Civil](#) [Help](#)

**Record Count: 9**

**Search By:** Party **Party Search Mode:** Name **Last Name:** ferguson **First Name:** brian **Case Status:** All **Sort By:** Filed Date

Case Number	Style	Filed/Location	Type/Status
<a href="#">03C014037</a>	IHC HEALTH SERVICES, Plaintiff(s) vs. BRIAN FERGUSON, Defendant(s)	07/16/2003 JC Department 5	Civil - Complaint Closed
<a href="#">10E001649</a>	PARK TERRACE/JEN TAO, Landlord(s) vs. BRIAN LEE FERGUSON, Tenant(s)	01/28/2010 JC Department 4	Summary Eviction Closed
<a href="#">10C006544</a>	CLARK COUNTY COLLECTION SERVICE LLC, Plaintiff(s) vs. BRIAN FERGUSON, Defendant(s)	02/23/2010 JC Department 4	Civil - Complaint Open
<a href="#">13E003625</a>	Mark Taylor Residential - Las Vegas Properties, Landlord(s) vs. Brian Ferguson, Tenant(s)	02/20/2013 JC Department 5	Summary Eviction Closed
<a href="#">13E012746</a>	Parkview Pointe Apt, Landlord(s) vs. Brian L Ferguson, Tenant(s)	06/21/2013 JC Department 5	Summary Eviction Closed
<a href="#">13C015782</a>	Nationstar Mortgage LLC, Plaintiff(s) vs. Brian Ferguson, Defendant(s)	06/27/2013 JC Department 5	Civil - Unlawful Detainer Closed
<a href="#">13E020029</a>	Enchanted Gardens LLC, Landlord(s) vs. Brian Ferguson, Tenant(s)	09/18/2013 JC Department 5	Summary Eviction Closed
<a href="#">13C021905</a>	Discover Bank, Plaintiff(s) vs. Brian W Ferguson, Defendant(s)	10/02/2013 JC Department 5	Civil - Complaint Closed
<a href="#">13C024546</a>	Silver Liege Development LLC, Plaintiff(s) vs. Brian Ferguson, Defendant(s)	11/08/2013 JC Department 4	Civil - Unlawful Detainer Open



CLERK OF THE COURT

1 **AFDD**  
2 **ROBERT B. NOGGLE, ESQ.**  
3 **Nevada Bar No. 11427**  
4 **LAW OFFICES OF**  
5 **NOGGLE LAW PLLC**  
6 **376 East Warm Springs Rd., Ste. 125**  
7 **Las Vegas, Nevada 89119**  
8 **Telephone: (702) 450-6300**  
9 **Facsimile: (702) 642-9766**

10 **Attorney for Plaintiff**

11 **DISTRICT COURT**  
12 **CLARK COUNTY, NEVADA**

13 **KENNETH RENFROE**

14 **Plaintiff,**

15 **vs.**

16 **LAKEVIEW LOAN SERVICING, LLC, ET**  
17 **AL**

18 **Defendant(s).**

) **Case No.: A-14-700520-C**

) **Dept. No.: III**

19 **AFFIDAVIT OF DUE DILIGENCE**

20 **I, MAYRA SAENZ, being first duly sworn, deposes and says:**

21 That I am an employee of Junes Legal Service, Inc., located at 630 South Tenth  
22 Street, Ste. B, Las Vegas, Nevada 89101. I am a person over the age of eighteen and not a party  
23 to, nor interested in the above-cited action. **I hereby certify and return that:**

24 On or about July 7, 2014, I received instructions to conduct a skip trace to locate a  
25 possible address for Defendant, **JENNIFER L. FERGUSON**. The information provided to me  
was the Defendant's full name and last known address of 7736 Beach Falls Ct., Las Vegas,  
Nevada 89149.

The following is a summary of our office's efforts to locate an address for defendant  
Jennifer L. Ferguson:

1. On or about July 7, 2014, I conducted a search through the Clark County Records  
Marriage records by Jennifer L. Ferguson and found 3 recordings.

- 1 A. Jennifer Lynn Ferguson married Jeffrey James Ferguson, recorded 3/28/2002
- 2 B. Jennifer Lynn Ferguson married Michael Christopher Estey, recorded 6/24/2002
- 3 C. Jennifer Lynn Ferguson married Christopher Wade Burrell, recorded 4/13/2004
- 4 2. On or about July 7, 2014, I conducted a search through the Clark County Records  
Foreclosure records by Jennifer L. Ferguson and found 5 recordings.
- 5 A. (5) recordings for parcel #125-28-816-020 at 7736 Beach Falls Ct., Las Vegas,  
6 Nevada 89149
- 7 3. On or about July 7, 2014, I conducted a search through the Clark County Records  
8 Ownership records by Jennifer L. Ferguson and found 3 recordings.
- 9 A. (3) recordings for parcel #125-28-816-020 at 7736 Beach Falls Ct., Las Vegas,  
Nevada 89149
- 10 4. On or about July 7, 2014, I conducted a search through the Clark County Records  
11 Lien records by Jennifer L. Ferguson and found 6 recordings.
- 12 A. (6) recordings for parcel #125-28-816-020 at 7736 Beach Falls Ct., Las Vegas,  
13 Nevada 89149
- 14 5. On or about July 7, 2014, I conducted a search through the Clark County Assessors  
by Jennifer L. Ferguson and found no results.
- 15 6. On or about July 7, 2014, I conducted a search through the Clark County Assessors  
16 by last known address of 7736 Beach Falls Ct., Las Vegas, Nevada 89149 and found  
this property listed for Kenneth Renfroe. Defendant is listed as the previous owner.
- 17 7. On or about July 7, 2014, I conducted a search through the Clark County Court Ticket  
18 system by Jennifer L. Ferguson and found no cases.
- 19 8. On or about July 7, 2014, I conducted a search through the Clark County Family  
20 Court system by Jennifer L. Ferguson and found no cases.
- 21 9. On or about July 7, 2014, I conducted a search through the Clark County Justice  
Court system by Jennifer L. Ferguson and found no cases.
- 22 10. On or about July 7, 2014, I conducted a search through the Clark County District  
23 Court system by Jennifer L. Ferguson and found 2 cases including this current case.
- 24 A. Case #A-11-636885-C, Jennifer Ferguson, filed 3/11/2011, Type/Status:  
25 Negligence-Auto/Closed

11. On or about July 7, 2014, I conducted a search through the Clark County Voter's Registrar by Jennifer L. Ferguson and found that the defendant is a registered voter with an address listed of 5397 Painted Mirage Road, Las Vegas, Nevada 89149. This address is not current, it is listed as a previous address through Nevada DMV and National database.
12. On or about July 7, 2014, I conducted an Internet search through a National Database by name Nationwide and found a possible match for Jennifer L. Ferguson, age: 41, date of birth: 3/1973. Current address listed at 468 Santa Barbara Dr., Pataskala, OH 43062 from 11/30/2012 to 7/7/2014. Previous addresses listed at 10818 Park St., Mantua, OH 44255 from 9/2005 to 4/3/2014 and 5397 Painted Mirage Rd., Las Vegas, Nevada 89149 from 7/2007 to 6/2008.
13. On or about July 7, 2014, I conducted a search through the Nevada Secretary of State website by Jennifer L. Ferguson and found no record.
14. On or about July 7, 2014, I conducted a search through the City of Las Vegas Business License website by Jennifer L. Ferguson and found no record.
15. On or about July 7, 2014, I conducted a search through the City of Henderson Business License website by Jennifer L. Ferguson and found no record.
16. On or about July 7, 2014, I conducted a search through the Nevada Department of Corrections by Jennifer L. Ferguson and found no record.
17. On or about July 7, 2014, I conducted a search through Nevada Department of Motor Vehicles (DMV) who provided a matching record for Jennifer L. Ferguson, date of birth 3/23/1973. Description: female, 5'3" tall, 180 lbs., brown hair and brown eyes. Defendant holds a surrendered class C license (#1703049292) with a last transaction date of 11/14/2008 and an expiration date of 3/23/2011. The address DMV shows on this record is 5397 Painted Mirage Rd., Las Vegas, Nevada 89149. **This license was surrendered to the state of Ohio according to DMV record.**
18. Postal inquiries were submitted to the US Postmaster in an effort to verify/obtain forwarding address of 7736 Beach Falls Ct., Las Vegas, Nevada 89149. To date the US Postmaster has not replied to our inquiries.
19. Utility companies refuse to release any information on customers, past or present.


20. Based on the foregoing information, Junes Legal Services, Inc. was unable to locate a possible address for said Defendant(s), **JENNIFER L. FERGUSON** in the County of Clark, State of Nevada.

I affirm that all attempts to serve the defendant at the last known address of 468 Santa Barbara Dr., Pataskala, OH 43062 were to no avail. See Affidavit of Attempts for details.

Pursuant to NRS 53.045

**I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct**

5 day of September 2014

  
 Mayra Saenz  
 Junes Legal Service, Inc.  
 630 S. 10th St. #B  
 Las Vegas, NV 89101  
 702-579-6300 ph  
 702-259-6249 fx  
 NV - Process Servers License # 1068

<b>AFAS</b>		<b>PHONE NUMBER</b>		<b>FOR COURT USE ONLY</b>	
ATTORNEY OR PARTY WITHOUT ATTORNEY (NAME AND ADDRESS)		702-450-6300			
NOGGLE LAW, PLLC					
376 E. WARM SPRINGS RD #140					
LAS VEGAS NV 89119		<b>REFERENCE NUMBER</b>			
		EP105940			
<b>NAME OF COURT, JUDICIAL DISTRICT OR BRANCH COURT, IF ANY, AND POST OFFICE AND STREET ADDRESS</b>					
District Court III					
200 S. THIRD STREET					
LAS VEGAS NV 89101					
<b>SHORT NAME OF CASE</b>					
KENNETH RENFROE v. LAKEVIEW LOAN SERVICING, LLC; ET AL					
<b>AFFIDAVIT OF ATTEMPTS</b>		<b>DATE/TIME</b>		<b>DEPT/DIV</b> III	<b>CASE NUMBER</b> A-14-700520-C

I am and was on the dates herein mentioned over the age of eighteen years and not a party to this action;

I received the following documents:

SUMMONS, COMPLAINT

After due search, careful inquiry and diligent attempts at the following address(es), I have been unable to effect service of said process on:

Name: JENNIFER L. FERGUSON

Address(es): 468 SANTA BARBARA DR.  
PATASKALA OH 43062

Process is being returned without service for the following reason(s):

2014-08-07 18:10:00 Attempted (But unable to serve) THE GIVEN ADDRESS IS AN APARTMENT COMPLEX. NO ANSWER, FRONT BLIND IS OPEN BUT INSIDE SHOWS STAIRS TO A DOOR FOR THE UPSTAIRS APARTMENT. 2 VEHICLES IN PARKING LOT (FFP643 AND FTH8125)

2014-08-08 09:00:00 Attempted (But unable to serve) NO ANSWER AGAIN, KNOCKED ON NEIGHBORS DOOR BUT COULDN'T GET AN ANSWER.

2014-08-10 20:05:00 Attempted (But unable to serve) NO ANSWER, LIGHTS OFF, SPOKE TO NEIGHBOR WHO SAID HE JUST RECENTLY MOVED IN AND WASN'T SURE IF ANYONE WAS LIVING THERE.

2014-08-12 11:00:00 Unable to serve/return NO ANSWER, SPOKE TO A WOMAN IN THE LEASING OFFICE WHO CONFIRMED TO ME THAT THE PROPERTY IS UNOCCUPIED. SHE WOULD NOT PROVIDE ANY INFORMATION ABOUT ANY PREVIOUS TENANTS.

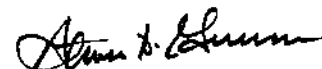
**Pursuant to NRS 53.045**

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

EXECUTED this 2 day of Sept, 2014.



DUSTIN RINE



CLERK OF THE COURT

## Affidavit of Publication

STATE OF NEVADA }  
COUNTY OF CLARK } SS

, Rosalie Qualls state:

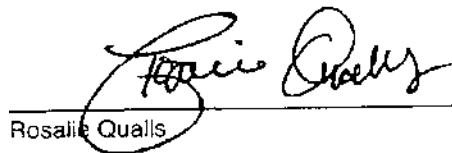
That I am Assistant Operations Manager of the Nevada Legal News, a daily newspaper of general circulation, printed and published in Las Vegas, Clark County, Nevada; that the publication, a copy of which is attached hereto, was published in the said newspaper on the following dates:

Sep 16, 2014  
Sep 23, 2014  
Sep 30, 2014  
Oct 07, 2014  
Oct 14, 2014

That said newspaper was regularly issued and circulated on those dates. I declare under penalty of perjury that the foregoing is true and correct.

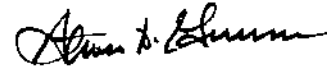
DATED: Oct 14, 2014

DISTRICT COURT  
CLARK COUNTY, NEVADA  
CASE NO. A 700520 DEPT. NO. III  
KENNETH RENFROE, Plaintiff(s),  
-vs- LAKEVIEW LOAN SERVICING, LLC; RECONTRUST COMPANY, N.A.; BRIAN J. FERGUSON and JENNIFER L. FERGUSON, Defendant(s).  
SUMMONS - CIVIL  
NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS. READ THE INFORMATION BELOW. TO THE DEFENDANT(S): JENNIFER L. FERGUSON A civil Complaint has been filed by the Plaintiff(s) against you for the relief set forth in the Complaint. Object of Action: This is a Complaint for Quiet Title and Concerns Title to Property. 1. If you intend to defend this lawsuit, within 20 days after this Summons is served on you, exclusive of the day of service, you must do the following: (a) File with the Clerk of this Court, whose address is shown below, a formal written response to the Complaint in accordance with the rules of the Court, with the appropriate filing fee. (b) Serve a copy of your response upon the attorney whose name and address is shown below. 2. Unless you respond, your default will be entered upon application of the Plaintiff(s) and failure to so respond will result in a judgment of default against you for the relief demanded in the Complaint, which could result in the taking of money or property or other relief requested in the Complaint. 3. If you intend to seek the advice of an attorney in this matter, you should do so promptly so that your response may be filed on time. 4. The State of Nevada, its political subdivisions, agencies, officers, employees, board members, commission members and legislators each have 45 days after service of this Summons within which to file an Answer or other responsive pleading to the Complaint. STEVEN D. GRIERSON, CLERK OF COURT, By: DIANA MATSON, Deputy Clerk, Date MAY 13 2014, Regional Justice Center, 200 Lewis Avenue, Las Vegas, NV 89101, Submitted By: By: ROBERT B. NOGGLE, ESQ., Nevada Bar No.: 11427, NOGGLE LAW PLLC., 376 E. Warm Springs Road Suite 140, Las Vegas, NV 89119, (702) 450-6300/(702) 642-9766 FAX, Attorney for Plaintiff  
Published in Nevada Legal News  
September 16, 23, 30, October 7, 14, 2014

  
Rosalie Qualls

04108432 00381591 7026429766

ROBERT B. NOGGLE, ESQ.  
NOGGLE LAW PLLC.  
376 EAST WARM SPRINGS RD STE. 140  
LAS VEGAS , NV 89119



CLERK OF THE COURT

## Affidavit of Publication

STATE OF NEVADA }  
COUNTY OF CLARK } SS

I, Rosalie Qualls state:

That I am Assistant Operations Manager of the Nevada Legal News, a daily newspaper of general circulation, printed and published in Las Vegas, Clark County, Nevada; that the publication, a copy of which is attached hereto, was published in the said newspaper on the following dates:

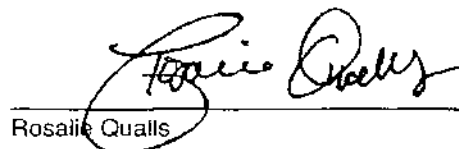
Sep 19, 2014  
Sep 26, 2014  
Oct 03, 2014  
Oct 10, 2014  
Oct 17, 2014

That said newspaper was regularly issued and circulated on those dates. I declare under penalty of perjury that the foregoing is true and correct.

DATED: Oct 17, 2014

Rosalie Qualls

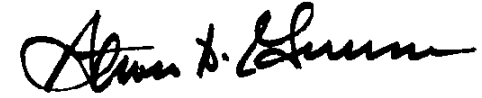
DISTRICT COURT  
CLARK COUNTY, NEVADA  
CASE NO. A 700520 DEPT. NO. III  
KENNETH RENFROE, Plaintiff(s),  
-vs- LAKEVIEW LOAN SERVICING, LLC; RECONTRUST COMPANY, N.A.; BRIAN J. FERGUSON and JENNIFER L. FERGUSON, Defendant(s).  
SUMMONS - CIVIL  
NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS. READ THE INFORMATION BELOW. TO THE DEFENDANT(S): BRIAN J. FERGUSON A civil Complaint has been filed by the Plaintiff(s) against you for the relief set forth in the Complaint. Object of Action: This is a Complaint for Quiet Title and Concerns Title to Property. 1. If you intend to defend this lawsuit, within 20 days after this Summons is served on you, exclusive of the day of service, you must do the following: (a) File with the Clerk of this Court, whose address is shown below, a formal written response to the Complaint in accordance with the rules of the Court, with the appropriate filing fee. (b) Serve a copy of your response upon the attorney whose name and address is shown below. 2. Unless you respond, your default will be entered upon application of the Plaintiff(s) and failure to so respond will result in a judgment of default against you for the relief demanded in the Complaint, which could result in the taking of money or property or other relief requested in the Complaint. 3. If you intend to seek the advice of an attorney in this matter, you should do so promptly so that your response may be filed on time. 4. The State of Nevada, its political subdivisions, agencies, officers, employees, board members, commission members and legislators each have 45 days after service of this Summons within which to file an Answer or other responsive pleading to the Complaint. STEVEN D. GRIERSON, CLERK OF COURT, By: ONDINA AMOS, Deputy Clerk, Date SEP 17 2014, Regional Justice Center, 200 Lewis Avenue, Las Vegas, NV 89101, Submitted By: By: ROBERT B. NOGGLE, ESQ., Nevada Bar No.: 11427, NOGGLE LAW PLLC., 376 E. Warm Springs Road Suite 140, Las Vegas, NV 89119, (702) 450-6300/(702) 642-9766 FAX, Attorney for Plaintiff  
Published in Nevada Legal News  
September 16, 26, October 3, 10, 17, 2014



04108432 00381845 7026429766

ROBERT B. NOGGLE, ESQ.  
NOGGLE LAW PLLC.  
376 EAST WARM SPRINGS RD STE. 140  
LAS VEGAS , NV 89119





CLERK OF THE COURT

1 **DFLT**

2 Robert B. Noggle, Esq.

3 Nevada Bar No.: 11427

4 **NOGGLE LAW PLLC**

5 376 East Warm Springs Rd., Ste. 140

6 Las Vegas, Nevada 89119

7 PH: 702-450-6300 | Fax: 702-642-9766

8 Attorney for Plaintiff

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

11 **KENNETH RENFROE,**

12 Plaintiff,

CASE NO.: A-14-700520-C

DEPT NO.: III

13 vs.

14 **LAKEVIEW LOAN SERVICING, LLC;**  
15 **RECONTRUST COMPANY, N.A.; BRIAN J.**  
16 **FERGUSON and JENNIFER L. FERGUSON,**

17 Defendants.

18 **DEFAULT**

19 It appearing from the files and records in the above entitled action that **JENNIFER L.**  
20 **FERGUSON**, defendant herein, being duly served with a copy of the summons and complaint on  
21 September 16, 2014, September 23, 2014, September 30, 2014, October 7, 2014, and October 14,  
22 2014, that more than 20 days, exclusive of the day of service, having expired since service upon the  
23 defendant:

24 //

25 //

1 That no answer or other appearance having been filed and no further time having been  
2 granted, the default of the above-named defendant for failing to answer or otherwise plead to the  
3 plaintiff's complaint is hereby granted.  
4

5  
6 STEVEN D. GRIERSON, CLERK OF THE COURT

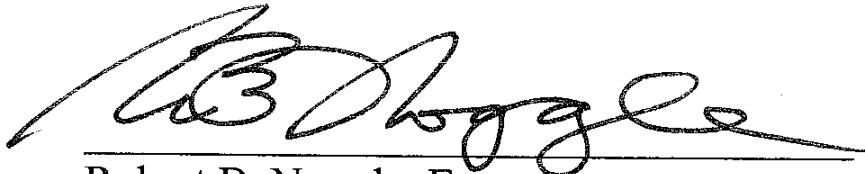
7  
8   
9 Deputy Clerk

Date

NOV  
LEONA ASIFOA 10 2014

A700520

10 NOGGLE LAW PLLC

11 

12 Robert B. Noggle, Esq.

13 376 East Warm Springs Road, Ste. 140

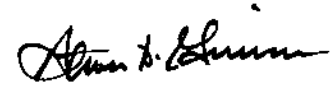
14 Las Vegas, Nevada 89119

15 Attorney for Plaintiff  
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AFFP  
A 700520-1

Electronically Filed  
11/17/2014 09:55:56 AM

**Amended**  
**Affidavit of Publication**



CLERK OF THE COURT

STATE OF NEVADA }  
COUNTY OF CLARK } SS


I, Rosalie Qualls state:

That I am Assistant Operations Manager of the Nevada Legal News, a daily newspaper of general circulation, printed and published in Las Vegas, Clark County, Nevada; that the publication, a copy of which is attached hereto, was published in the said newspaper on the following dates:

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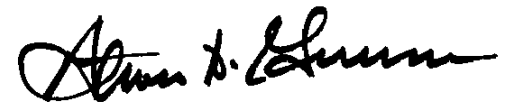
  
\_\_\_\_\_  
Rosalie Qualls

DISTRICT COURT  
CLARK COUNTY, NEVADA  
CASE NO. A 700520 DEPT. NO. III  
KENNETH RENFROE, Plaintiff(s),  
-vs- LAKEVIEW LOAN SERVICING, LLC; RECONTRUST COMPANY, N.A.; BRIAN J. FERGUSON and JENNIFER L. FERGUSON, Defendant(s).  
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NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS. READ THE INFORMATION BELOW. TO THE DEFENDANT(S): BRIAN J. FERGUSON A civil Complaint has been filed by the Plaintiff(s) against you for the relief set forth in the Complaint. Object of Action: This is a Complaint for Quiet Title and Concerns Title to Property. 1. If you intend to defend this lawsuit, within 20 days after this Summons is served on you, exclusive of the day of service, you must do the following: (a) File with the Clerk of this Court, whose address is shown below, a formal written response to the Complaint in accordance with the rules of the Court, with the appropriate filing fee. (b) Serve a copy of your response upon the attorney whose name and address is shown below. 2. Unless you respond, your default will be entered upon application of the Plaintiff(s) and failure to so respond will result in a judgment of default against you for the relief demanded in the Complaint, which could result in the taking of money or property or other relief requested in the Complaint. 3. If you intend to seek the advice of an attorney in this matter, you should do so promptly so that your response may be filed on time. 4. The State of Nevada, its political subdivisions, agencies, officers, employees, board members, commission members and legislators each have 45 days after service of this Summons within which to file an Answer or other responsive pleading to the Complaint. STEVEN D. GRIERSON, CLERK OF COURT, By: ONDINA AMOS, Deputy Clerk, Date SEP 17 2014, Regional Justice Center, 200 Lewis Avenue, Las Vegas, NV 89101, Submitted By: By: ROBERT B. NOGGLE, ESQ., Nevada Bar No.: 11427, NOGGLE LAW PLLC., 376 E. Warm Springs Road Suite 140, Las Vegas, NV 89119, (702) 450-6300/(702) 642-9766 FAX, Attorney for Plaintiff  
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04108432 00381845 7026429766

ROBERT B. NOGGLE, ESQ.  
NOGGLE LAW PLLC.  
376 EAST WARM SPRINGS RD STE. 140  
LAS VEGAS , NV 89119

APP000033



CLERK OF THE COURT

**MDSM**  
DARREN T. BRENNER, ESQ.  
Nevada Bar No. 8386  
NATALIE L. WINSLOW, ESQ.  
Nevada Bar No. 12125  
AKERMAN LLP  
1160 Town Center Drive, Suite 330  
Las Vegas, Nevada 89144  
Telephone: (702) 634-5000  
Facsimile: (702) 380-8572  
Email: darren.brenner@akerman.com

*Attorneys for Defendants*  
*ReconTrust Company, N.A. and*  
*Lakeview Loan Servicing, LLC*

DISTRICT COURT  
CLARK COUNTY, NEVADA

KENNETH RENFROE,  
  
Plaintiff,  
  
v.  
LAKEVIEW LOAN SERVICING, LLC;  
RECONTRUST COMPANY, N.A.; BRIAN J.  
FERGUSON AND JENNIFER L. FERGUSON,  
  
Defendants.

Case No.: A-14-700520-C  
Dept. No. III

**LAKEVIEW LOAN SERVICING, LLC'S  
MOTION TO DISMISS COMPLAINT  
BASED ON THE SUPREMACY AND  
PROPERTY CLAUSES OF THE U.S.  
CONSTITUTION**

Defendant Lakeview Loan Servicing, LLC moves to dismiss plaintiff Kenneth Renfroe's  
complaint.

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{29887435;1}

AKERMAN LLP

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

**NOTICE OF MOTION**

TO: ALL PARTIES AND COUNSEL OF RECORD:

PLEASE TAKE NOTICE that Defendants ReconTrust Company, N.A., and Lakeview Loan Servicing, LLC, will bring the foregoing Motion to Dismiss Complaint Based on the Supremacy and Property Clauses of the U.S. Constitution on for hearing before the Court on the 7 day of January, <sup>2015</sup>~~2014~~, at the hour of 9 : 0 0 a.m., or as soon thereafter in Department III as soon as counsel can be heard.

DATED this 20th day of November, 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 Nationstar Mortgage, LLC*

**I. Introduction.**

Renfroe's apparent sole causes of action are for quiet title and declaratory relief—according to Renfroe, the HOA foreclosure sale extinguished Lakeview's federally insured deed of trust. Renfroe cannot succeed on his causes of action as a matter of law because the loan at the center of this dispute is insured by the FHA and is therefore protected under federal law.

**First**, federal law is the supreme law of the land. U.S. CONST. ART. VI, cl. 2. Federal law protects FHA insured loans from being eliminated or impaired by operation of state law. *SFR Investments*<sup>1</sup> and the "super-priority" lien created by NRS 116.3116(2) are inapplicable and preempted by federal law, as recently decided by a Nevada federal district court. *See Washington & Sandhill Homeowners Ass'n v. Bank of Am.*, No. 2:13-cv-01834-GMN-GWF, 2014 WL 4798565 (D. Nev.

<sup>1</sup> *SFR Invs. Pool 1 v. U.S. Bank*, 130 Nev. Adv. Op. 75, 334 P.3d 408 (2014) ("*SFR Investments*").

1 Sept. 25, 2014).

2 **Second**, under the Property Clause of the U.S. Constitution, title to the United States's  
3 property can only be divested by an act of Congress. U.S. CONST. ART. IV, § 3, cl. 2. Because the  
4 property at issue in this case is federal property, the HOA sale could not have extinguished  
5 Lakeview's interest.

6 Chapter 116 of the Nevada Revised States must yield to the federal interest in the deed of trust under  
7 the Supremacy and Property Clauses of the U.S. Constitution. The Court should dismiss Renfroe's  
8 lawsuit as a matter of law.

9 II. Factual Background.

10 Brian and Jennifer Ferguson (the **borrowers**) purchased property located at 7736 Beach Falls  
11 Court, Las Vegas, Nevada 89149 in May of 2008. **Ex. A.**<sup>2</sup> The borrowers borrowed \$172,296.00  
12 from Countrywide Bank, FSB to finance the purchase. *Id.* The deed of trust indicates it is an FHA  
13 insured mortgage, and contains an FHA case number. *Id.* The deed of trust states that mortgage  
14 insurance premiums must be paid to the Department of Housing and Urban Development (**HUD**)  
15 and provides for how those payments will be applied in the order of payments section of the deed of  
16 trust. *Id.* at ¶¶ 2-3. The FHA insured deed of trust was eventually assigned to Lakeview on August  
17 1, 2013. **Ex. B.**

18 On June 5, 2013, Nevada Association Services, Inc. (**NAS**), as agent for Desert Creek HOA,  
19 recorded a notice of delinquent assessment lien against the property. **Ex. C.** On October 11, 2013,  
20 NAS, as agent for the HOA, recorded a notice of default. **Ex. D.** NAS, as agent for the HOA,  
21 recorded a notice of foreclosure sale on February 25, 2014. **Ex. E.** On April 18, 2014, NAS sold the  
22 property to Renfroe. **Ex. F.** Per the foreclosure deed, Renfroe purchased the property for  
23 \$20,000.00. *Id.* The taxable value of the property at the time of the sale was \$135,580.00. *Id.*

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25  
26 <sup>2</sup> Lakeview requests this Court take judicial notice of the properly recorded public records attached  
27 as exhibits to this motion. The Court may take judicial notice of facts commonly known in its  
28 jurisdiction, as well as facts "[c]apable of accurate and ready determination by resort to sources  
whose accuracy cannot reasonably be questioned, so that the fact is not subject to reasonable  
dispute." NRS 47.130.

1 III. Legal Standard.

2 Rule 12(b)(5) of the Nevada Rules of Civil Procedure provides that a complaint may be  
3 dismissed for "failure to state a claim upon which relief can be granted." When passing on such a  
4 motion, the factual allegations in the complaint are treated as true, and all inferences are drawn in  
5 favor of the non-moving party. *Hamp v. Foote*, 118 Nev. 405, 47 P.3d 438 (2002). A complaint  
6 should be dismissed where the allegations are insufficient to establish the elements of a claim for  
7 relief. *Id.* at 408.

8 IV. Renfroe's Title is Void because Chapter 116 Must Yield to the Federal Government's Interest  
9 in the Mortgage under the Supremacy Clause.

10 The Supremacy Clause bars Nevada law from allowing an HOA foreclosure to extinguish a  
11 federally insured security interest. *Washington & Sandhill Homeowners Ass'n v. Bank of Am., N.A.*,  
12 No. 2:13-cv-01845-GMN-GWF, 2012 WL 4798565 (D. Nev. Sept. 25, 2014). *Washington*, issued  
13 seven days after *SFR Investments*, expressly held that *SFR Investments* does not apply to FHA loans,  
14 and that a deed of trust insured by the FHA cannot be extinguished by a Chapter 116 HOA  
15 foreclosure sale.

16 Under the Single Family Mortgage Insurance Program, HUD insures mortgages originated  
17 by private lenders—commonly known as FHA insurance—on single family residences under a  
18 federal congressional mandate to make housing available to all citizens. 12 U.S.C. § 1709. HUD's  
19 insurance encourages private lenders to originate loans to individuals who would not otherwise  
20 qualify for a home loan. *Secretary of Housing & Urban Dev. v. Sky Meadow Assoc.*, 117 F. Supp.  
21 2d 970, 973-74 (C.D. Cal. 2000).

22 Under the program, the private lender may foreclose if the borrower defaults and, if the  
23 successful bidder at the foreclosure sale, may convey title to the property to HUD. 24 C.F.R. §§  
24 203.355(a); 203.359(a). The lender then submits an insurance claim for payment of its losses. 24  
25 C.F.R. § 203.65. HUD disposes of the property pursuant to 24 C.F.R. §§ 291.1 to 291.565.<sup>3</sup>

26  
27 <sup>3</sup> See also 12 U.S.C. § 1710(a)(1) (authorizing HUD to take possession of the property); 12 U.S.C. § 1719(g)  
28 (governing the handling and disposal of HUD property once HUD takes possession).

1 Under Ninth Circuit precedent, federal law applies in cases involving FHA insured  
2 mortgages "to assure the protection of the federal program against loss, state law to the contrary  
3 notwithstanding." *United States v. Stadium Apartments, Inc.*, 425 F.2d 358, 362 (9th Cir. 1970)  
4 (applying federal law to override state law right of redemption to insure that FHA was reimbursed on  
5 its guarantee of a mortgage); *United States v. View Crest Garden Apartments, Inc.*, 268 F.2d 380,  
6 383 (9th Cir. 1959) ("[T]he federal policy to protect the treasury and to promote the security of  
7 federal investment which in turn promotes the prime purpose of the Act—to facilitate the building  
8 of homes by the use of federal credit—becomes predominant. Local rules limiting the effectiveness  
9 of the remedies available to the United States for breach of a federal duty cannot be adopted.").

10 Under the Supremacy Clause, "This Constitution, and the Laws of the United States, which  
11 shall be made in Pursuance thereof . . . shall be the supreme Law of the Land." U.S. CONST. ART. VI,  
12 cl. 2. The Supremacy Clause overrides state law that nullifies the effectiveness of federal law. *See*  
13 *Stadium Apartments*, 425 F.2d at 362; *View Crest Garden Apartments*, 268 F.2d at 383. Because of  
14 the compelling federal purpose served by the FHA program—to make home ownership affordable  
15 for individuals who would otherwise not qualify for home loans—federal law applies.

16 Chapter 116 of the Nevada Revised Statutes impairs federal law in the context of FHA loans  
17 in at least two respects. **First**, Chapter 116, per *SFR Investments*, purports to create a lien that is  
18 superior to the deed of trust and the FHA's interest in the property. The lien—by its nature as a  
19 purported senior lien—diminishes the value of the FHA's interest, which is not permitted under the  
20 Supremacy Clause. **Second**, a foreclosure that purports to extinguish the deed of trust does not just  
21 *diminish* the FHA's interest, it *nullifies* the FHA's interest. As explained in *Washington*, the  
22 Supremacy Clause does not allow state law to operate in that manner. Accordingly, the HOA's lien  
23 was not superior, and the foreclosure sale, even if valid under Nevada law, does not extinguish the  
24 deed of trust.

25 V. Renfroe's Title is Void under the Property Clause.

26 The Property Clause of the U.S. Constitution provides an independent basis for the Court to  
27 grant Lakeview's motion to dismiss. The U.S. Constitution provides: "The Congress shall have  
28 Power to dispose of and make all needful Rules and Regulations respecting . . . Property belonging



1 to the United States . . . ." U.S. CONST. ART. IV, § 3, cl. 2. Congress's power to dispose of property  
2 belonging to the United States is "without limitation," *see State of Alabama v. State of Texas*, 347  
3 U.S. 272, 273 (1954), and exclusive to Congress, *see Beaver v. United States*, 350 F.2d 4, 8 (9th Cir.  
4 1965).

5 The Supreme Court has defined "property" to include "all other personal and real property  
6 rightfully belonging to the United States." *Ashwander v. Tenn. Valley Auth.*, 297 U.S. 288, 331  
7 (1936). Applying that definition, the Ninth Circuit concluded that a mortgage that the United States  
8 has an interest in is property protected by the Property Clause. *Rust v. Johnson*, 597 F.2d 174, 177-  
9 78 (9th Cir. 1979). In *Rust*, the federal interest was a mortgage assigned by a private lender to the  
10 Federal National Mortgage Association (Fannie Mae). *Id.* Similarly, a "mortgage interest retained  
11 by [a federal agency is] a federal property interest," and "[i]n absence of express congressional  
12 authority, the Supremacy Clause bar[s] the foreclosure sale." *Secretary of Housing & Urban*  
13 *Development v. Sky Meadow Assoc.*, 117 F. Supp. 2d 970, 978 (C.D. Cal. 2000).

14 Applied here, the FHA insurance on Lakeview's deed of trust causes the security interest to  
15 be property of the United States. The district court in *Washington* correctly reached that conclusion  
16 in *dicta*, reasoning that the mortgage interest, combined with the mortgagee's obligation to convey  
17 title to the federal government if the borrower defaults, created a federal protected by the Property  
18 Clause. *Washington & Sandhill Homeowners Ass'n v. Bank of America, N.A.*, No. 2:13-cv-01845-  
19 GMN-GWF, 2014 WL 4798565, at \*6 (D. Nev. Sept. 25, 2014). An HOA cannot foreclose on the  
20 property, including the FHA's property interest in the deed of trust.

## 21 VI. Conclusion.

22 Renfroe's title is void under the Supremacy and Property Clauses of the U.S. Constitution.

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1 This Court should dismiss Renfroe's complaint with prejudice.

2 DATED this 20th day of November, 2014.

3 AKERMAN LLP

4 /s/ Natalie L. Winslow

5 DARREN T. BRENNER, ESQ.

6 Nevada Bar No. 8386

7 NATALIE L. WINSLOW, ESQ.

8 Nevada Bar No. 12125

9 1160 Town Center Drive, Suite 330

10 Las Vegas, Nevada 89144

11 *Attorneys for Defendant Lakeview Loan Servicing, LLC*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 20th day of November, 2014 and pursuant to NRCP 5(b), I served through the electronic filing system (Wiznet) and/or deposited for mailing in the U.S. Mail a true and correct copy of the **LAKEVIEW LOAN SERVICING, LLC'S MOTION TO DISMISS COMPLAINT BASED ON THE SUPREMACY AND PROPERTY CLAUSES OF THE U.S. CONSTITUTION**, postage prepaid and addressed to:

Robert B. Noggle, Esq.  
Noggle Law PLLC  
376 East Warm Springs Rd., Ste. 140  
Las Vegas, NV 89119  
office@nogglelaw.com  
processing@nogglelaw.com

*Attorneys for Plaintiff*

/s/ Debbie Julien  
\_\_\_\_\_  
An employee of AKERMAN LLP

# **EXHIBIT A**

# **EXHIBIT A**

{20628576;l}



20080527-0004865

Fee: \$26.00 RPTT: \$0.00

N/C Fee: \$25.00

05/27/2008 15:43:00

T20080098737

Requestor:

FIRST AMERICAN TITLE HOWARD

Debbie Conway CDO

Clark County Recorder Pgs: 13

Assessor's Parcel Number:

125-28-816-020

After Recording Return To:

COUNTRYWIDE BANK, FSB

MS SV-79 DOCUMENT PROCESSING

P.O.Box 10423

Van Nuys, CA 91410-0423

Prepared By:

PAULA M. ABATO

Recording Requested By:

D. DEL BALZO

COUNTRYWIDE BANK, FSB

10190 COVINGTON CROSS DR

#190

LAS VEGAS

NV 89144

[Space Above This Line For Recording Data]

NV3324603617703

107-2348206

00019246332605008

[Case #]

[Escrow/Closing #]

[Doc ID #]

Lender affirms that this instrument does not contain Personal Information as that term is defined in Nevada Revised Statutes §603A.040.

State of Nevada

## DEED OF TRUST

FHA Case No.

NV3324603617703

MIN 1001337-0003136153-1

THIS DEED OF TRUST ("Security Instrument") is made on MAY 14, 2008 . The Grantor is BRIAN J FERGUSON, AND JENNIFER L FERGUSON, HUSBAND AND WIFE AS JOINT TENANTS

("Borrower").

FHA Nevada Deed of Trust with MERS - 4/96

MERS FHA Deed of Trust-NV

1004N-NV (11/07)(d/i)

Page 1 of 10

Amended 2/98



\* 2 3 9 9 1 \*



\* 1 9 2 4 6 3 3 2 6 0 0 0 0 1 0 0 4 N \*

CASE #: NV3324603617703

DOC ID #: 00019246332605008

The trustee is  
RECONTRUST COMPANY, N.A.

225 W HILLCREST DRIVE, MSN: TO-02  
THOUSAND OAKS, CA 91360

("Trustee"). The beneficiary is Mortgage Electronic Registration Systems, Inc. ("MERS"), (solely as nominee for Lender, as hereinafter defined, and Lender's successors and assigns). MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

COUNTRYWIDE BANK, FSB

("Lender") is organized and existing under the laws of THE UNITED STATES, and whose address is

1199 North Fairfax St. Ste. 500  
Alexandria, VA 22314

Borrower owes Lender the principal sum of

ONE HUNDRED SEVENTY TWO THOUSAND TWO HUNDRED NINETY SIX and  
00/100

Dollars (U.S. \$ 172,296.00). This debt is evidenced by Borrower's note dated the same date as this Security Instrument ("Note"), which provides for monthly payments, with the full debt, if not paid earlier, due and payable on JUNE 01, 2038. This Security Instrument secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest, and all renewals, extensions and modifications of the Note; (b) the payment of all other sums, with interest, advanced under paragraph 7 to protect the security of this Security Instrument; and (c) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to the Trustee, in trust, with power of sale, the following described property located in

CLARK

County, Nevada:

PARCEL I: LOT TWENTY-ONE (21) IN BLOCK TWO (2) OF DESERT CREEK PHASE II-UNIT 3, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 58 OF PLATS, PAGE 47, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA. PARCEL II: THE RIGHTS AND OBLIGATIONS FOR THE USE AND ENJOYMENT OF COMMON AREAS AS GRANTED TO DESERT CREEK OWNERS ASSOCIATION, A NEVADA NON-PROFIT CORPORATION, BY INSTRUMENT RECORDED FEBRUARY 20, 1990 IN BOOK 900220 OF OFFICIAL RECORDS AS DOCUMENT NO. 00320.

which has the address of

7736 BEACH FALLS CT, LAS VEGAS

[Street, City]

Nevada 89149-5175 ("Property Address");  
[Zip Code]

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument; but, if necessary to comply with law or custom, MERS, (as nominee for Lender and Lender's successors and assigns), has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing or canceling this Security Instrument.

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

Borrower and Lender covenant and agree as follows:

**UNIFORM COVENANTS.**

**1. Payment of Principal, Interest and Late Charge.** Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and late charges due under the Note.

**2. Monthly Payment of Taxes, Insurance and Other Charges.** Borrower shall include in each monthly payment, together with the principal and interest as set forth in the Note and any late charges, a sum for (a) taxes and special assessments levied or to be levied against the Property, (b) leasehold payments or ground rents on the Property, and (c) premiums for insurance required under paragraph 4. In any year in which the Lender must pay a mortgage insurance premium to the Secretary of Housing and Urban Development ("Secretary"), or in any year in which such premium would have been required if Lender still held the Security Instrument, each monthly payment shall also include either: (i) a sum for the annual mortgage insurance premium to be paid by Lender to the Secretary, or (ii) a monthly charge instead of a mortgage insurance premium if this Security Instrument is held by the Secretary, in a reasonable amount to be determined by the Secretary. Except for the monthly charge by the Secretary, these items are called "Escrow Items" and the sums paid to Lender are called "Escrow Funds."

Lender may, at any time, collect and hold amounts for Escrow Items in an aggregate amount not to exceed the maximum amount that may be required for Borrower's escrow account under the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. Section 2601 *et seq.* and implementing regulations, 24 CFR Part 3500, as they may be amended from time to time ("RESPA"), except that the cushion or reserve permitted by RESPA for unanticipated disbursements or disbursements before the Borrower's payments are available in the account may not be based on amounts due for the mortgage insurance premium.

If the amounts held by Lender for Escrow Items exceed the amounts permitted to be held by RESPA, Lender shall account to Borrower for the excess funds as required by RESPA. If the amounts of funds held by Lender at any time are not sufficient to pay the Escrow Items when due, Lender may notify the Borrower and require Borrower to make up the shortage as permitted by RESPA.

The Escrow Funds are pledged as additional security for all sums secured by this Security Instrument. If Borrower tenders to Lender the full payment of all such sums, Borrower's account shall be credited with the balance remaining for all installment items (a), (b), and (c) and any mortgage insurance premium installment that Lender has not become obligated to pay to the Secretary, and Lender shall promptly refund any excess funds to Borrower. Immediately prior to a foreclosure sale of the Property or its acquisition by Lender, Borrower's account shall be credited with any balance remaining for all installments for items (a), (b), and (c).

**3. Application of Payments.** All payments under paragraphs 1 and 2 shall be applied by Lender as follows:

First, to the mortgage insurance premium to be paid by Lender to the Secretary or to the monthly charge by the Secretary instead of the monthly mortgage insurance premium;

Second, to any taxes, special assessments, leasehold payments or ground rents, and fire, flood and other hazard insurance premiums, as required;

Third, to interest due under the Note;

Fourth, to amortization of the principal of the Note; and

Fifth, to late charges due under the Note.

**4. Fire, Flood and Other Hazard Insurance.** Borrower shall insure all improvements on the Property, whether now in existence or subsequently erected, against any hazards, casualties, and contingencies, including fire, for which Lender requires insurance. This insurance shall be maintained in the amounts and for the periods that Lender requires. Borrower shall also insure all improvements on the Property, whether now in existence or subsequently erected, against loss by floods to the extent required by the Secretary. All insurance shall be carried with companies approved by Lender. The insurance policies and any renewals shall be held by Lender and shall include loss payable clauses in favor of, and in a form acceptable to, Lender.

In the event of loss, Borrower shall give Lender immediate notice by mail. Lender may make proof of loss if not made promptly by Borrower. Each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Lender, instead of to Borrower and to Lender jointly. All or any part of the insurance proceeds may be applied by Lender, at its option, either (a) to the reduction of the indebtedness under the Note and this Security Instrument, first to any delinquent amounts applied in the order in paragraph 3, and then to prepayment of principal, or (b) to the restoration or repair of the damaged Property. Any application of the proceeds to the principal shall not extend or postpone the due date of the monthly payments which are referred to in paragraph 2, or change the amount of such payments. Any excess insurance proceeds over an amount required to pay all outstanding indebtedness under the Note and this Security Instrument shall be paid to the entity legally entitled thereto.

In the event of foreclosure of this Security Instrument or other transfer of title to the Property that extinguishes the indebtedness, all right, title and interest of Borrower in and to insurance policies in force shall pass to the purchaser.

**5. Occupancy, Preservation, Maintenance and Protection of the Property; Borrower's Loan Application; Leaseholds.** Borrower shall occupy, establish, and use the Property as Borrower's principal residence within sixty days after the execution of this Security Instrument (or within sixty days of a later sale or transfer of the Property) and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender determines that requirement will cause undue hardship for Borrower, or unless extenuating circumstances exist which are beyond Borrower's control. Borrower shall notify Lender of any extenuating circumstances. Borrower shall not commit waste or destroy, damage or substantially change the Property or allow the Property to deteriorate, reasonable wear and tear excepted. Lender may inspect the Property if the Property is vacant or abandoned or the loan is in default. Lender may take reasonable action to protect and preserve such vacant or abandoned Property. Borrower shall also be in default if Borrower, during the loan application process, gave materially false or inaccurate information or statements to Lender (or failed to provide Lender with any material information) in connection with the loan evidenced by the Note, including, but not limited to, representations concerning Borrower's occupancy of the Property as a principal residence. If this Security Instrument is on a leasehold, Borrower shall comply with the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and fee title shall not be merged unless Lender agrees to the merger in writing.



**6. Condemnation.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, or for conveyance in place of condemnation, are hereby assigned and shall be paid to Lender to the extent of the full amount of the indebtedness that remains unpaid under the Note and this Security Instrument. Lender shall apply such proceeds to the reduction of the indebtedness under the Note and this Security Instrument, first to any delinquent amounts applied in the order provided in paragraph 3, and then to prepayment of principal. Any application of the proceeds to the principal shall not extend or postpone the due date of the monthly payments, which are referred to in paragraph 2, or change the amount of such payments. Any excess proceeds over an amount required to pay all outstanding indebtedness under the Note and this Security Instrument shall be paid to the entity legally entitled thereto.

**7. Charges to Borrower and Protection of Lender's Rights in the Property.** Borrower shall pay all governmental or municipal charges, fines and impositions that are not included in paragraph 2. Borrower shall pay these obligations on time directly to the entity which is owed the payment. If failure to pay would adversely affect Lender's interest in the Property, upon Lender's request Borrower shall promptly furnish to Lender receipts evidencing these payments.

If Borrower fails to make these payments or the payments required by paragraph 2, or fails to perform any other covenants and agreements contained in this Security Instrument, or there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, for condemnation or to enforce laws or regulations), then Lender may do and pay whatever is necessary to protect the value of the Property and Lender's rights in the Property, including payment of taxes, hazard insurance and other items mentioned in paragraph 2.

Any amounts disbursed by Lender under this paragraph shall become an additional debt of Borrower and be secured by this Security Instrument. These amounts shall bear interest from the date of disbursement, at the Note rate, and at the option of Lender, shall be immediately due and payable.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender; (b) contests in good faith the lien by, or defends against enforcement of the lien in, legal proceedings which in the Lender's opinion operate to prevent the enforcement of the lien; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which may attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Borrower shall satisfy the lien or take one or more of the actions set forth above within 10 days of the giving of notice.

**8. Fees.** Lender may collect fees and charges authorized by the Secretary.

**9. Grounds for Acceleration of Debt.**

**(a) Default.** Lender may, except as limited by regulations issued by the Secretary, in the case of payment defaults, require immediate payment in full of all sums secured by this Security Instrument if:

- (i) Borrower defaults by failing to pay in full any monthly payment required by this Security Instrument prior to or on the due date of the next monthly payment, or
- (ii) Borrower defaults by failing, for a period of thirty days, to perform any other obligations contained in this Security Instrument.

**(b) Sale Without Credit Approval.** Lender shall, if permitted by applicable law (including Section 341(d) of the Garn-St. Germain Depository Institutions Act of 1982, 12 U.S.C. 1701j-3(d)) and with the prior approval of the Secretary, require immediate payment in full of all sums secured by this Security Instrument if:

- (i) All or part of the Property, or a beneficial interest in a trust owning all or part of the Property, is sold or otherwise transferred (other than by devise or descent), and
- (ii) The Property is not occupied by the purchaser or grantee as his or her principal residence, or the purchaser or grantee does so occupy the Property but his or her credit has not been approved in accordance with the requirements of the Secretary.

**(c) No Waiver.** If circumstances occur that would permit Lender to require immediate payment in

full, but Lender does not require such payments, Lender does not waive its rights with respect to subsequent events.

**(d) Regulations of HUD Secretary.** In many circumstances regulations issued by the Secretary will limit Lender's rights, in the case of payment defaults, to require immediate payment in full and foreclose if not paid. This Security Instrument does not authorize acceleration or foreclosure if not permitted by regulations of the Secretary.

**(e) Mortgage Not Insured.** Borrower agrees that if this Security Instrument and the Note are not determined to be eligible for insurance under the National Housing Act within 60 days from the date hereof, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument. A written statement of any authorized agent of the Secretary dated subsequent to 60 days from the date hereof, declining to insure this Security Instrument and the Note, shall be deemed conclusive proof of such ineligibility. Notwithstanding the foregoing, this option may not be exercised by Lender when the unavailability of insurance is solely due to Lender's failure to remit a mortgage insurance premium to the Secretary.

**10. Reinstatement.** Borrower has a right to be reinstated if Lender has required immediate payment in full because of Borrower's failure to pay an amount due under the Note or this Security Instrument. This right applies even after foreclosure proceedings are instituted. To reinstate the Security Instrument, Borrower shall tender in a lump sum all amounts required to bring Borrower's account current including, to the extent they are obligations of Borrower under this Security Instrument, foreclosure costs and reasonable and customary attorneys' fees and expenses properly associated with the foreclosure proceeding. Upon reinstatement by Borrower, this Security Instrument and the obligations that it secures shall remain in effect as if Lender had not required immediate payment in full. However, Lender is not required to permit reinstatement if: (i) Lender has accepted reinstatement after the commencement of foreclosure proceedings within two years immediately preceding the commencement of a current foreclosure proceeding, (ii) reinstatement will preclude foreclosure on different grounds in the future, or (iii) reinstatement will adversely affect the priority of the lien created by this Security Instrument.

**11. Borrower Not Released; Forbearance By Lender Not a Waiver.** Extension of the time of payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to any successor in interest of Borrower shall not operate to release the liability of the original Borrower or Borrower's successor in interest. Lender shall not be required to commence proceedings against any successor in interest or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

**12. Successors and Assigns Bound; Joint and Several Liability; Co-Signers.** The covenants and agreements of this Security Instrument shall bind and benefit the successors and assigns of Lender and Borrower, subject to the provisions of paragraph 9(b). Borrower's covenants and agreements shall be joint and several. Any Borrower who co-signs this Security Instrument but does not execute the Note: (a) is co-signing this Security Instrument only to mortgage, grant and convey that Borrower's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower may agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without that Borrower's consent.

**13. Notices.** Any notice to Borrower provided for in this Security Instrument shall be given by delivering it or by mailing it by first class mail unless applicable law requires use of another method. The notice shall be directed to the Property Address or any other address Borrower designates by notice to Lender. Any notice to Lender shall be given by first class mail to Lender's address stated herein or any address Lender designates by notice to Borrower. Any notice provided for in this Security Instrument shall be deemed to have been given to Borrower or Lender when given as provided in this paragraph.

**14. Governing Law; Severability.** This Security Instrument shall be governed by Federal law and the law of the jurisdiction in which the Property is located. In the event that any provision or clause of this Security

Instrument or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision. To this end the provisions of this Security Instrument and the Note are declared to be severable.

**15. Borrower's Copy.** Borrower shall be given one conformed copy of the Note and of this Security Instrument.

**16. Hazardous Substances.** Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any Environmental Law. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property.

Borrower shall promptly give Lender written notice of any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge. If Borrower learns, or is notified by any governmental or regulatory authority, that any removal or other remediation of any Hazardous Substances affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law.

As used in this paragraph 16, "Hazardous Substances" are those substances defined as toxic or hazardous substances by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in this paragraph 16, "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection.

**NON-UNIFORM COVENANTS.** Borrower and Lender further covenant and agree as follows:

**17. Assignment of Rents.** To the extent permitted by applicable law, Borrower unconditionally assigns and transfers to Lender all the rents and revenues of the Property. Borrower authorizes Lender or Lender's agents to collect the rents and revenues and hereby directs each tenant of the Property to pay the rents to Lender or Lender's agents. However, prior to Lender's notice to Borrower of Borrower's breach of any covenant or agreement in the Security Instrument, Borrower shall collect and receive all rents and revenues of the Property as trustee for the benefit of Lender and Borrower. This assignment of rents constitutes an absolute assignment and not an assignment for additional security only.

If Lender gives notice of breach to Borrower: (a) all rents received by Borrower shall be held by Borrower as trustee for benefit of Lender only, to be applied to the sums secured by the Security Instrument; (b) Lender shall be entitled to collect and receive all of the rents of the Property; and (c) each tenant of the Property shall pay all rents due and unpaid to Lender or Lender's agent on Lender's written demand to the tenant.

Borrower has not executed any prior assignment of the rents and has not and will not perform any act that would prevent Lender from exercising its rights under this paragraph 17.

Lender shall not be required to enter upon, take control of or maintain the Property before or after giving notice of breach to Borrower. However, Lender or a judicially appointed receiver may do so at any time there is a breach. Any application of rents shall not cure or waive any default or invalidate any other right or remedy of Lender. This assignment of rents of the Property shall terminate when the debt secured by the Security Instrument is paid in full.

**18. Foreclosure Procedure.** If Lender requires immediate payment in full under Paragraph 9, Lender may invoke the power of sale, including the right to accelerate full payment of the Note, and any other remedies permitted by applicable law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Paragraph 18, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

If Lender invokes the power of sale, Lender shall execute or cause Trustee to execute written notice of the occurrence of an event of default and of Lender's election to cause the Property to be sold, and shall cause such notice to be recorded in each county in which any part of the Property is located. Lender shall

mail copies of the notice as prescribed by applicable law to Borrower and to the persons prescribed by applicable law. Trustee shall give public notice of sale to the persons and in the manner prescribed by applicable law. After the time required by applicable law, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale. Lender or its designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it.

If the Lender's interest in this Security Instrument is held by the Secretary and the Secretary requires immediate payment in full under Paragraph 9, the Secretary may invoke the nonjudicial power of sale provided in the Single Family Mortgage Foreclosure Act of 1994 ("Act") (12 U.S.C. § 3751 *et seq.*) by requesting a foreclosure commissioner designated under the Act to commence foreclosure and to sell the Property as provided in the Act. Nothing in the preceding sentence shall deprive the Secretary of any rights otherwise available to a Lender under this Paragraph 18 or applicable law.

19. **Reconveyance.** Upon payment of all sums secured by this Security Instrument, Lender shall request Trustee to reconvey the Property and shall surrender this Security Instrument and all notes evidencing debt secured by this Security Instrument to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled to it. Such person or persons shall pay any recordation costs. Lender may charge such person or persons a fee for reconveying the Property, but only if the fee is paid to a third party (such as the Trustee) for services rendered and the charging of the fee is permitted under applicable law.

20. **Substitute Trustee.** Lender or its assigns may, from time to time, appoint another trustee, or trustees, to execute the trust created by the deed of trust or other conveyance it trust. A copy of a resolution of the board of directors of directors of Lender (if Lender is a corporation), certified by the secretary thereof, under its corporate seal, or an instrument executed and acknowledged by Lender (if Lender is a natural person), shall be conclusive proof of the proper appointment of such substituted trustee. Upon the recording of such certified copy or trustees shall be vested with all the title, interest, powers, duties and trust in the premises vested in or conferred upon the original trustee. If there be more than one trustee, either may act alone and execute the trusts upon the request of the Lender, and all his acts thereunder shall be deemed to be the acts of all trustees, and the recital in any conveyance executed by such request shall be conclusive evidence thereof, and of the authority of such sole trustee to act.

21. **Assumption Fee.** If there is an assumption of this loan, Lender may charge an assumption fee of U.S. \$ 300.00


CASE #: NV3324603617703

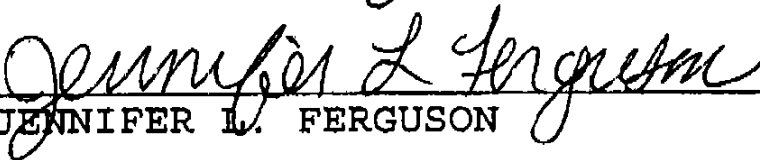
DOC ID #: 00019246332605008

**22. Riders to this Security Instrument.** If one or more riders are executed by Borrower and recorded together with this Security Instrument, the covenants of each such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Security Instrument as if the rider(s) were a part of this Security Instrument. [Check applicable box(es)].

- |  |   |
|--|---|
| <input type="checkbox"/> Condominium Rider                         | <input type="checkbox"/> Growing Equity Rider |
| <input checked="" type="checkbox"/> Planned Unit Development Rider | <input type="checkbox"/> Other [specify]      |
| <input type="checkbox"/> Graduated Payment Rider                   |   |

BY SIGNING BELOW, Borrower accepts and agrees to the terms contained in this Security Instrument and in any rider(s) executed by Borrower and recorded with it.

  
\_\_\_\_\_  
BRIAN J. FERGUSON (Seal)  
- Borrower

  
\_\_\_\_\_  
JENNIFER L. FERGUSON (Seal)  
- Borrower

\_\_\_\_\_  
(Seal)  
- Borrower

\_\_\_\_\_  
(Seal)  
- Borrower

CASE #: NV3324603617703

DOC ID #: 00019246332605008

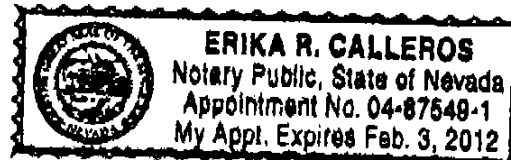
STATE OF NEVADA  
COUNTY OF Clark

This instrument was acknowledged before me on May 15, 2008 by  
Brian J. Ferguson & Jennifer L. Ferguson

Erika R. Calleros

Mail Tax Statements To:  
TAX DEPARTMENT SV3-24

450 American Street  
Simi Valley CA, 93065



## PLANNED UNIT DEVELOPMENT RIDER

NV3324603617703

[Case #]

107-2348206

[Escrow/Closing #]

00019246332605008

[Doc ID #]

FHA Case No.

NV3324603617703

THIS PLANNED UNIT DEVELOPMENT RIDER is made this 14th day of MAY, 2008, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust or Security Deed ("Security Instrument") of the same date given by the undersigned ("Borrower") to secure Borrower's Note ("Note") to COUNTRYWIDE BANK, FSB

("Lender") of the same date and covering the Property described in the Security Instrument and located at:

7736 BEACH FALLS CT

LAS VEGAS, NV 89149-5175

[Property Address]

The Property Address is a part of a planned unit development ("PUD") known as DESERT CREEK OWNERS ASSOCIATION

[Name of Planned Unit Development]

**PUD COVENANTS.** In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

- A. So long as the Owners Association (or equivalent entity holding title to common areas and facilities), acting as trustee for the homeowners, maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy insuring the

FHA PUD Rider

1589U-XX (11/07)(d/i)

Page 1 of 3



\* 2 3 9 9 1 \*



\* 1 9 2 4 6 3 3 2 6 0 0 0 0 1 5 8 9 U \*

CASE #: NV3324603617703

DOC ID #: 00019246332605008

Property located in the PUD, including all improvements now existing or hereafter erected on the mortgaged premises, and such policy is satisfactory to Lender and provides insurance coverage in the amounts, for the periods, and against the hazards Lender requires, including fire and other hazards included within the term "extended coverage," and loss by flood, to the extent required by the Secretary, then: (i) Lender waives the provision in Paragraph 2 of this Security Instrument for the monthly payment to Lender of one-twelfth of the yearly premium installments for hazard insurance on the Property, and (ii) Borrower's obligation under Paragraph 4 of this Security Instrument to maintain hazard insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the Owners Association policy. Borrower shall give Lender prompt notice of any lapse in required hazard insurance coverage and of any loss occurring from a hazard. In the event of a distribution of hazard insurance proceeds in lieu of restoration or repair following a loss to the Property or to common areas and facilities of the PUD, any proceeds payable to Borrower are hereby assigned and shall be paid to Lender for application to the sums secured by this Security Instrument, with any excess paid to the entity legally entitled thereto.

- B. Borrower promises to pay all dues and assessments imposed pursuant to the legal instruments creating and governing the PUD.
- C. If Borrower does not pay PUD dues and assessments when due, then Lender may pay them. Any amounts disbursed by Lender under this paragraph C shall become additional debt of Borrower secured by the Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from




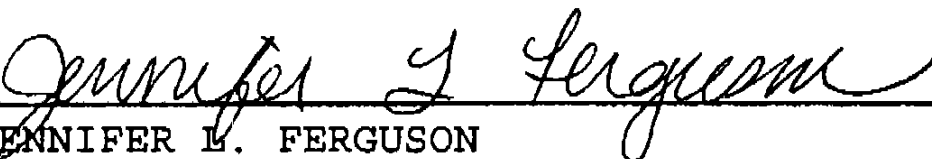
CASE #: NV3324603617703

DOC ID #: 00019246332605008

the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and provisions contained in this PUD Rider.

  
BRIAN J. FERGUSON (Seal)  
- Borrower

  
JENNIFER L. FERGUSON (Seal)  
- Borrower

\_\_\_\_\_  
(Seal)  
- Borrower

\_\_\_\_\_  
(Seal)  
- Borrower

# **EXHIBIT B**

# **EXHIBIT B**

{20628576;1}

Recording Requested By:  
**Bank of America**  
Prepared By: **Marcus Jones**  
800-444-4302

When recorded mail to:  
**CoreLogic**  
450 E. Boundary St.  
Chapin, SC 29036



DocID# 12119246332637247

Tax ID: 125-28-816-020

Property Address:  
7736 Beach Falls Ct  
Las Vegas, NV 89149-5175

NV0-ADT 26648738 7/31/2013 LAK081A

Inst #: 201309260000999

Fees: \$18.00

N/C Fee: \$0.00

09/26/2013 10:25:11 AM

Receipt #: 1786680

Requestor:

CORELOGIC

Recorded By: MSH Pgs: 2

DEBBIE CONWAY

CLARK COUNTY RECORDER

This space for Recorder's use

### ASSIGNMENT OF DEED OF TRUST

For Value Received, the undersigned holder of a Deed of Trust (herein "Assignor") whose address is 1800 TAPO CANYON ROAD, SIMI VALLEY, CA 93063 does hereby grant, sell, assign, transfer and convey unto LAKEVIEW LOAN SERVICING, LLC whose address is 4425 PONCE DE LEON BLVD, MAILSTOP MS5/251 CORAL GABLES, FL 33146 all beneficial interest under that certain Deed of Trust described below together with the note(s) and obligations therein described and the money due and to become due thereon with interest and all rights accrued or to accrue under said Deed of Trust.

Original Lender: MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE  
FOR COUNTRYWIDE BANK, FSB

Made By: BRIAN J FERGUSON, AND JENNIFER L FERGUSON, HUSBAND AND WIFE  
AS JOINT TENANTS

Trustee: RECONTRUST COMPANY, N.A.

Date of Deed of Trust: 5/14/2008 Original Loan Amount: \$172,296.00

Recorded in Clark County, NV on: 5/27/2008, book N/A, page N/A and instrument number 20080527-0004865

I the undersigned hereby affirm that this document submitted for recording does not contain the social security number of any person or persons.

IN WITNESS WHEREOF, the undersigned has caused this Assignment of Deed of Trust to be executed on  
AUG 01 2013

BANK OF AMERICA, N.A.

By: Tallens Smith  
Assistant Vice President

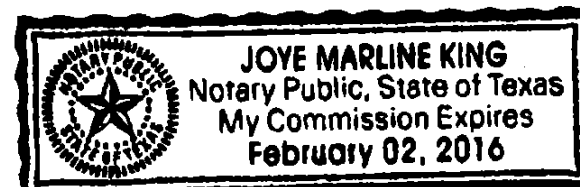
State of TX, County of DALLAS

On AUG 01 2013, before me, JOYE MARLINE KING, a Notary Public, personally appeared Tallensi Smith, ASSISTANT VICE PRESIDENT of BANK OF AMERICA, N.A. personally known to me to be the person(s) whose name(s) is/are subscribed to the within document and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the document the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

*Joye Marline King*

Notary Public: JOYE MARLINE KING  
My Commission Expires: 02-02-2016



DocID# 12119246332637247

# **EXHIBIT C**

# **EXHIBIT C**

{20628576;1}

Inst #: 201306050003046  
Fees: \$17.00  
N/C Fee: \$0.00  
06/05/2013 01:15:10 PM  
Receipt #: 1643581  
Requestor:  
TITLE SOLUTIONS, INC.  
Recorded By: GILKS Pgs: 1  
DEBBIE CONWAY  
CLARK COUNTY RECORDER

APN # 125-28-816-020  
# N74068

### NOTICE OF DELINQUENT ASSESSMENT LIEN

In accordance with Nevada Revised Statutes and the Association's declaration of Covenants Conditions and Restrictions (CC&Rs), recorded on February 20, 1990, as instrument number 00320 Book 900220, of the official records of Clark County, Nevada, the Desert Creek HOA has a lien on the following legally described property.

The property against which the lien is imposed is commonly referred to as 7736 Beach Falls Court Las Vegas, NV 89149 particularly legally described as: DESERT CREEK PHASE 2-UNIT 3, PLAT BOOK 58, PAGE 47, LOT 21, BLOCK 2 in the County of Clark.

The owner(s) of record as reflected on the public record as of today's date is (are):  
Brian J Ferguson, Jennifer L Ferguson

Mailing address(es):  
10818 Park Street Mantua, OH 44255  
10818 Park Street Mantua, OH 44255

\*Total amount due as of today's date is \$1,337.64.

This amount includes late fees, collection fees and interest in the amount of \$884.98

\* Additional monies will accrue under this claim at the rate of the claimant's regular assessments or special assessments, plus permissible late charges, costs of collection and interest, accruing after the date of the notice.

Nevada Association Services, Inc. is a debt collector. Nevada Association Services, Inc. is attempting to collect a debt. Any information obtained will be used for that purpose.

Dated: June 3, 2013



By Megan Molina, of Nevada Association Services, Inc., as agent for Desert Creek HOA

When Recorded Mail To:  
Nevada Association Services  
TS # N74068  
6224 W. Desert Inn Rd, Suite A  
Las Vegas, NV 89146  
Phone: (702) 804-8885 Toll Free: (888) 627-5544

## **EXHIBIT D**

## **EXHIBIT D**

{20628576;1}

APN # 125-28-816-020  
NAS # N74068  
Title Solutions, Inc. # **732382**  
Property Address: 7736 Beach Falls Court

Inst #: 201310110002325  
Fees: \$18.00  
N/C Fee: \$0.00  
10/11/2013 11:15:19 AM  
Receipt #: 1806902  
Requestor:  
TITLE SOLUTIONS, INC.  
Recorded By: SOL Pgs: 2  
**DEBBIE CONWAY**  
CLARK COUNTY RECORDER

**NOTICE OF DEFAULT AND ELECTION TO SELL UNDER  
HOMEOWNERS ASSOCIATION LIEN**

**IMPORTANT NOTICE**

**WARNING! IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS  
NOTICE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT  
IS IN DISPUTE!**

IF YOUR PROPERTY IS IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR PAYMENTS IT MAY BE SOLD WITHOUT ANY COURT ACTION and you may have the legal right to bring your account in good standing by paying all your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account. No sale date may be set until ninety (90) days from the date this notice of default was mailed to you. The date this document was mailed to you appears on this notice.

This amount is \$2,398.32 as of October 9, 2013 and will increase until your account becomes current.

While your property is in foreclosure, you still must pay other obligations (such as insurance and taxes) required by your note and deed of trust or mortgage, or as required under your Covenants Conditions and Restrictions. If you fail to make future payments on the loan, pay taxes on the property, provide insurance on the property or pay other obligations as required by your note and deed of trust or mortgage, or as required under your Covenants Conditions and Restrictions, Desert Creek HOA (the Association) may insist that you do so in order to reinstate your account in good standing. In addition, the Association may require as a condition to reinstatement that you provide reliable written evidence that you paid all senior liens, property taxes and hazard insurance premiums.

Upon your request, this office will mail you a written itemization of the entire amount you must pay. You may not have to pay the entire unpaid portion of your account, even though full payment was demanded, but you must pay all amounts in default at the time payment is made. However, you and your Association may mutually agree in writing prior to the foreclosure sale to, among other things, 1) provide additional time in which to cure the default by transfer of the property or otherwise; 2) establish a schedule of payments in order to cure your default; or both (1) and (2).

Following the expiration of the time period referred to in the first paragraph of this notice, unless the obligation being foreclosed upon or a separate written agreement between you and your Association permits a longer period, you have only the legal right to stop the sale of your property by paying the entire amount demanded by your Association.

To find out about the amount you must pay, or arrange for payment to stop the foreclosure, or if your property is in foreclosure for any other reason, contact: Nevada Association Services, Inc. on behalf of Desert Creek HOA, 6224 W. Desert Inn Road, Suite A, Las Vegas, NV 89146. The phone number is (702) 804-8885 or toll free at (888) 627-5544.

If you have any questions, you should contact a lawyer or the Association which maintains the right of assessment on your property.



NAS # N74068

Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale, provided the sale is concluded prior to the conclusion of the foreclosure.

**REMEMBER, YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT  
TAKE PROMPT ACTION.  
NOTICE IS HEREBY GIVEN THAT NEVADA ASSOCIATION  
SERVICES, INC.**

is the duly appointed agent under the previously mentioned Notice of Delinquent Assessment Lien, with the owner(s) as reflected on said lien being Brian J Ferguson, Jennifer L Ferguson, dated June 3, 2013, and recorded on June 5, 2013 as instrument number 0003046 Book 20130605 in the official records of Clark County, Nevada, executed by Desert Creek HOA, hereby declares that a breach of the obligation for which the Covenants Conditions and Restrictions, recorded on February 20, 1990, as instrument number 00320 Book 900220, as security has occurred in that the payments have not been made of homeowner's assessments due from 2/1/2013 and all subsequent homeowner's assessments, monthly or otherwise, less credits and offsets, plus late charges, interest, trustee's fees and costs, attorney's fees and costs and Association fees and costs.

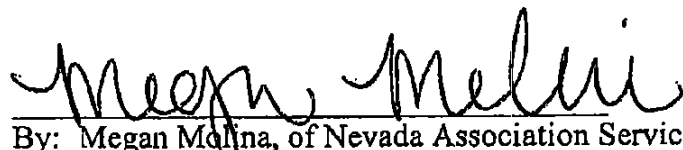
That by reason thereof, the Association has deposited with said agent such documents as the Covenants Conditions and Restrictions and documents evidencing the obligations secured thereby, and declares all sums secured thereby due and payable and elects to cause the property to be sold to satisfy the obligations.

Nevada Association Services, Inc. is a debt collector. Nevada Association Services, Inc. is attempting to collect a debt. Any information obtained will be used for that purpose.

Nevada Associations Services, Inc., whose address is 6224 W. Desert Inn Road, Suite A, Las Vegas, NV 89146 is authorized by the association to enforce the lien by sale.

Legal Description: DESERT CREEK PHASE 2-UNIT 3, PLAT BOOK 58, PAGE 47, LOT 21, BLOCK 2 in the County of Clark

Dated: October 9, 2013



By: Megan Molina, of Nevada Association Services, Inc.  
on behalf of Desert Creek HOA

When Recorded Mail To:  
Nevada Association Services, Inc.  
6224 W. Desert Inn Road, Suite A  
Las Vegas, NV 89146  
(702) 804-8885  
(888) 627-5544

# **EXHIBIT E**

# **EXHIBIT E**

{20628576;1}

Inst #: 201402250001906  
Fees: \$18.00  
N/C Fee: \$0.00  
02/25/2014 12:23:33 PM  
Receipt #: 1942701  
Requestor:  
TITLE SOLUTIONS, INC.  
Recorded By: STN Pgs: 2  
DEBBIE CONWAY  
CLARK COUNTY RECORDER

**RECORDING COVER PAGE**

(Must be typed or printed clearly in BLACK ink only  
and avoid printing in the 1" margins of document)

APN# 125-28-816-020

(11 digit Assessor's Parcel Number may be obtained at:  
<http://redrock.co.clark.nv.us/assrrealprop/owner.aspx>)

**TITLE OF DOCUMENT**  
(DO NOT Abbreviate)

Notice of Foreclosure Sale

Document Title on cover page must appear EXACTLY as the first page of the  
document to be recorded.

**RECORDING REQUESTED BY:**

Nevada Association Services

RETURN TO: Name Nevada Association Services

Address 6224 W. Desert Inn Road

City/State/Zip Las Vegas, NV 89146

**MAIL TAX STATEMENT TO: (Applicable to documents transferring real property)**

Name \_\_\_\_\_

Address \_\_\_\_\_

City/State/Zip \_\_\_\_\_

This page provides additional information required by NRS 111.312 Sections 1-2.

An additional recording fee of \$1.00 will apply.

To print this document properly—do not use page scaling.

APN # 125-28-816-020  
Desert Creek HOA

NAS # N74068

### NOTICE OF FORECLOSURE SALE

**WARNING! A SALE OF YOUR PROPERTY IS IMMINENT! UNLESS YOU PAY THE AMOUNT SPECIFIED IN THIS NOTICE BEFORE THE SALE DATE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE. YOU MUST ACT BEFORE THE SALE DATE. IF YOU HAVE ANY QUESTIONS, PLEASE CALL NEVADA ASSOCIATION SERVICES, INC. AT (702) 804-8885. IF YOU NEED ASSISTANCE, PLEASE CALL THE FORECLOSURE SECTION OF THE OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE DIVISION, AT 1-877-829-9907 IMMEDIATELY.**

YOU ARE IN DEFAULT UNDER A DELINQUENT ASSESSMENT LIEN, June 3, 2013. UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDINGS AGAINST YOU, YOU SHOULD CONTACT A LAWYER.

NOTICE IS HEREBY GIVEN THAT on 3/21/2014 at 10:00 am at the front entrance to the Nevada Association Services, Inc. 6224 West Desert Inn Road, Las Vegas, Nevada, under the power of sale pursuant to the terms of those certain covenants conditions and restrictions recorded on February 20, 1990 as instrument number 00320 Book 900220 of official records of Clark County, and as amended, Nevada Association Services, Inc., as duly appointed agent under that certain Delinquent Assessment Lien, recorded on June 5, 2013 as document number 0003046 Book 20130605 of the official records of said county, will sell at public auction to the highest bidder, for lawful money of the United States, all right, title, and interest in the following commonly known property known as: 7736 Beach Falls Court, Las Vegas, NV 89149. Said property is legally described as: DESERT CREEK PHASE 2-UNIT 3, PLAT BOOK 58, PAGE 47, LOT 21, BLOCK 2, official records of Clark County, Nevada.

The owner(s) of said property as of the date of the recording of said lien is purported to be: Brian J Ferguson, Jennifer L Ferguson

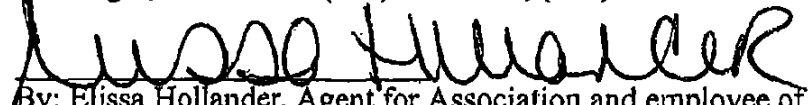
The undersigned agent disclaims any liability for incorrectness of the street address and other common designations, if any, shown herein. The sale will be made without covenant or warranty, expressed or implied regarding, but not limited to, title or possession, or encumbrances, or obligations to satisfy any secured or unsecured liens. The total amount of the unpaid balance of the obligation secured by the property to be sold and reasonable estimated costs, expenses and advances at the time of the initial publication of the Notice of Sale is \$3,716.32. Payment must be in cash or a cashier's check drawn on a state or national bank, check drawn on a state or federal savings and loan association, savings association or savings bank and authorized to do business in the State of Nevada. The Notice of Default and Election to Sell the described property was recorded on 10/11/2013 as instrument number 0002325 Book 20131011 in the official records of Clark County.

Nevada Association Services, Inc. is a debt collector. Nevada Association Services, Inc. is attempting to collect a debt. Any information obtained will be used for that purpose.

February 20, 2014

When Recorded Mail To:  
Nevada Association Services, Inc.  
6224 W. Desert Inn Road, Suite A  
Las Vegas, NV 89146

Nevada Association Services, Inc.  
6224 W. Desert Inn Road, Suite A  
Las Vegas, NV 89146 (702) 804-8885, (888) 627-5544

  
By: Elissa Hollander, Agent for Association and employee of  
Nevada Association Services, Inc.

## **EXHIBIT F**

## **EXHIBIT F**

{20628576;1}

Inst #: 20140421-0000959  
Fees: \$18.00 N/C Fee: \$0.00  
RPTT: \$693.60 Ex: #  
04/21/2014 12:59:26 PM  
Receipt #: 1999198  
Requestor:  
FIRST PRIORITY TITLE SERVIC  
Recorded By: CDE Pgs: 3  
DEBBIE CONWAY  
CLARK COUNTY RECORDER

Please mail tax statement and  
when recorded mail to:  
**Kenneth Renfroe**  
PO Box 10081  
San Bernardino, CA 92423-0081

### FORECLOSURE DEED

APN # 125-28-816-020  
Title Solutions, Inc. #732382

NAS # N74068

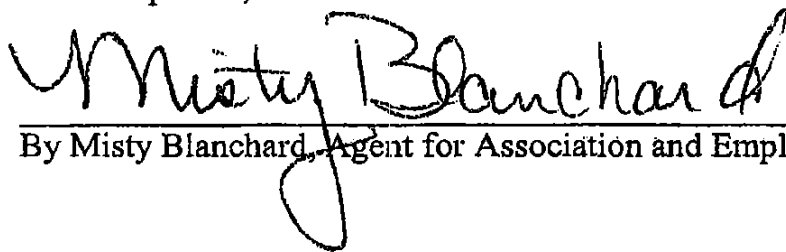
The undersigned declares:

Nevada Association Services, Inc., herein called agent (for the Desert Creek HOA), was the duly appointed agent under that certain Notice of Delinquent Assessment Lien, recorded June 5, 2013 as instrument number 0003046 Book 20130605, in Clark County. The previous owner as reflected on said lien is Brian J Ferguson, Jennifer L Ferguson. Nevada Association Services, Inc. as agent for Desert Creek HOA does hereby grant and convey, but without warranty expressed or implied to: Kenneth Renfroe (herein called grantee), pursuant to NRS 116.31162, 116.31163 and 116.31164, all its right, title and interest in and to that certain property legally described as: DESERT CREEK PHASE 2-UNIT 3, PLAT BOOK 58, PAGE 47, LOT 21, BLOCK 2 Clark County

#### AGENT STATES THAT:

This conveyance is made pursuant to the powers conferred upon agent by Nevada Revised Statutes, the Desert Creek HOA governing documents (CC&R's) and that certain Notice of Delinquent Assessment Lien, described herein. Default occurred as set forth in a Notice of Default and Election to Sell, recorded on 10/11/2013 as instrument # 0002325 Book 20131011 which was recorded in the office of the recorder of said county. Nevada Association Services, Inc. has complied with all requirements of law including, but not limited to, the elapsing of 90 days, mailing of copies of Notice of Delinquent Assessment and Notice of Default and the posting and publication of the Notice of Sale. Said property was sold by said agent, on behalf of Desert Creek HOA at public auction on 4/18/2014, at the place indicated on the Notice of Sale. Grantee being the highest bidder at such sale, became the purchaser of said property and paid therefore to said agent the amount bid \$20,000.00 in lawful money of the United States, or by satisfaction, pro tanto, of the obligations then secured by the Delinquent Assessment Lien.

Dated: April 18, 2014



By Misty Blanchard, Agent for Association and Employee of Nevada Association Services

STATE OF NEVADA                    )  
COUNTY OF CLARK                )

On April 18, 2014, before me, Susana E. Puckett, personally appeared Misty Blanchard personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged that he/she executed the same in his/her authorized capacity, and that by signing his/her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.  
WITNESS my hand and seal.

(Seal)



(Signature)

*Susana E. Puckett*

STATE OF NEVADA  
DECLARATION OF VALUE

1. Assessor Parcel Number(s)

a. 125-28-816-020  
b. \_\_\_\_\_  
c. \_\_\_\_\_  
d. \_\_\_\_\_

2. Type of Property:

a. ☐ Vacant Land      b. ☒ Single Fam. Res.  
c. ☐ Condo/Twnhse      d. ☐ 2-4 Plex  
e. ☐ Apt. Bldg      f. ☐ Comm'l/Ind'l  
g. ☐ Agricultural      h. ☐ Mobile Home  
Other \_\_\_\_\_

FOR RECORDERS OPTIONAL USE ONLY

Book \_\_\_\_\_ Page: \_\_\_\_\_  
Date of Recording: \_\_\_\_\_  
Notes: \_\_\_\_\_

3.a. Total Value/Sales Price of Property

\$ 20,000.00

b. Deed in Lieu of Foreclosure Only (value of property (\_\_\_\_\_))

c. Transfer Tax Value:

\$ 135,580.00

d. Real Property Transfer Tax Due

\$ 693.60

4. If Exemption Claimed:

a. Transfer Tax Exemption per NRS 375.090, Section \_\_\_\_\_

b. Explain Reason for Exemption: \_\_\_\_\_

5. Partial Interest: Percentage being transferred: 100 %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature

Marty Sanchez

Capacity: Agent for HOA/NAS Employee

Signature \_\_\_\_\_

Capacity: \_\_\_\_\_

SELLER (GRANTOR) INFORMATION  
(REQUIRED)

Print Name: Nevada Association Services

Address: 6224 W. Desert Inn Road

City: Las Vegas

State: Nevada Zip: 89146

BUYER (GRANTEE) INFORMATION  
(REQUIRED)

Print Name: Kenneth Renfro

Address: PO Box 10081

City: San Bernardino

State: California Zip: 92423-0081

COMPANY/PERSON REQUESTING RECORDING (Required if not seller or buyer)

Print Name: First Priority Title Service

Escrow # N/A

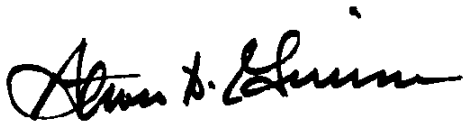
Address: 2552 Walnut Ave, Ste 220

City: Tustin

State: CA Zip: 92780

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED



  
CLERK OF THE COURT

**DFLT**  
Robert B. Noggle, Esq.  
Nevada Bar No.: 11427  
NOGGLE LAW PLLC  
376 East Warm Springs Rd., Ste. 140  
Las Vegas, Nevada 89119  
PH: 702-450-6300 | Fax: 702-642-9766  
Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

KENNETH RENFROE,  
Plaintiff,

CASE NO.: A-14-700520-C  
DEPT NO.: III

vs.

LAKEVIEW LOAN SERVICING, LLC;  
RECONTRUST COMPANY, N.A.; BRIAN J.  
FERGUSON and JENNIFER L. FERGUSON,  
Defendants.

**DEFAULT**

It appearing from the files and records in the above entitled action that **BRIAN J. FERGUSON**,  
defendant herein, being duly served with a copy of the summons and complaint on September 19,  
2014, September 26, 2014, October 3, 2014, October 10, 2014, and October 17, 2014, that more than  
20 days, exclusive of the day of service, having expired since service upon the defendant:

//

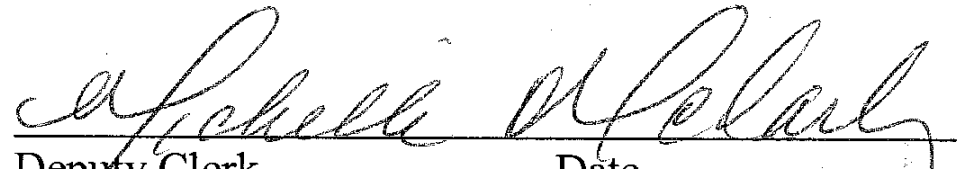
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NOV 19 2014  
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CLERK OF THE COURT

RECEIVED

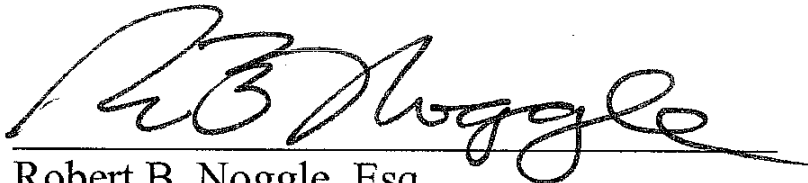
1 That no answer or other appearance having been filed and no further time having been  
2 granted, the default of the above-named defendant for failing to answer or otherwise plead to the  
3 plaintiff's complaint is hereby granted.  
4

5  
6 STEVEN D. GRIERSON, CLERK OF THE COURT

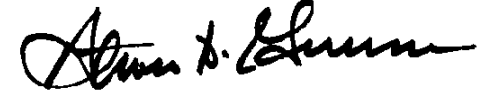
7  
8   
9 Deputy Clerk Date  
10 A700520 NOV 19 2014

11 NOGGLE LAW PLLC

MICHELLE MCCARTHY

12 

13 Robert B. Noggle, Esq.  
14 376 East Warm Springs Road, Ste. 140  
15 Las Vegas, Nevada 89119  
16 Attorney for Plaintiff  
17  
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CLERK OF THE COURT

OPPS  
Robert B. Noggle, Esq.  
Nevada Bar No.: 11427  
NOGGLE LAW PLLC  
376 E. Warm Springs Rd., Ste. 140  
Las Vegas, Nevada 89119  
(702) 450-6300 | (702) 642-9766 FAX  
*Attorney for Plaintiff*

DISTRICT COURT  
CLARK COUNTY, NEVADA

KENNETH RENFROE,

Plaintiff,

vs.

CASE NO.: A-14-700520-C  
DEPT NO.: III

LAKEVIEW LOAN SERVICING, LLC;  
RECONTRUST COMPANY, N.A.; BRIAN J.  
FERGUSON AND JENNIFER L. FERGUSON;

Defendants.

**OPPOSITION TO MOTION TO DISMISS**

Plaintiff, Kenneth Renfroe, by and through his attorney, Robert B. Noggle, Esq., opposes the motion to dismiss as follows.

**FACTS**

Plaintiff is the owner of the real property commonly known as 7736 Beach Falls Court, Las Vegas, Nevada 89149. Plaintiff obtained title by way of foreclosure deed recorded April 21, 2014. Ex F to Defendant's Motion. The plaintiff's title derives from a foreclosure deed arising from a delinquency in assessments due from the former owners to Desert Creed Home Owners Association, pursuant to NRS Chapter 116.

Defendant Lakeview Loan Servicing, LLC (hereinafter "Lakeview") is the beneficiary of the deed of trust pursuant to an assignment recorded on September 26, 2013. Ex. B to Defendant's Motion

Plaintiff filed his Complaint on May 9, 2014, seeking declaratory relief and alleging the foreclosure deed extinguished Lakeview's interest in the property and any other person or entity with an interest.

## POINTS AND AUTHORITIES

### **I. Legal Standard**

In the case of Vacation Village, Inc. v. Hitachi America, Ltd., 110 Nev. 481, 874 P.2d 744 (1994) the Supreme Court stated:

The standard of review for a dismissal under NRCP 12(b)(5) is rigorous as this court “must construe the pleading liberally and draw every fair intendment in favor of the [non-moving party].” Squires v. Sierra Nev. Educational Found., 107 Nev. 902, 905, 823 P.2d 256, 257 (1991) (quoting Merluzzi v. Larson, 96 Nev. 409, 411, 610 P.2d 739, 741 (1980)). All factual allegations of the complaint must be accepted as true. Capital Mortgage Holding v. Hahn, 101 Nev. 314, 315, 705 P.2d 126 (1985). A complaint will not be dismissed for failure to state a claim “unless it appears beyond a doubt that the plaintiff could prove no set of facts which, if accepted by the trier of fact, would entitle him [or her] to relief.” Edgar v. Wagner, 101 Nev. 226, 228, 699 P.2d 110, 112 (1985) (citing Conley v. Gibson, 355 U.S. 41, 45-46, 78 S.Ct. 99, 102, 2 L.Ed.2d 80 (1957)).

Plaintiff’s case should not be dismissed because there are numerous factual issues to resolve and it would be premature at this stage of litigation to dismiss the case.

### **II. ARGUMENT**

Defendant’s motion should be denied at this early stage of litigation. Both the Supremacy Clause and Property Clause arguments should be rejected. Defendant lacks standing to argue there was a federal property interest which would be extinguished by the HOA foreclosure because Lakeview is not a federal agency and no property belonging to Lakeview belongs to the federal government. Lakeview has cited no *binding* authority to support its argument. Lastly, Lakeview greatly broadens and exaggerates the holding in Wash. & Sandhill Homeowners Ass’n v. Bank of Am., N.A.

#### **i. Lakeview Lacks Standing To Argue The HOA Foreclosure Is Pre-Empted By Federal Law.**

Lakeview’s motion to dismiss is based upon an argument they lack standing to make. Further, the only support for their motion lies in non-binding case law in which they broaden the holding beyond that which the Court ruled.

1 Lakeview cites to Wash. & Sandhill Homeowners Ass'n v. Bank of Am., N.A. (D. Nev.,  
2 2014) for the premise that a home with an FHA loan on it cannot be foreclosed upon by the HOA and  
3 extinguish the prior existing loan. Motion to Dismiss at 2:23-25. There are numerous problems with  
4 this argument. First, in Sandhill, HUD was not only a party to the action, but was the owner of the  
5 property after the original lender, Bank of America, transferred the property to HUD following Bank  
6 of America's foreclosure. Second, there are significant factual differences in the case. In Sandhill,  
7 the HOA foreclosed prior to the beneficiary of the deed of trust (Bank of America). However, after  
8 Bank of America foreclosed, the HOA issued a notice of delinquent assessments to Bank of America,  
9 and then again to HUD when Bank of America transferred the property to HUD pursuant to the  
10 mortgage insurance requirements. Following these requests for delinquent assessments, the HOA  
11 changed its mind and decided it was the owner of the property. Ultimately, HUD was on title to the  
12 property at the time of the litigation.

13 Lakeview also cites to United States v. Stadium Apartments, Inc., 425 F.2d 358 (9th Cir.,  
14 1970) and United States v. View Crest Garden Apts., Inc., 268 F.2d 380 (9th Cir., 1959). Both of  
15 these cases involve the United States government as parties to the case. In Stadium Apartments, the  
16 Court stated that California state redemption rights did not apply where FHA foreclosed on a home.  
17 Similarly, in View Crest Garden Apts., the Court also invalidated Washington state law because FHA  
18 was again foreclosing on the property. Both of these cases involved the United States as a party and  
19 specifically, the FHA itself foreclosing.

20 None of those facts are present in the instant case. Here, the HOA foreclosed on the property  
21 and the beneficiary of the deed of trust (Lakeview) has not foreclosed, nor transferred the property to  
22 HUD. HUD is not a party to the instant action making Lakeview's Supremacy Clause argument  
23 improper because they lack standing.

24 The issue of standing is explained by the United States Supreme Court in Lujan v. Defenders  
25 of Wildlife, 504 U.S. 555, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992). The Supreme Court stated,

26 As the parties invoking federal jurisdiction, respondents bear the burden  
27 of showing standing by establishing, *inter alia*, that they have suffered an injury  
28 in fact, i.e., a concrete and particularized, actual or imminent invasion of a  
legally-protected interest... Standing is particularly difficult to show here, since

1 third parties, rather than respondents, are the object of the Government action or  
2 inaction to which respondents object.

3 Lujan v. Defenders of Wildlife, 504 U.S. 555, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992)

4 In Lujan, The Supreme Court explained that standing requires injury to the party making the  
5 claim. Although the Supreme Court was dealing with the plaintiff, the issue of standing is equally  
6 applicable to defendants. In Roethlisberger v. McNulty, 256 P.3d 955, 127 Nev. Adv. Op. 48 (Nev.,  
7 2011), Defendant Roethlisberger attempted to change venue based upon the residence of his co-  
8 defendant. The Nevada Supreme Court determined that, “Because venue in Washoe County was not  
9 improper as to Roethlisberger, he lacked standing to request a change of venue pursuant to NRS  
10 13.090. Only a defendant who claims to be a resident of Douglas County, such as (the co-defendant)  
11 could have requested a change in venue....” Id. at 957. The Nevada Supreme Court denied  
12 Roethlisberger from asserting a third party’s defense as his own, similar to the US Supreme Court in  
13 Lujan.

14 Here, Lakeview is attempting to do the same thing. Lakeview has asserted that, “the  
15 Supremacy Clause bars Nevada law from allowing an HOA foreclosure to extinguish a federally  
16 insured security interest”. Motion to Dismiss at 4:10-11. Lakeview further asserts that Sandhill  
17 “expressly held that *SFR Investments* does not apply to FHA Loan, and a deed of trust insured by the  
18 FHA cannot be extinguished by a Chapter 116 HOA foreclosure sale.” Id. at 4:13-15.

19 Lakeview however is not the federal government. Lakeview does not represent the FHA in  
20 this matter and FHA is not a party making this argument. Lakeview cannot raise the Supremacy  
21 Clause as a defense when it does not apply to them. Furthermore, Lakeview is in an entirely separate  
22 position than the defendant was in Sandhill. The party who raised all the Supremacy Clause  
23 arguments in Sandhill was the Secretary of Housing and Urban Development (“HUD”), protecting its  
24 own federal interest. As in Roethlisberger, Lakeview cannot raise arguments reserved to someone  
25 else. There is no federal property that can be taken from Lakeview because they are not the federal  
26 government, nor do they represent them.

27 ///

28 ///

1           **ii. Even If This Court Determines That Lakeview Somehow May Raise Federal**  
2           **Property Claims, Their Motion Must Still Be Denied Because They Cannot Be**  
3           **Reimbursed By FHA Under The Terms Of The Insurance Agreement.**

4           Lakeview correctly cites the claim process in their Motion at the bottom of page 4, however  
5           they fail to show how federal property would be impacted. 24 C.F.R. §§ 203.355-203.371 is  
6           identified as the “claim procedure” for an FHA loan. A claim based upon an FHA insured loan  
7           requires several steps.

- 8           1) Foreclose on the property or complete a pre-foreclosure sale (short sale). 24 C.F.R. §  
9           203.355
- 10          2) In the case of a foreclosure or deed in lieu of foreclosure, transfer title of the property to  
11          the Secretary (of HUD). 24 C.F.R. § 203.359.
- 12          3) Once title is transferred, forward a copy of the deed to the Secretary that has been filed  
13          with the recorder. 24 C.F.R. § 203.365(a)(1).
- 14          4) Send financial information pertinent to the mortgage transaction to the Secretary. 24  
15          C.F.R. § 203.365(a)(2) & (3).

16          Pursuant to 24 C.F.R. § 203.368, the mortgagee (Lakeview), may also make an insurance  
17          claim without transferring title to the Secretary in limited circumstances. Essentially, those  
18          circumstances requires Lakeview to hold a foreclosure sale of the property where a third party will  
19          obtain the property or the mortgagee may elect to keep title to the property. See 24 C.F.R.  
20          203.368(g). There are no sets of circumstances which permit Lakeview from obtaining insurance  
21          proceeds on an FHA insured loan without going through the foreclosure process, either through a  
22          direct foreclosure, deed in lieu of foreclosure or pre-foreclosure sale.

23          Making an insurance claim with FHA requires Lakeview to perform one of the above actions.  
24          Those actions are a precondition for making any insurance claim. Without foreclosing on the party  
25          and having a third party purchase it, obtaining title to the property and transferring to the Secretary of  
26          HUD or performing an approved pre-foreclosure sale, there is no way in which Lakeview may submit  
27          a claim to HUD. Therefore, HUD is not required to pay *any* money to Lakeview as a result of the  
28          HOA foreclosure. If HUD is not required to pay a claim to Lakeview, there can be no violation of  
                the Supremacy Clause alleged by Lakeview. If Lakeview cannot make a claim and HUD does not

1 pay any money to Lakeview, there can be no deprivation of federal property rights and Lakeview's  
2 motion must be denied.

3 **iii. Lakeview's Property Clause Argument Is Not Supported By Statute or Case Law**

4 Lakeview's final argument is that the motion to dismiss must be granted based upon the  
5 Property Clause of the United States Constitution. Motion to Dismiss at 5:25. The only support for  
6 this claim comes from three distinguishable cases: Rust, Sky Meadows Assoc., and Sandhill. None  
7 of these cases are applicable in the instant action.

8 In Rust, which is a 9<sup>th</sup> circuit case based upon California law, Fannie Mae (the federal  
9 government entity) was the beneficiary of the deed of trust securing the mortgage to the property. It  
10 is clear that as the beneficiary of the deed of trust, Fannie Mae had a "federal interest" in the  
11 property. Rust v. Johnson, 597 F.2d 174, 181 (C.A.9 (Cal.), 1979).

12 In Sky Meadows Assoc., a California District Court case, HUD owned the property at the  
13 time the HOA foreclosed. As such, the Court determined that based upon the Supremacy Clause and  
14 Property Clause of the US Constitution, the HOA was not permitted to foreclose on property.

15 Lastly, Sandill, as discussed above, also involved property directly owned by HUD.  
16 Lakeview though, also greatly misconstrues the holding in Sandhill, claiming it stands for the  
17 proposition that, "the mortgage interest, combined with the mortgagee's obligation to convey title to  
18 the federal government if the borrower defaults, created a federal protected (sic) by the Property  
19 Clause". Motion to Dismiss at 6:16-17. Lakeview's claims misrepresents what the Sandhill Court  
20 actually stated, which is as follows,

21 ("[A] mortgage interest retained by [a federal agency is] a federal property  
22 interest.... In absence of express congressional authority, the Supremacy Clause  
23 barred the foreclosure sale."). **While no court appears to have ever directly  
24 addressed the question of whether a federal agency's insurance of a mortgage  
25 creates a federal property interest protected by the Constitution**, under the  
26 FHA insurance program, mortgagees must take action within a limited time after  
27 a default and, if they purchase the property at the foreclosure, mortgagees must  
28 then convey title to HUD. 24 C.F.R. §§ 203.355(a), 203.359(a). Therefore,  
because a mortgagee must act on default and then must convey title to HUD  
should it purchase the property, *it would not be a significant extension of the  
Property Clause's protection to hold that HUD's insurance of a mortgage under  
the FHA insurance program created a federal property interest that can only be  
divested by an act of Congress. However, this Court need not make such  
finding in order to rule in this case.*



1 Wash. & Sandhill Homeowners Ass'n v. Bank of Am., N.A. (D. Nev., 2014) at \*10-11. Emphasis  
2 added.

3 The Court in Sandhill specifically chose not to make a decision on whether or not FHA  
4 insurance was sufficient to create a federal property interest. The Court acknowledged that no court  
5 has directly made that determination. Although the Court hypothesizes that it is *possible* that some  
6 court, at some time, could find FHA insurance would be a sufficient federal property interest, they  
7 chose not to make that determination. This is also in stark contrast to Lakeview's assertion that,  
8 "(Sandhill) expressly held that SFR Investments does not apply to FHA loans...". Motion to Dismiss  
9 at 4:13. Lakeview provides no citation for this "express holding", but as shown above, the Court did  
10 not make the determination that an FHA insurance policy was sufficient to overrule SFR Investments.

11 As such, the decisions in Rust, Sky Meadows Assoc. and Sandhill are sufficiently  
12 distinguishable that this Court should not follow those decisions. Each case had a federal  
13 government actor as owner of the property or beneficiary of the deed of trust which we do not have in  
14 this case. Defendant's Property Clause argument should be rejected and Defendant's motion denied.

15 **iv. Lakeview's Motion to Dismiss Should Be Denied at This Early Stage of**  
16 **Litigation.**

17 In order for Lakeview to succeed in its motion to dismiss, they need to show "beyond a doubt  
18 that Plaintiff could prove no set of facts which, if accepted by the trier of fact, would entitle him to  
19 relief." Edgar v. Wagner, 101 Nev. 226, 228, 699 P.2d 110, 112 (1985). As demonstrated throughout  
20 this opposition, there are a number of reasons Plaintiff could succeed on the merits of this case, but  
21 more importantly, there are numerous reasons why Lakeview's argument fails. They lack standing to  
22 argue there is a federal property interest because they do not represent the government nor do they  
23 have any federal property. They have established no law which states all homes with FHA loans on  
24 them are protected from HOA foreclosure. Each case cited by Lakeview for this proposition was  
25 brought by the federal government or one of its representatives. Furthermore, each property in  
26 question was actually owned by either HUD or Fannie Mae, which are claimed to be government  
27 agencies.

1 Here, we have a home which was not owned by any government agency. By its own  
2 admission, Lakeview was the beneficiary of the deed of trust. Motion to Dismiss at 3:16, See also,  
3 Defendant's Exhibit B, Assignment of the Deed of Trust to Lakeview. This shows that the  
4 government was not the owner of any property interest of the deed of trust at the time of the HOA  
5 foreclosure.

6 Based upon this opposition, Plaintiff can establish numerous facts which could lead a trier of  
7 fact to find in his favor. For this reason, Defendant's motion should be denied.

### 8 **III. CONCLUSION**

9 Based upon the foregoing, Lakeview's motion to dismiss should be denied in its entirety.

10 DATED this 15<sup>th</sup> day of December, 2014  
11

12  
13 NOGGLE LAW PLLC

14  
15 By: / s / Robert B. Noggle, Esq. /  
16 Robert B. Noggle, Esq.  
17 376 East Warm Springs Road, Ste. 140  
18 Las Vegas, Nevada 89119  
19 Attorney for Plaintiff  
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