IN THE SUPREME COURT OF THE STATE OF NEVADA

NATIONSTAR MORTGAGE, LLC, Appellant, vs. SFR INVESTMENTS POOL 1, LLC, Respondent.	Case No. 69400	Electronically Filed Jun 23 2016 10:26 a.m. Tracie K. Lindeman Clerk of Supreme Court

APPEAL
from the Eighth Judicial District Court, Department VII
The Honorable Michael P. Villani, District Judge
District Court Case No. A-13-684715-C

APPELLANT'S OPENING BRIEF

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NRAP 26.1 DISCLOSURE

Pursuant to NRAP 26.1, the undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed:

> Nationstar Mortgage LLC (Nationstar) is a Delaware limited liability company that is wholly owned by Nationstar Sub1 LLC and Nationstar Sub2 LLC. Nationstar Sub1 LLC and Nationstar Sub2 LLC are Delaware limited liability companies that are wholly owned by Nationstar Mortgage Holdings, Inc., a publicly-traded company on the New York Stock Exchange (NYSE: NSM). Nationstar Mortgage Holdings, Inc. does not have any parent corporations, and no publicly-held company has an ownership interest of ten percent or more in Nationstar Mortgage Holdings, Inc.

These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

INTRODUCTION

Freddie Mac is a federally chartered enterprise that facilitates and participates in the secondary market in residential mortgage loans by purchasing them from banks and other private lenders, thereby freeing up money for additional lending. As the Restatement of Property and Nevada law recognize, secondary-market participants often contract with entities called "servicers" to handle practical aspects of mortgage ownership, such as communicating with borrowers and taking legal action to protect the mortgage-owner's interests.

In September 2008, the Federal Housing Finance Agency (FHFA), the federal agency that regulates Freddie Mac, placed it (and the similarly situated Fannie Mae) into conservatorship. The federal statute governing FHFA conservatorships mandates that "no property of [a conservatorship] shall be subject to … foreclosure … without the consent" of the Conservator. 12 U.S.C. § 4617(j)(3). Functionally, this federal foreclosure bar prevents extinguishment of Freddie Mac's property—such as Freddie Mac's deed-of-trust interests—during conservatorship. Under the U.S. Constitution's Supremacy Clause, the federal statute preempts state law, such as NRS Chapter 116, that would otherwise extinguish Freddie Mac's interests.

This appeal principally concerns whether Freddie Mac's contractually authorized servicer, Nationstar, may invoke the federal foreclosure bar as a defense

to a quiet title action in which the purchaser claims a homeowners' association foreclosure sale extinguished a Freddie Mac deed of trust. The district court precluded Nationstar from asserting the defense. That was error. As a contractually authorized servicer, Nationstar maintains an interest in the deed of trust that corresponds to and is derived from Freddie Mac's interest—if Freddie Mac's interest were extinguished, Nationstar would have no remaining interest of its own. Nationstar, therefore, has a concrete stake in protecting Freddie Mac's interest and has the legal right to assert the federal foreclosure bar.

Separately, this appeal involves the substantive questions whether Nationstar received constitutionally adequate notice of the HOA sale, and whether that sale was commercially unreasonable and thus void. On each, the district court erred.

This Court should reverse the district court's grant of summary judgment to the purchaser, and remand for further proceedings consistent with the Court's resolution of the pending legal questions.

STATEMENT OF JURISDICTION

This Court has jurisdiction under NRAP 3A(b)(1), as the district court granted summary judgment on November 10, 2015, notice of entry of which was also served on November 11, 2015. Nationstar filed a timely notice of appeal on December 9, 2015.

ROUTING STATEMENT

This case is presumptively retained by the Supreme Court because it raises as a principal issue a question of first impression of common law and three questions of statewide public importance. NRAP 17(a)(13) and (14). The principal issues raised on appeal are:

(1) Whether Nationstar, as the beneficiary of the deed of trust and servicer for Freddie Mac, has standing to assert the federal foreclosure bar as a defense to a quiet title claim brought by an investor that purchased at the HOA foreclosure sale;

(2) Whether the HOA's failure to provide notice of an assessment lien foreclosure sale to the beneficiary of record renders the sale void; and

(3) Whether the HOA's foreclosure sale was commercially unreasonable.

ISSUES PRESENTED

(1) Whether Freddie Mac's contractually authorized servicer Nationstar could assert the federal foreclosure bar as a defense to SFR's claim that a state-law HOA foreclosure extinguished a deed of trust owned by Freddie Mac.

(2) Whether the district court erred in holding that the HOA's failure to provide notice of the foreclosure sale to Nationstar was cured by the boilerplate recitals contained in the trustee's deed upon sale.

(3) Whether the district court erred by ignoring facts evidencing that the HOA's foreclosure sale was commercially unreasonable.

STATEMENT OF THE CASE

This is a quiet title action following an HOA lien foreclosure sale. On July 8, 2013, a residential home borrower, Ignacio Gutierrez, filed a complaint challenging a foreclosure sale by a homeowners' association. On August 2, 2013, one of the defendants, respondent SFR, filed its answer and a third-party complaint against Nationstar, seeking to quiet title to the property. (JA000021) Nationstar answered, asserting the federal foreclosure bar as a defense. (JA000084; JA000088).

SFR moved for summary judgment (JA000094); Nationstar opposed the motion (JA000167) and filed a countermotion for summary judgment. (JA000237). The district court granted SFR's motion on November 10, 2015 (JA000448), and Nationstar appealed. (JA000465).

STATEMENT OF FACTS

I. The Original Purchase of the Property and the Deed of Trust

In July 2005, Ignacio Gutierrez purchased a home in Henderson, Nevada. On July 20, 2005, a deed of trust was recorded, listing Gutierrez as the borrower, KB Home Mortgage Company ("KB") as the lender, Mortgage Electronic Registration Systems, Inc. ("MERS") as beneficiary in a nominee capacity of the lender and lender's successors and assigns, and First American Title Company of Nevada as trustee. (JA000258-259). The deed of trust granted KB an assignable

security interest in the property to secure the repayment of Gutierrez's loan, which was in the original amount of $271,638.00. *Id*.

On April 23, 2012, an assignment of the deed of trust, under which MERS assigned its interest to Bank of America, N.A. ("BANA"), was recorded. (JA000288). On November 28, 2012, a second assignment, from BANA to Nationstar, was recorded. (JA000296)

II. Freddie Mac's Interest in the Deed of Trust and Conservatorship

Freddie Mac purchased the loan and thereby obtained a property interest in the deed of trust shortly after the loan's origination (JA000285, at 20:1-5). On September 6, 2008, FHFA placed Freddie Mac into conservatorship. (JA000170). Nationstar is the servicer of the loan for Freddie Mac and was the servicer when the HOA foreclosed and sold the property in April of 2013. (JA000284, at 16:9-12).

III. The HOA's Lien and Foreclosure

Gutierrez defaulted on his obligations to the HOA, and on July 10, 2012 the HOA's agent Nevada Association Services, Inc. ("NAS") recorded a lien for delinquent assessments. (JA000291). The amount owing as of the date of preparation of the lien was $1,333.30, which included all assessments, late fees, interest, and collection fees. *Id*. On August 30, 2012, NAS recorded a notice of default and election to sell against the Property. (JA000293).

On February 20, 2013 — after the deed-of-trust assignment from BANA to Nationstar had been recorded — NAS recorded a Notice of Foreclosure Sale but did not provide notice directly to Nationstar. (JA000298-299; and JA000303-305). The amount owed as of February 20, 2013 was $3,757.49, which included the total amount of the unpaid balance and reasonably estimated costs, expenses, and advances at the time of the publication of the notice of foreclosure sale. *Id.*

On April 8, 2013, a foreclosure deed was recorded against the property. (JA000307). The foreclosure deed states that the property was sold on April 5, 2013 to SFR, with a purchase price of $11,000 — approximately four percent of the amount Gutierrez borrowed to purchase the property eight years earlier (*Id.*), a mere 9 percent of what the trustee's deed itself purports the transfer value of the property to be (JA000309), and just 8% of what Nationstar's expert determined the market value of the property to be at the time of the sale. (JA000316).

At no time did FHFA, as Conservator, consent to the HOA sale extinguishing or foreclosing Freddie Mac's interest in the property. (JA000236).

III. Procedural Background

On July 8, 2013, Gutierrez filed a complaint against multiple defendants, alleging lack of notice, requesting entry of an order setting aside the sale, and demanding damages. (JA000002). SFR filed an answer, counterclaim, and third-party complaint against Nationstar seeking to quiet title and, in the alternative,

advancing a claim for unjust enrichment. (JA000021) In its third-party complaint against Nationstar, SFR alleged that SFR purchased the property at an HOA foreclosure sale free and clear of the first deed of trust encumbering the property. In summary judgment proceedings, SFR relied on a Nevada statute granting HOAs a so-called "superpriority" lien for a limited amount of back dues. NRS 116.3116(2). This Court has held that as a matter of Nevada law, foreclosures conducted properly under that statute extinguish deed-of-trust interests.

Nationstar answered the third-party complaint, asserting the federal foreclosure bar as an affirmative defense. (JA000084; JA000088). SFR then moved for summary judgment on all claims. (JA000094). Nationstar opposed the motion and filed a countermotion for summary judgment, invoking the federal foreclosure bar in each instance. (JA000167; JA000237). The district court ruled that Nationstar lacked standing to invoke the federal foreclosure bar, and on that basis granted summary judgment to SFR. (JA000448-454). In so doing, the district court rejected Nationstar's arguments that Nationstar did not receive statutorily or constitutionally adequate notice of the HOA sale and that the terms of the HOA sale were commercially unreasonable, rendering the sale void. Nationstar timely appealed. (JA000465).

SUMMARY OF ARGUMENT

The district court's order granting summary judgment to SFR includes three reversible errors.

First, the district court erred in ruling that Nationstar lacked legal authority, or "standing," to invoke the federal foreclosure bar. As the record beneficiary of the deed of trust, Nationstar had a concrete interest at stake—an interest that corresponded to and was derived from Freddie Mac's interest, and which the federal foreclosure bar protected from extinguishment—and therefore had standing to invoke the federal foreclosure bar. In any event, Nationstar was entitled as Freddie Mac's contractually authorized servicer to raise the statutory defense on Freddie Mac's behalf. Because this error precluded Nationstar from raising a potentially dispositive defense to a claim on which the district court granted summary judgment to SFR, this Court must reverse and remand with instructions that the district court permit Nationstar to invoke the federal foreclosure bar.

Second, the district court erred in rejecting Nationstar's notice arguments. The lack of notice to Nationstar violated NRS Chapter 116 and the constitutional safeguards of due process. SFR argued that recitals contained in the foreclosure trustee deed constructively cured the defective notice, but subsequent case law confirms that conclusory statements in the trustee's deed that it complied with the

law do not make it so—particularly where, as here, uncontroverted evidence establishes that the HOA did *not* comply.

Third, the district court erred in rejecting Nationstar's commercial-unreasonableness argument. The fact that sale price was $11,000—only four percent of the amount Gutierrez borrowed to purchase the property—demonstrates that the sale was not conducted in good faith, especially when coupled with the HOA's failure to provide the required notice of the sale.

ARGUMENT

"This [C]ourt reviews a district court's grant of summary judgment de novo." *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). In reviewing a grant of summary judgment, the Court must determine "whether the law has been correctly perceived and applied by the district court." *Mullis v. Nevada National Bank*, 98 Nev. 510, 512, 654 P.2d 533, 535 (1982). A motion for summary judgment should be granted "when the pleadings and other evidence on file demonstrate that no 'genuine issue as to any material fact [remains] and that the moving party is entitled to judgment as a matter of law.'" *Id.*; NRCP 56(c). All evidence and inferences must be viewed in a light most favorable to the non-moving party on a summary judgment motion. *Safeway*, 121 Nev. at 729, 121 P.3d at 1029.

I. The District Court Erred in Precluding Nationstar From Asserting the Federal Foreclosure Bar

The district court's ruling that Nationstar lacked standing to assert the federal foreclosure bar as a defense to SFR's claim of quiet title was wrong for two reasons. *See* JA000448. *First*, Nationstar, as Freddie Mac's contractually authorized servicer, has an interest in the deed of trust and the underlying property that corresponds to and is derived from Freddie Mac's interest, and that the federal foreclosure bar therefore protects. As a party with a concrete interest at stake, Nationstar has standing to assert a federal statute that would, through preemptive effect, preserve that interest. *Second*, even if the Court assumes (incorrectly in our view) that only Freddie Mac and not Nationstar had a property interest at stake, under the Restatement principles this Court adopted in *Edelstein* and *Montierth*, Nationstar is fully entitled to assert defenses on Freddie Mac's behalf to protect Freddie Mac's interest.

A. Nationstar Has Standing to Invoke Any Law That Will Protect Its Interest in the Property, Which Corresponds To and Is Derived from Freddie Mac's Interest

The district court ruled that Nationstar lacked standing to protect its interest in the property, purportedly because the federal foreclosure bar can be invoked

only if "Freddie Mac or FHFA is a party" to the litigation. (JA000452-453).[1] This ruling failed to appreciate that Nationstar's interest as Freddie Mac's servicer corresponds to and is derived from Freddie Mac's interest, which the federal foreclosure bar unambiguously protects. Nationstar's interest is concrete and not speculative. Whether Section 4617(j)(3) insulates Freddie Mac's interest, upon which Nationstar's interest depends, directly affects Nationstar's interests—if the federal foreclosure bar applies, Nationstar's interest is preserved, while if the statute were somehow (incorrectly in our view) held inapplicable, Nationstar's interest would be extinguished along with Freddie Mac's.

Indeed, federal courts have recognized that servicers like Nationstar, who are the record beneficiaries of a deed of trust but do not own the corresponding loan, have constitutional and prudential standing to bring an action regarding the loan. *See, e.g.*, *Greer v. O'Dell*, 305 F.3d 1297, 1299 (11th Cir. 2002) ("[A] loan servicer is a 'real party in interest' with standing to conduct, through licensed counsel, the legal affairs of the investor relating to the debt that it services."); *BAC Home Loans Servicing, LP v. Texas Realty Holdings, LLC*, 901 F. Supp. 2d 884, 905-09 (S.D. Tex. 2012) (Mortgage servicer was a real party in interest and

[1] Indeed, the district court left open whether the federal foreclosure bar applied, holding that nothing its decision "shall be construed to prohibit Freddie Mac or FHFA from asserting in an appropriate action 12 U.S.C. § 4617(j)(3) preempts NRS 116 to the extent NRS 116 would … otherwise allow Freddie Mac's Deed of Trust to be extinguished … without FHFA's consent." (JA000463).

"clearly" had constitutional standing to bring lawsuit in its own name to administer the loan.); *TFG-Illinois, L.P. v. United Maint. Co., Inc.*, 829 F. Supp. 2d 1097, 1111 (D. Utah 2011) ("[S]ervicer standing . . . does not seem to require anything more than that a servicer have a pecuniary interest that is harmed by a borrower's default."); *Kiah v. Aurora Loan Serv., LLC*, No. 10-46161-FDS, 2011 WL 841282, at *5 (D. Mass. Mar. 4, 2011) (Fannie Mae often requires servicers to initiate legal proceedings in the servicer's name if the servicer or MERS is the mortgagee of record.).

Federal courts in Nevada have reached the same conclusion. *See, e.g.*, *CitiMortgage, Inc. v. Country Gardens Owners' Ass'n*, No. 2:13-CV-02039-GMN, 2013 WL 6409951, at *1, *4 (D. Nev. Dec. 5, 2013) (granting servicer preliminary injunction to enjoin foreclosure sale to enforce a super-priority lien). One court to recently have applied this principle held that that the beneficiary of a deed of trust may raise federal preemption arguments. In *Saticoy Bay LLC v. SRMOF II 2012-1 Trust*, No. 2:13-CV-1199, 2015 WL 1990076 (D. Nev. Apr. 20, 2015), the plaintiff alleged that the beneficiary of the deed of trust lacked "standing to make this [preemption] argument on behalf of a federal agency that is not a party to this action." *Id.* at *4. The court summarily rejected this argument. It found plaintiff's argument that preemption arguments should be limited to federal agencies to be "baseless." *Id.* The court concluded that the beneficiary of the deed was "entitled

to argue that state law is constitutionally preempted whether or not the government is a party to the case."

Moreover, private parties routinely invoke other federal statutory protections in purely private litigation, without any question arising as to their standing (which is, of course, a jurisdictional matter that any party or the court could raise at any time). *See, e.g., Beal Bank, SSB v. Nassau Cnty.*, 973 F. Supp. 130, 133 (E.D.N.Y. 1997) (private parties asserted claims to protect property interest by invoking the operations of the FDIC's similar property protection statute); *Cambridge Capital Corp. v. Halcon Enterprises, Inc.*, 842 F. Supp. 499, 504 (S.D. Fla. 1993) (same); *see also Grimsley v. Bd. Of Cnty. Comm'rs of Atoka Cnty., Okla.*, 9 F. App'x 970, 973 n.3 (10th Cir. 2001) (noting that a private party injured by a sale without FDIC consent could bring claim invoking the operation of FDIC's property protection statute). Federal courts in Nevada have applied this rule in considering related preemption arguments. *See Thunder Properties, Inc. v. Wood*, No. 3:14-cv-0068-RCJ-WGC, 2015 WL 1926768, at *4 (D. Nev. Apr. 28, 2015) ("Whether N.R.S. 116.3116 as applied to federally insured mortgages conflicts with [the Supremacy Clause] is a question of law that may be raised by any party, and not just a government agency." (citing *Armstrong v. Exceptional Child Care Ctr., Inc.*, 135 S. Ct. 1378, 1383 (2015)).

The United States Supreme Court recently discussed this issue, noting that the Supremacy Clause, though not establishing an independent cause of action, "creates a rule of decision: Courts 'shall' regard the 'Constitution,' and all laws 'made in Pursuance thereof,' as 'the supreme Law of the Land.' They must not give effect to state laws that conflict with federal laws." *Armstrong*, 135 S. Ct. at 1383 (2015) (quoting U.S. Const. Art. IV cl. 2). Accordingly, "once a case or controversy properly comes before a court, judges are bound by federal law." *Id.* at 1384. Thus, a private defendant may successfully argue that federal law preempts a state doctrine, thereby defeating a private plaintiff's claim. *See Mutual Pharm. Co. v. Bartlett*, 133 S. Ct. 2466 (2013).[2]

And as recently as April 2015, this Court affirmed that private parties can invoke federal statutes that prescribe the interests of federal financial-institution

[2] Private parties may raise federal preemption arguments in support of their claims or defenses because courts "must not give effect to state laws that conflict with federal laws." *Armstrong*, 135 S. Ct. at 1383. Accordingly, loan servicers such as Nationstar may argue that federal law provides the rule of decision in resolving the quiet title claims properly before state courts in this and related litigation. Other Nevada district courts recently have confused this reliance on federal law with the improper invocation of the Supremacy Clause as a separate cause of action. Order, *SFR Investments Pool 1, LLC v. Bank of Am., N.A.*, No. A-14-697102-C, slip op. at 7 (Clark Cty. Dist. Ct. Jan. 12, 2016) (holding that because "private litigants cannot use the Supremacy Clause to displace state law"); *see also* Order, *SFR Investments Pool 1, LLC v. JP Morgan Chase Bank, N.A.*, No. A-13-679365-C, slip op. at 9-10 (Clark Cty. Dist. Ct. Apr. 14, 2016) (same). Here, Nationstar has not attempted to rely on the Supremacy Clause as a separate cause of action, and its argument that federal law controls the resolution of this case is proper.

receivers or conservators in particular property. In *Munoz v. Branch Banking & Trust Co.*, 348 P.3d 689 (Nev. 2015), this Court held that a Nevada statute was preempted because it "frustrate[d] the purpose" of federal law, notwithstanding the fact that the party asserting preemption was a bank, not a federal agency. The Court considered the preemptive effect of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA) on a state statute, NRS 40.459(1)(c). That state statute limits the amount of a deficiency judgment that a successor creditor can recover. *Munoz*, 348 P.3d at 690. FIRREA provides that the Federal Deposit Insurance Corporation (FDIC) will act as receiver for a failed bank and convert the bank's assets to cash to cover insured depositors and debtors to the maximum extent possible. *Id*. at 691-92. One category of assets of a bank is the loans it holds. The bank argued that, because the Nevada law limited the amount a subsequent private purchaser could recover on the loan, this made it less likely that a private party would purchase the loan, and hence would make it at least marginally more difficult for the FDIC to dispose of the assets. *Id*. at 692-93. This Court agreed, holding that Nevada law was preempted by the federal law. *Munoz* makes clear that Nevada law allows a private party to assert a defense of federal preemption to defend its property interest.

Contrary to the district court's conclusion that the federal foreclosure bar was a "claim or defense of Freddie Mac or FHFA," the plain text of the law does

not limit its utilization to only those entities. Rather, HERA provides—with no conditions precedent—that "[n]o property of the Agency shall be subject to levy, attachment, garnishment, foreclosure, or sale without the consent of the Agency." 12 U.S.C. § 4617(j)(3). Thus, the Federal Foreclosure Bar works automatically, by operation of law, to protect the Deed of Trust and thereby limits the property rights SFR acquired in the HOA Sale. Much like the bank's property interest in *Munoz*, Nationstar's interest is affected by the federal foreclosure bar and, also like the bank in *Munoz*, Nationstar is entitled to invoke the governing federal statute. *Cf. Munoz*, 693 P.3d at 692.

B. In Any Event, Nationstar Had Standing to Assert the Federal Foreclosure Bar on Freddie Mac's Behalf

Even if Nationstar lacked the right to invoke the federal foreclosure bar based on its own property interest, it still could invoke Freddie Mac's interest due to its contractual relationship with Freddie Mac. Servicers, by virtue of their contractual relationship with the loan and deed of trust owner, have a pecuniary interest in protecting the owner's rights that is sufficient to confer standing to litigate on the owner's behalf. *See CWCapital Asset Mgmt., LLC v. Chicago Props.*, 610 F.3d 497, 501 (7th Cir. 2010) (noting a servicer's "personal stake in the outcome of the lawsuit because it receives a percentage of the proceeds of a defaulted loan that it services."); *Cf. Sprint Comm'ns Co., L.P. v. APCC Servs., Inc.*, 554 U.S. 269, 271-72 (2008) (a third-party assignee has standing to litigate on

behalf of its assignor, even if the assignee has no interest in the litigation aside from the fee it is paid for its service); *Mortg. Elec. Registration Sys., Inc. v. Bellistri*, No. 4:09-cv-731, 2010 WL 2720802 (E.D. Mo. July 1, 2010) ("MERS had a legal right to file suit to foreclose the mortgage . . . . the right to file suit is 'a substantial property right.'" (quoting *Kinsella v. Landa*, 600 S.W.2d 104, 107 (Mo. Ct. App. 1980))).

Indeed, Nationstar's contract with Freddie Mac authorizes Nationstar to protect Freddie Mac's interests—including, if necessary, foreclosing on the Deed of Trust. *See, e.g.*, Freddie Mac's Single-Family Seller/Servicer Guide at 8105.3, 9301.1, 9301.12, 9401.1.[3] Thus, Freddie Mac provided Nationstar with authority to protect Freddie Mac's lien interests.

Decisions of this Court—and the Restatement doctrine they adopt—confirm that servicers are fully entitled to take action to protect the loan owner's interests, which is exactly what Nationstar sought to do in the court below. In *Edelstein v. Bank of New York Mellon*, this Court adopted the Restatement approach to the transfer of mortgages. 128 Nev. __, __, 286 P.3d 249, 257-58 (Nev. 2012) (citing

[3] The Guide is publicly available on Freddie Mac's website. An interactive version is available at www.freddiemac.com/singlefamily/guide, and archived prior versions of the Guide are available at www.freddiemac.com/singlefamily/guide/bulletins/snapshot.html. The Court may take judicial notice of the Guide. *See, e.g., Charest v. Fannie Mae*, 9 F. Supp. 3d 114, 118 & n.1 (D. Mass. 2014); *Cirino v. Bank of Am., N.A.*, No. CV 13-8829 PSG MRWX, 2014 WL 9894432, at *7 (C.D. Cal. Oct. 1, 2014).

Restatement (Third) of Prop.: Mortgages § 5.4(a) (1997) ("Restatement")). Recently, this Court reaffirmed that it adopted the entirety of the Restatement approach, including sections not discussed in *Edelstein*. *In re Montierth*, 131 Nev. __, __, 354 P.3d 648, 650-51 (2015). Under the Restatement approach adopted in *Edelstein* and *Montierth*, ownership of the deed of trust was transferred to Freddie Mac along with the promissory note when Freddie Mac purchased the loan.

The Restatement describes the typical arrangement between investors in mortgages, such as Freddie Mac and their servicers:

> Institutional purchasers of loans in the secondary mortgage market often designate a third party, not the originating mortgagee, to collect payments on and otherwise "service" the loan for the investor. In such cases the promissory note is typically transferred to the purchaser, but an assignment of the mortgage from the originating mortgagee *to the servicer* may be executed and recorded. This assignment is convenient because it facilitates actions that the servicer might take, such as releasing the mortgage, at the instruction of the purchaser. The servicer may or may not execute a further unrecorded assignment of the mortgage to the purchaser.

Restatement § 5.4 cmt. c (emphasis added). The Restatement approach is a sound recognition of the realities of the mortgage industry: Freddie Mac and Fannie Mae can more efficiently support the national secondary mortgage market if they can contract with servicers to manage loans without relinquishing ownership of

deeds of trust.[4]

Montierth clarified that the above provisions of the Restatement were incorporated into Nevada law, although they were not mentioned in *Edelstein*: "Because it was not pertinent to [the Nevada Supreme Court's] analysis in *Edelstein*, [the court] did not include the exceptions provided in the Restatement." *Montierth*, 131 Nev. __, 354 P.3d at 651. Accordingly, this court recognized in *Montierth* that when a noteholder authorizes the beneficiary of record of a deed of trust to enforce the deed of trust, the beneficiary of record may do so. *See Montierth*, 131 Nev. at __, 354 P.3d at 651 (citing the Restatement § 5.4 cmt. c).

Moreover, FHFA, Freddie Mac's conservator, has specifically stated that it supports invocation of the federal foreclosure bar by "authorized servicers," such as Nationstar, in litigation involving the issues presented here: "FHFA supports the reliance on Title 12 United States Code Section 4617(j)(3) in litigation by authorized servicers of [Freddie Mac] to preclude the purported involuntary extinguishment of [Freddie Mac]'s interest by an HOA foreclosure sale." (JA000236).

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[4] The Restatement approach also is consonant with federal law, which defines the scope of property interests protected by statutes such as the federal foreclosure bar broadly. *See supra* at [to be filled in later].

II. The Court Erred in Holding that the Trustee's Deed Recitals Cured the HOA's Failure to Provide Proper Notice

A. The HOA Failed to Provide Proper Notice of the Foreclosure Sale

Foreclosure statutes must be strictly construed. *Rose v. First Fed. Sav. & Loan*, 105 Nev. 454, 777 P.2d 1318 (1989); *Bank-Fund Staff Fed. Credit Union v. Cueller*, 639 A.2d 561 (D.C. 1994); *City of Augusta v. Allen*, 438 A.2d 472 (Me. 1981); *CHD, Inc. v. Boyles*, 157 P.3d 415 (Wa. App. 2007); *Young v. Embley*, 143 P.3d 936 (Alaska 2006). The procedure for conducting an HOA foreclosure sale in Nevada is set forth in NRS 116.3116 *et seq*. The foreclosure process commences by the recording of a notice of breach and the election to sale. NRS 116.31162(1)(b). After the notice of default is recorded, the foreclosure trustee must wait at least 90 days, at which point the trustee must comply with NRS 116.311635(1)(a), which governs the procedure for noticing a foreclosure sale:

> The association or other person conducting the sale *shall*[5] also, after the expiration of the 90 days and before selling the unit:
>
> (a) Give notice of the time and place of the sale in the manner and for a time not less than that required by law for the sale of real property upon execution. . . .

[5] It is a well-settled principle of statutory construction that statutes using the word "may" are generally directory and permissive in nature, while those that employ the term "shall" are presumptively mandatory. *State v. Am. Bankers Ins. Co.*, 106 Nev. 880, 882, 802 P.2d 1276, 1278 (1990); *Sengbusch v. Fuller*, 103 Nev. 580, 582, 747 P.2d 240, 241 (1987).

NRS 116.311635(1)(a) (emphasis added). In addition, the notice: (1) must include the amount necessary to satisfy the lien as of the date of the proposed sale; and (2) place a warning in 14-point bold type that cautions, among other things, that a sale of the property is imminent. NRS 116.311635(3). The sale must occur on the day the sale was advertised in the notice of sale, or on a date to which the sale was postponed. NRS 116.31164(1). Strictly construing the HOA foreclosure statutes, the Nevada Legislature has placed an *affirmative burden* on the HOA to provide adequate notice of any pending sale.

If the HOA fails to meet its duty of providing proper notice, there is a defect in the foreclosure. *See, e.g., Karl v. Quality Loan Service Corp.*, 759 F. Supp. 2d 1240, 1249 (D. Nev. 2010) Here, at the time of the execution and recordation of the notice of the HOA foreclosure sale, Nationstar was the record beneficiary of the deed of trust. (JA000298; JA000296). The HOA (through its collection agent NAS) failed to provide Nationstar with the required notice of the HOA foreclosure sale. (JA000078-80). The failure to provide notice violated other laws such as NRS 116.311635(3), which requires that a notice of sale provide notice of the amount necessary to satisfy the lien to as of the date of the proposed foreclosure sale – <u>not</u> the amount due and owing as of the date of the recording of the notice.

The HOA's failure to comply with Chapter 116's notice requirements renders the sale void. *See e.g. Rose*, 105 Nev. at 457-58, 777 P.2d at 1319-20

(invalidating sale that did not comply with statutory notice requirements). In *Rose*, this court set aside a non-judicial foreclosure sale under Chapter 107 because the foreclosing entity failed to deliver a notice of sale to the grantor's successor in interest. *Rose*, 105 Nev. at 457-58, 777 P.2d at 1319-20. The court determined that the Legislature intended that notice be provided to the grantor or his successor in interest of any pending foreclosure sale and that the foreclosing parties "should have served notice of the sale of the property . . . before proceeding with the sale." *Id*. Because the successor in interest did not receive notice, the court voided the sale. *Id*. Similarly, here, because the sale did not comply with the statutory notice requirements of Chapter 116, the sale was void.

B. The Foreclosure Sale Failed to Comport with Due Process

There is a logical reason that an HOA must provide adequate notice in advance of a foreclosure sale: valuable property rights are at risk of forfeiture, and an HOA sale can result in a relatively small purchase price as compared to the value of the property. "Notice analysis takes place on two levels, statutory requirements and constitutional due process concerns." *In re Ex-Cel Concrete Co., Inc.*, 178 B.R. 198, 204 (B.A.P. 9th Cir. 1995). Here, not only did the HOA fail to comply with the statutory requirements of Chapter 116, it also failed to comply with constitutional due process, rendering the HOA sale void. *See id*.

Due process requires notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them the opportunity to present their objections. *Browning v. Dixon*, 114 Nev. 213, 217, 954 P.2d 741, 743 (1998) (quoting *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S.Ct. 652, 94 L.Ed. 865 (1950)). The Fourteenth Amendment to the U.S. Constitution states that no state shall "deprive any person of life, liberty, or property, without due process of law." Article 1 of the Nevada Constitution provides: "All men are by Nature free and equal and have certain inalienable rights among which are those of . . . Acquiring, Possessing and Protecting property." NEV. CONST. ART. I. Under the Nevada Constitution, "[n]o person shall be deprived of life, liberty, or property, without due process of law." NEV. CONST. ART. 8, § 5. A mortgage is an interest in property, which is entitled to procedural due process protection. *In re Mansaray-Ruffin*, 530 F.3d 230, 239 (3d Cir. 2008); *see also In re Ex-Cel Concrete Co., Inc.*, 178 B.R. 198 (B.A.P. 9th Cir. 1995) (a bankruptcy court order stripping a lienholder of its property interest is void "[i]f the notice requirement of the due process clause is not satisfied").

In this case, Nationstar was deprived of its due process rights because the HOA provided *no notice* of the HOA sale. As a result, Nationstar had no practical way of knowing:

- That its interest in the property was at risk;
- The relatively small amount of the HOA's super-priority lien; or
- When any foreclosure sale might occur.

This complete lack of notice does not comport with fundamental requirements of due process. *See In re Ex-Cel Concrete Co., Inc.*, 178 B.R. 198, 204 (B.A.P. 9th Cir. 1995) ("'Secured creditors . . . must have due opportunity to defend their interests and consequently must be properly notified and summoned to appear for that purpose' . . . . Time may have gone by since *Norseworthy* was decided, but its constitutional concerns persist. . . .") (quoting *Ray v. Norseworthy*, 90 U.S. (23 Wall) 128, 23 L.Ed. 116 (1874)). It cannot be that due process is satisfied when a first deed of trust record beneficiary is deprived of the opportunity of reviewing the notice of sale—which includes the alleged amounts owed to the HOA and the date and time of the sale—and then be threatened that its interest in the property is extinguished. *See SFR Investments Pool 1, LLC v. U.S. Bank, N.A.*, 130 Nev. Adv. Op. 75 (2014) (the first deed of trust beneficiary's due process rights were not offended based on the record before it, when the first deed of trust beneficiary could, based on the recorded notices, "determin[e] the precise superpriority amount in advance of the sale or pay[ ] the entire amount and request[ ] a refund of the balance"). Nationstar was deprived of the opportunity to

take additional steps to protect the deed of trust and Freddie Mac's interest in the property.

III. The District Court Erred by Ignoring Facts Evidencing That the HOA Foreclosure Sale Was Commercially Unreasonable

A. The HOA foreclosure sale was commercially unreasonable under *Shadow Wood* and not conducted in good faith

NRS 116.1113 provides as follows:

> Every contract or duty governed by this chapter imposes an obligation of good faith in its performance or enforcement.

The drafters of this section defined good faith as follows in their comment:

> This section sets forth a basic principle running throughout this Act: in transactions involving common interest communities, good faith is required in the performance and enforcement of all agreements and duties. Good faith, as used in this Act, means observance of two standards: "honesty in fact," and **observance of reasonable standards of fair dealing**. While the term is not defined, the term is derived from and used in the same manner as in section 1-201 of the Uniform Simplification of Land Transfers Act, and Sections 2-103(i)(b) and 7-404 of the Uniform Commercial Code.

UCIOA §1-113 cmt. (1982) (Emphasis Added).

The *Shadow Wood* court adopted the analysis of Restatement (Third) of Property: Mortgages §8.3 (1997). *Shadow Wood Homeowners Assoc. v. N.Y. Community Bancorp, Inc.*,, 132 Nev. Adv. Op. 5, *15, 366 P.3d 1105, 1112 (Jan. 28, 2016). Section 8.3 provides:

> (a) A foreclosure sale price obtained pursuant to a foreclosure proceeding that is otherwise regularly conducted in compliance with applicable law does not render the foreclosure defective **unless the price is grossly inadequate**.
> (b) Subsection (a) applies to both power of sale and judicial foreclosure proceedings.

(Emphasis added).

The Restatement authors went on to define what it means by "grossly inadequate:"

> "Gross inadequacy" cannot be precisely defined in terms of a specific percentage of fair market value. Generally, however, a court is warranted in invalidating a sale where the price is less than 20 percent of fair market value and, absent other foreclosure defects, is usually not warranted in invalidating a sale that yields in excess of that amount. See Illustrations 1-5. **While the trial court's judgment in matters of price adequacy is entitled to considerable deference, in extreme cases a price may be so low (typically well under 20% of fair market value) that it would be an abuse of discretion for the court to refuse to invalidate it.**

Id. at cmt. b. (Emphasis added).

Finally, the Restatement authors expressly embraced Nationstar's formula and method of proving gross inadequacy:

> This section articulates the traditional and widely held view that a foreclosure proceeding that otherwise complies with state law may not be invalidated because of the sale price unless that price is grossly inadequate. **The standard by which "gross inadequacy" is measured is the fair market value of the real estate.** For this purpose the latter means, not the fair "forced sale" value of the real estate, but the price which would

> result from negotiation and mutual agreement, after ample time to find a purchaser, between a vendor who is willing, but not compelled to sell, and a purchaser who is willing to buy, but not compelled to take a particular piece of real estate.

Id. (Emphasis added). No one would argue that a foreclosure sale should always bring a fair market value. Indeed, the Restatement's authors note that forced sales such as foreclosures typically sell for less than fair market value, in their introductory discussion in Section 8.3. *See* Restatement (Third) of Property: Mortgages §8.3 cmt. a (1997). The point of the Restatement approach adopted by the *Shadow Wood* court is to compare the fair market value of the property versus what it actually sold for at the foreclosure sale. *Id*. at cmt. b, Illustration 2. If the forced sale price is less than 20 percent of the fair market value, then the court should set aside the foreclosure sale as "grossly inadequate." *Id.*; *see also Shadow Wood*, 132 Nev. Adv. Op. at 15.

The court should note that the Restatement author's formula for arriving at "fair market value" is identical to Nevada law under NRS §375.010(2), the statute that the Clark County Assessor used to formulate the property's assessed value that appears on the trustee's deeds' declaration of value page.

In *Shadow Wood,* the amount paid was 23 percent, which was, to quote the Court, "not obviously inadequate." However, in the instant matter, the sales price SFR was able to obtain the Property for was less than 8% of the appraised value.

Nationstar has produced expert testimony evidencing the value of the property at the time of the foreclosure sale was $138,000. (JA000316). The HOA sale price was $11,000.00. (JA000162). Dividing the sales price by the fair market value of the Property at the time of the sale shows that the property was sold for less than 8 percent of its fair market value, a grossly inadequate price that renders the foreclosure sale invalid. Even if the court were to go by the transfer tax value that NAS and SFR listed in the trustee's deed upon sale - $120,703.00 – The sale amount is still only 9 percent of that value. (JA000164)

Even if Nationstar was required to show any additional fraud, unfairness or oppression in the conduct of the HOA sale – which it is not – Nationstar has *still* presented evidence of unfairness in the HOA's failure to provide Nationstar with notice of the sale – patently unfair and oppressive, and in violation of Nationstar's rights.

In *Shadow Wood*, the court cited to *In re Tome*, 113 B.R. 626, 637 (Bankr. C.D. Cal. 1990) as an example of unfairness. In *Tome*, the court held that a sale must be set aside where "the lender or its agent has provided false or misleading information concerning the payoff of a note secured by a deed of trust after the lender has sold its position to a purchaser without giving mail notice to the debtor." *Id.*

Under Nevada law, there is no formula for proving commercial reasonableness. Instead, courts employ a multifaceted analysis that takes into

account the totality of the circumstances. The court in *Levers v. Rio King Land & Inv. Co.* stated that "every aspect of the disposition, including the method, manner, time, place, and terms, must be commercially reasonable." 93 Nev. 95, 98, 560 P.2d 917, 920 (1977). The analysis can include the "quality of the publicity, the price obtained at the auction, [and] the number of bidders in attendance." *See Dennison v. Allen Grp. Leasing Corp.*, 110 Nev. 181, 186, 871 P.2d 288, 291 (1994). The United States Supreme Court held in *Ballentyne v. Smith* that "if there be great inadequacy, slight circumstances of unfairness in the conduct of the party benefited by the sale will be sufficient to justify setting it aside. It is difficult to formulate any rule more definite than this, and each case must stand upon its own peculiar facts." 205 U.S. 285, 290 (1907). Based on this analysis, a Nevada federal court recently set aside a similar inadequate sale. *See ZYZZX2 v. Dizon*, No. 213CV1307-JCM-PAL, 2016 WL 1181666, at *5 (D. Nev. Mar. 25, 2016).

The foreclosure sale here is rendered invalid for unfairness by the violation of the notice requirements of NRS 116 *et seq.*; the fact that none of the recorded notices indicated a super-priority sale, nor did they allow for the calculation of the superpriority amount; and the grossly inadequate price. The district court erred in ignoring these facts and granting summary judgment in favor of SFR.

B. The "Recitals" in the Trustee's Deed to Did Not Cure the HOA's Failure to Comply with NRS 116

The district court held that boilerplate recitals in the trustee's deed upon sale "cured" the HOA's multiple violations of state and federal law. This proposition was squarely rejected in a recent decision by this court.

As this court stated in *SFR Investments*, "NRS 116.3116(2) gives an HOA a true superpriority lien, **proper foreclosure of which** will extinguish a first deed of trust." (emphasis added.). *SFR Investments,* 334 P.3d at 419. In the district court, SFR argued that the recitals contained in the trustee's deed upon sale served as "conclusive evidence" that the HOA complied with the law – even in the face of irrefutable evidence that the HOA did not. This argument was rejected by this court in *Shadow Wood*, where this court instead held that, as a matter of law, deed recitals under NRS 116.3116 cannot be conclusive as to the question of whether statutory requirements were met. *Shadow Wood, Inc.*, 132 Nev. Adv. Op. at *13-15. In *Shadow Wood,* the foreclosure deed contained recitals nearly identical to the recital in this case. (JA000162). This court rejected the argument that the recital prevented any challenge to the foreclosure, on several grounds. First, there is "long-standing and broad inherent power of a court to sit in equity and quiet title, including setting aside a foreclosure sale if the circumstances support such action." *Id*. at *14. Second, **"**the recitals made conclusive by operation of NRS 116.31166 implicate compliance only with the statutory prerequisites to foreclosure." *Id*.

Finally, this court cited case law from other jurisdictions "under which equitable relief may still be available in the face of conclusive recitals, at least in cases involving fraud." *Id*. This led the *Shadow Wood* court to conclude that the mere fact that an HOA's foreclosure deed contains the "conclusive recitals" of NRS 116.31166 did not preclude a challenge to the HOA Trustee's foreclosure. *Id*. Therefore, because the district court's basis for granting summary judgment has been contradicted by this court in a subsequently issued opinion, the summary judgment should be overturned.

Even without the recent precedent of *Shadow Wood*, SFR's position regarding the preclusive effect of the foreclosure deed was fatally flawed because it overlooked the requirements of NRS 116.31166 (1) and (3), which extend beyond the matters recited in the trustee's deed. SFR contended that an HOA's compliance with the HOA lien statute rests solely on the mere recital of compliance in a foreclosure deed. According to SFR, because the foreclosure deed in this case contains these recitations, the flaws in the HOA's sale are cured.

SFR's reading of NRS 116.31166 ignores the axiom that no part of a statute should be construed to render another void. *See Harris Assocs.*, 119 Nev. at 642, 81 P.3d at 534; *accord, e.g.*, *Banegas v. State Indus. Ins. System*, 117 Nev. 222, 229, 19 P.3d 245, 250 (2001) ("[W]ords within a statute must not be read in isolation, and statutes must be construed to give meaning to all of their parts and

language within the context of the purpose of the legislation."). Further, where statutory provisions may be viewed as conflicting, they must be harmonized. *See, e.g. Int'l Game Tech., Inc. v. Second Judicial Dist. Court ex rel. County of Washoe*, 124 Nev. 193, 201, 179 P.3d 556, 561 (2008); *Acklin v. McCarthy*, 96 Nev. 520, 523, 612 P.2d 219, 220 (1980) ("An entire act must be construed in light of its purpose and as a whole.").

SFR's interpretation, which the district court apparently adopted, would render NRS 116.31166(1) and (3) null. SFR essentially argues that the recitals in the foreclosure deed are conclusive proof that the foreclosure sale extinguished the deed of trust under NRS 116.31166(1–2). But that argument ignores NRS 116.31166(3)'s requirement that the foreclosure sale be conducted *pursuant to NRS 116.31162, 116.31163, and 116.31164* to vest the purchaser at the HOA foreclosure sale with title to the property. As this court has explained, the Legislature's use of "pursuant to" means "in compliance with; in accordance with; under . . . [a]s authorized by; under . . . [i]n carrying out." *In re Steven Daniel P.*, 129 Nev. __, __, 309 P.3d 1041, 1044 (2013) (quoting BLACK'S LAW DICTIONARY at 1356 (9th ed. 2009)). Furthermore, "pursuant to" is a "restrictive term" that mandates compliance. *Id*.

Here, by using the phrase "pursuant to" in NRS 116.31166(3) with reference to NRS 116.31162, 116.31163 and 116.31164, the Nevada Legislature mandated

compliance with those statutes. Consequently, an HOA's foreclosure sale does not vest title without equity or right of redemption unless the HOA actually complied with NRS 116.31162, NRS 116.31163, and NRS 116.31164, not just NRS 116.31166(1).

SFR's interpretation of NRS 116.31166 not only would write the notice requirements of NRS 116.31162, NRS 116.31163, and NRS 116.31164 out of existence, it also would lead to absurd and unjust results. According to SFR's logic, an HOA could fail to record any of the three notices the HOA lien statute requires, *falsely* recite that they did, in fact, record the notices, and the court would be forced to hold that the notices were in fact recorded, *even if* the opposing party produced irrefutable evidence that proved the recitals were false. And there is no limiting principle to SFR's position; a dishonest HOA could collude with a dishonest purchaser to sell property without any proper announcement to the current owner or other security holders and still take title to the property free and clear under the aegis of a patently false, yet "irrefutable" recitation in the deed. The Nevada Legislature could not have possibly intended such unjust absurd consequences.

The Alaska Supreme Court considered a similar issue in *Rosenberg v. Smidt*, 727 P.2d 778 (Alaska 1986). There, the appellants argued that under Alaska's version of the 1982 UCIOA, the recitals in the foreclosure sale deed were

conclusive evidence of compliance in favor of bona fide purchasers. *Id*. at 783. The deed in that case stated (similar to the trustee deed here):

> All other requirements of law regarding the mailing, publication and personal delivery of copies of the Notice of Default and all other notices have been complied with, and said Notice of Sale was publicly posted as required by law and published in the Anchorage Times on August 26 and September 2, 9, and 16, 1980.

Id. The parties disputed whether the deed barred the respondents from overturning the sale based on lack of notice. *Id*. While the appellants alleged that the court should accept the recitals as "conclusive proof," the respondents alleged that only recitals of fact, not conclusions of law, were subject to this standard.[6] The court held as follows:

> The fact that .080(c) explicitly calls for factual details in the deed recital concerning recording, price, publication, and sale suggests that facts are also called for concerning mailing or delivery. *Further, requiring a factual recital tends to assure that the requirements of law concerning mailing or delivery are complied with*. A conclusory statement can be a matter placed in a form, or a programmed deed, and will not require the trustee to review what was actually done. A factual recital does require review in each case. While a factual recital requirement does not protect against fraud in all cases, it does tend to prevent the more common failings of oversight and neglect. A conclusory recital, on the other hand, accomplishes little or nothing.

[6] Alaska Stat. § 3.20.080(c) provides: The deed shall recite the date and the book and page of the recording of default, and the mailing or delivery of the copies of the notice of default, the true consideration for the conveyance, the time and place of the publication of notice of sale, and the time, place and manner of sale, and refer to the deed of trust by reference to the page, volume and place of record.

Id. at 786 (emphasis added). The court also reasoned that one of UCIOA's primary purposes was to "require that effective notice of default and sale be given parties in interest, and to provide a self-effecting method of assuring that such notice is given."

As this court recognized in *SFR Investments*, the first-lien-extinguishing effect of NRS 116.3116 constitutes a "'significant departure from existing practice.'" 130 Nev. at __, 334 P.3d at 412 (quoting UCIOA § 3-116, cmt 1 (1982)). Therefore, strict compliance with the statute should be required before a first lienholder has its deed of trust extinguished.

CONCLUSION

For all of the above reasons, the district court's judgment should be reversed, with the case remanded for further consideration of the issues related to the federal foreclosure bar. In the alternative, this case should be remanded to the district court with instructions to enter summary judgment in favor of Nationstar.

DATED: June 22, 2016

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this answering brief has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman and 14 point font size.

I FURTHER CERTIFY that this answering brief complies with the page or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the answer exempted by NRAP 32(a)(7)(C) it is proportionally spaced, has a typeface of 14 points or more and contains 7,897 words.

FINALLY, I CERTIFY that I have read this **Appellant's Opening Brief**, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this answering brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page of the transcript or appendix where the matter relied on is to be found.

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I understand that I may be subject to sanctions in the event that the accompanying answer is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 22nd day of June, 2016.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 22nd day of June, 2016, I served and deposited for mailing in the U.S. Mail a true and correct copy of the foregoing **APPELLANT'S OPENING BRIEF**, postage prepaid and addressed to:

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