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DISTRICT COURT

CLARK COUNTY, NEVADA

SATICO BAY LLC, Plaintiff, vs. FEDERAL NATIONAL MORTGAGE ASSOCIATION, Defendants.	CASE#: A690924 DEPT. VI

BEFORE THE HONORABLE ELISSA F. CADISH, DISTRICT COURT JUDGE

TUESDAY, NOVEMBER 17, 2015

RECORDER'S TRANSCRIPT OF HEARING

PLAINTIFF SATICOY BAY, LLC SERIES 9641 CHRISTINE VIEW'S MOTION FOR SUMMARY JUDGMENT

APPEARANCES:

For the Plaintiff: MICHAEL F. BOHN, ESQ.

For the Defendants: MICHAEL R. BROOKS, ESQ.

RECORDED BY: JESSICA KIRKPATRICK, COURT RECORDER

Docket 69419 Document 2016-11740

Las Vegas, Nevada, Tuesday, November 17, 2015

[Case called at 9:43 a.m.]

THE COURT: Okay page 3. Let me get there, Saticoy Bay Series 9641 Christine View versus Fannie Mae. Let me get appearances.

MR. BOHN: Michael Bohn for plaintiff, Saticoy Bay.

MR. BROOKS: Michael Brooks appearing on behalf of the defendant Federal National Mortgage Association.

THE COURT: Okay. So we now have the original briefing. I granted 56(f) relief at that time. There was some supplemental briefing and then Mr. Brooks asked for additional time to brief the issue, which is briefed in now the second supplemental opposition under the HERA act. That's H-E-R-A. So I think we now have a fully briefed series of summary judgment briefing.

So, Mr. Bohn, it's your motion and what I will say and I appreciate you're usually pretty good about skipping over stuff when you know how I've ruled on things and I appreciate that. I will say I have not faced or had to rule on this issue in the second supplemental opposition before so go ahead.

MR. BOHN: So you want me to speak out loud about it?

THE COURT: Not for me to say but I'm letting you know I haven't ruled on that issue previously.

MR. BOHN: Okay, and I understand and counsel has cited that several of the District Court Judges in Federal Court --

THE COURT: Right.

MR. BOHN: -- have ruled on the issue --

THE COURT: Right.

MR. BOHN: -- counter to what my position is.

THE COURT: Right, do we have any rulings in our court?

MR. BOHN: Not that I'm aware of.

THE COURT: Okay.

MR. BOHN: And --

THE COURT: Lovely.

MR. BOHN: -- I'm going to say this as nice as possible, no matter what you do it's going to be appealed.

THE COURT: Yes, and I recognize that in every one of these cases.

MR. BOHN: I'll just, you know, summarize it. It's our position and there are some federal appeals courts. The statute in question here was modeled after a similar statute for the FDIC. And the FDIC cases there's a couple of Federal Circuit Courts of Appeals that say that the bar to foreclosure applies only to governmental authorities and their taxing abilities. There are some recent District Court cases that have ruled otherwise but they're not Appeals Court. So we're taking the position that it doesn't apply to an HOA. It applies only to taxing authorities. And again the local Federal Court said no.

THE COURT: Right.

MR. BOHN: Um --

THE COURT: And --

MR. BOHN: But I --

THE COURT: -- Saticoy Bay was involved in that case or were they?

MR. BOHN: Well --

THE COURT: Well there's been several cases I should say so --

MR. BOHN: There was a --

THE COURT: -- at least one of them.

MR. BOHN: -- Judge Navarro consolidated a number of cases for oral argument.

THE COURT: I see.

MR. BOHN: And at oral argument I introduced my client who happened to live just a couple doors away from Judge Navarro and whose kids played soccer together and did boy scouts together.

THE COURT: Oh --

MR. BOHN: And Judge Navarro --

THE COURT: -- she recused herself.

MR. BOHN: -- recused herself from that case.

THE COURT: Okay, got it.

MR. BOHN: And the case has been assigned to Judge Dawson who still hasn't ruled on that particular motion --

THE COURT: Uh-huh.

MR. BOHN: -- or has adopted Judge Navarro's ruling.

THE COURT: Right.

MR. BOHN: So what sets our case apart from the cases in Federal Court is over there the FHFA was an actual party.

THE COURT: Right.

MR. BOHN: Here FHFA is not a party.

THE COURT: Right, so in the -- and I read Judge Navarro's decision in the *Skylights* case. And in that case both the FHFA and Fannie Mae were parties. So I did -- and I guess in the other cases that followed they were both parties as well. Is that what you're saying?

MR. BOHN: Correct.

THE COURT: Because I didn't -- I can't say that I looked at each one of them.

MR. BOHN: Yeah, and I'll tell you frankly that several other judges in decisions -- several other Federal Court Judges have expressly adopted Judge Navarro's opinion.

THE COURT: Right.

MR. BOHN: But I think the one issue that sets our case apart is the fact that FHFA is not a party to this case. The statute refers to the agency meaning FHFA and so we would submit that. That makes it a different matter. And we're also taking the position that consent can be implied consent and complied consent is recognized in law. And the fact that Fannie Mae did get notice and failed to take any action we are saying can be deemed to be implied consent to the foreclosure. So that's the real short version of my argument. And I'll -- unless you have further questions I'm sure Mr. Brooks has plenty to say so --

THE COURT: Unless you want to address the notice issues that were previously mentioned on prior sets of briefs that I guess are all still pending at this point. And again it's up to you what -- if you want to address it.

MR. BOHN: If I can get back to my original motion here.

THE COURT: Sure. Right, I know you have a lot of these cases, so I appreciate you need to find your notes.

MR. BOHN: We filed the motion originally and --

THE COURT: Right.

MR. BOHN: -- did attach the notices or that the notice did actually go out. So I don't think -- well position A) the deed has the recitals, which are conclusive.

THE COURT: Conclusive.

MR. BOHN: And our fallback position is we sent the notices out and they were actually received.

THE COURT: Thank you. Mr. Brooks.

MR. BROOKS: Yeah, Your Honor, the -- as counsel has recognized there have been numerous cases, different judges have all adopted the preemption argument with respect to the application of the Housing Economic Recovery Act. The -- both in terms of its specific preemption, also its intent. It was obviously intended to preserve the assets of the enterprises while they go through this restructuring, which was critical to the trying to preserve what was left of the housing market. Having said that they remain in conservatorship, but more importantly they were in conservatorship at that time.

I want to address the issue with regard to the standing argument in particular. Now and specifically the first thing to note is that Judge Navarro did not make a point of holding that FHFA was the party that had to assert that right. They happened to have intervened in that case, but there was nothing that specifically addressed the propriety of Fannie Mae asserting it on its own right. There was nothing that said this decision was dependent upon that FHFA's involvement.

Secondly there is no authority that says that a private party cannot assert preemption for its own benefit to protect -- for the preservation of an asset. It's not like we're asserting other rights or statutory contractual rights of another party. We're asserting the protections that were granted under this statute that we have -- that Fannie Mae has been harmed by. So there is both -- and let's recognize that the court was addressing under (j)(3) that the threatened loss to Fannie Mae while it was in the name of Fannie Mae there's no reason why it can't

then seek to preserve those assets in the name of Fannie Mae. If it can lose them in the Fannie -- name of Fannie Mae or be threatened, it can certainly -- it stand -- it has the ability to step in and defend those as well.

Importantly I think one of the things that Judge Navarro said it's a complex relationship, the conservatorship. But she recognized that FHFA steps into the shoes of Fannie Mae. So for the purposes of standing we're standing here -- we -- Fannie Mae absolutely has the standing. In fact interestingly Judge Mahan in a Saticoy Bay case has ruled that there is no -- there's no authority for the proposition that a party may not assert preemption rights. That the *Freedom Mortgage* case is easily distinguishable because it's a right or an obligation for that matter that HUD may have that somebody else was arguing about and HUD hadn't taken a position expressly as to whether it was proved. FHFA has now made two public proclamations, one in December and one in April stating that yeah that they fully support these attempts to assert HERA to preserve the assets of the enterprises so that there's not a depletion and frustration of their attempts to reorganize these entities.

The -- and importantly the focus in our case is not on -- it's on the preservation of the asset. This isn't some sort of -- this isn't a maybe/maybe not contractual obligation of HUD as in -- but it's actually the present asset of Fannie Mae that it is trying to protect. So the focus here is specifically on the assets of Fannie Mae.

With regard to the implied consent, I don't know if counsel -- there was some confusion in our briefing. But we pointed out that NAS in this case did not send notice to Fannie Mae of the notice of trustee sale. If you look at page 4, which I think immediately jumps to page 8 of our second opposition or the supplemental

opposition, you will see in there a citation to the testimony from NAS that they had no evidence, despite knowing that they knew about Fannie Mae, they have no evidence that they ever served notice on Fannie Mae of this particular sale. We've raised that. That is a significant factual issue. This -- it doesn't go into an irregularity. If they didn't do that this sale is void. That deed isn't worth the paper it's written on and we don't have any presumptions to talk about.

They didn't follow the statute. That's sort of the distinct from this particular HERA argument. But in fact if they did not send out notice to Fannie Mae that deed is not worth the paper it's written on. We -- more importantly this idea of implied consent it completely goes out the window when you understand that there was no notice given to Fannie Mae. Furthermore that argument would completely turn this statute on its head that says you have to provide express consent. You can't have implied consent where it actually says you must have express consent. This idea that it goes from a Fannie Mae or FHFA having to assert a physical act of providing consent and now arguing that it's implicit it is really too much of a stretch of the law to be justified or countenance.

I want to go into there are -- I'm going to -- I have asserted in our briefing originally both -- two important constitutional arguments. One is the opt in argument, which is familiar I'm sure to the Court. One is one that we are particularly -- we particularly advocate, which is that the uniform lien statute when it's married with the notice statutes provided by the Nevada Legislature do not adequately provide for the exercise of superpriority lien rights when the Supreme Court recognizes that they're split, that the way the notice statutes are written does not adequately provide for the notice of the presence of the superpriority lien rights, which are in fact conditional and limited and therefore there should be some

provision. As a matter of fact it is very tellingly even when you get to the distribution statutes there's no recognition of how the distribution should waterfall based on this -- the priority of the liens.

That's a second -- I understand that Your Honor has ruled on most of the constitutional arguments. And I think we've adequately briefed the subject, so I won't spend any more time. I strongly encourage Your Honor -- I understand about the opt in arguments. If you have questions about my arguments regarding the marrying of the two statues I certainly am more than willing to discuss that. But I don't want to -- I'll recognize that Your Honor has a position on a lot of these issues.

With regard to the intent I think one of the really, really compelling things that we've been determine -- finding out through the course of discovery and a lot of our cases and in this case in particular is that the sales agents had no idea if they were selling superpriority liens or not. They would -- they tell us. We don't ask the homeowners association about it. We don't talk -- we don't get them to tell us whether they validated or confirmed a proper budget, whether they followed the procedures under 115, whether they did it every year as required. They - and more to the point it's not so important for me to go through the litany of the requirements, although they're fairly extensive. But what is important is to recognize they never had these conversations. And they will tell you we didn't have to have these conversations, because the statute doesn't require us to have these conversations.

So what we end up with is we go through this process and we have a deed and we have this statutory framework. Let's -- we have a deed that says NAS has sold all of its interest in the -- in that certain lien on the property. Okay, that's what the deed says. Now think about that in the context of the statutory framework. We have a split lien. We have two pieces as the Nevada Supreme Court has

recognized. The SFR court recognized that it's a significant departure from standing practice. And yet we don't have this -- we don't have anything that would sort of recognize that this is a -- that this even exists. The statute doesn't create a -- by the way this is really important. The statute creates these four presumptions about notice and the sale. But you know where there's not a single presumption for superpriority? There's not a presumption or a default to superpriority.

THE COURT: Right.

MR. BROOKS: There's nothing that says it just automatically exists. What we have is this -- we have a lien.

THE COURT: There's a superpriority for the last 9 months of assessments.

MR. BROOKS: That's right, Your Honor, pursuant to an adopted budget. But what do we have? We have any -- a lien for any assessments. And then we have this sub-priority -- superpriority portion that is conditional subject to the conditions that you just outlined. Where are the conditions recited in any of these notices? I don't care about the amount. I care about the conditions.

Tell us do you know in the Washington DC case, do you know why Washington DC one of the things that distinguishes that case the *Chase Plaza* case out of Washington DC that came down shortly before I believe the *SFR* decision came down and it was actually cited by *SFR*. In those notices in every single one of them they said we're selling superpriority. We are selling superpriority. That's not in this case.

THE COURT: No, but in our Supreme Court's decision in *SFR* it said you don't have to say it in the notices.

MR. BROOKS: It did --

THE COURT: It pretty explicitly said don't have to say that in the notices.

MR. BROOKS: Yes, it explicitly said you don't have to provide the amount.

THE COURT: Right.

MR. BROOKS: I'm not talking about -- I'm just saying tell us that it's there. Tell us that you intend to exercise it. I don't -- I'm not looking for you tell me how much. We can figure that out. Okay. By the way as a person who regularly --

THE COURT: So instead we can assume that the HOA is saying no we're not to get our last 9 months of assessments. We're only trying to get the older ones.

MR. BROOKS: Yeah, well did you look at the CC&Rs? And by the way is it --

THE COURT: I looked at them and we know how --

MR. BROOKS: Is it the last 9 months or the 9 months immediately preceding the institution of the action? Right?

THE COURT: Right.

MR. BROOKS: It's the 9 months immediately preceding the institution of the action --

THE COURT: Correct.

MR. BROOKS: -- based on a budget adopted pursuant to and there is a statutory provision in there.

THE COURT: There is.

MR. BROOKS: That wasn't accidental.

THE COURT: Right.

MR. BROOKS: 3115.

THE COURT: Right.

MR. BROOKS: That is a conditional -- it's a -- I like to think of it actually conceptually it is a single lien of any assessments with superpriority potential, a single lien with superpriority potential and the question is was that potential realized.

Was that potential exercised? And in this case the facts clearly show that it wasn't. First of all we have to start with the fact that the deed is ambiguous. The deed is ambiguous because it doesn't identify that those conditions exists. It doesn't say that they transferred the superpriority portion. And then more importantly this statutory framework and the Supreme Court recognizes is two --

THE COURT: No, transfer a superpriority portion. The superpriority lien was foreclosed on. What they transfer as title.

MR. BROOKS: I -- that, Your Honor, that's not in the statute. What you just said is not in the statute. You have to --

THE COURT: Well the buyer at the HOA foreclosure sale doesn't get a superpriority lien.

MR. BROOKS: No, Your Honor, I --

THE COURT: They bought the property.

MR. BROOKS: Your Honor, I -- maybe I misspoke but what -- it's not the lien we're talking about. The question is were the superpriority rights exercised such that 9 months, which was in place, actually trumped the interest of my client Fannie Mae?

THE COURT: Right.

MR. BROOKS: Okay.

THE COURT: Right.

MR. BROOKS: So that's the question. And as we look at this deed there's nothing in this deed that would tell us that those rights -- that potential was realized. There is nothing that would tell us that. And then we look at the testimony of the association. Why do I care? Superpriority has nothing to do with the collection process. They never talked about it. You have CC&Rs that say we will not enforce

to the -- and undermine the rights of a first position deed holder. Why is that important? Not because you can't -- this whole argument that, you know, it can't be waived which the Supreme Court addressed.

THE COURT: Yes.

MR. BROOKS: But do you know that there is a provision in the statute that says that they can choose not to enforce certain rights that they have that discretion; 1163102 specifically says they can choose not to enforce that. So you have the association saying we don't care it's not part of our collection process. We have the collection agent saying we don't communicate with our association about it. We don't put it in any of our notices. And we don't tell any bidders that this is a superpriority sale because we didn't know.

We have that -- so we have those facts. But importantly it's -- the Supreme Court recognizes this is a -- this is the funny part about this. We have this two pieces, split lien, unique, sophisticated design to balance the equities and do all this other stuff and then we have this hand-fisted statute that doesn't address any of the subtleties. And so they followed the statute. They followed the black letter of the law and Nevada Association Services can stand there in good faith and say we didn't know what we were selling. We didn't know what we were selling. But I know what they intended to sell. They intended to sell the sub-priority portion. Why do I know that? Not only did they not talk about it but they made a public proclamation in their CC&Rs that they would not exercise their superpriority rights.

Now they could have changed their mind and they could have said yeah, by the way notwithstanding the provisions in our CC&Rs we're actually going to enforce these right now because they're non-waivable. So they could have done that but they didn't. And the CC&Rs again, the CC&Rs are clear that they

expressed their intent.

Here's the other thing and this fact is really, really compelling. Now all of the Uniform Common Interest Ownership Act -- the -- these -- there was a policy review -- it was part of the Uniform Common Interest Act Board issued a statement in 2013 that had 4 or 6 different examples of how these things should play out.

THE COURT: Right.

MR. BROOKS: And in -- and on those cases they actually talk about how the waterfall of payments should go in the event.

THE COURT: Right.

MR. BROOKS: Now the waterfall of payment if you recall from those cases it says the payments to the costs of sale. Then it would go 9 months to the association then --

THE COURT: Then to the first.

MR. BROOKS: -- to then to the first. Guess how much was paid to the first on this?

THE COURT: Done, okay.

MR. BROOKS: 47 months. 47 months were paid to the first. And because of that, because of that they clearly didn't intend to exercise. If they had to be limited to just the 9 months they would have lost a lot of money. This would not have been good for them.

THE COURT: Wait, wait, wait --

MR. BROOKS: But instead --

THE COURT: -- 47 months was paid to the HOA, is that what you --

MR. BROOKS: Yeah.

THE COURT: Okay, because I --

MR. BROOKS: So instead of waterfalling -- instead of saying okay here's what we're going to do we're going to account for this. We're going to take, you know, our fees and costs that are unpaid. We're going to take 9 months.

THE COURT: Uh-huh.

MR. BROOKS: We're going to and when it was all said and done after the commencement of this there was a total of 47 months of delinquent assessments that were paid on this account.

THE COURT: Right, got it.

MR. BROOKS: So what does that reflect?

THE COURT: It reflects that somebody, not this plaintiff, didn't pay it out correctly, perhaps.

MR. BROOKS: Well but more over what does it reflect about the mindset of the person that actually exercised the power of sale? If they didn't tell them that it was superpriority there's no obligation on their part to tell them, right? If they're doing a sub-priority sale what it tells us is that they intended to do a sub-priority sale which was consistent with all of their notices, which was --

THE COURT: If it was a sub-priority sale none of it should have gone to them and all of it should have gone to your client.

MR. BROOKS: No that would be completely wrong because if it was a sub-priority sale --

THE COURT: Oh right then they're taking it subject to the deed of trust.

MR. BROOKS: Yeah, yeah.

THE COURT: Sorry, yes, you're correct.

MR. BROOKS: Yes.

THE COURT: Okay, got it.

MR. BROOKS: So the receipt of payments consistent with the sub-priority sale, the notice is consistent with a sub-priority sale.

THE COURT: Right.

MR. BROOKS: The CC&R is consistent with the sub-priority sale.

THE COURT: Right.

MR. BROOKS: The communication is consistent with the sub-priority sale. All of it expresses -- this was a sub-priority sale. Factually -- I say summary judgment needs to be defeated because there was no notice to Fannie Mae. There clearly was not. There's no evidence of that in the record. The HERA defense obviously standing in the shoes of Fannie Mae today gives me an extraordinarily powerful argument to make. And I think that may or may not carry the day. But I really think it's important. I really wanted to address the facts of this case and how this sale looked to Your Honor, because I want you to recognize that if you look at the -- what happened in this case it is all consistent with NAS' belief that it was exercising a sub-priority sale. And over and over and over again we're getting the same testimony. I've got David Allessi [phonetic] saying the same thing. I've got everybody saying the same thing.

So in any event -- and my only -- I will say the last bit of -- it takes the facts of this case. It takes what happened in this case and it actually makes it all make sense. I submit to you that counsel's version of events where a -- somebody can go in and acquire title to real property free and clear of a first position deed of trust in the amount of hundreds of thousands of dollars for $26,000. That doesn't make sense. That shouldn't happen. And it shouldn't happen because it didn't happen. And I offer the evidence to explain to you why it didn't happen. So thank you.

THE COURT: Thank you. Mr. Bohn.

MR. BOHN: Just very briefly, *SFR* says it can and does happen. And it says it twice and it says the remedy for the holder of the deed of trust is very simple, pay the 9 months and you're done. Intent has nothing to do with it. The statute says there's one lien with two parts. You're selling a lien. What they intended to sell doesn't make a difference. And the statute said you can't alter the statutes. And yeah, I know you're familiar enough with the issues I'll submit it on that.

MR. BROOKS: I just have --

MR. BOHN: Unless you have any questions on anything?

THE COURT: No, I think I'm okay.

MR. BOHN: Alright, thank you.

MR. BROOKS: I -- Your Honor, the *SFR* decision did not decider this particular issue. It decided very discrete issues. Is it a lien, one. I think -- to me that's not even really a decision. It says it's a lien, it's a lien. Can it be foreclosed by a non-judicial or judicial action, the superpriority portion? Is -- are the provisions in the CC&Rs are those that purported the waive -- the superpriority right are those enforceable. And then there was the -- some -- sort of a due process regarding the notice. Those were the only four things decided. This issue was not decided. Counsel cannot submit to you that the Supreme Court actually considered this issue. And in its conclusion the majority said --

THE COURT: Mr. Brooks, I've read SFR many times.

MR. BROOKS: Yeah.

THE COURT: I know what it says and doesn't say.

MR. BROOKS: Four things --

THE COURT: Believe me I know by now what it says and doesn't say.

MR. BROOKS: And in its conclusion it says we find that it is a true lien. The proper foreclosure of which will extinguish a first deed of trust. That a superpriority -- the proper foreclosure of which identifies it as a separate piece and it includes that. It doesn't say a proper foreclosure extinguishes. It says a proper foreclosure of which extinguishes a deed of trust. That's important because they're recognizing this duality of this lien. It is a lien with a superpriority potential, but it's not coextensive. It doesn't just exist. We can't just say it is because it's not. This is sophisticated, it's subtle. It's -- it requires our analysis. It requires us to look at the deed and when it is ambiguous such as a case like this to look at the parties' intent. And we've done that. We've provided the evidence and we think we should prevail on that as well as on the HERA argument which I think are -- as I said far more compelling at least at these points under these facts. Thank you.

THE COURT: I agree with the last part. So I -- when I've had arguments about HUD insured loans, which is similar to what some of the other decisions from the Federal Court have said, I haven't had cases where HUD has actually become the holder of the loans and so I've rejected the preemption arguments in those cases. However, in this circumstance today with Fannie Mae owning this loan, the deed of trust under the conservatorship of FHFA I understand that FHFA is not a party and hasn't intervened here. But I agree with the reasoning of Judge Navarro in the *Skylights* decision. It seems to me that analysis is correct as it walks through the statute and the reasoning would apply -- it does apply to Fannie Mae even without FHFA as a party here.

Certainly Fannie Mae as the holder of the note has standing to come in and argue that its interest can't be eliminated without the consent of the FHFA. It's the holder of the loan that continues to have the interest in the property if it wasn't

eliminated by this sale. So it certainly has standing to make the argument. And although -- and going through the statutory analysis and the fact that it's held by -- that it's owned by Fannie Mae which is -- has FHFA as conservator does bring it within the statute, specifically (j)(3) of the HERA, the House and Economic Recovery Act. HERA. So it does seem to me that based on that argument I am denying the plaintiff's motion for summary judgment, granting Fannie Mae's countermotion for summary judgment. Based on that I -- the other arguments are moot at this point.

Mr. Brooks, if you would please prepare a proposed order. Run it past Mr. Bohn before you submit it.

MR. BROOKS: Absolutely, Your Honor.

MR. BOHN: Thank you, Your Honor.

THE COURT: Thank you.

[Hearing concluded at 10:14 a.m.]

* * * * * * *

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

Jessica Kirkpatrick

Jessica Kirkpatrick
Court Recorder/Transcriber

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DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 9641 CHRISTINE VIEW,

Plaintiff,

v.

FEDERAL NATIONAL MORTGAGE ASSOCIATION; THE COOPER CASTLE LAW FIRM, LLP; DON MORENO AND RIETA MORENO,

Defendants.

Case No.: A-13-690924-C
Dept. No.: VI

ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND GRANTING FEDERAL NATIONAL MORTGAGE ASSOCIATION'S COUNTERMOTION FOR SUMMARY JUDGMENT

This matter came for hearing on November 17, 2015, at 8:30 a.m., in Department VI of the Eighth Judicial District Court, in and for Clark County, Nevada, with the Honorable Elissa F. Cadish presiding, on Plaintiff, Saticoy Bay LLC Series 9641 Christine View's ("Plaintiff"), Motion for Summary Judgment and Defendant, Federal National Mortgage Association's ("Fannie Mae"), Counter-Motion for Summary Judgment; with Michael F. Bohn, Esq. appearing on behalf of Plaintiff; and Michael R. Brooks, Esq., of Brooks Hubley, LLP, appearing on behalf of Fannie Mae.

☐ Voluntary Dismissal
☐ Involuntary Dismissal
☐ Stipulated Dismissal
☐ Motion to Dismiss by Deft(s)
☒ Summary Judgment
☐ Stipulated Judgment
☐ Default Judgment
☐ Judgment of Arbitration

This Court, having considered all pleadings and papers on file herein and arguments of counsel, and for good cause shown, hereby orders the following:

FINDINGS OF FACTS

1. A Deed of Trust listing Don and Rieta Moreno as the borrowers, Countrywide Home Loans, Inc. ("Countrywide") as the original lender, and Mortgage Electronic Registration Systems, Inc ("MERS") as beneficiary and nominee for Lender and Lender's successors and assigns, was recorded on November 2, 2004. The Deed of Trust granted Countrywide and its successors and assigns a security interest in real property known as 9641 Christine View Court, Las Vegas 89129 (the "Property") to secure the repayment of a loan in the original amount of $174,950.00 (the "Loan").

2. On September 6, 2008, pursuant to Housing & Economic Recovery Act of 2008 ("HERA"), the Director of the Federal Housing Finance Agency ("FHFA" or "Conservator") placed Fannie Mae and Freddie Mac into conservatorship.

3. On March 17, 2010, Nevada Association Services ("NAS"), on behalf of the HOA, recorded a lien for delinquent assessments against the Property. Per the notice of delinquent assessments, the amount owing as of the date of preparation of the lien was $1,050.00.

4. On August 16, 2010, NAS, on behalf of the HOA, recorded a notice of default and election to sell against the Property.

5. On May 30, 2012, MERS assigned the Deed of Trust to Bank of America, N.A., Successor by Merger to BAC Home Loans Servicing, LP FKA Countrywide Home Loans Servicing, LP. This document was recorded on June 1, 2012, in the Official Records for Clark County as instrument number 20120601-0002535.

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6. On October 6, 2012, Bank of America assigned the Deed of Trust to Fannie Mae. This document was recorded on October 19, 2012, in the Official Records for Clark County as instrument number 20121019-000325.

7. NAS, on behalf of the HOA, recorded a Second Notice of Trustee's Sale against the Property on August 15, 2013. Per the Notice of Trustee's Sale, the amount owed as of the time of initial publication of the Notice of Sale, totaled $2,712.17.

8. On September 26, 2013, a Trustee's Deed Upon Sale was recorded against the Property. The Trustee's Deed Upon Sale states that the Property was sold on September 6, 2013, to Saticoy Bay for a purchase price of $26,800.00.

9. At no time did the Conservator consent to the HOA's foreclosure sale extinguishing or foreclosing Fannie Mae's interest in Property.

CONCLUSIONS OF LAW

THE COURT HEREBY FINDS AS FINDS AS FOLLOWS AS A MATTER OF LAW:

1. 12 U.S.C. § 4617(j)(3) preempts Nevada Revised Statute § 116.3116 to the extent that a homeowner association's foreclosure of its super-priority lien cannot extinguish a property interest of Fannie Mae while it is under FHFA's conservatorship.

2. Fannie Mae's interest in Property secured by the Deed of Trust was a property interest protected by 12 U.S.C. § 4617(j)(3).

3. The HOA's foreclosure sale of its super-priority interest in this case did not extinguish Fannie Mae's interest in the Property secured by the Deed of Trust nor convey the Property to Saticoy Bay free and clear of the Deed of Trust.

4. Saticoy Bay's interest in the Property is subject to the Deed of Trust.

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IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Fannie Mae's Counterclaims for Quiet Title and Declaratory Relief are each resolved in favor of Fannie Mae, and that Fannie Mae's Counter-Motion for Summary Judgment, is **GRANTED**.

IT IS FURTHER ORDERED that based on the above findings and order, Plaintiff's claims for Quiet Title and Declaratory Relief are each resolved in favor of Fannie Mae, and that Plaintiff's Motion for Summary Judgment is **DENIED**.

IT IS SO ORDERED.

DATED this 7 day of December, 2015.

DISTRICT COURT JUDGE

Respectfully submitted by:

BROOKS HUBLEY, LLP

MICHAEL R. BROOKS, ESQ.
Attorneys for Defendant Federal National Mortgage Association

Approved as to Form and Content:

MICHAEL F. BOHN, ESQ.
Attorney for Plaintiff Saticoy Bay LLC Series 9641 Christine View

BROOKS HUBLEY, LLP
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CLERK OF THE COURT

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E-mail: mbrooks@brookshubley.com
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DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 9641 CHRISTINE VIEW,

Plaintiff,

v.

FEDERAL NATIONAL MORTGAGE ASSOCIATION; THE COOPER CASTLE LAW FIRM, LLP; DON MORENO AND RIETA MORENO,

Defendants.

Case No.: A-13-690924-C
Dept. No.: VI

NOTICE OF ENTRY OF ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND GRANTING FEDERAL NATIONAL MORTGAGE ASSOCIATION'S COUNTERMOTION FOR SUMMARY JUDGMENT

PLEASE TAKE NOTICE that an Order Denying Plaintiff's Motion for Summary Judgment and Granting Federal National Mortgage Association's Countermotion for Summary Judgment was entered in the above-captioned matter on the 8th day of December, 2015.

/././

/././

/././

A true and correct copy of said Order is attached hereto.

DATED this 10 day of December, 2015.

BROOKS HUBLEY, LLP

MICHAEL R. BROOKS, ESQ.
Attorneys for Defendant Federal National Mortgage Association

BROOKS HUBLEY, LLP
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CERTIFCATE OF SERVICE

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

I HEREBY CERTIFY that, pursuant to Eighth Judicial District Court Administrative Order 14-2 and EDCR 8.05(i), I electronically served, via the Eighth Judicial District Court electronic filing system and in place of service by mail, the **NOTICE OF ENTRY OF ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND GRANTING FEDERAL NATIONAL MORTGAGE ASSOCIATION'S COUNTERMOTION FOR SUMMARY JUDGMENT** on the following parties and those parties listed on the Court's Master List in said action:

Law Offices of Michael F. Bohn, Esq.	
Contact	**Email**
Eserve Contact	office@bohnlawfirm.com
Michael F Bohn Esq	mbohn@bohnlawfirm.com

I certify under penalty of perjury that the foregoing is true and correct and that this Certificate of Service was executed by me on the 10th day of December, 2015, at Las Vegas, Nevada.

An Employee of BROOKS HUBLEY, LLP

BROOKS HUBLEY, LLP
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Attorneys for Defendant Federal National Mortgage Association

DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 9641 CHRISTINE VIEW, Plaintiff, v. FEDERAL NATIONAL MORTGAGE ASSOCIATION; THE COOPER CASTLE LAW FIRM, LLP; DON MORENO AND RIETA MORENO, Defendants.	Case No.: A-13-690924-C Dept. No.: VI **ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND GRANTING FEDERAL NATIONAL MORTGAGE ASSOCIATION'S COUNTERMOTION FOR SUMMARY JUDGMENT**

This matter came for hearing on November 17, 2015, at 8:30 a.m., in Department VI of the Eighth Judicial District Court, in and for Clark County, Nevada, with the Honorable Elissa F. Cadish presiding, on Plaintiff, Saticoy Bay LLC Series 9641 Christine View's ("Plaintiff"), Motion for Summary Judgment and Defendant, Federal National Mortgage Association's ("Fannie Mae"), Counter-Motion for Summary Judgment; with Michael F. Bohn, Esq. appearing on behalf of Plaintiff; and Michael R. Brooks, Esq., of Brooks Hubley, LLP, appearing on behalf of Fannie Mae.

☐ Voluntary Dismissal
☐ Involuntary Dismissal
☐ Stipulated Dismissal
☐ Motion to Dismiss by Def(s)

☒ Summary Judgment
☐ Stipulated Judgment
☐ Default Judgment
☐ Judgment of Arbitration

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This Court, having considered all pleadings and papers on file herein and arguments of counsel, and for good cause shown, hereby orders the following:

FINDINGS OF FACTS

1. A Deed of Trust listing Don and Rieta Moreno as the borrowers, Countrywide Home Loans, Inc. ("Countrywide") as the original lender, and Mortgage Electronic Registration Systems, Inc ("MERS") as beneficiary and nominee for Lender and Lender's successors and assigns, was recorded on November 2, 2004. The Deed of Trust granted Countrywide and its successors and assigns a security interest in real property known as 9641 Christine View Court, Las Vegas 89129 (the "Property") to secure the repayment of a loan in the original amount of $174,950.00 (the "Loan").

2. On September 6, 2008, pursuant to Housing & Economic Recovery Act of 2008 ("HERA"), the Director of the Federal Housing Finance Agency ("FHFA" or "Conservator") placed Fannie Mae and Freddie Mac into conservatorship.

3. On March 17, 2010, Nevada Association Services ("NAS"), on behalf of the HOA, recorded a lien for delinquent assessments against the Property. Per the notice of delinquent assessments, the amount owing as of the date of preparation of the lien was $1,050.00.

4. On August 16, 2010, NAS, on behalf of the HOA, recorded a notice of default and election to sell against the Property.

5. On May 30, 2012, MERS assigned the Deed of Trust to Bank of America, N.A., Successor by Merger to BAC Home Loans Servicing, LP FKA Countrywide Home Loans Servicing, LP. This document was recorded on June 1, 2012, in the Official Records for Clark County as instrument number 20120601-0002535.

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6. On October 6, 2012, Bank of America assigned the Deed of Trust to Fannie Mae. This document was recorded on October 19, 2012, in the Official Records for Clark County as instrument number 20121019-000325.

7. NAS, on behalf of the HOA, recorded a Second Notice of Trustee's Sale against the Property on August 15, 2013. Per the Notice of Trustee's Sale, the amount owed as of the time of initial publication of the Notice of Sale, totaled $2,712.17.

8. On September 26, 2013, a Trustee's Deed Upon Sale was recorded against the Property. The Trustee's Deed Upon Sale states that the Property was sold on September 6, 2013, to Saticoy Bay for a purchase price of $26,800.00.

9. At no time did the Conservator consent to the HOA's foreclosure sale extinguishing or foreclosing Fannie Mae's interest in Property.

CONCLUSIONS OF LAW

THE COURT HEREBY FINDS AS FINDS AS FOLLOWS AS A MATTER OF LAW:

1. 12 U.S.C. § 4617(j)(3) preempts Nevada Revised Statute § 116.3116 to the extent that a homeowner association's foreclosure of its super-priority lien cannot extinguish a property interest of Fannie Mae while it is under FHFA's conservatorship.

2. Fannie Mae's interest in Property secured by the Deed of Trust was a property interest protected by 12 U.S.C. § 4617(j)(3).

3. The HOA's foreclosure sale of its super-priority interest in this case did not extinguish Fannie Mae's interest in the Property secured by the Deed of Trust nor convey the Property to Saticoy Bay free and clear of the Deed of Trust.

4. Saticoy Bay's interest in the Property is subject to the Deed of Trust.

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IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Fannie Mae's Counterclaims for Quiet Title and Declaratory Relief are each resolved in favor of Fannie Mae, and that Fannie Mae's Counter-Motion for Summary Judgment, is GRANTED.

IT IS FURTHER ORDERED that based on the above findings and order, Plaintiff's claims for Quiet Title and Declaratory Relief are each resolved in favor of Fannie Mae, and that Plaintiff's Motion for Summary Judgment is **DENIED**.

IT IS SO ORDERED.

DATED this 7 day of December, 2015.

DISTRICT COURT JUDGE

Respectfully submitted by:

BROOKS HUBLEY, LLP

MICHAEL R. BROOKS, ESQ.
Attorneys for Defendant Federal National Mortgage Association

Approved as to Form and Content:

MICHAEL F. BOHN, ESQ.
Attorney for Plaintiff Saticoy Bay LLC Series 9641 Christine View

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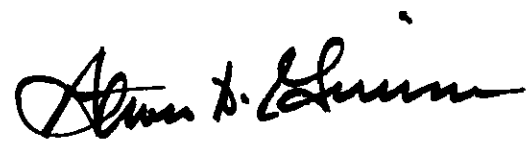

CLERK OF THE COURT

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mbohn@bohnlawfirm.com
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Attorney for plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 9641 CHRISTINE VIEW, Plaintiff, vs. FEDERAL NATIONAL MORTGAGE ASSOCIATION; DON MORENO; and RIETA MORENO, Defendants	CASE NO. :A690924 DEPT. NO: VI

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that Plaintiff, Saticoy Bay LLC Series 9641 Christine View, hereby appeals to the Supreme Court of Nevada from the order denying plaintiff's motion for summary judgment and granting Federal National Mortgage Association's countermotion for summary judgment entered on December 8, 2015

DATED this 11th day of December 2015.

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

By: /s/ /Michael F. Bohn, Esq./
MICHAEL F. BOHN, ESQ.
376 E. Warm Springs Road, Suite 140
Las Vegas, Nevada 89119
Attorney for plaintiff

CERTIFICATE OF SERVICE

Pursuant to NRCP 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee of Law Offices of Michael F. Bohn., Esq., and on the 11th day of December, 2015, an electronic copy of the **NOTICE OF APPEAL** was served on opposing counsel via the Court's electronic service system to the following counsel of record:

Michael R. Brooks, Esq.
Alia A. Najjar, M.D., Esq.
BROOKS HUBLEY LLP
1645 Village Center Circle, Suite 200
Las Vegas, Nevada 89134

/s/ /*Marc Sameroff* /
An employee of the LAW OFFICES
OF MICHAEL F. BOHN, ESQ., LTD.

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Attorney for plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 9641 CHRISTINE VIEW, Plaintiff, vs. FEDERAL NATIONAL MORTGAGE ASSOCIATION; DON MORENO; and RIETA MORENO, Defendants	CASE NO. :A690924 DEPT. NO: VI

NOTICE OF VOLUNTARY DISMISSAL WITHOUT PREJUDICE

Please take notice the plaintiff, Saticoy Bay LLC Series 9641 Christine View, hereby voluntarily dismisses **DON MORENO; and RIETA MORENO**, without prejudice, pursuant to NRCP 41 (a)(1)(I) which provides:

> Subject to the provisions of Rule 23(e), of Rule 66, and of any statute, an action may be dismissed by the plaintiff upon repayment of defendants' filing fees, without order of court (i) by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs, or (ii) by filing a stipulation of dismissal signed by all parties who have appeared in the action. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court of the United States or of any state an action based on or including the same claim.

DON MORENO; and RIETA MORENO have not served an answer or a motion for summary judgment. DON MORENO; and RIETA MORENO'sfiling fees, if any, will be paid concurrently with service of this notice.

Dated this 6th day of January, 2016.

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

By: / s /Michael F. Bohn, Esq. /
Michael F. Bohn, Esq.
376 East Warm Springs Road, Ste. 140
Las Vegas, Nevada 89119
Attorney for plaintiff

CERTIFICATE OF SERVICE

Pursuant to NRCP 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee of Law Offices of Michael F. Bohn., Esq., and on the 6th day of January, 2016 an electronic copy of the **NOTICE OF VOLUNTARY DISMISSAL WITHOUT PREJUDICE** was served on opposing counsel via the Court's electronic service system to the following counsel of record:

Michael R. Brooks, Esq.
Alia A. Najjar, M.D., Esq.
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Las Vegas, Nevada 89134

/s/ /Marc Sameroff /
An Employee of the LAW OFFICES OF
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Attorney for appellant

SUPREME COURT

STATE OF NEVADA

SATICOY BAY LLC SERIES 9641 CHRISTINE VIEW, Appellant, vs. FEDERAL NATIONAL MORTGAGE ASSOCIATION; Respondents	CASE NO.: 69419

JOINT APPENDIX 2

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Attorney for Appellant

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Attorney for Respondent

INDEX TO JOINT APPENDIX 2

ALPHABETICAL INDEX TO JOINT APPENDIXES

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Attorneys for Defendant,
Federal National Mortgage Association

DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 9641 CHRISTINE VIEW, Plaintiff, v. FEDERAL NATIONAL MORTGAGE ASSOCIATION et al., Defendants.	Case No.: A-13-690924-C Dept. No.: VI **DEFENDANT'S FEDERAL NATIONAL MORTGAGE ASSOCIATION'S SUPPLEMENTAL OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND COUNTER-MOTION FOR SUMMARY JUDGMENT**

Defendant Federal National Mortgage Association (hereinafter "Fannie Mae") respectfully submits this Supplemental Opposition to the Plaintiff's Motion for Summary Judgment ("Motion"). Fannie Mae will also submits its Supplement to Counter-Motion for Summary Judgment.

This Opposition and Counter-Motion are supported by the accompanying Memorandum of Points and Authorities, the accompanying exhibits, the records of this Court, and any other arguments presented to this Court at or before the hearing on Plaintiff's Motion. As explained below, those supporting documents show that the Plaintiffs failed to establish an absence of

triable facts. *See Butler v. Bogdanovich*, 101 Nev. 449, 451, 705 P.2d 662, 663 (1985) ("The burden of proving the absence of triable facts is upon the moving party."). Additional discovery is needed to determine whether there are such facts remaining in dispute.

DATED: September 14, 2015

BROOKS HUBLEY, LLP

By: _____

Michael R. Brooks, Esq.
Kyle N. Foster, Esq.
Attorneys for the Defendant, Federal National Mortgage Association

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MEMORANDUM OF POINTS AND AUTHORITIES

I. Introduction

Since the original hearing on the Summary Judgment Motion, new evidence confirms that this sale was void as a matter of law. Even if the sale was not void, new evidence confirms that the Cheyenne Ridge Homeowners Association never intended to foreclose on its super priority lien rights.

II. Statement of Material Facts

A. Additional Evidence Concerning The HOA Lien and the HOA Foreclosure Sale.

More than five years after the Deed of Trust had been recorded against the Property, on March 17, 2010, Nevada Association Services, Inc. ("NAS"), agent for Cheyenne Ridge Homeowners Association (the "HOA"), recorded a Notice of Delinquent Assessment Lien against the Property for alleged non-payment of homeowner assessment dues in the amount of $1,050.00 (the "HOA Lien."). (*See,* Plaintiff's Motion, Ex. 3). NAS then recorded a Notice of Default and Election to Sell ("NOD") under the HOA Lien on August 12, 2010 alleging assessment delinquencies of $1,728.00. (*See,* Plaintiff's Motion, Ex. 4).

On February 10, 2012, a Notice of Foreclosure Sale ("First NOTS") was recorded setting a sale date for March 9, 2012. The First Notice of Sale stated that 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 $3,426.42." (Ex. E) This sale was not conducted at that time.

Rather, NAS recorded a second notice of foreclosure sale ("Second NOTS") on August 15, 2013 in which the assessment delinquencies were reduced to $2,712.17. (*See,* Plaintiff's

Motion, Ex. 7). There is no explanation for the reduction in the assessment delinquencies and naturally leads to the conclusion that the super-priority claim amounts were satisfied. Furthermore, there is no evidence provided by the Plaintiff that the Second NOTS was ever served on Fannie Mae even though Fannie Mae's interest in the Property was recorded 10 months before the Second NOTS was provided. (*See,* Exhibit A, Assignment of Deed of Trust; *See also* Plaintiff's Motion, Ex. 7).

On September 6, 2013, NAS purportedly conducted a non-judicial foreclosure of the Property on behalf of the HOA. Plaintiff purchased the interest represented by the HOA Lien at a sale held on that date for $26,800.00 and recorded a Foreclosure Deed with the Clark County Recorder on September 26, 2013. At the time of the sale the Property, a 2,200 square foot home with 4 bedrooms and 3 baths, had an estimated fair market value of nearly $200,000. As a result, Plaintiff paid barely 10% of the current fair market value.

Plaintiff then filed this lawsuit and asserts that it owns the Property – free and clear of any encumbrances including the Deed of Trust. Fannie Mae filed its Answer on May 2, 2014. It is important to note that the Nevada Supreme Court has since issued what is commonly referred to as the SFR Decision, in which the Court held that a *properly* conducted HOA non-judicial foreclosure of a super-priority lien could extinguish a first position deed of trust.

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BY MR. BROOKS:

Q. With regard to the payments to the HOA I did a little math, and I'm not asking you to verify my math, but it shows that roughly $1,492 and some change was sent to the association.

Does that seem about right?

A. I have no idea but I can look and try to figure it out myself.

Q. So then I will represent to you that when I did the math and totaled up all the payments that we covered, that it came out to 1,492.50?

A. The payment that's NAS forwarded to the HOA?

Q. Correct.

A. Okay.

Q. Do you know if there was any attempt by NAS to reconcile those payments against super priority rights that the association held?

A. I have no idea.

Q. Do you know if there was any attempt by the association to reconcile it's super priority rights against the payments that were received?

A. I don't know. I don't know what they do, what their practice is.

(See, Ex. B; Testimony of Susan Moses,85:16-86:12).

Based on the undisputed evidence in this case, the super-priority was established and Fannie Mae is entitled to judgment as a matter of law.

B. The Facts and Circumstances Make It Clear that the Association Did Not Intend To Exercise Superpriority Rights.

The analysis of super-priority rights must begin with the express grant of a priority lien right to a first security interest holder, in this case Fannie Mae. *See,* NRS 116.3116(2)(b). Notwithstanding this express priority right to Fannie Mae, an HOA has a "super-priority" lien that is in two pieces. (*SFR Investments Pool 1, LLC v. U.S. Bank*, 130 Nev. at 411; *see also, 7912 Limbwood Court Trust v. Wells Fargo Bank,* 2:13-cv-00506-APG-GWF [Doc. 135] August 31, 2015.)). The superpriority right cannot exist without the subpriority right, but it is

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not co-extensive with underlying assessment lien. (*SFR Investment Pool 1* at 411 ("The superpriority piece, consisting of the last nine months of unpaid HOA dues and maintenance and nuisance-abatement charges, is "prior to" a first deed of trust. The subpriority piece, consisting of all other HOA fees or assessments, is subordinate to a first deed of trust."). The distinctions between superpriority and subpriority are more specifically laid out at NRS 116.3116(2)(b):

> (a) any charges incurred by the association on a unit pursuant to NRS 116.310312; or
>
> (b) to the extent of the assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien.

In light of the fact that the lien is a single lien with two pieces, the first question that must be asked is whether the HOA intended to specifically foreclose on its superpriority rights. If intent cannot be established from the language of the Deed itself, the intent case must be garnered from the surrounding facts and circumstances because the HOA lien sale documents tell us nothing of superpriority lien rights.

> Since the ultimate matter to be determined is the intent of the parties, and since that intent must be determined from all of the facts and circumstances before the Court, there is no restriction as to the number or kind of relevant circumstances which may be considered as bearing on the issue of intent, and the opinions and texts abound with statements to the effect that ordinarily the presence or the absence of any particular circumstance is not conclusive as to the intention of the parties-all of the relevant facts and circumstances are to be considered.
> (*Robinson v. Durston*, 83 Nev. 337, 351, 432 P.2d 75, 84 (1967), *see also, Kartheiser v. Hawkins* 98 Nev. 237, 239 (1982), *see also Lowden Inv. Co. v. Gen. Electric Credit Co.*, 103 Nev. 374, 379, 741 P.2d 806, 809 (Nev 1987)(stating that parol evidence "is not admissible to vary or contradict the terms

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> of a written agreement" but "is admissible to in order to resolve ambiguities in a written instrument")

In the present case, the Foreclosure Deed prepared by NAS states simply that it grants "…all its right, title and interest in and to that certain property …" (*See*, Plaintiff's Motion Ex. 1; Foreclosure Deed). There is no reference to superpriority or to subpriority. The Foreclosure Deed itself does not shed any light on the superpriority aspect of the conveyance. Furthermore, none of the HOA lien sale documents reference the presence of super-priority rights according to the testimony of NAS (Ex. C. Testimony of Chris Yergensen 28:3-10; 29:21-30:15, *infra*). Moreover, there is no presumption in favor of the presence of superpriority within the provisions of NRS 116.31164. Further, there are no recitals that would give rise to the presumption even if it existed. As a result, this Court must look deeper to the facts and circumstances surrounding the Association's lien sale to find the intent of the Association and NAS at the time of the HOA lien sale.

With the evidence that has been developed, we know that the HOA only intended to foreclose on the subpriority piece of the lien. Looking at the facts and circumstances, we see the following:

Fact and Circumstance No. 1: Notices of the Foreclosure Sale Provide No Indication that Super-Priority Rights are Being Exercised:

The absence of recitals in any of the HOA lien sale documents (i.e., Notice of Delinquent Assessment Lien, Notice of Default, Notice of Sale, and Foreclosure Deed) that the lien being enforced was for the abatement of a nuisance or for the collection of assessments "for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115" give us no insight into whether the HOA, or its collection agent intended to

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assert super-priority lien rights. In fact, the failure to include such recitals is prejudicial to both the lender and the homeowner who might otherwise take action to protect against a potential loss.

The lack of recitals giving notice of super-priority rights is not mere conjecture. Even if there were realization of the super-priority potential, we know through testimony for NAS that they had a policy of not disclosing whether the HOA sales were an exercise of super-priority rights. Chris Yergensen, an NAS 30(b)(6) witness has testified:

> Q: (Mr. Brooks) In the notice of trustee sale there is no attempt to identify satisfaction of the super priority piece or sub-priority piece, is there?
> A: (Mr. Yergensen) We don't break it down on any of the notices.
> Q: So the bank in a notice of trustee sale wouldn't necessarily know whether or not the super priority piece is still outstanding, correct?
> A: Correct.

Exhibit C, Yergensen Dep. 28:3-10, August 3, 2015.

Mr. Yergensen further testified as follows:

> Q: (Mr. Brooks) The notice of trustee sale, does the investor have any way of knowing whether or not there is a super priority right that's being exercised?
> A: (Mr. Yergensen) The investor?
> Q: In this case, it was Saticoy Bay, Eddie Haddad. Would they have any way of knowing from the notice of delinquent assessment or the notice of default or the notice of trustee sale that, in fact, these are super priority rights that are being exercised?
> A: We cry out at sale the entire lien so, you know, I mean, they are the ones that sued and they are the ones that have caused all the litigation, so I think they had some sort of indication of what was going on, but from us, no.
> Q: So you've done nothing, you NAS have done nothing to lead them to believe or cause them to rely on statements that you've made that there were super priority lien rights being exercised?
> A: That's correct.

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Yergensen Dep. 29:21-25-30:1-15, August 3, 2015.

Mr. Yergensen has also testified that NAS did not request an accounting of super-priority from the association in the ordinary course of exercising HOA lien sale rights.

This testimony sheds light on the significant issues inherent in the HOA lien sale statutes. As Mr. Yergensen can rightfully claim that NAS properly conducted an HOA lien sale but does not give any indication as to whether one, or both "pieces", to borrow the Nevada Supreme Court's terminology, are being foreclosed. In sum, the association, the homeowner, the collection agent, and the buyer have no idea that super-priority rights are being sold. Yet, Cheyenne Ridge would argue that the lender is presumed to know that super-priority rights are being exercised and take action to protect itself even when NAS could not say that they were being sold. That is the kind of tortured reading of a statute that is not even a logical extension of the SFR Decision.

If Plaintiff's argument is accepted, every one of these HOA lien sales will be littered with misinformation resulting in inadequate bids. Specifically, bidders won't know whether super-priority rights are being exercised and therefore will not know whether they are buying a property free and clear of a first deed of trust or not. This will result in depressed bidding in most every sell.

Fact and Circumstance No. 2: The CC&Rs Indicate that the HOA Would Not Take Action to Render Invalid the Rights of a Beneficiary Under a Deed of Trust.

The CC&Rs in this case provide significant insight into the HOA's intended prosecution of lien rights. In the first instance, the CC&Rs make it clear that the HOA was concerned about making loans from available to its members. As a result, the HOA granted a sweeping protection to mortgagees which states:

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> Section 11.04 Protection of Encumberances.
>
> Notwithstanding any other provision hereof, no amendment, violation, breach of, or failure to comply with any provision of this Declaration and no action to enforce any such provision shall affect, defeat, render invalid or impair the lien of any Mortgage, deed of trust or other lien on any Lot taken in good faith and for value and recorded prior to the time of recording of notice of such amendment, violation, breach or failure to comply.
>
> (*See,* Ex. E; Amended CC&R, section 11.04, pp. 33-34).

The Cheyenne Ridge Association manifested its intent not to enforce liens against mortgages by giving mortgagees protection against any violations. This intent is further confirmed by the fact that the specific procedures set forth in the CC&Rs for the enforcement of an HOA lien exclude any reference to junior lienholders of any kind. (See, Ex. E; Amended CC&R, sec. 5.11, pp. 14-15.) If the association were to enforce any lien rights without providing notice, it would be most certainly inviting litigation for fraud or negligent misrepresentation by including this language. Moreover, and more importantly, it is further evidence of the intent of the Cheyenne Ridge Association to not enforce super-priority rights which the Board is empowered to do by statute.

While Plaintiff may argue that the association cannot waive its super-priority rights, the UCIOA makes it clear that the Board can choose not to enforce them. Specifically, NRS 116.3102 provides:

> 3. The executive board may determine whether to take enforcement action by exercising the association's power to impose sanctions or commence an action for a violation of the declaration, bylaws or rules, including whether to compromise any claim for unpaid assessments or other claim made by or against it. The executive board does not have a duty to take enforcement action if it determines that, under the facts and circumstances presented:

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(a) The association's legal position does not justify taking any or further enforcement action;

(b) The covenant, restriction or rule being enforced is, or is likely to be construed as, inconsistent with current law;

(c) Although a violation may exist or may have occurred, it is not so material as to be objectionable to a reasonable person or to justify expending the association's resources; or

(d) It is not in the association's best interests to pursue an enforcement action.

By proceeding with an HOA lien sale without identifying or possibly even discussing the amount of the super-priority rights with NAS, the association evidenced its intention not to enforce its super-priority rights for any of the reasons identified in the statute. This does not constitute a waiver of its superpriority lien rights.

All of these facts and circumstances shed light on the significant issues inherent in the HOA lien sale statutes. If NAS can rightfully claim that they properly conducted an HOA lien sale - but does not give any indication as to whether one, or both "pieces", to borrow the Nevada Supreme Court's terminology, are being foreclosed- then the question becomes whether or not the super priority potential of the lien was specifically intended to be sold without anyone knowing that it was. In sum, the association, the homeowner, the collection agent, and the buyer have no idea that super-priority rights are being sold. Yet, in this statutory universe of ignorance, the Association would argue that the lender is presumed to know that super-priority rights are being exercised and take action to protect itself even when NAS could not say that they were being sold. That is the kind of tortured reading of a statute that does not logically extend the SFR Decision.

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Fact and Circumstance No. 3: The Association Never Accounted for the Superpriority Amount Due.

In sworn testimony at a deposition noticed in this matter, the person most knowledgeable for Cheyenne Ridge Association's management company stated:

> Q. (Mr. Brooks): Okay. So have you ever reviewed the actual notices that are sent out to determine whether or not there's actual itemization of superpriority or subpriority pieces?
> A. In the sub or super, there's -- I don't look at that. I look at what they're charging for dues, late fees, abatements or whatever, you know -- any fees that should be on there, I look at every ledger before it gets, you know -- goes to foreclosure or even as it's going forward.
> Q. And there's no calculation of the superpriority amounts in that regard?
> A. No.

(See, Ex. F; Testimony of Kim Kallfelz, p. 14:10-22).

Furthermore, Ms. Kallfelz testified that in her mind notifying NAS of the presence of superpriority rights was not a collection issue.

> Q. Did you or anybody at Kallfelz Team communicate to Nevada Association Services that the budgets for the association had been adopted in a timely fashion and consistent with Nevada law?
> A. I don't know that has anything to do with collections.
> (See, Ex. F; Deposition of Kim Kallfelz, 38:2-7).

Ms. Kallfelz, as the main line of communication between Cheyenne Ridge Association and NAS repeatedly made it clear that it was not the role of the Association or her company to account for superpriority lien rights.

Fact and Circumstance No. 4: NAS's lack of discussion concerning superpriority lien rights reveals that there was no intention to enforce superpriority lien rights.

One of the most compelling pieces of evidence that the HOAs did not intend to foreclose the superpriority piece of the lien is the testimony of Chris Yergensuon. In his

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testimony, he was asked about his communications with the HOA regarding the presence of super-priority lien rights.

> Q: (Mr. Brooks) Obviously, when I ask about super priority portion of the lien I'm referring specifically to the provision of NRS 116.31162B hanging paragraph. Also the supreme court's decision in the SFR case, and so the statute identifies nine months of assessments adopted pursuant to a budget or the abatement of a nuisance?
> A: (Mr. Yergenson) Right.
> Q: Does the HOA communicate to you the presence of either of those conditions for purposes of exercising lien rights?
> A: No. But I do need to clarify that the super priority portion is still subject to litigation, and actually in the Horizons matter in front of the Nevada Supreme Court, they are actually considering what is the super priority portion. The calculation of the super priority amount in what you've referred to under 3116 has been subject to litigation since 2010.
> Exhibit C, Deposition of Chris Yergensen, pp. 11:21-12:13

Fact and Circumstance No. 5: The Notice of Default failed to describe the deficiency in payment.

Cheyenne Ridge's lien did not distinguish between the super priority and sub priority portions of the lien. The deficiency in payment consists of two different lien portions. One portion has the potential to become super priority, but *only* if there is an express description of the conditions giving rise to the super-priority. Allowing a sale to proceed without identifying the presence of super-priority would deny any due process protections to affected lienholders. *Kotecki v. Auguzstiny*, 87 Nev. 393, 395, 487 P.2d 925, 926 (1971).

The low purchase price and lack of information concerning superpriority rights resulting in uncertainly confirm the fact that the HOA did not intend to exercise superpriority lien rights.

/././

/././

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Fact and Circumstance No. 6: NAS did not account for super-priority rights when it distributed funds post sale.

NRS 116.31164 (3)(c) dictates the distribution of funds from a lien foreclosure sale. The proceeds are to be distributed as follows:

> (c) Apply the proceeds of the sale for the following purposes in the following order:
> (1) The reasonable expenses of sale;
> (2) The reasonable expenses of securing possession before sale, holding, maintaining, and preparing the unit for sale, including payment of taxes and other governmental charges, premiums on hazard and liability insurance, and, to the extent provided for by the declaration, reasonable attorney's fees and other legal expenses incurred by the association;
> (3) Satisfaction of the association's lien;
> (4) Satisfaction in the order of priority of any subordinate claim of record; and
> (5) Remittance of any excess to the unit's owner.

In her deposition, Susan Moses indicates that NAS did not separate out the superpriority amounts for the statutorily required distribution.

> Q. Is there any accounting for super priority amounts that a senior lien holder would be entitled to before the HOA receives payments?
> A. I don't know.
> Q. There is nothing in here to indicate to you that such an accounting was made, correct?
> A. No.
> (See, Ex. B; Deposition of Susan Moses, p. 104: 20-105:1.)

Fact and Circumstance No. 7: The Cheyenne Ridge Homeowner's Association Delinquent Assessment Collection Policy makes no provision for the collection of super-priority rights

The Cheyenne Ridge Homeowner's Association Policy (Ex. H) does not contain any mention of collecting funds for the super priority. In the end, the facts and circumstances

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establishing that there was not an exercise of super-priority rights is so compelling that Fannie Mae is entitled to summary judgment.

IV. SUPPLEMENTAL COUNTER-MOTION FOR SUMMARY JUDGMENT.

a. No intent to Exercise Super-priority rights.

For the above-mentioned reasons, Green Tree would like to incorporate its arguments from this motion showing that the HOA had no intention to exercise its super-priority rights, and without this express intention the lien that was sold was the subpriority portion of the homeowner's lien and is inferior to the First Deed of Trust. Green Tree adds this argument to the Constitutional arguments that the statute violates due process and is so vague as to be unenforceable.

V. Conclusion

For the foregoing reasons, this Court should deny Plaintiff's Motion for Summary Judgment and Grant Defendant's Counter-Motion for Summary Judgment or defer ruling on the Motion until the close of discovery.

DATED: September 14, 2015

BROOKS HUBLEY, LLP

By: _____

Michael R. Brooks, Esq.
Kyle N. Foster, Esq.
Attorneys for the Defendant, Federal National Mortgage Association

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CERTIFICATE OF SERVICE

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

I also certify that on this day, pursuant to Eighth Judicial District Court Administrative Order 14-2 and EDCR 8.05(i), I electronically served, via the Eighth Judicial District Court's electronic filing system and in place of service by mail, ***DEFENDANT FEDERAL NATIONAL MORTGAGE ASSOCIATION'S SUPPLEMENTAL OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT*** on the following parties and those parties listed on the Court's Master List in said action:

Brooks Hubley, LLP

Contact	Email
Madeline L. DiCicco, Esq.	mdicicco@brookshubley.com
Dana Taylor	dtaylor@brookshubley.com
Michael R. Brooks, Esq.	mbrooks@brookshubley. com

Law Offices of Michael F. Bohn, Esq.

Contact	Email
Eserve Contact	office@bohnlawfirm.com
Michael F. Bohn Esq.	mbohn@bohnlawfirm.com

I certify under penalty of perjury that the foregoing is true and correct and that this Certificate of Service was executed by me on this 4th day of September, 2015.

Nicole Lamb

An Employee of BROOKS HUBLEY, LLP

BROOKS HUBLEY LLP
1645 VILLAGE CENTER CIRCLE, LAS VEGAS, NV 89134
TELEPHONE: (702) 851-1191 FAX: (702) 851-1198

EXHIBIT A

EXHIBIT A

Inst #: 201210190000325
Fees: $18.00
N/C Fee: $0.00
10/19/2012 09:08:27 AM
Receipt #: 1349906
Requestor:
CORELOGIC
Recorded By: MSH Pgs: 2
DEBBIE CONWAY
CLARK COUNTY RECORDER

Recording Requested By:
Bank of America
Prepared By: **Danilo Cuenca**
800-444-4302
When recorded mail to:
Bank of America, N.A.
Document Processing Mail Code:TX2-979-01-19 Attn:Assignment Unit
4500 Amon Carter Blvd.
Fort Worth, TX 76155

DocID# **6858438294350474**
Tax ID: **138-07-622-006**
Property Address:
9641 Christine View Ct
Las Vegas, NV 89129-7849
NV0-ADT 20377037 E 10/4/2012

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 **FEDERAL NATIONAL MORTGAGE ASSOCIATION** whose address is **14221 Dallas Parkway, Suite 100, Dallas, TX 75254** 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:	**COUNTRYWIDE HOME LOANS, INC.**
Made By:	**DON MORENO, AND RIETA J MORENO, HUSBAND AND WIFE AS JOINT TENANTS WITH RIGHT OF SURVIVORSHIP**
Trustee:	**COUNTRYWIDE TITLE CORPORATION**

Date of Deed of Trust: **10/18/2004** Original Loan Amount: **$174,950.00**

Recorded in **Clark County, NV** on: **11/2/2004**, book **N/A**, page **N/A** and instrument number **20041102-0005250**

Contact Federal National Mortgage Association for this instrument c/o Seterus, Inc, 14523 SW Millikan Way #200, Beaverton, OR 97005, telephone # 1-866-570-5277, which is responsible for receiving payments.

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 10-6-12

Bank of America, N.A.

By: _____
Martha Munoz
Assistant Vice President

State of California
County of Ventura

On OCT 0 6 2012 before me, VAZRIK SARAFIANS, Notary Public, personally appeared Martha Munoz

, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument 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 instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public: VAZRIK SARAFIANS (Seal)
My Commission Expires: NOV/06/2013

VAZRIK SARAFIANS
Commission # 1867732
Notary Public - California
Los Angeles County
My Comm. Expires Nov 6, 2013

DocID# 6858438294350474

EXHIBIT B

EXHIBIT B

DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 9641
CHRISTINE VIEW,

Plaintiff,

vs.

CASE NO.
A-13-690924

FEDERAL NATIONAL MORTGAGE
ASSOCIATION; THE COOPER CASTLE
LAW FIRM, LLP; DON MORENO AND
RIETA MORENO,

Defendants.

DEPOSITION OF

SUSAN MOSES

August 3, 2015

9:00 a.m.

1645 Village Center Circle

Las Vegas, Nevada

DONNA E. MIZE, CCR NO. 675

APPEARANCES OF COUNSEL

For Defendants:

MICHAEL BROOKS, ESQ.
Brooks Hubley, LLP
1645 Village Center Circle
Suite 200
Las Vegas, Nevada 89134
702.851.1191
mdicicco@brookshubley.com

INDEX OF EXAMINATION

WITNESS: SUSAN MOSES

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Deposition of Susan Moses

August 3, 2015

(Prior to the commencement of the deposition, all of the parties present agreed to waive statements by the court reporter, pursuant to Rule 30(b)(4) of NRCP.)

SUSAN MOSES,

was called as a witness, and having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. BROOKS:

Q. Can you please state your name and spell it for the record?

A. Sure. Susan Moses, S-U-S-A-N-M-O-S-E-S.

Q. Ms. Moses, for the purposes of the deposition you're here as a 30(b)(6) witness on behalf of Nevada Association Services; is that correct?

A. Correct.

Q. For the purposes of this deposition have you seen the subpoena that requires your attendance today?

A. Yes.

(Exhibit A marked)

BY MR. BROOKS:

Q. I'm showing you what's been marked as Exhibit

Q. Are those items you're pointing to right there, are those simply receipts that are provided to the homeowner?
A. Correct.
Q. So if they bring in a cashier's check, they would get one of those receipts?
A. Yes.
Q. If they made a payment by debit card, they would get a debit receipt?
A. I don't know if she gives one of these in addition to that.
Q. It would seem redundant but it's possible?
A. It's possible. I don't know.
(Discussion off the record)
BY MR. BROOKS:
Q. With regard to the payments to the HOA I did a little math, and I'm not asking you to verify my math, but it shows that roughly $1,492 and some change was sent to the association.
Does that seem about right?
A. I have no idea but I can look and try to figure it out myself.
Q. So then I will represent to you that when I did the math and totaled up all the payments that we covered, that it came out to 1,492.50?

A. I'm asking you who should have received interest so I don't have to look at the whole thing if you can just tell me.

Q. It indicates here on the first three lines that the recipient of the assignment of deed of trust is Federal National Mortgage Association; is that right?

A. Uh-huh.

Q. It was assigned by Bank of America, correct?

A. Yes.

Q. We will mark this as Exhibit GG.

(Exhibit GG marked)

BY MR. BROOKS:

Q. Exhibit GG is a package of documents which I believe were provided by your office. The face sheet is a notice of foreclosure sale dated August 14, 2013, signed by Elissa Hollander. The remaining documents are certified mail receipts.

A. Certified return receipt requested, certified receipts and return mail.

Q. If you want to review your file but I tried to include everything that was provided by your office in connection with this?

A. Okay.

Q. Is this a true and correct copy of the notice

of foreclosure sale that was prepared by NAS?
A. Yes.
Q. It was assigned on August 14, 2013, correct?
A. Correct.
Q. That would be the day after the title date down was provided to NAS by First American, right?
A. Yes.
Q. And based on the title date down, notices of this foreclosure sale would have been sent to everyone that was showing an interest in the property as of the date of the notice of trustee sale, correct?
A. It would have been everybody that was on the date down, the updated date down.
Q. I've looked through here and I have not found any notice to Federal National Mortgage Association or to Seterus who was designated as the contact person?
A. Okay.
Q. Is there any record that notices were sent to Fannie Mae or Seterus?
A. I can look through and see.
Q. Go right ahead. Take your time.
(Discussion off the record)
THE WITNESS: Who am I looking for again?
BY MR. BROOKS:
Q. Fannie Mae or --

A. You keep saying Fannie Mae or do you mean somebody else?

Q. Federal National or Fannie Mae or even Seterus would do?

A. No, it doesn't look like it.

Q. I assume this is the physical mailings that are done, but is there a list of everybody that all these documents was sent to?

A. There should be, yes.

Q. Is that in your file?

A. You didn't get a copy of it?

Q. I think I did. I don't have it in front of me. That's just going to be the same as the mailings, correct?

A. Correct. I want to be sure that one of them didn't fall out. I don't see a list. What did you need the list for?

Q. I was trying to be thorough. If I had missed something --

A. It's not in the file so there is no list in the file.

Q. So there's no indication that this notice was ever sent to Fannie Mae, correct?

A. I don't see anything in here.

Q. Is there any notation or anything in your

file or anything to indicate why it may not have been sent to Fannie Mae?

A. I think that's a Chris question.

Q. The why question might be. My question to you is is there anything in the file that would indicate that there was a discussion or an explanation of why it wasn't sent?

A. I think that's a Chris question.

Q. Again, the originals that you've provided that you're testifying to, is there any notice in there about the service of Fannie Mae?

A. Can you ask your question again?

Q. Does the physical files that you are here to produce, is there any notations in there about the service of Fannie Mae with the notice of trustee sale?

A. I don't understand your question. What are you looking for?

Q. Is there a piece of paper that says anything about Fannie Mae and the notice of trustee sale?

A. I don't think so. You would have it if there was.

Q. Again, just trying to be thorough.

A. I understand.

Q. Ultimately, was this property sold at an HOA lien sale?

Republic Services was a junior lien holder?

A. No.

(Exhibit JJ marked)

BY MR. BROOKS:

Q. JJ is two pages dated September 20, 2013. It looks like a letter from June Gerber to Cheyenne Ridge; is that correct?

A. Yes.

Q. Do you have a copy of this in your file?

A. Yes.

Q. Is this an accurate copy?

A. Yes.

Q. It indicates that there was a payment of it appears to be $1,232.42 to Cheyenne Ridge; is that correct?

A. Yes.

Q. It pays all collectible assessments and violations; is that correct?

A. Yes.

Q. Is there any accounting for super priority amounts that a senior lien holder would be entitled to before the HOA receives payments?

A. I don't know.

Q. There is nothing in here to indicate to you that such an accounting was made, correct?

A. No.

(Exhibit KK marked)

BY MR. BROOKS:

Q. Exhibit KK is a five pages long. It is an intra-office memo it looks like between Carol and June dated January 27, 2014; is that correct?

A. Correct.

Q. It indicates that the documents attached to the memo indicate that there were two checks and two cover letters sent; is that correct?

A. Correct.

Q. The first check was for $1,530.05 to Republic Services. Is this an accurate -- a copy of the payment made to Republic Services?

A. It looks like it, yes.

Q. Is there any indication why Republic Services was sent this check in the file?

A. I don't know what you're asking.

Q. Does the file contain any information that Republic Services submitted a claim to be paid this amount?

A. I don't know. I don't know if they made a claim.

Q. Do you know if Republic Services was treated as a junior lien holder?

REPORTER'S CERTIFICATE

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

I, Donna E. Mize, a Certified Court Reporter, licensed by the State of Nevada, do hereby certify:

That I reported the deposition of Susan Moses, on August 3, 2015, commencing at the hour of 9:00 a.m.

That prior to being examined, the witness was duly sworn by me to testify to the truth, the whole truth and nothing but the truth.

That I thereafter transcribed my said shorthand notes into typewriting and that the typewritten transcription of said deposition is a complete, true, and accurate transcription of my said shorthand notes taken down at said time. That review of the transcript was not requested.

I further certify that I am not a relative or employee of an attorney involved in said action, nor a person financially interested in said action.

IN WITNESS WHEREOF, I have set my hand in my office in the County of Clark, State of Nevada, this 12th of August, 2015.

Donna E Mize

DONNA E. MIZE, CCR NO. 675

EXHIBIT C

EXHIBIT C

DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 9641
CHRISTINE VIEW,

Plaintiff,

vs.

CASE NO.
A-13-690924

FEDERAL NATIONAL MORTGAGE
ASSOCIATION; THE COOPER CASTLE
LAW FIRM, LLP; DON MORENO AND
RIETA MORENO,

Defendants.

DEPOSITION OF

CHRIS YERGENSEN

August 3, 2015

12:55 p.m.

1645 Village Center Circle

Las Vegas, Nevada

DONNA E. MIZE, CCR NO. 675

APPEARANCES OF COUNSEL

For Defendants:

MICHAEL BROOKS, ESQ.
Brooks Hubley, LLP
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702.851.1191
mdicicco@brookshubley.com

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WITNESS: CHRIS YERGENSEN

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Deposition of Chris Yergensen

August 3, 2015

(Prior to the commencement of the deposition, all of the parties present agreed to waive statements by the court reporter, pursuant to Rule 30(b)(4) of NRCP.)

CHRIS YERGENSEN,

was called as a witness, and having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. BROOKS:

Q. Can you please state your name and spell it for the record?

A. Chris Yergensen, C-H-R-I-S-Y-E-R-G-E-N-S-E-N.

Q. Mr. Yergensen, you are here in response to the subpoena to testify, is that correct, in the above-referenced matter?

A. That's correct.

Q. I've already taken the deposition of Ms. Moses. Did I get that right?

A. Yes.

Q. You're here to testify to as I understand it the policies and procedures for NAS; is that correct?

A. Correct.

really dealt with interest they were going to charge, late fees they were going to charge as well as the timing in which they were going to send the accounts to collections as well as payment plan policies. I think once they sent -- I'm not familiar with any collection policy that dealt with any activity post sending it to a collection agency.

Q. Other than the four things that you've identified, was there anything else that you request of an association?

A. I don't think so.

Q. With regard to the account ledger, does the account ledger ask the association to identify that super priority portion of any of those liens?

A. It does not.

Q. Does Cheyenne Ridge provide you an accounting of the super priority portion of their liens?

A. I guess I need to ask you what do you mean by the super priority portion since that is an issue of multiple litigation cases.

Q. Obviously, when I ask about super priority portion of the lien I'm referring specifically to the provision of NRS 116.31162B hanging paragraph. Also, the supreme court's decision in the SFR case, and so the statute identifies nine months of assessments

adopted pursuant to a budget or the abatement of a nuisance?

A. Right.

Q. Does the HOA communicate to you the presence of either of those conditions for purposes of exercising lien rights?

A. No. But I do need to clarify that the super priority portion is still subject to litigation, and actually in the Horizons matter in front of the Nevada Supreme Court, they are actually considering what is the super priority portion. The calculation of the super priority amount in what you've referred to under 3116 has been subject to litigation since 2010.

Q. Fair enough.

A. I'm sure that your client would argue about my calculation, and I would argue about his calculation.

Q. Let me ask. You refer to a case. It was called Horizons?

A. Horizons Condominiums at Green Valley Ranch versus Ikohn Holdings, I-K-O-H-N, Holdings, LLC. That case was submitted in January of 2013, oral arguments were heard in May 2014, and it still hasn't been cited yet.

Q. And the question in that case --

sub-priority piece, I can't tell you. That's a question for a court to decide.

Q. In the notice of trustee sale there is no attempt to identify satisfaction of the super priority piece or sub-priority piece, is there?

A. We don't break it down on any of the notices.

Q. So the bank in a notice of trustee sale wouldn't necessarily know whether or not the super priority piece is still outstanding, correct?

A. Correct.

Q. And the homeowner wouldn't necessarily know if the super priority piece is outstanding, correct?

A. I don't think the homeowner would care. Why would he care? Is he trying to save the property for your client because we could foreclose for either piece. Your question is very novel. The first time I've ever heard this.

It's because essentially homeowners association assessments are ongoing. If your client is going to make an argument about a payment for a statutory lien provision, which is what the HOA has against all homes, as soon as they've made nine payments, whenever they made them, you're taking the position that the priority piece was paid, that's interesting.

Q. I don't think that I'm taking that position. I don't mean to be argumentative, but the homeowner would be very interested in knowing they have a secured debt of $170,000 that is about to become an unsecured debt for $170,000 because the HOA is about to sell it for $10,000 -- in this case it was sold for $2,700 is really what it was?

A. Why would the homeowner care, he is going to lose the house? A, he is either going to lose it to us or he is going to lose it to your client.

Q. The difference, of course, is that in the instance of the super priority lien exercise, he now or she now and in this case the couple, has an unsecured obligation for $170,000. They are losing the right to offset their single largest asset against their single largest debt?

A. Sure. They lose leverage against your client.

Q. Well, collateral, they lose that collateral.

A. It's a novel argument.

Q. The notice of trustee sale, does the investor have anyway of knowing whether or not there is a super priority right that's being exercised?

A. The investor?

Q. In this case it was Saticoy Bay, Eddie

Haddad. Would they have any way of knowing from the notice of delinquent assessment or the notice of default or the notice of trustee sale that, in fact, these are super priority rights that are being exercised?

A. We cry out at sale the entire lien so, you know, I mean, they are the ones that sued and they are the ones that have caused all the litigation so I think they had some sort of indication of what was going on, but from us, no.

Q. So you've done nothing, you NAS have done nothing to lead them to believe or cause them to rely on statements that you've made that there were super priority lien rights being exercised?

A. That's correct.

Q. And we're talking about forms here and that would hold true for all of the forms we're talking about, correct?

A. Correct. The only difference would be if we did actually receive a partial payment that was actually for the super priority that we agreed to, we would cry that at sale.

Q. Would that be in the notice of trustee sale?

A. No, it would be at the sale. At the auction we would cry that out at sale.

REPORTER'S CERTIFICATE

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

I, Donna E. Mize, a Certified Court Reporter, licensed by the State of Nevada, do hereby certify:

That I reported the deposition of Chris Yergensen, on August 3, 2015, commencing at the hour of 12:45 p.m.

That prior to being examined, the witness was duly sworn by me to testify to the truth, the whole truth and nothing but the truth.

That I thereafter transcribed my said shorthand notes into typewriting and that the typewritten transcription of said deposition is a complete, true, and accurate transcription of my said shorthand notes taken down at said time. That review of the transcript was not requested.

I further certify that I am not a relative or employee of an attorney involved in said action, nor a person financially interested in said action.

IN WITNESS WHEREOF, I have set my hand in my office in the County of Clark, State of Nevada, this 12th of August, 2015.

Donna E Mize

DONNA E. MIZE, CCR NO. 675

EXHIBIT D

EXHIBIT D

N#56960

NEVADA ASSOCIATION SERVIC
6224 W DESERT INN RD STE A
LAS VEGAS NV 89146
702-804-8885

04/30/2010	10:08:09
Merchant ID:	518453024300153
Device ID:	1234
Terminal ID:	PD04.

DEBIT CARD

DEBIT SALE

CARD #	XXXXXXXXXXXX3017
Debit Card Type	014
Debit Network	MAESTRO
TRANS #	982
Batch #:	4
Approval Code:	081314
Entry Method:	Swiped
Approved:	Online
SALE AMOUNT	$500.00

Signature Not Required

MERCHANT COPY

RECEIVED
APR 30 2010
BY:.....

Nevada Association Services, Inc.
6224 W. Desert Inn Road, Suite A
Las Vegas, NV 89146
Phone (702) 804-8885
Fax (702) 804-8887
Toll Free (888) 627-5544

Nevada Association Services
Disbursement Requisition

Date: May 4, 2010
Owner(s) names: Don Moreno , Rieta Moreno
Property Add.: 9641 Christine View Court
Account Number: 9641CV
HOA: Cheyenne Ridge

Processed By: David Stone
N#: N56960

Payment Made By: Debit Card
Full or Partial Payment: Partial Payment
If Full Payment, Assessments Paid

Manager

Cheyenne Ridge
c/o Theresa Solis
The Masters Association Management
8687 W. Sahara Ave. Ste. 201
Las Vegas, NV 89117

Amounts to Disburse

To HOA:	$75.00
To Mgmt Co:	$150.00
To Title Co:	$0.00
To Posting Co:	$0.00
To NAS:	$215.00
To Recording:	$28.00
To Postage:	$32.00
+ To Misc1:	$0.00
+ To Misc2:	$0.00
To Misc3:	$0.00
To Misc4:	$0.00
To Misc5:	$0.00
Total Of Payment:	$500.00

Interest: $0.00
Title Co: First American Title Nevada/NDT
Title Order #:
Posting Co:
Posting Order #:

Notes:

282111107 NEW 01/08 881030430

HOLD DOCUMENT UP TO THE LIGHT TO VIEW TRUE WATERMARK

MONEY ORDER

HOLD DOCUMENT UP TO THE LIGHT TO VIEW TRUE WATERMARK

CHASE

1093501113 91-2/1221

Date 06/15/2010

Moreno / NC69760

Pay To The Order Of NEVADA ASSOCIATION SERVICES INC. $ **********154.00***

Pay ONE HUNDRED FIFTY FOUR DOLLARS AND 00 CENTS

NOT VALID FOR MORE THAN $1000.00

MEMO HOA

SENDER

9641 Cheshire View CT LV NV 89129

ADDRESS:
JPMorgan Chase Bank, N.A.
Phoenix, AZ

⑈1093501113⑈ ⑆122100024⑆ 80600228⑈

RECEIVED
JUN JUN 15 2010

Nevada Association Services, Inc.
6224 W. Desert Inn Road, Suite A
Las Vegas, NV 89146
Phone (702) 804-8885
Fax (702) 804-8887
Toll Free (888) 627-5544

Nevada Association Services
Disbursement Requisition

Date: June 15, 2010
Owner(s) names: Don Moreno , Rieta Moreno
Property Add.: 9641 Christine View Court
Account Number: 9641CV
HOA: Cheyenne Ridge

Processed By: David Stone
N#: N56960

Payment Made By: CC/MO
Full or Partial Payment: Partial Payment
If Full Payment, Assessments Paid

Manager

Cheyenne Ridge
c/o Theresa Solis
The Masters Association Management
8687 W. Sahara Ave. Ste. 201
Las Vegas, NV 89117

Amounts to Disburse

To HOA:	$75.00
To Mgmt Co:	$0.00
To Title Co:	$0.00
To Posting Co:	$0.00
To NAS:	$79.00
To Recording:	$0.00
To Postage:	$0.00
+ To Misc1:	$0.00
+ To Misc2:	$0.00
To Misc3:	$0.00
To Misc4:	$0.00
To Misc5:	$0.00
Total Of Payment:	$154.00

Interest: $0.00
Title Co: First American Title Nevada/NDT
Title Order #:
Posting Co:
Posting Order #:

Notes:

NEVADA ASSOCIATION SERVIC
6224 W DESERT INN RD STE A
LAS VEGAS NV 89146
702-804-8885

01/21/2011	14:09:18
Merchant ID:	5184530243001583
Device ID:	1234
Terminal ID:	PD04.

DEBIT CARD

DEBIT SALE

CARD #	XXXXXXXXXXXX1432
Debit Card Type	015
Debit Network	INTERLINK
TRANS #	908
Batch #:	8
Approval Code:	071917
Entry Method:	Swiped
Approved:	Online
SALE AMOUNT	$219.00

Signature Not Required

MERCHANT COPY

5b960

Nevada Association Services, Inc.
6224 W. Desert Inn Road, Suite A
Las Vegas, NV 89146
Phone (702) 804-8885
Fax (702) 804-8887
Toll Free (888) 627-5544

Nevada Association Services
Disbursement Requisition

Date: January 24, 2011
Owner(s) names: Don Moreno , Rieta Moreno
Property Add.: 9641 Christine View Court
Account Number: 9641CV
HOA: Cheyenne Ridge

Processed By: David Stone
N#: NS6960

Payment Made By: Debit Card
Full or Partial Payment: Partial Payment
If Full Payment, Assessments Paid

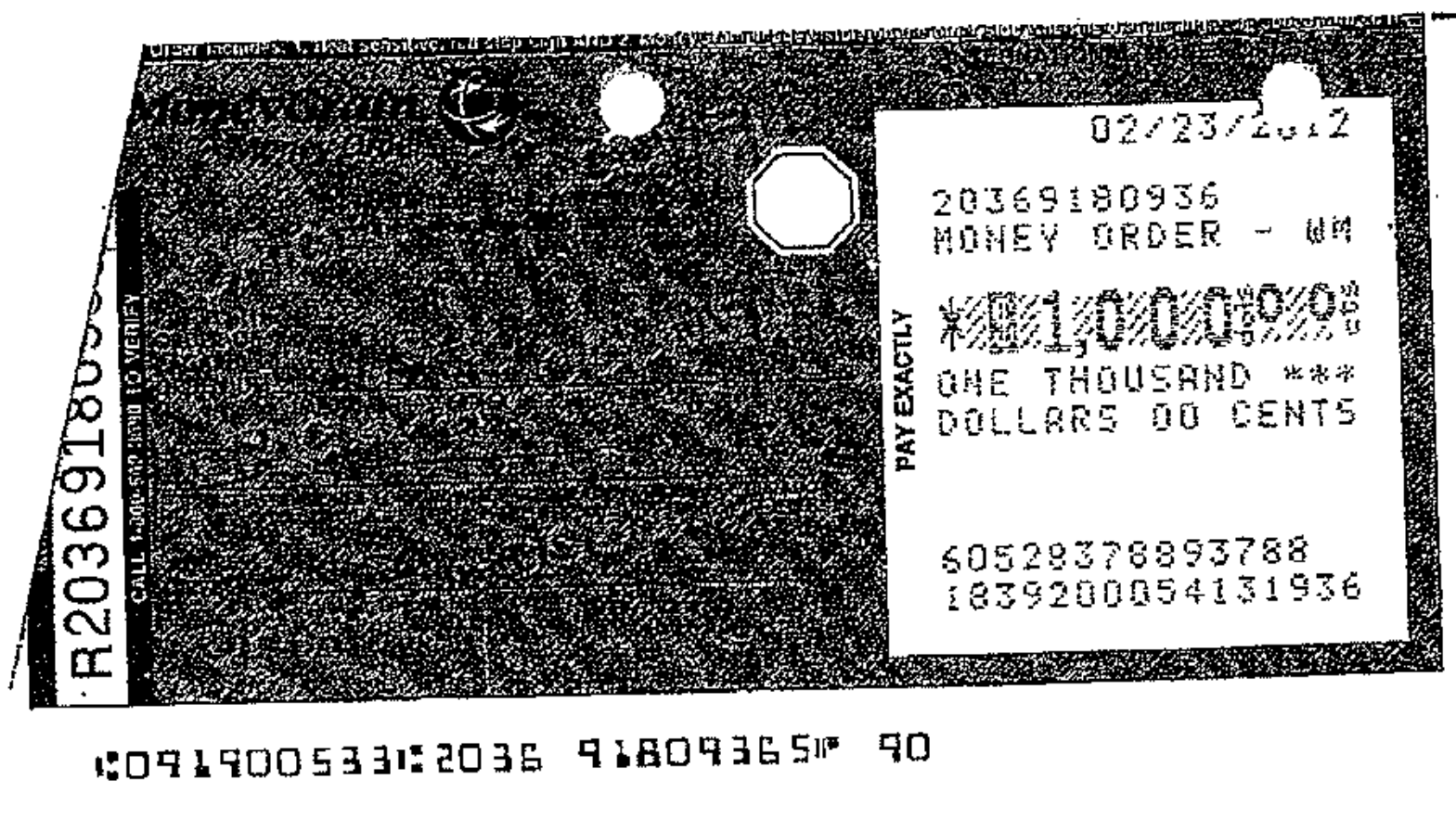
Manager

Cheyenne Ridge
c/o Kim Kallfelz
Kallfelz Team Association Management
4085 N. Rancho Drive, Ste. 150
Las Vegas, NV 89130

Amounts to Disburse

To HOA:	$100.00	**Interest:**	$0.00
To Mgmt Co:	$0.00	**Title Co:**	First American Title Nevada/NDT
To Title Co:	$119.00	**Title Order #:**	4515977
To Posting Co:	$0.00	**Posting Co:**	
To NAS:	$0.00	**Posting Order #:**	
To Recording:	$0.00		
To Postage:	$0.00		
+ To Misc1:	$0.00		
+ To Misc2:	$0.00		
To Misc3:	$0.00		
To Misc4:	$0.00		
To Misc5:	$0.00		
Total Of Payment:	$219.00		

Notes:


R20369180936
CALL 1-800-500-1000 TO VERIFY
02/23/2012
20369180936
MONEY ORDER - WM
PAY EXACTLY
*****1,000.00
ONE THOUSAND ***
DOLLARS 00 CENTS
605283788993788
183920005413193G
:091900533:2036 9180936 5: 90

Nevada Association Services
6224 W. Desert Inn Road, Suite A
Las Vegas, NV 89146
Phone: (702) 804-8885
Fax: (702) 804-8887
Toll Free: (888) 627-5544

Nevada Association Services
Disbursement Requisition

Date: March 1, 2012
Owner(s) names: Don Moreno, Rieta Moreno
Property Add.: 9641 Christine View Court
Account Number: 9641CV
HOA: Cheyenne Ridge

Payment Made By: CC/MO
Full or Partial Payment: Partial Payment
If Full Payment, Assessments Paid

Processed By: June Gerber
N#: N56960

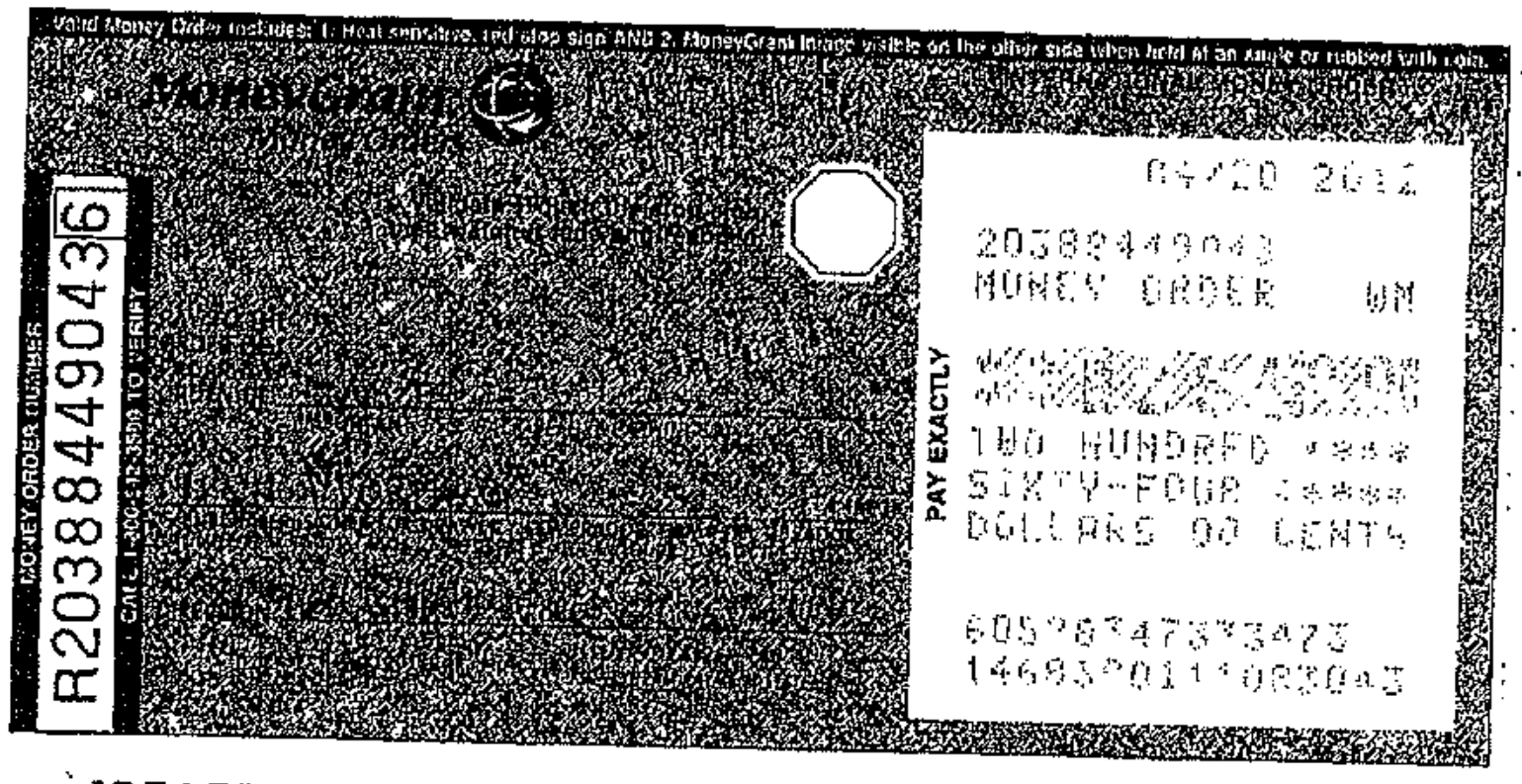
Manager
Cheyenne Ridge
c/o Kim Kallfelz
Kallfelz Team Association Management
4085 N. Rancho Drive, Ste. 150
Las Vegas, NV 89130

Amounts to Disburse

NAS Fees	$0.00	
NAS Costs	$157.75	
To HOA:	$400.00	
To Mgmt Co:	$0.00	
To Title Co:	$186.00	First American Title, Order# 4515977
To Posting Co:	$256.25	Priority Posting & Publishing, Order# 922724
Total Of Payment:	$1,000.00	
Notes:		

Mailing Fees	$0.00
Mailing Costs	$157.75
Recording Costs	$0.00

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.


Valid Money Order includes: 1. Heat sensitive, red alert sign AND 2. MoneyGram image visible on the other side when held at an angle or rubbed with coin.
MoneyGram
Money Order
R20388449043 6
MONEY ORDER NUMBER
CALL 1-800-933-3399 TO VERIFY
PAY EXACTLY
8/20 2012
20388449043
MONEY ORDER 0M
TWO HUNDRED ****
SIXTY-FOUR *****
DOLLARS 00 CENTS
605*8*473*3473
14693*011*0830a3
:091900533: 2038 8449043 6" 90

Nevada Association Services
6224 W. Desert Inn Road, Suite A
Las Vegas, NV 89146
Phone: (702) 804-8885
Fax: (702) 804-8887
Toll Free: (888) 627-5544

Nevada Association Services
Disbursement Requisition

Date: April 20, 2012
Owner(s) names: Don Moreno, Rieta Moreno
Property Add.: 9641 Christine View Court
Account Number: 9641CV
HOA: Cheyenne Ridge

Payment Made By: CC/MO
Full or Partial Payment: Partial Payment
If Full Payment, Assessments Paid

Processed By: June Gerber
N#: N56960

Manager
Cheyenne Ridge
c/o Kim Kallfelz
Kallfelz Team Association Management
4085 N. Rancho Drive, Ste. 150
Las Vegas, NV 89130

Amounts to Disburse

NAS Fees	$0.00	
NAS Costs	$0.00	
To HOA:	$123.58	
To Mgmt Co:	$0.00	
To Title Co:	$0.00	First American Title, Order# 4515977
To Posting Co:	$140.42	Priority Posting & Publishing, Order# 922724
Total Of Payment:	$264.00	
Notes:		

Mailing	$0.00
Recording Costs	$0.00

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 ASSOCIATION SERVIC
6224 W DESERT INN RD STE A
LAS VEGAS NV 89146
702-804-8885

05/18/2012	12:56:29
Merchant ID:	5184530243001583
Device ID:	1234
Terminal ID:	PD04.

DEBIT CARD

DEBIT SALE

CARD #	XXXXXXXXXXX6500
Debit Card Type	015
Debit Network	INTERLINK
TRANS #	993
Batch #:	9
Approval Code:	032582
Entry Method:	Swiped
Approved:	Online
SALE AMOUNT	$263.00

Signature Not Required

MERCHANT COPY

56960

RECEIVED
MAY 16 2012

APP000286

Nevada Association Services
6224 W. Desert Inn Road, Suite A
Las Vegas, NV 89146
Phone: (702) 804-8885
Fax: (702) 804-8887
Toll Free: (888) 627-5544

Nevada Association Services
Disbursement Requisition

Date: May 21, 2012
Owner(s) names: Don Moreno, Rieta Moreno
Property Add.: 9641 Christine View Court
Account Number: 9641CV
HOA: Cheyenne Ridge

Payment Made By: Debit Card
Full or Partial Payment: Partial Payment
If Full Payment, Assessments Paid

Processed By: June Gerber
N#: N56960

Manager
Cheyenne Ridge
c/o Kim Kallfelz
Kallfelz Team Association Management
4085 N. Rancho Drive, Ste. 150
Las Vegas, NV 89130

Amounts to Disburse

NAS Fees	$0.00	
NAS Costs	$38.00	
To HOA:	$125.00	
To Mgmt Co:	$0.00	
To Title Co:	$0.00	First American Title, Order# 4515977
To Posting Co:	$100.00	Priority Posting & Publishing, Order# 922724
Total Of Payment:	$263.00	
Notes:		

Mailing	$0.00
Recording Costs	$38.00

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 ASSOCIATION SERVIC
6224 W DESERT INN RD STE A
LAS VEGAS NV 89146
702-804-8885

06/18/2012	09:25:59
Merchant ID:	518453024300 1583
Device ID:	1234
Terminal ID:	POO4.

DEBIT CARD

DEBIT SALE

CARD #	XXXXXXXXXXXX6500
Debit Card Type	015
Debit Network	INTERLINK
TRANS #	935
Batch #:	0
Approval Code:	027593
Entry Method:	Swiped
Approved:	Online
SALE AMOUNT	$263.00

Signature Not Required

MERCHANT COPY

5u940

Nevada Association Services
6224 W. Desert Inn Road, Suite A
Las Vegas, NV 89146
Phone: (702) 804-8885
Fax: (702) 804-8887
Toll Free: (888) 627-5544

Nevada Association Services
Disbursement Requisition

Date: June 19, 2012
Owner(s) names: Don Moreno, Rieta Moreno
Property Add.: 9641 Christine View Court
Account Number: 9641CV
HOA: Cheyenne Ridge

Payment Made By: Debit Card
Full or Partial Payment: Partial Payment
If Full Payment, Assessments Paid

Processed By: June Gerber
N#: N56960

Manager
Cheyenne Ridge
c/o Kim Kallfelz
Kallfelz Team Association Management
4085 N. Rancho Drive, Ste. 150
Las Vegas, NV 89130

Amounts to Disburse

NAS Fees	$135.00	
NAS Costs	$0.00	
To HOA:	$128.00	
To Mgmt Co:	$0.00	
To Title Co:	$0.00	First American Title, Order# 4515977
To Posting Co:	$0.00	Priority Posting & Publishing, Order# 922724
Total Of Payment:	$263.00	
Notes:		

Mailing	$0.00
Recording Costs	$0.00

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 ASSOCIATION SERVIC
6224 W DESERT INN RD STE A
LAS VEGAS NV 89146
702-804-8885

07/17/2012	12:29:29
Merchant ID:	518453024 3001583
Device ID:	1234
Terminal ID:	PD04.

DEBIT CARD

DEBIT SALE

CARD #	XXXXXXXXXXXX6500
Debit Card Type	015
Debit Network	INTERLINK
TRANS #	983
Batch #:	4
Approval Code:	071978
Entry Method:	Swiped
Approved:	Online
SALE AMOUNT	$263.00

Signature Not Required

MERCHANT COPY

50900

Nevada Association Services
6224 W. Desert Inn Road, Suite A
Las Vegas, NV 89146
Phone: (702) 804-8885
Fax: (702) 804-8887
Toll Free: (888) 627-5544

Nevada Association Services
Disbursement Requisition

Date: July 18, 2012
Owner(s) names: Don Moreno, Rieta Moreno
Property Add.: 9641 Christine View Court
Account Number: 9641CV
HOA: Cheyenne Ridge

Payment Made By: Debit Card
Full or Partial Payment: Partial Payment
If Full Payment, Assessments Paid

Processed By: June Gerber
N#: N56960

Manager
Cheyenne Ridge
c/o Kim Kallfelz
Kallfelz Team Association Management
4085 N. Rancho Drive, Ste. 150
Las Vegas, NV 89130

Amounts to Disburse

NAS Fees	$166.00	
NAS Costs	$0.00	
To HOA:	$97.00	
To Mgmt Co:	$0.00	
To Title Co:	$0.00	First American Title, Order# 4515977
To Posting Co:	$0.00	Priority Posting & Publishing, Order# 922724
Total Of Payment:	$263.00	
Notes:		

Mailing	$0.00
Recording Costs	$0.00

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.

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NEVADA ASSOCIATION SERVIC
6224 W DESERT INN RD STE A
LAS VEGAS NV 89146
702-804-8885

09/07/2012 11:29:49
Merchant ID: 518453024300158
Device ID: 1234
Terminal ID: P004

DEBIT CARD
DEBIT SALE

CARD # XXXXXXXXXXXX6500
Debit Card Type 015
Debit Network INTERLINK
TRANS # 980
Batch #: 7
Approval Code: 096505
Entry Method: Swiped
Approved: Online

SALE AMOUNT $263.00

Signature Not Required

MERCHANT COPY

Nevada Association Services
6224 W. Desert Inn Road, Suite A
Las Vegas, NV 89146
Phone: (702) 804-8885
Fax: (702) 804-8887
Toll Free: (888) 627-5544

Nevada Association Services
Disbursement Requisition

Date: September 7, 2012
Owner(s) names: Don Moreno, Rieta Moreno
Property Add.: 9641 Christine View Court
Account Number: 9641CV
HOA: Cheyenne Ridge

Payment Made By: Debit Card
Full or Partial Payment: Partial Payment
If Full Payment, Assessments Paid

Processed By: June Gerber
N#: N56960

Manager
Cheyenne Ridge
c/o Kim Kallfelz
Kallfelz Team Association Management
4085 N. Rancho Drive, Ste. 150
Las Vegas, NV 89130

Amounts to Disburse

NAS Fees	$132.00	
NAS Costs	$0.00	
To HOA:	$131.00	
To Mgmt Co:	$0.00	
To Title Co:	$0.00	First American Title, Order# 4515977
To Posting Co:	$0.00	Priority Posting & Publishing, Order# 922724
Total Of Payment:	$263.00	
Notes:		

Mailing	$132.00
Recording Costs	$0.00

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.

NSU4U0

NEVADA ASSOCIATION SERVIC
6224 W DESERT INN RD STE A
LAS VEGAS NV 89146
702-804-8885

13:09:14
518453024300158S
1234
PD04.

10/19/2012
Merchant ID:
Device ID:
Terminal ID:

DEBIT CARD
DEBIT SALE

XXXXXXXXXXXX6500 015

INTERLINK

662
7
091231
Swiped
Online

CARD #
Debit Card Type
Debit Network
TRANS #:
Batch #:
Approval Code:
Entry Method:
Approved:

$263.00

SALE AMOUNT

Signature Not Required

MERCHANT COPY

Nevada Association Services
6224 W. Desert Inn Road, Suite A
Las Vegas, NV 89146
Phone: (702) 804-8885
Fax: (702) 804-8887
Toll Free: (888) 627-5544

Nevada Association Services
Disbursement Requisition

Date: October 19, 2012
Owner(s) names: Don Moreno, Rieta Moreno
Property Add.: 9641 Christine View Court
Account Number: 9641CV
HOA: Cheyenne Ridge

Payment Made By: Debit Card
Full or Partial Payment: Partial Payment
If Full Payment, Assessments Paid

Processed By: June Gerber
N#: N56960

Manager
Cheyenne Ridge
c/o Kim Kallfelz
Kallfelz Team Association Management
4085 N. Rancho Drive, Ste. 150
Las Vegas, NV 89130

Amounts to Disburse

NAS Fees	$100.00	
NAS Costs	$0.00	
To HOA:	$163.00	
To Mgmt Co:	$0.00	
To Title Co:	$0.00	First American Title, Order# 4515977
To Posting Co:	$0.00	Priority Posting & Publishing, Order# 922724
Total Of Payment:	$263.00	
Notes:		

Mailing	$0.00
Recording Costs	$0.00

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.

EXHIBIT E

EXHIBIT E

The Board shall adopt a proposed annual budget at least forty-five (45) days prior to the commencement of each fiscal year of the Association, which budget shall be subject to the limitations of Section 5.06 below. Within thirty (30) days after adoption of any proposed budget, the Board shall provide a summary of the budget to all Owners, and shall set a date for a meeting of the Owners to consider ratification of the budget. Said meeting shall be held not less than fourteen (14) days nor more than thirty (30) days after mailing of the summary. Unless at that meeting the proposed budget is rejected by at least seventy-five percent (75%) of the voting power of the Association, the budget shall be deemed ratified, whether or not a quorum was present. If the proposed budget is duly rejected as aforesaid, the annual budget for the immediately preceding fiscal year shall remain in effect until such time as a subsequent proposed budget is ratified.

From time to time the Board of Directors may determine that all excess funds remaining in the Operating Fund, over and above the amounts used for the operation of the Property, may be retained by the Association and used to reduce the following year's Common Assessment. Upon dissolution of the Association incident to the abandonment or termination of the maintenance of the Property, any amounts remaining in any of the Maintenance Funds shall be distributed pursuant to NRS 116.2118(7).

Section 5.06. Limitations on Common Assessment Increases. The Board shall not levy, for any fiscal year, an annual Common Assessment which exceeds the "Maximum Authorized Common Assessment" as determined pursuant to Section 5.06(a), below, unless first approved by the vote of Members representing at least a majority of the total voting power of the Association.

a. Maximum Authorized Common Assessment for Initial Year of Operation. Until the first day of the fiscal year immediately following the fiscal year in which Common Assessments commence, the annual Maximum Authorized Common Assessment per Lot shall be Four Hundred Eighty Dollars ($480.00), prorated for the number of days remaining in said first fiscal year.

b. Maximum Authorized Common Assessment for Subsequent Fiscal Years. Beginning with the fiscal year immediately following the fiscal year in which Common Assessments commence, the Maximum Authorized Common Assessment in any fiscal year shall not exceed one hundred fifteen percent (115%) of the Maximum Authorized Common Assessment in effect for the immediately preceding fiscal year (i.e., the Maximum Authorized Common Assessment shall not be increased by more than 15% in any one fiscal year.

c. Supplemental Common Assessment. If in any fiscal year the Board reasonably determines that the common expenses of the Association cannot be met by the Common Assessments levied under the current budget, the Board may, upon the affirmative vote of a majority of the voting power of the Association, submit a Supplemental Common Assessment, applicable to that year only, for ratification as provided in Section 5.05 above.

Section 5.07. Capital Improvement Assessment. The Board, with the vote of Members representing at least fifty-one percent (51%) of the voting power of the Association, may levy, in any fiscal year, a capital improvement assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Property, including fixtures and personal property related thereto. All such capital improvement assessments must be fixed in the same proportion as Common assessments are levied, and they may be collected in the manner and frequency as determined by the Board from time to time.

Section 5.08. Special Assessments. If any Owner or his family, guests, licensees, lessees or invitees violates the Articles, Bylaws, rules and regulations or this Declaration, the Board may, after Notice and Hearing as provided in the Bylaws, impose a reasonable Special Assessment upon such Owner for each violation.

Section 5.09. Remedies of the Association. In the event any installment of a Common Assessment or Special Assessment is not paid within fifteen (15) days after the due date, a late charge of Ten Dollars ($10.00) shall be added to the amount of said installment. In addition, any installment of a Common or Special Assessment not paid within thirty (30) days after the due date shall bear interest from the due date of such installment at a rate of twelve percent (12%) per annum, but in no event shall such interest be more than the then maximum rate permitted by law. If any assessment or installment of an assessment is not paid within thirty (30) days after it is due, the Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against his Lot. No Owner may waive or otherwise escape liability for the assessments provided for herein by abandonment of his Lot.

Section 5.10. Notice of Lien. No action shall be brought to enforce any assessment lien herein unless a Notice of Lien is deposited in the United States mail, certified or registered, postage prepaid, to the Owner of the Lot, and a copy thereof has been recorded by the Association. Such Notice of Lien must state (a) the amount of the assessment and interest, costs (including attorneys' fees) and penalties, (b) a description of the Lot against which the assessment was made, and (c) the name of the record Owner of the Lot. The Notice of Lien shall be signed and acknowledged by an officer of the Association. The lien shall continue until fully paid or otherwise satisfied.

Section 5.11. Foreclosure Sale. The Association may enforce the lien by sale of the applicable Lot or Lots. In exercising its power of sale, the Association shall comply with such requirements and conditions and shall follow such procedure as may be established under the Act relative to the enforcement of such liens.

Unless otherwise permitted by law, no sale to foreclose an assessment lien may be conducted until (1) the Association, its agent or attorney has first executed and recorded a notice of default and election to sell the Lot or cause its sale to satisfy the assessment lien ("Notice of Default"), and (2) the delinquent Owner or such Owner's successor in interest has failed to pay the amount of the delinquent assessment and interest, costs (including attorneys' fees) and expenses incident to its

Prior to any annexation under this Section, detailed plans for the development of the additional property must be submitted to the VA and the VA must first determine that such plans are in accordance with the development plan and so advise Declarant.

Section 10.03 Other Additions. Subject to NRS 116.2122 and any other applicable law, additional real property may be annexed to the Property and brought within the general plan and scheme of this Declaration upon approval of (a) all owners of such additional real property, and (b) at least sixty-seven percent (67%) of the voting power of the Association; provided, however, that the amount of real property annexed to the Property pursuant to this Section 11.03 shall not exceed ten percent (10%) of the original Property, and the number of Lots in the Property shall not in any event exceed the maximum number of Lots which Declarant has herein reserved the right to create.

Section 10.04 Rights and Obligations of Members of Added Territory. Subject to the provisions of Section 11.05, upon the recording of an appropriate "Annexation Amendment" all provisions contained in this Declaration shall apply to the real property described in such Annexation Amendment (the "added territory") in the same manner as if it were originally covered by this Declaration. Thereafter, the rights, powers and responsibilities of the parties to this Declaration with respect to the added territory shall be the same as with respect to the property originally covered hereby, and the rights, powers and responsibilities of the Owners, lessees and occupants of Lots within the added territory, as well as within the property originally subject to this Declaration, shall be the same as if the added territory were originally covered by this Declaration. Upon annexation to the Property, the Owners of Lots located in the added territory shall share in the payment of assessments to the Association. Voting rights attributable to the Lots in the added territory shall not vest until annual assessments have commenced as to such Lots. Upon annexation of any added territory, all Developmental Rights (as defined in NRS 116.11034) reserved with respect to such added territory shall be deemed to have expired.

Section 10.05 Annexation Amendment. The additions authorized under Sections 10.02 and 10.03 shall be made by recording an Annexation Amendment to this Declaration which shall (a) describe the added territory, (b) assign an identifying number to each new Lot created, (c) reallocate the allocated interests among all Lots to the extent required by NRS 116.2110, and (d) describe any Association Property. The Annexation Amendment shall be signed by Declarant. Upon recordation of said Annexation Amendment, and upon compliance with NRS 116.2109(6) with respect to any amendment of the Plat, said added territory shall become and constitute a part of the Property, become subject to this Declaration and encompassed within the general plan and scheme of covenants, conditions, restrictions, reservation of easements and equitable servitudes contained herein, and become subject to the functions, powers and jurisdiction of the Association; and the Owners of Lots in the added territory shall automatically become Members.

ARTICLE XI
MISCELLANEOUS

Section 11.01 Duration of Declaration. Each of the provisions contained in this Declaration shall run with the land and continue and remain in full force and effect perpetually, unless a Declaration of Termination approved by at least eighty percent (80%) of the voting power of the Association is recorded.

Section 11.02 Effect of Provisions of Declaration. Each provision of this Declaration, and any agreement, promise, covenant and undertaking to comply with each provision of this Declaration, and any necessary exception or reservation or grant of title, estate, right or interest to effectuate any provision of this Declaration (i) shall be deemed incorporated in each deed or other instrument by which any right, title or interest in the Property or in any Lot is granted, devised or conveyed, whether or not set forth or referred to in such deed or other instrument; (ii) shall, by virtue of acceptance of any right, title or interest in the Property or in any Lot by an Owner, be deemed accepted, ratified, adopted and declared as a personal covenant of such Owner, and shall be binding on such Owner and such Owner's heirs, personal representatives, successors and assigns to, with and for the benefit of the Association and with and for the benefit of any other Owner; (iii) shall be deemed a real covenant by Declarant for itself, its successors and assigns and also an equitable servitude, running, in each case, as a burden with and upon the title to the Property and each Lot for the benefit of the Property and each Lot; and (iv) shall be deemed a covenant, obligation and restriction secured by a lien in favor of the Association, burdening and encumbering the title to the Property and each Lot in favor of the Association.

Section 11.03 Enforcement and Remedies. In addition to any other remedies herein provided, each provision of this Declaration may be enforced by the Association, or any Owner by a proceeding for a prohibitive or mandatory injunction or by a suit or action to recover damages. By accepting a deed to his Lot each Owner hereby acknowledges and agrees that every violation of this Declaration shall create an irrebuttable presumption of immediate and irreparable damage without adequate remedy at law, entitling Declarant, the Association and/or any Owner to obtain a temporary restraining order, preliminary or permanent injunction (mandatory or prohibitory) abating such violation. If any court proceedings are instituted in connection with the rights of enforcement and remedies provided in this Declaration, the prevailing party shall be entitled to recover from the losing party any costs and expenses in connection therewith, including reasonable attorneys' fees.

Section 11.04 Protection of Encumbrances. Notwithstanding any other provision hereof, no amendment, violation, breach of, or failure to comply with any provision of this Declaration and

EXHIBIT F

EXHIBIT F

DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 9641 CHRISTINE VIEW,

Plaintiff,

vs.

FEDERAL NATIONAL MORTGAGE ASSOCIATION; THE COOPER CASTLE LAW FIRM LLP; DON MORENO AND RIETA MORENO,

Defendants.

CASE NO. A-13-690924-C

DEPT. NO. VI

DEPOSITION OF KIM KALLFELZ

Taken on Monday, August 24, 2015

At 2:17 p.m.

At 1645 Village Center Circle
Suite 200
Las Vegas, Nevada

Reported by: John L. Nagle, CCR 211

APPEARANCES:

For Kim Kallfelz:

LEACH JOHNSON SONG & GRUCHOW
8945 West Russell Road
Suite 330
Las Vegas, Nevada 89148
BY: RYAN D. HASTINGS, ESQ.
Ph. (702)538-9074; Fax (702)538-9113
rhastings@leachjohnson.com

For Defendant, Federal National Mortgage Association:

BROOKS HUBLEY LLP
1645 Village Center Circle
Suite 200
Las Vegas, Nevada 89134
BY: MICHAEL R. BROOKS, ESQ.
Ph. (702)851-1191; Fax (702)851-1198
mbrooks@brookshubley.com

INDEX

EXHIBITS

(Deposition Exhibit A marked.)

KIM KALLFELZ,

having been first duly sworn, was

examined and testified as follows:

EXAMINATION

BY MR. BROOKS:

Q. Will you please state your name and spell it for the record?

A. Kim Kallfelz, K-a-l-l-f-e-l-z.

Q. And, Ms. Kallfelz, are you here to testify in response to a subpoena duces tecum that was served on Kallfelz Team Association Management?

A. Yes.

Q. And I'm showing you a document marked as Exhibit A. We're going to mark that as Exhibit A.

Have you seen this document before?

A. Yes.

Q. Is this a document that notified you of the obligation to appear to testify today?

A. It looks like it.

Q. And when did you find out that you would be testifying today?

A. Quite a while ago. I can't remember the

priority and superpriority pieces?

MR. HASTINGS: Objection to the extent that it calls for a legal conclusion.

You can answer.

THE WITNESS: That's their business. I don't --

BY MR. BROOKS:

Q. Okay.

A. There's no way for me to answer that.

Q. Okay. So have you ever reviewed the actual notices that are sent out to determine whether or not there's actual itemization of superpriority or subpriority pieces?

A. In the sub or super, there's -- I don't look at that. I look at what they're charging for dues, late fees, abatements or whatever, you know -- any fees that should be on there, I look at every ledger before it gets, you know -- goes to foreclosure or even as it's going forward.

Q. And there's no calculation of the superpriority amounts in that regard?

A. No.

Q. Then the next -- there's going to be three of these, so this is the second one.

"My objective is just to document the fact

A. Could you repeat that question?

Q. Did you or anybody at Kallfelz Team communicate to Nevada Association Services that the budgets for the association had been adopted in a timely fashion and consistent with Nevada law?

A. I don't know that has anything to do with collections.

Q. Only the superpriority amount. Okay.

Let me check my notes really quick.

I'm just about done, I believe. Give me a second. Actually, I had a cheat sheet I was using, and either I lost it or I think --

THE COURT REPORTER: Go off the record?

MR. BROOKS: Yeah, go off the record.

(Discussion off the record.)

BY MR. BROOKS:

Q. Actually, just one last question.

The documents that you brought with you today, have those all been delivered to our office?

A. Just the minutes.

MR. HASTINGS: She had forwarded me some minutes that I haven't had a chance to go through that will need to be redacted before I can forward them to you, but other than that, everything else has been produced, at least that I was provided with.

REPORTER'S CERTIFICATE

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

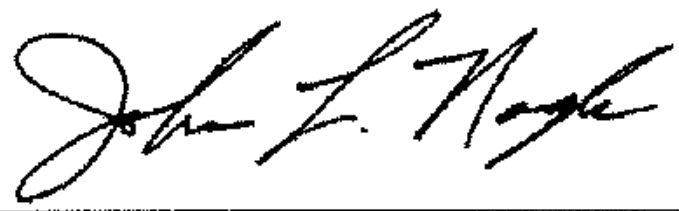
I, John L. Nagle, a Certified Court Reporter licensed by the State of Nevada, do hereby certify:

That I reported the taking of the deposition of KIM KALLFELZ on Monday, August 24, 2015, commencing at the hour of 2:17 p.m. That prior to being examined, the witness was by me duly sworn to testify to the truth, the whole truth, and nothing but the truth.

That I thereafter transcribed my said stenographic notes via computer-aided transcription into written form, and that the typewritten transcript of said deposition is a complete, true and accurate transcription of my said stenographic notes taken down at said time. That review of the transcript was requested.

I further certify that I am not a relative, employee or independent contractor of counsel involved in said action; nor a person financially interested in said action; nor do I have any other relationship that may reasonably cause my impartiality to be questioned.

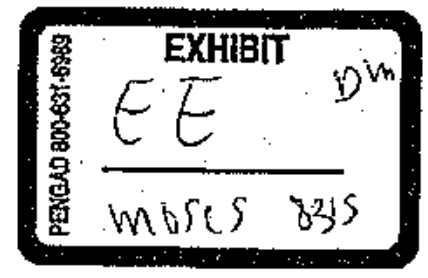
IN WITNESS WHEREOF, I have subscribed my name this 1st day of September, 2015.



John L. Nagle, CCR 211

EXHIBIT G

EXHIBIT G



First American Title Insurance Company

MORTGAGE SERVICES DIVISION
2250 CORPORATE CIRCLE, SUITE 350, HENDERSON, NV 89074

AUGUST 13, 2013

NEVADA ASSOCIATION SERVICES (N.A.S.) (HOA)
6224 W. DESERT INN ROAD, STE A
LAS VEGAS, NV 89146
ATTN: JUNE GERBER

REFERENCE: **N56960/MORENO**
OUR ORDER NUMBER: **4515977**

THE ITEMS ENCLOSED WERE PREPARED FOR THE SOLE USE OF THE HEREIN-NAMED TRUSTEE. THESE ITEMS SHOULD NOT BE RELIED UPON BY ANY THIRD PARTY AS A CONDITION OF TITLE.

First American Title Insurance Company
Mortgage Services Division

AUGIE JIMENEZ
TITLE OFFICER
PH: 702-222-4273
FX: 866-515-8363

ENCLOSURE

ORDER NO: 4515977
REFERENCE NO: N56960
TITLE OFFICER: AUGIE JIMENEZ
PRODUCT TYPE: NEVADA HOA

PUBLICATION ENDORSEMENT

Attached to Guarantee No. 4515977
Customer Reference No. N56960/MORENO
Issued By

First American Title Insurance Company
a corporation, herein called the Company

THE COMPANY HEREBY ASSURES THE ASSURED THAT, SUBSEQUENT TO AUGUST 16, 2010, THE DATE OF THE GUARANTEE ISSUED UNDER THE ABOVE NUMBER, NO MATTERS ARE SHOWN BY THE PUBLIC RECORDS WHICH WOULD AFFECT THE ASSURANCES IN SAID GUARANTEE OTHER THAN THE FOLLOWING:

1. TAXES, BONDS AND ASSESSMENTS NOT EXAMINED. TAX AND BOND REPORT TO FOLLOW, IF REQUESTED.

2. **WE HEREBY ADD THE FOLLOWING TO ITEM NO. 6.**

NOTE 1: NOTICE OF DEFAULT RECORDED 09/07/2010 AS INSTRUMENT NO. 201009070001254 OF OFFICIAL RECORDS.

NOTE 2: AN INSTRUMENT ENTITLED "CORPORATION ASSIGNMENT OF DEED OF TRUST NEVADA", RELATING TO THE ABOVE MENTIONED DEED OF TRUST, WAS RECORDED 09/13/2010 AS INSTRUMENT NO. 201009130000628 OF OFFICIAL RECORDS, EXECUTED BY MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC TO BAC HOME LOANS SERVICING, LP FKA COUNTRYWIDE HOME LOANS SERVICING LP .

NOTE 3: A DOCUMENT RECORDED 09/13/2010 AS INSTRUMENT NO. 201009130000629 OF OFFICIAL RECORDS EXECUTED BY BAC HOME LOANS SERVICING, LP FKA COUNTRYWIDE HOME LOANS SERVICING LP PROVIDES THAT RECONTRUST COMPANY, N.A WAS SUBSTITUTED AS TRUSTEE UNDER THE DEED OF TRUST.

NOTE 4: THE TERMS AND PROVISIONS CONTAINED IN THE DOCUMENT ENTITLED "CERTIFICATE, STATE OF NEVADA, FORECLOSURE MEDIATION PROGRAM" RECORDED 12/13/2010 AS INSTRUMENT NO. 201012130000780 OF OFFICIAL RECORDS

NOTE 5: A NOTICE OF TRUSTEE'S SALE DATED 12/09/2010, EXECUTED BY RECONTRUST COMPANY, N.A , TRUSTEE, RECORDED 12/13/2010 AS 201012130000781 OF OFFICIAL RECORDS. SAID NOTICE SETS FORTH, AMONG OTHER ITEMS, A PURPORTED SALE DATE OF 12/29/2010 AT 10:00 A.M.

NOTE 6: A NOTICE OF TRUSTEE'S SALE DATED 03/15/2011, EXECUTED BY RECONTRUST COMPANY, N.A , TRUSTEE,, RECORDED 03/18/2011 AS 201103180002380 OF OFFICIAL RECORDS. SAID NOTICE SETS FORTH, AMONG OTHER ITEMS, A PURPORTED SALE DATE OF 04/05/2011 AT 10:00 A.M.

3. THE TERMS AND PROVISIONS CONTAINED IN THE DOCUMENT ENTITLED "RESCISSION OF ELECTION TO DECLARE DEFAULT NEVADA" RECORDED 10/06/2011 AS INSTRUMENT NO. 201110060003101 OF OFFICIAL RECORDS.

NOTE 7: AN INSTRUMENT ENTITLED "ASSIGNMENT OF DEED OF TRUST", RELATING TO THE ABOVE MENTIONED DEED OF TRUST, WAS RECORDED 06/01/2012 AS INSTRUMENT NO. 201206010002535 OF OFFICIAL RECORDS, EXECUTED BY MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC TO BANK OF AMERICA, N.A, SUCCESSOR BY MERGER TO BAC HOME LOANS SERVICING, LP FKA COUNTRYWIDE HOME LOANS SERVICING, LP.

NOTE 8: AN INSTRUMENT ENTITLED "ASSIGNMENT OF DEED OF TRUST", RELATING TO THE ABOVE MENTIONED DEED OF TRUST, WAS RECORDED 10/19/2012 AS INSTRUMENT NO. 201210190000325 OF OFFICIAL RECORDS, EXECUTED BY BANK OF AMERICA, N.A TO FEDERAL NATIONAL MORTGAGE ASSOCIATION.

NOTE 9: A DOCUMENT RECORDED 07/11/2013 AS INSTRUMENT NO. 201307110000933 OF OFFICIAL RECORDS EXECUTED BY FEDERAL NATIONAL MORTGAGE ASSOCIATION BY SETERUS, INC, AS ITS ATTORNEY IN FACT PROVIDES THAT COOPER CASTLE LAW FIRM, LLP, A MULTI JURIDICTIONAL LAW FIRM WAS SUBSTITUTED AS TRUSTEE UNDER THE DEED OF TRUST.

4. WE HEREBY ADD THE FOLLOWING TO ITEM NO. 7.

NOTE 1: AN INSTRUMENT ENTITLED "ASSIGNMENT OF DEED OF TRUST", RELATING TO THE ABOVE MENTIONED DEED OF TRUST, WAS RECORDED 07/11/2012 AS INSTRUMENT NO. 201207110002252 OF OFFICIAL RECORDS, EXECUTED BY MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC TO BANK OF AMERICA, N.A,.

5. THE TERMS AND PROVISIONS CONTAINED IN THE DOCUMENT ENTITLED "FULL RECONVEYANCE" RECORDED 09/24/2012 AS INSTRUMENT NO. 201209240001268 OF OFFICIAL RECORDS.

6. WE HEREBY ADD THE FOLLOWING TO ITEM NO. 8.

7. THE TERMS AND PROVISIONS CONTAINED IN THE DOCUMENT ENTITLED "RELEASE OF LIEN" RECORDED 09/24/2010 AS INSTRUMENT NO. 201009240000419 OF OFFICIAL RECORDS.

8. WE HEREBY ADD THE FOLLOWING TO ITEM NO. 9

9. THE TERMS AND PROVISIONS CONTAINED IN THE DOCUMENT ENTITLED "RELEASE OF LIEN FOR SOLID WASTE SERVICE" RECORDED 03/23/2011 AS INSTRUMENT NO. 201103230001932 OF OFFICIAL RECORDS.

10. THE TERMS AND PROVISIONS CONTAINED IN THE DOCUMENT ENTITLED "RELEASE OF LIEN FOR SOLID WASTE SERVICE" RECORDED 04/27/2011 AS INSTRUMENT NO. 201104270000112 OF OFFICIAL RECORDS.

11. THE TERMS AND PROVISIONS CONTAINED IN THE DOCUMENT ENTITLED "RELEASE OF LIEN FOR SOLID WASTE SERVICE" RECORDED 04/27/2011 AS INSTRUMENT NO. 20110427000129 OF OFFICIAL RECORDS.

12. WE HEREBY ADD THE FOLLOWING TO ITEM NO. 10

NOTE 1: NOTICE OF DEFAULT RECORDED 08/16/2010 AS INSTRUMENT NO. 201008160002331 OF OFFICIAL RECORDS.

NOTE 2: A NOTICE OF TRUSTEE'S SALE DATED 02/07/2012, EXECUTED BY NEVADA ASSOCIATION SERVICES, INC, RECORDED 02/10/2012 AS 201202100000792 OF OFFICIAL RECORDS. SAID NOTICE SETS FORTH, AMONG OTHER ITEMS, A PURPORTED SALE DATE OF 03/09/2012 AT 10:00 A.M.

13. WE HEREBY ADD THE FOLLOWING

14. A CLAIM OF LIEN RECORDED 11/04/2011 AS INSTRUMENT NO. 201111040002001 OF OFFICIAL RECORDS.
LIEN CLAIMANT: REPUBLIC SERVICES.
AMOUNT: $128.46.

NOTE 1: ADDITIONAL NOTICES SHOULD BE SENT TO:

REPUBLIC SERVICES.
P. O. BOX 98508
LAS VEGAS, NEVADA 89193-8508

15. A CLAIM OF LIEN RECORDED 08/03/2012 AS INSTRUMENT NO. 201208030002565 OF OFFICIAL RECORDS.
LIEN CLAIMANT: REPUBLIC SERVICES..
AMOUNT: $129.86.

NOTE 1: ADDITIONAL NOTICES SHOULD BE SENT TO:

REPUBLIC SERVICES.
P. O. BOX 98508
LAS VEGAS, NEVADA 89193-8508

16. A CLAIM OF LIEN RECORDED 09/24/2012 AS INSTRUMENT NO. 201209240000502 OF OFFICIAL RECORDS.
LIEN CLAIMANT: CITY OF LAS VEGAS SEWER.
AMOUNT: $279.48.

NOTE 1: ADDITIONAL NOTICES SHOULD BE SENT TO:

CITY OF LAS VEGAS SEWER.
495 S. MAIN ST.
LAS VEGAS, NV 89101

17. A CLAIM OF LIEN RECORDED 11/13/2012 AS INSTRUMENT NO. 201211130000041 OF OFFICIAL RECORDS.
LIEN CLAIMANT: **REPUBLIC SERVICES..**
AMOUNT: **$292.14.**

NOTE 1: ADDITIONAL NOTICES SHOULD BE SENT TO:

REPUBLIC SERVICES.
P. O. BOX 98508
LAS VEGAS, NEVADA 89193-8508

18. A CLAIM OF LIEN RECORDED 05/16/2013 AS INSTRUMENT NO. 201305160001923 OF OFFICIAL RECORDS.
LIEN CLAIMANT: **REPUBLIC SERVICES..**
AMOUNT: **$247.16.**

NOTE 1: ADDITIONAL NOTICES SHOULD BE SENT TO:

REPUBLIC SERVICES.
P. O. BOX 98508
LAS VEGAS, NEVADA 89193-8508

THE TOTAL LIABILITY OF THE COMPANY UNDER SAID GUARANTEE AND UNDER THIS ENDORSEMENT THERETO SHALL NOT EXCEED, IN THE AGGREGATE, THE AMOUNT STATED IN SAID GUARANTEE.

THIS ENDORSEMENT IS MADE A PART OF SAID GUARANTEE AND IS SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE LIMITS OF LIABILITY AND THE OTHER PROVISIONS OF THE CONDITIONS AND STIPULATIONS THEREIN, EXCEPT AS MODIFIED BY THE PROVISIONS HEREOF.

DATED: AUGUST 13, 2013 AT 7:30 A. M.

First American Title Insurance Company

AUGIE JIMENEZ
TITLE OFFICER
PHONE:PH: 702-222-4273
FAX:FX: 866-515-8363

Form 1284
CLTA Guarantee Form No. 2
Date-Down Endorsement (5-18-67)

EXHIBIT H

EXHIBIT H

Cheyenne Ridge Homeowners Association

Delinquent Assessment Collection Policy

Timely payment of regular and special assessment is of critical importance to the Association. The failure of any unit's owner to pay monthly assessments when due creates a cash-flow problem for the Association and causes those owners who make timely payments of their assessment to bear a disproportionate share of the Association's financial obligations. Therefore, the Board of Directors enacts the following policies and procedures concerning collection of delinquent assessment accounts.

1. Assessments due dates. The regular annual assessment is payable in 12 equal monthly installments and shall be due on the first day of each calendar month. Special assessments shall be due and payable on the due date specified by the Board of Directors in the notice imposing the assessment or in the ballot present the special assessment to the members for approval.

2. Late Charges. Regular and special assessments shall be assessed a delinquent or late fee if not paid within 15 days after they become due, in which the unit owner's account with the Association shall be charged an amount equal to $10.00. Late charges shall be assessed to and made a part of the past due obligation of the unit's owner in accordance to Nevada law.

3. Collection Costs. As provided by Nevada law and the Associations governing documents, the Association is also entitled to charge and recover from the delinquent unit's owner all reasonable costs incurred in collections delinquent assessments including, but not limited to, the following: (i) reasonable charges imposed to defray the cost or preparing and mailing demands letters; (ii) legal expenses incurred; (iii) recording costs; and (iv) costs incurred with title companies or foreclosure service providers. Collection Costs shall be assessed to and made a part of the pas due obligation of the unit's owners in accordance to Nevada law.

4. Interest. If an assessment payment is delinquent for more than 30 days, interest shall be imposed on all delinquent assessments, late charges, and reasonable costs of collection at the annual percentage rate in accordance to Nevada law. Interest charges shall be assessed to and made part of the past due obligation of the unit 's owners in accordance with Nevada law.

5. Transfer of Account to Collection Agent. If the payment of the past due obligation of the unit's owner is delinquent for 60 days, the Association shall mail to the delinquent unit's owner a notice that provides: (1) a schedule of fees that may be charged if the unit's owner fails to pay the past due obligation, (2) a proposed repayment plan, and (3) a notice of the right to contest the past due obligation at a hearing before the executive board and the procedures for requesting such a hearing. If the account of the unit's owner remains delinquent for more than ten (10) business days following the mailing of the notice provided above, the Association shall refer the account to Nevada Association Services, Inc., a licensed collection agent, for further action. The Association may instruct the collection agent, on it's behalf, to pursue one of these alternatives: (1) non-judicial foreclosure proceedings, (2) court action, or (3) judicial foreclosure.

6. Demand Followed by Foreclosure proceedings. If the unit's owner fails to pay the past due obligation, or enter into a payment plan, within ten (10) business days following the Association's notice pursuant to paragraph 5 above, then NAS shall cause a demand letter to be sent to the delinquent homeowner

advising the unit's owner to pay the past due obligation, including all costs, and that collection actions will be taken should the delinquent unit's owner fail to pay the past due obligation.

7. Notice of claim of Lien. If payment for all sums that are then delinquent, including the delinquent assessment, late charges, costs, and reasonable attorney fees is not made within ten (10) days from the date of the demand letter as outlined in sectlon6, NAS shall cause to be recorded in the County Recorder's Office a Notice of Delinquent Assessment and Claim of Lien for all sums that are then delinquent. A recorded Notice of Delinquent Assessment provides recorded notice on the unit of the delinquent unit's owner, which is subject to foreclose pursuant to Nevada law.

8. Continued Foreclosure Proceedings. In the event that the unit's owner continues to fail to pay the past due obligation, NAS shall continue with foreclosure proceedings in accordance to Nevada law. The Association shall provide authorization to NAS to foreclose on the unit of the delinquent unit's owner.

9. Payment Agreement. Payment plan requests must be submitted in writing for approval. Any agreement entered into with the unit's owner shall be reasonable, as determined by the Board, and for the purpose of assuring that the best interest of the Association is served. Failure of an owner to comply with an approved payment schedule shall give the Board and/ or its agent the right to immediately continue the collection process with further notice to the owner.

10. Recovery of Attorney Fees and all Reasonable Costs of Collection. If a lawsuit or foreclosure proceeding is initiated by the Association to recover assessments, the Association is entitled, by Nevada law, to recover late charges and interest, reasonable costs of collection, reasonable attorney's fees, and all other costs, including title company charges and attorney fees in connection with the foreclosure process.

11. Effective Date of this Policy. This policy was duly adopted by the action of the Board of Directors on November 18, 2013, and shall be effective as of the same date. This resolution of the Board of Directors has be duly adopted November 18, 2013 meeting.

By: Jennifer Sanborn Attested By: _____

President Secretary

7

Amended Delinquency Policy- January 1, 2014

1. Late Charges. Regular and special assessments shall be assessed a delinquent or late fee if not paid within Sixty (60) days after they become due, in which the unit owner's account with the Association shall be charged an amount equal to$10.00 Ten Dollars. Late charges shall be assessed to and made a part of the past due obligation of the unit's owner in accordance to Nevada law.

By: Jennifer Sanders Attested By: _____

President Secretary

Electronically Filed
09/25/2015 02:54:36 PM

CLERK OF THE COURT

ROPP
MICHAEL F. BOHN, ESQ.
Nevada Bar No.: 1641
mbohn@bohnlawfirm.com
LAW OFFICES OF
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DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 9641 CHRISTINE VIEW, Plaintiff, vs. FEDERAL NATIONAL MORTGAGE ASSOCIATION; DON MORENO; and RIETA MORENO, Defendants	CASE NO.: A-13-690924-C DEPT NO.: VI

REPLY TO DEFENDANT FEDERAL NATIONAL MORTGAGE ASSOCIATION'S SUPPLEMENTAL OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND OPPOSITION TO DEFENDANT'S COUNTER-MOTION FOR SUMMARY JUDGMENT

Plaintiff, Saticoy Bay LLC Series 9641 Christine View ("plaintiff"), by and through its attorney, Michael F. Bohn, Esq., submits the following points and authorities in support of the motion for summary judgment filed by plaintiff on April 22, 2015 and in response to the additional arguments raised by defendant Federal National Mortgage Association (hereinafter "defendant") in its supplemental opposition, filed on September 14, 2015.

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POINTS AND AUTHORITIES

Legal Argument

1. The foreclosure deed is "conclusive" against the defendant.

At pages 5 to 7 of its motion for summary judgment, plaintiff cited NRS 116.31166 as authority that the recitals in the foreclosure deed recorded on September 26, 2013 are "conclusive proof" that all notices required for the HOA's foreclosure of its superpriority lien were timely served.

At page 4 of its supplemental opposition, defendant states that plaintiff's motion does not contain proof that a copy of the notice of foreclosure sale recorded on August 13, 2013 was mailed to defendant. To the contrary, Exhibit 7 to plaintiff's motion proves that a copy of the notice of foreclosure sale was mailed by certified mail to defendant's assignor, Bank of America, at 4500 Amon Carter Blvd., Fort Worth, TX 76155, which is the return address listed in the upper left hand corner of the assignment of deed of trust recorded on October 19, 2012 by which defendant claims to hold its interest in the property. A copy of the assignment of deed of trust is Exhibit 1.

At page 5 of its supplemental opposition, defendant asserts that "the HOA (or its agents) must properly follow the statutory requirements or else the foreclosure sale is void," and defendant cites NRS 107.080(5) and 107.080(6) as authority. Although NRS 116.31168(1) expressly incorporates the mandatory notice requirements contained in NRS 107.090, no language in NRS Chapter 116 incorporates the procedure provided in NRS 107.080(5) and NRS 107.080(6) that permits "any court of competent jurisdiction in the county where the sale took place" to declare the sale void if the person claiming not to have received notice commences "an action pursuant to subsection 5 within 60 days after the date on which the person received actual notice of such sale." Even if this statute did apply, defendant did not commence such an action within the 60 day time limit.

As set forth at pages 6 and 7 of plaintiff's motion for summary judgment, NRS 116.31166(2) expressly provides that a deed containing the recitals required by NRS 116.31166(1) "is conclusive against the unit's former owner, his or heirs and assigns, and all other persons." Defendant has not disputed that the foreclosure deed in this case contains the required recitals. As set forth at page 7 of plaintiff's motion for summary judgment, because the foreclosure deed issued to plaintiff is conclusive,

defendant is limited to pursuing a claim for damages against the HOA and its foreclosure agent. Moeller v. Lien, 25 Cal. App. 4th 822, 832, 30 Cal. Rptr. 2d 777 (1994).

In Moeller v. Lien, the respondent allowed a trustee's sale to go forward even though it had available cash deposits to pay off the loan. Id. at 828. The trial court set aside the sale because "[t]he value of the property was four times the amount of the debt/sales price." Id. at 829. The Court of Appeals reversed the trial court's order and stated:

> Thus **as a general rule, a trustor has no right to set aside a trustee's deed as against a bona fide purchaser for value by attacking the validity of the sale.** (Homestead Savings v. Damiento, supra, 230 Cal. App. 3d at p. 436.) The conclusive presumption precludes an attack by the trustor on a trustee's sale to a bona fide purchaser **even though there may have been a failure to comply with some required procedure which deprived the trustor of his right of reinstatement or redemption**. (4 Miller & Starr, supra, § 9:141, p. 463; cf. Homestead v. Damiento, supra, 230 Cal. App. 3d at p. 436.) The conclusive presumption precludes an attack by the trustor on the trustee's sale to a bona fide purchaser even where the trustee wrongfully rejected a proper tender of reinstatement by the trustor**. Where the trustor is precluded from suing to set aside the foreclosure sale, the trustor may recover damages from the trustee**. (Munger v. Moore (1970) 11 Cal. App. 3d 1, 9, 11 [89 Cal. Rptr. 323].)
>
> Id. at 831-832. (emphasis added)

In SFR Investments Pool 1, LLC v. U.S. Bank, N.A., 130 Nev., Adv. Op. 75, 334 P.3d 408, 417 (2014), the Nevada Supreme Court stated:

> But the choice of foreclosure method for HOA liens is the Legislature's, and the Nevada Legislature has written NRS Chapter 116 to allow nonjudicial foreclosure of HOA liens, subject to the special notice requirements and protections handcrafted by the Legislature in NRS 116.31162 through NRS 116.31168.

The Court also stated: "If revisions to the foreclosure methods provided for in NRS Chapter 116 are appropriate, **they are for the Legislature to craft, not this court**." Id. (emphasis added)

These statements are a clear instruction by the Supreme Court that it is not the role of the district courts to add provisions and conditions to the foreclosure process prescribed by NRS Chapter 116. Defendant's argument at pages 5 and 6 of its supplemental opposition that plaintiff must produce evidence of compliance beyond those required by NRS 116.31166 to receive the benefit of the "conclusive" presumption in NRS 116.31166 is just such an attempt to have this court revise the foreclosure process mandated by NRS Chapter 116.

Defendant contends at page 6 of its supplemental opposition that "the sale in the present case is

void as a matter of law if it is intended to apply to Fannie Mae," but this argument simply ignores the express direction by the Nevada Legislature that the foreclosure deed is "conclusive." To accept defendant's argument that defendant can eliminate this "conclusive" protection due to an alleged error committed by the HOA foreclosure agent would read NRS 116.31166 out of the statute.

2. The Nevada Supreme Court has expressly held that the HOA foreclosure notices do not need to specifically identify the superpriority amount.

At page 6 of its supplemental opposition, defendant claims that the language in NRS 116.31162(b)(1) requiring that the notice of default "[d]escribe the deficiency in payment" means that the notice must "describe the quality of the deficiency in payment including whether the deficiency was for assessments adopted pursuant to a periodic budget pursuant to the provisions of Nev. Rev. Stat. 116.3115." At page 7 of its supplemental opposition, defendant asserts that the deposition testimony of Chris Yergensen proves that "NAS was not sure that it ever actually was enforcing superpriority rights." Chris Yergensen actually testified that the calculation of the superpriority lien amount was an issue in another case pending before the Nevada Supreme Court (Exhibit C to supplemental opposition, p. 12) and that a homeowner would not care about the superpriority piece of the lien (Exhibit C to supplemental opposition, p. 28).

In SFR Investments Pool 1, LLC v. U.S. Bank, N.A., 130 Nev., Adv. Op. 75, 334 P.3d 408, 418 (2014), the Nevada Supreme Court expressly rejected the lender's argument that the notices provided by the HOA must separately identify the superpriority amount of the HOA's assessment lien:

> U.S. Bank further complains about the content of the notice it received. **It argues that due process requires specific notice indicating the amount of the superpriority piece of the lien and explaining how the beneficiary of the first deed of trust can prevent the superpriority foreclosure sale**. But it appears from the record that specific lien amounts were stated in the notices, ranging from $1,149.24 when the notice of delinquency was recorded to $4,542.06 when the notice of sale was sent. **The notices went to the homeowner and other junior lienholders, not just U.S. Bank, so it was appropriate to state the total amount of the lien.** As U.S. Bank argues elsewhere, dues will typically comprise most, perhaps even all, of the HOA lien. *See supra* note 3. And from what little the record contains, nothing appears to have stopped U.S. Bank from determining the precise superpriority amount in advance of the sale or paying the entire amount and requesting a refund of the balance. Cf. In re Medaglia, 52 F.3d 451, 455 (2d Cir.1995) ("[I]t is well established that **due process is not offended by requiring a person with actual, timely knowledge of an event that may affect a right to exercise due diligence** and take necessary steps to preserve that right."). (emphasis added)

Because the Nevada Supreme Court has expressly rejected the exact notice argument that defendant has asserted in its supplemental opposition, plaintiff is entitled to summary judgment on the issue of notice.

3. Defendant has produced no evidence that the super priority lien amount was paid prior to the sale held on September 6, 2013.

At page 8 of its supplemental opposition, defendant contends that Exhibit D to defendant's supplemental opposition proves that between the date that the notice of delinquent assessment lien was recorded and the date of the foreclosure sale held on September 6, 2013, the unit owner paid over $3,400 to the HOA foreclosure agent and that the HOA received nearly $1,500 of this amount.

At page 9 of its supplemental opposition, defendant asserts that these payments must be credited as payments against the super-priority lien and that Fannie Mae is entitled to judgment as a matter of law. Yet, the deposition testimony by Susan Moses excerpted at page 9 says no such thing. First, counsel requested that the deponent assume "that roughly $1,492 and some change was sent to the association," and the deponent replied: "I have no idea but I can look and try to figure it out myself." Counsel responded that he did the math, and he represented to the deponent that NAS forwarded $1,492.50 to the HOA.

Counsel then asked: "Do you know if there was any attempt by NAS to reconcile those payments against super priority rights that the association held?" The deponent responded: "I don't know." This is not "undisputed evidence" as claimed by defendant – it is not evidence at all because the deponent clearly stated that she had no personal knowledge of the issue defendant wanted to prove.

The undisputed fact is that neither defendant, nor its predecessors, tendered any amount to be applied to the HOA's superpriority lien as contemplated by the drafters of the UCIOA. In SFR Investments Pool 1, LLC v. U.S. Bank, N.A., 130 Nev., Adv. Op. 75, 334 P.3d 408, 412-413 (2014), the Nevada Supreme Court quoted from 1982 UCIOA § 3-116 cmt. 1; 1994 & 2008 UCIOA § 3-116 cmt. 2 that the super priority lien was specifically designed to induce lenders to pay the nine "months' assessments demanded by the association *rather than have the association foreclose on the unit.*" (emphasis in opinion) No provision in the UCIOA contemplates that the lender receive credit for

payments made by the unit owner.

At page 28 of the deposition transcript of Chris Yergensen attached as Exhibit C to defendant's supplemental opposition, counsel for defendant asked: "And the homeowner wouldn't necessarily know if the super priority piece is outstanding, correct?" The deponent replied: "I don't think the homeowner would care. Why would he care? Is he trying to save the property for your client because we could foreclose for either piece." The testimony of the deponent does not support defendant's argument that the lender must receive credit against the super priority lien amount for any payments made by the unit owner after default.

4. Because defendant and its predecessors did not tender any amount to cure the HOA's superpriority lien, the foreclosure of the HOA's lien extinguished defendant's deed of trust.

At pages 11 and 12 of its supplemental opposition, defendant asserts that the HOA foreclosure documents contain no recitals regarding the super priority component being foreclosed by the HOA. In SFR Investments Pool 1, LLC v. U.S. Bank, N.A., 130 Nev., Adv. Op. 75, 334 P.3d 408, 418 (2014), the Nevada Supreme Court expressly rejected the argument that the HOA foreclosure notices must specifically identify the amount of the super priority lien. The Court instead stated: "The notices went to the homeowner and other junior lienholders, not just U.S. Bank, so it was appropriate to state the total amount of the lien."

5. The CC&Rs do not modify the HOA's super priority lien rights.

At pages 13 and 14 of its supplemental opposition, defendant asserts that the Section 11.04 in the CC&Rs evidences the HOA's "intent not to enforce liens against mortgagees by giving mortgages protection against any violations." On the other hand, in SFR Investments Pool 1, LLC v. U.S. Bank, N.A., 130 Nev., Adv. Op. 75, 334 P.3d 408, 419 (2014), the Supreme Court expressly held that NRS 116.1104 prevents the HOA's lien rights from being varied or waived by agreement.

6. The HOA's management company had no obligation to notify the HOA foreclosure agent of the superpriority amount.

At page 16 of its supplemental opposition, defendant includes excerpts from the deposition of Kim Kallfelz that the management company for the HOA does not calculate or notify the HOA

foreclosure agent of the superpriority amount when notices are prepared. As noted above, the Nevada Supreme Court has expressly held that the foreclosure notices can properly state the "total amount of the lien." 334 P.3d at 418.

7. Defendant has produced no evidence that the HOA did not intend to enforce its superpriority lien.

At page 17 of its supplemental opposition, defendant includes an excerpt from the deposition of Chris Yergensen and contends that the HOA's practice of not communicating the super priority lien amount to the HOA foreclosure agent proves that the HOA's lien did not include a super priority piece. Again, the Nevada Supreme Court specifically held that an HOA lien does not need to specifically identify the super priority lien amount. Furthermore, there is no evidence that either the defendant or its predecessors made any effort to contact the HOA or its foreclosure agent to determine the super priority lien amount for the purpose of tendering the cure payment contemplated by the Comments to Section 3-116 of the UCIOA.

8. Plaintiff's rights in the Property are not affected by how the foreclosure sale proceeds are distributed.

At page 18 of its supplemental opposition, defendant includes an excerpt from the deposition of Susan Moses to argue that "NAS did not separate out the superpriority amounts for the statutorily required distribution."

In this regard, NRS 116.31166(2) expressly provides: "The receipt for the purchase money contained in such a deed is sufficient to discharge the purchaser from obligation to see to the proper application of the purchase money." Consequently, any claim by defendant that the HOA sales proceeds were not properly divided does not affect plaintiff's title to the property.

9. There is no requirement that an HOA's delinquent assessment collection policy mention the HOA's superpriority lien rights.

At pages 18 and 19 of its supplemental opposition, defendant asserts that the HOA's delinquent assessment collection policy does not mention the HOA's superpriority lien rights. However, because this document is directed to unit owners who are responsible for the entire amount of the HOA's lien, there is no logical reason for the document attached as Exhibit H to defendant's supplemental opposition

to mention the HOA's superpriority lien rights. As stated in the deposition testimony of Chris Yergensen discussed at page 6 above: "I don't think the homeowner would care. Why would he care?"

CONCLUSION

In SFR Investments Pool 1, LLC v. U.S. Bank, N.A., 130 Nev., Adv. Op. 75, 334 P.3d 408 (2014), the Nevada Supreme Court expressly rejected U.S. Bank's argument that the HOA foreclosure notices must specifically identify the super priority amount. The Court instead recognized that it was the lender's obligation to exercise "due diligence" to determine the super priority amount if the lender wanted to make the cure payment contemplated by the drafters of the UCIOA.

Defendant has produced no evidence that either the defendant or its predecessors made any effort to tender the amount necessary to cure the superpriority lien prior to the HOA foreclosure sale held on September 6, 2013.

The fact that the HOA and its foreclosure agent did not specifically identify the superpriority lien amount cannot be construed as evidence that the HOA did not foreclose on the superpriority component of its lien.

By reason of the foregoing, plaintiff respectfully submits that plaintiff's motion for summary judgment be granted and defendant's counter-motion for summary judgment should be denied.

DATED this 25th day of September, 2015.

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MICHAEL F. BOHN, ESQ., LTD.

By: / s / Michael F. Bohn, Esq. /
Michael F. Bohn, Esq.
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Attorney for plaintiff

CERTIFICATE OF SERVICE

Pursuant to NRCP 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee of the Law Offices of Michael F. Bohn, Esq., Ltd. and on the 25th day of September, 2015, an electronic copy of the **REPLY TO DEFENDANT FEDERAL NATIONAL MORTGAGE ASSOCIATION'S SUPPLEMENTAL OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND OPPOSITION TO DEFENDANT'S COUNTER-MOTION FOR SUMMARY JUDGMENT** was served on opposing counsel via the Court's electronic service system to the following counsel of record:

Michael R. Brooks, Esq.
Madeline L. DiCicco. Esq.
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/s/ /Marc Sameroff /
An Employee of the LAW OFFICES OF
MICHAEL F. BOHN, ESQ., LTD.

EXHIBIT 1

EXHIBIT 1

Inst #: 201210190000325
Fees: $18.00
N/C Fee: $0.00
10/19/2012 09:08:27 AM
Receipt #: 1349906
Requestor:
CORELOGIC
Recorded By: MSH Pgs: 2
DEBBIE CONWAY
CLARK COUNTY RECORDER

Recording Requested By:
Bank of America
Prepared By: **Danilo Cuenca**
800-444-4302
When recorded mail to:
Bank of America, N.A.
Document Processing Mail Code:TX2-979-01-19 Attn:Assignment Unit
4500 Amon Carter Blvd.
Fort Worth, TX 76155

DocID# **6858438294350474**
Tax ID: **138-07-622-006**
Property Address:
9641 Christine View Ct
Las Vegas, NV 89129-7849
NV0-ADT 20377037 E 10/4/2012

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 **FEDERAL NATIONAL MORTGAGE ASSOCIATION** whose address is **14221 Dallas Parkway, Suite 100, Dallas, TX 75254** 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: **COUNTRYWIDE HOME LOANS, INC.**
Made By: **DON MORENO, AND RIETA J MORENO, HUSBAND AND WIFE AS JOINT TENANTS WITH RIGHT OF SURVIVORSHIP**
Trustee: **COUNTRYWIDE TITLE CORPORATION**
Date of Deed of Trust: **10/18/2004** Original Loan Amount: **$174,950.00**

Recorded in **Clark County**, **NV** on: **11/2/2004**, book **N/A**, page **N/A** and instrument number **20041102-0005250**

Contact Federal National Mortgage Association for this instrument c/o Seterus, Inc, 14523 SW Millikan Way #200, Beaverton, OR 97005, telephone # 1-866-570-5277, which is responsible for receiving payments.

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 10-6-12

Bank of America, N.A.

By: Martha Munoz
Martha Munoz
Assistant Vice President

State of **California**
County of **Ventura**

On OCT 0 6 2012 before me, VAZRIK SARAFIANS, Notary Public, personally appeared Martha Munoz, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument 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 instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public VAZRIK SARAFIANS (Seal)
My Commission Expires: NOV/06/2013

VAZRIK SARAFIANS
Commission # 1867732
Notary Public - California
Los Angeles County
My Comm. Expires Nov 6, 2013

DocID# **6858438294350474**

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DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 9641 CHRISTINE VIEW,

Plaintiff,

v.

FEDERAL NATIONAL MORTGAGE ASSOCIATION; THE COOPER CASTLE LAW FIRM, LLP; DON MORENO AND RIETA MORENO,

Defendants.

Case No. A-13-690924-C

Dept. No. VI

SECOND SUPPLEMENTAL OPPOSITION TO MOTION FOR SUMMARY JUDGMENT AND COUNTERMOTION FOR SUMMARY JUDGMENT

HEARING DATE: NOV. 17, 2015
HEARING TIME: 8:30 AM

Federal National Mortgage Association ("Fannie Mae") hereby supplements its opposition to Saticoy Bay LLC Series 9641 Christine View's ("Saticoy") Motion for Summary Judgment. This Supplement is supported by the accompanying Memorandum of Points and Authorities, the accompanying exhibits, the records of this Court, and any other arguments presented to this Court at or before the hearing on Plaintiff's Motion.

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MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

In July 2008, Congress passed the Housing and Economic Recovery Act of 2008 ("HERA"), Pub. L. No. 110-289, 122 Stat. 2654, *codified at* 12 U.S.C. § 4511 *et seq.*, which established the Federal Housing Finance Agency ("FHFA" or the "Conservator") to regulate the Federal Home Loan Mortgage Corporation ("Freddie Mac"), Fannie Mae, and the Federal Home Loan Banks. In September 2008, FHFA placed Fannie Mae and Freddie Mac (together, "the Enterprises") into conservatorships "for the purpose of reorganizing, rehabilitating, or winding up [their] affairs." 12 U.S.C. § 4617(a)(2). In HERA, Congress granted FHFA an array of powers, privileges, and exemptions from otherwise applicable laws to enable FHFA to carry out its statutory functions when acting as Conservator of the Enterprises. Among these is a broad statutory "exemption" captioned "Property protection" that provides that when the Enterprises are under the conservatorship of FHFA, none of their property "shall be subject to . . . foreclosure . . . without the consent of [FHFA]." 12 U.S.C. § 4617(j)(3) ("Federal Foreclosure Bar").

On September 6, 2013, Nevada Association Services ("NAS"), on behalf of the Cheyenne Ridge HOA ("HOA"), conducted a homeowner's association foreclosure sale at which Saticoy Bay purchased the property at issue in this case for $26,800.00 ("HOA Sale"). *See* Plaintiff's Motion for Summary Judgment Exhibit 1, Trustee's Deed Upon Sale. Saticoy contends the HOA Sale extinguished Fannie Mae's interest in the subject property. In support, Saticoy relies on a Nevada statute that grants homeowners' associations a superpriority lien for uncollected dues owed to the homeowner's association under certain circumstances. See Nev. Rev. Stat. § 116.3116(2) ("State Foreclosure Statute"). The State Foreclosure Statute grants

homeowners' association liens superpriority for a limited amount above all other interests in a property and enables HOA superpriority lien holders to conduct a foreclosure sale, thereby extinguishing all junior interests.

The State Foreclosure Statute conflicts directly with the Federal Foreclosure Bar, which expressly precludes the involuntary extinguishment of Fannie Mae's property interest. Here, the Conservator did not consent to any HOA sale that extinguished Fannie Mae's interest in the Property. Under the Supremacy Clause, the State Foreclosure Statute must yield, and the HOA Sale did not extinguish Fannie Mae's interest.

In eight cases presenting the same dispositive legal issue, courts in Nevada Federal District Court recently granted summary judgment in favor of FHFA, Freddie Mac, and Fannie Mae. *See Skylights v. Byron*, No. 2:15-cv-0043-GMN-VCF, 2015 WL 3887061 (D. Nev. June 24, 2015); *Elmer v. Freddie Mac,* No. 2:14-cv-01999-GMN-NJK, 2015 WL 4393051 (D. Nev. July 14, 2015); *Premier One Holdings, Inc. v. Fannie Mae*, No. 2:14-cv-02128-GMN-NJK, 2015 WL 4276169 (D. Nev. July 14, 2015); *Williston Investment Grp., LLC v. JP Morgan Chase Bank, NA*, No. 2:14-cv-02038-GMN-PAL, 2015 WL 4276144 (D. Nev. July 14, 2015); *My Global Village, LLC v. Fannie Mae*, No. 2:15-cv-00211-RCJ-NJK, 2015 WL 4523501 (D. Nev. July 27, 2015); *1597 Ashfield Valley Trust v. Fannie Mae*, No. 2:14-cv-02123-JCM, 2015 WL 4581220 (D. Nev. July 28, 2015); *Fannie Mae v. SFR Investments Pool 1, LLC*, No. 2:14-CV0-2046-JAD-PAL, 2015 WL 5723647 (D. Nev. Sept. 28, 2015); *Saticoy Bay, LLC Series 1702 Empire Mine v. Fannie Mae*, No. 2:14-CV-01975-KJD-NJK, 2015 WL 5709484 (D. Nev. Sept. 29, 2015). The latter seven cases adopted the court's reasoning in *Skylights*. These cases held that the Federal Foreclosure Bar preempts any Nevada law, including the State Foreclosure Statute, that would otherwise permit the HOA's foreclosure of its

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superpriority lien to extinguish Fannie Mae's or Freddie Mac's interest in the Property while they are under FHFA's conservatorship. This Court should do the same.

The Court should deny Plaintiff's Motion for Summary Judgment, and grant Fannie Mae's Motion for Summary Judgment —holding that the HOA Sale did not extinguish Fannie Mae's interest and therefore the Deed of Trust continued to encumber the Property after the HOA Sale.

STATEMENT OF UNDISPUTED FACTS

1. A Deed of Trust listing Don and Rieta Moreno as the borrowers and Countrywide Home Loans, Inc. ("Countrywide") as the original lender was recorded on November 2, 2004. *See* Opposition to Motion for Summary Judgment Exhibit A. The Deed of Trust granted Countrywide and its successors and assigns a security interest in real property known as 9641 Christine View Court, Las Vegas 89129 (the "Property") to secure the repayment of a loan in the original amount of $174,950.00 (the "Loan"). *Id.*

2. On September 6, 2008, pursuant to HERA, FHFA's Director placed Fannie Mae and Freddie Mac into conservatorship. *See* Request for Judicial Notice, Exhibit I, Announcement of Fannie Mae conservatorship.

3. On March 17, 2010, Nevada Association Services ("NAS"), on behalf of the HOA, recorded a lien for delinquent assessments against the Property. *See* Plaintiff's Motion for Summary Judgment, Exhibit 3. Per the notice of delinquent assessments, the amount owing as of the date of preparation of the lien was $1,050.00. Plaintiff's Motion for Summary Judgment, Exhibit 3.

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4. On August 12, 2010, NAS, on behalf of the HOA, recorded a notice of default and election to sell against the Property. *See* Plaintiff's Motion for Summary Judgment *id.* Exhibit 4.

5. The Deed of Trust was assigned to Fannie Mae on October 6, 2012. This document was recorded on October 19, 2012 in the Official Records for Clark County as instrument number 20121019-000325. *See* Opposition to Motion for Summary Judgment, Exhibit D.

6. NAS, on behalf of the HOA, recorded a Second Notice of Trustee's Sale against the Property on August 15, 2013. *See* Plaintiff's Motion for Summary Judgment, Exhibit 7. Per the Notice of Trustee's Sale, the amount owed as of the time of initial publication of the Notice of Sale, totaled $2,712.17. *See* Plaintiff's Motion for Summary Judgment, Exhibit 7.

7. On September 26, 2013, a Trustee's Deed Upon Sale was recorded against the Property. *See* Plaintiffs Motion For Summary Judgment, Exhibit 1. The Trustee's Deed Upon Sale states that the Property was sold on September 6, 2013 to Saticoy Bay for a purchase price of $26,800.00. Plaintiffs Motion For Summary Judgment, Exhibit 1.

8. At no time did the Conservator consent to the HOA Sale extinguishing or foreclosing Fannie Mae's interest in Property. *See* Request for Judicial Notice, Ex. J (FHFA's Statement on HOA Super-Priority Lien Foreclosures (Apr. 21, 2015), www.fhfa.gov/Media/PublicAffairs/Pages/Statement-on-HOA-Super-Priority-Lien-Foreclosures.aspx).

STANDARD OF REVIEW

Fannie Mae hereby incorporates its Standard of Review from its Opposition to Motion for Summary Judgment by reference.

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LEGAL ARGUMENT

A. The Federal Foreclosure Bar Preempts Contrary State Law

The question before this Court is whether the Federal Foreclosure Bar preempts the State Foreclosure Statute. The answer in Nevada Federal Courts has repeatedly been in the affirmative. This Court should rule the same.

A federal statute expressly preempts contrary law when it "explicitly manifests Congress's intent to displace state law." *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1022 (9th Cir. 2013). This is the case here: the text of HERA declares that "[n]o property of the Agency shall be subject to levy, attachment, garnishment, foreclosure, or sale." 12 U.S.C. § 4617(j)(3). The Federal Foreclosure Bar automatically bars any nonconsensual limitation or extinguishment through foreclosure of any interest in property held by Fannie Mae while in conservatorship. All of these "adverse actions . . . could otherwise be imposed on FHFA's property under state law. Accordingly, Congress's creation of these protections clearly manifests its intent to displace state law." *Skylights*, 2015 WL 3887061, at *6; *accord Elmer*, 2015 WL 4393051, at *3-4; *Premier One*, 2015 WL 4276169, at *3; *Williston*, 2015 WL 4276144 at *3-4; *My Global Village*, 2015 WL 4523501, at *4 (the "Supremacy Clause . . . prevent[s] NRS 116.3116 from extinguishing Fannie's [Deed of Trust] in the Property without consent"). Therefore, the Federal Foreclosure Bar preempts the State Foreclosure Statute to the extent that the state statute otherwise would permit any such nonconsensual extinguishment.

Even if this Court were to depart from the reasoning in *Skylights* and the other cases cited *supra* at 3 and not deem that the express terms of Section 4617(j)(3) explicitly manifests Congress's preemptive intent, the statute nevertheless would preempt the State Foreclosure

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Law because "'state law is naturally preempted to the extent of any conflict with a federal statute.'" *Valle del Sol*, 732 F.3d at 1023 (quoting *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 372 (2000)). "[U]nder the Supremacy Clause . . . any state law, however clearly within a State's acknowledged power, which interferes with or is contrary to federal law, must yield." *Gade v. Nat'l Solid Wastes Mgm't Ass'n*, 505 U.S. 88, 108 (1992) (internal quotations and citations omitted). Therefore, conflict preemption occurs "where it is impossible for a private party to comply with both state and federal law" or "where the challenged state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Valle del Sol*, 732 F.3d at 1023 (internal quotations and citations omitted). In short, "state law that conflicts with federal law is without effect." *Cipollone v. Liggett Grp., Inc.*, 505 U.S. 504, 516 (1992).

Moreover, in applying this governing rule, a federal court evaluating another provision of HERA held that it preempted certain state laws because "[e]xposure to state law claims would undermine the FHFA's ability to establish uniform and consistent standards for the regulated entities, and thwart its mandate to assure their safe and sound operation. If [p]laintiffs' state claims were not preempted, liability based on these claims would create obstacles to the accomplishment of the policy goals set forth in [HERA]." *California ex rel. Harris v. FHFA*, No. 10-cv-03084, 2011 WL 3794942, at *16 (N.D. Cal. Aug. 26, 2011). In addition, courts applying the companion statute governing Federal Deposit Insurance Corporation ("FDIC") receiverships have similarly held that it supersedes otherwise-applicable state law. *See, e.g., FDIC v. Lowery,* 12 F.3d 995 (10th Cir. 1993) (concluding that local taxing authorities could not sell property owned by FDIC to satisfy tax liens without FDIC's consent and noting that "[t]he text of section 1825(b)(2) is unequivocal and suggests no

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implied exception"); *GWN Petroleum Corp. v. Ok-Tex. Oil & Gas, Inc.*, 998 F.2d 853 (10th Cir. 1993) (concluding that a private judgment holder's attempt to garnish proceeds from the sale of oil and gas paid to the FDIC was barred by Section 1825(b)(2)).[1]

Similarly, Congress's clear and manifest purpose in enacting Section 4617(j)(3) was to protect the nationwide operations of the Enterprises while in conservatorship from actions, such as the HOA Sale, that otherwise would deprive them of their interests in property. In so doing, Congress ensured that the Enterprises would not be subject to an array of conflicting state laws, such as those relied upon by LN Management, which could undermine the Conservator's efforts to restore and assure the safety and soundness of the Enterprises' business operations. Accordingly, the Federal Foreclosure Bar preempts any state law that would authorize the HOA Sale to effect the nonconsensual extinguishment of Fannie Mae's interest in the Property and thereby permit the transfer to Saticoy of free and clear title to the Property.

B. Section 4617(j)(3) Protects Fannie Mae's Property Interests

Saticoy may argue that the Federal Foreclosure Bar does not apply to the Property in this case. However, this argument is contradicted by the plain text of the statute: when Fannie Mae is in conservatorship imposed by FHFA, none of its property "shall be subject to . . . foreclosure[] . . . without the consent of [FHFA]." 12 U.S.C. § 4617(j)(3). The *Skylights* decision considered a variety of challenges to the application of the Federal Foreclosure Bar

[1] When analyzing HERA's provisions, courts have frequently turned to precedent interpreting the analogous receivership authority of the FDIC. *See, e.g.*, *Cnty. of Sonoma v. FHFA*, 710 F.3d 987, 993 (9th Cir. 2013) (referring to the FDIC's statutory authority in a related area as "analogous to 12 U.S.C. § 4617(f)"); *In re Fed. Home Loan Mortg. Corp. Derivative Litig.*, 643 F. Supp. 2d 790, 795 (E.D. Va. 2009) ("the Court is persuaded by decisions that have reached the same conclusion when interpreting [FIRREA], whose provisions regarding the powers of federal bank receivers and conservators are substantially identical to those of HERA."), *aff'd sub nom. Louisiana Mun. Police Retirement Sys. v. FHFA*, 434 F. App'x 188 (4th Cir. 2011).

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under materially identical facts as here, and rejected them all. *Skylights*, 2015 WL 3887061, at *8-10. This reasoning was adopted by and others courts in resolving similar cases. *See Elmer*, 2015 WL 4393051, at *3-4; *Premier One*, 2015 WL 4276169, at *3; *Williston*, 2015 WL 4276144 at *3-4; *My Global Village*, 2015 WL 4523501, at *4; *Ashfield*, 2015 WL 4581220, at *7; *Fannie Mae v. SFR*, 2015 WL 5723647; *Saticoy Bay, LLC Series 1702 Empire Mine*, 2015 WL 5709484. In each of these cases, the court held that an HOA foreclosure sale could not have extinguished the Enterprises' property interests pursuant to a straightforward application of the Federal Foreclosure Bar, guided by the case law interpreting the similar property protection provision applicable to FDIC receiverships, 12 U.S.C. § 1825(b)(2). The same is true here.

1. Section 4617(j)(3) Provides Broad Protection to Fannie Mae's Property Interests

Federal law defines the scope of property interests protected by statutes such as the Federal Foreclosure Bar broadly. *See Matagorda Cnty. v. Russell Law*, 19 F.3d 215, 221 (5th Cir. 1994). Courts have repeatedly held that mortgage liens constitute property for purposes of the analogous FDIC statute, § 1825(b)(2). "[T]he term 'property' in § 1825(b)(2) encompasses all forms of interest in property, including mortgages and other liens." *Simon v. Cebrick*, 53 F.3d 17, 20 (3d Cir. 1995); *see also S/N-1 REO Ltd. Liab. Co. v. City of Fall River*, 81 F. Supp. 2d 142, 150 (D. Mass. 1999) ("A lien held by the FDIC as mortgagee is 'property' within the meaning of § 1825(b)(2)"); *37 Huntington St., H, LLC v. City of Hartford*, 772 A.2d 633, 641 (Conn. 2001) (same); *Cambridge Capital Corp. v. Halcon Enterps., Inc.*, 842 F. Supp. 499, 503 (S.D. Fla. 1993) (same).

Here, Fannie Mae was the record beneficiary of the Deed of Trust at the time of the

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HOA Sale. *See* Opposition to Motion for Summary Judgment, Exhibit D. Thus, there can be no doubt that Fannie Mae's interest was protected at the time of the HOA Sale.

Foreclosure bars such as Section 4617(j)(3) and Section 1825(b)(2) bar other lien holders from extinguishing protected property interests through a foreclosure sale. *See Simon*, 53 F.3d at 20 (Section 1825(b)(2) "protect[s] the FDIC's mortgages from being extinguished without its consent through foreclosure"); *Matagorda*, 19 F.3d at 221 ("If the taxing units were allowed to foreclose their tax lien without the consent of the FDIC, the consensual mortgage lien . . . acquired by the FDIC . . . would be extinguished. This is forbidden by the plain wording of § 1825(b)(2)."); *Donna Indep. School Dist. v. Balli*, 21 F.3d 100, 101 (5th Cir. 1994) (holding that taxing units could not extinguish FDIC liens without FDIC's consent); *Beal Bank, SSB v. Nassau Cnty.*, 973 F. Supp. 130, 133 (E.D.N.Y. 1997) ("The language of § 1825(b)(2) unequivocally prohibits the institution of collection techniques, including foreclosure, sale or levy with regard to property owned by the FDIC."); *Cambridge Capital Corp. v. Halcon Enterps., Inc.*, 842 F. Supp. 499, 502 (S.D. Fla. 1993) ("Section 1825(b)(2) could not be more specific in prohibiting the extinguishment of an FDIC lien interest because it provides that no 'property' of the FDIC shall be subject to 'levy,' 'foreclosure,' or 'sale' without the 'consent of the FDIC.' This Court need look no further than the statute itself to determine that Congress has expressed its intent that no property of the FDIC—fee or lien—be subject to foreclosure without the FDIC's consent.").

In sum, just as courts routinely hold that foreclosures cannot extinguish property interests to which the FDIC has succeeded as receiver without its consent, foreclosure sales do not extinguish the property interests of Fannie Mae under Section 4617(j)(3) without FHFA's consent. *See Trembling Prairie Land Co. v. Verspoor*, 145 F.3d 686, 691 (5th Cir. 1998) ("In

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deference to the will of Congress, we hold that the tax sale at issue was conducted without the consent of the FDIC. Accordingly, the tax sale violated 12 U.S.C. § 1825(b)(2) and thus is null and void."); *FDIC v. Lee*, 130 F.3d 1139, 1143 (5th Cir. 1997) ("12 U.S.C. § 1825(b)(2) applies . . . and that the tax sale conducted by Jefferson Parish is null and void.").

2. The Protection of Section 4617(j)(3) Extends to Fannie Mae When It Is Under FHFA's Conservatorship

The Federal Foreclosure Bar necessarily protects Fannie Mae's property interests because the Conservator has succeeded by law to all of Fannie Mae's "rights, titles, powers, and privileges," 12 U.S.C. § 4617(b)(2)(A)(i). "Accordingly, the property of Fannie Mae effectively becomes the property of FHFA once it assumes the role of conservator, and that property is protected by section 4617(j)'s exemptions." *Skylights*, 2015 WL 3887061, at *8; *accord Elmer*, 2015 WL 4393051, at *3-4; *Premier One*, 2015 WL 4276169, at *3; *Williston*, 2015 WL 4276144 at *3-4; *My Global Village*, 2015 WL 4523501, at *4. This interpretation is supported by the text and structure of HERA. *See Skylights*, 2015 WL 3887061, at *8. Section 4617 concerns FHFA's "[a]uthority over" Fannie Mae and Freddie Mac when they are "critically undercapitalized" and thus must be placed into conservatorship or receivership. Furthermore, the protections of Section 4617(j)(3) apply in "any case in which [FHFA] is acting as a conservator or a receiver." 12 U.S.C. § 4617(j)(1).

Indeed, courts uniformly have rejected any argument that the immunities provided by Section 4617(j) do not apply to Fannie Mae (or other entities) while in FHFA conservatorship. *See Skylights*, 2015 WL 3887061, at *8 (collecting cases); *Nevada v. Countrywide Home Loans Servicing, LP,* 812 F. Supp. 2d 1211, 1218 (D. Nev. 2011) ("while under the conservatorship with the FHFA, Fannie Mae is statutorily exempt from taxes, penalties, and

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fines to the same extent that the FHFA is"); *FHFA v. City of Chicago*, 962 F. Supp. 2d 1044, 1064 (N.D. Ill. 2013) (argument is "meritless"); *accord Elmer*, 2015 WL 4393051, at *3-4; *Premier One*, 2015 WL 4276169, at *3; *Williston*, 2015 WL 4276144 at *3-4; *My Global Village*, 2015 WL 4523501, at *4. The courts have also rejected similar arguments in the context of FDIC receiverships. *See In re Cnty. of Orange*, 262 F.3d 1014, 1020 (9th Cir. 2001) ("We also note that subsection (b)(2) provides 'nor shall any involuntary lien attach to the property of the Corporation.' That language's plain meaning is that once the property belongs to the FDIC, that is, when the FDIC acts as receiver, no liens shall attach") (emphasis omitted) (quoting 12 U.S.C. § 1825(b)(2)); *Cnty. of Fairfax v. FDIC*, Civ. A. No. 92-0858, 1993 WL 62247, at *4 (D.D.C. Feb. 26, 1993) (rejecting contention that statutory penalty bar applicable to the FDIC as receiver, 12 U.S.C. § 1825(b)(3), only "exempts the FDIC *itself* from penalty assessment but not the [financial institution] for which the FDIC assumes receivership").

C. The HOA Sale Did Not Extinguish Fannie Mae's Interest in the Property

Section 4617(j)(3) of HERA operates in the same fashion as Section 1825(b)(2) would to preclude the HOA Sale from extinguishing Fannie Mae's interest in the Property. *First*, there can be no dispute that Fannie Mae—and, thus, its Conservator, FHFA—had an interest in the Property at the time of the HOA Sale. *See* Exhibit D from Opposition to Summary Judgment/Countermotion for Summary Judgment. Absent the Conservator's consent, Section 4617(j)(3) protects from extinguishment any form of property interest to which the Conservator has succeeded. *See supra*. *Second*, the Conservator did not consent to the extinguishment of Fannie Mae's property interest through the HOA's non-judicial foreclosure sale, and has announced so publicly. *See* Req. for Judicial Notice, Ex. J (FHFA's Statement

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on HOA Super-Priority Lien Foreclosures (Apr. 21, 2015), http://www.fhfa.gov/Media/PublicAffairs/Pages/Statement-on-HOA-Super-Priority-Lien-Foreclosures.aspx (FHFA "has not consented, and will not consent in the future, to the foreclosure or other extinguishment of any Fannie Mae or Freddie Mac lien or other property interest in connection with HOA foreclosures of super-priority liens.")).

Indeed, this case presents a particularly striking example of how Section 4617(j)(3) facilitates the Conservator's ability to preserve and conserve the assets of the Enterprises while in Conservatorship. *See* 12 U.S.C. § 4617(b)(2)(D). At the HOA Sale that purported to extinguish Fannie Mae's property interest, the Property was sold for $26,800.00, which is less than sixteen percent of the $174,950.00 Loan on the Property. *See* Opposition to Motion for Summary Judgment Exhibit A; Plaintiff's Motion for Summary Judgment Exhibit 1. As another court noted when interpreting the scope of Section 1825(b)(2), "it is the mortgage and lien interests that are the most important because . . . the largest category of assets which the Federal Deposit Insurance Corporation acquires in its capacity as receiver are loans secured by mortgage interests in real property." *Cambridge Capital*, 842 F. Supp. at 506. To allow the extinguishment, in direct contravention of a congressional directive, of the Enterprises' interests in the substantial number of properties subject to HOA superpriority liens would directly undermine the Conservator's ability to preserve and conserve the assets of the Enterprises.

CONCLUSION

Pursuant to 12 U.S.C. § 4617(j)(3), the HOA Sale here did not extinguish Fannie Mae's interest in the Property and did not convey the Property to Plaintiff free and clear of Fannie Mae's interest. Accordingly, Fannie Mae and FHFA respectfully request that this Court deny

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Plaintiff's Motion for Summary Judgment, grant its Counter Motion for Summary Judgment, and declare that the Plaintiff's interest in the Property, if any, is subject to the Deed of Trust.

Dated this 23 day of October, 2015.

BROOKS HUBLEY, LLP

By: _____

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CERTIFCATE OF SERVICE

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

I HEREBY CERTIFY that, pursuant to Eighth Judicial District Court Administrative Order 14-2 and EDCR 8.05(i), I electronically served, via the Eighth Judicial District Court electronic filing system and in place of service by mail, the **SECOND SUPPLEMENTAL OPPOSITION TO MOTION FOR SUMMARY JUDGMENT AND COUNTERMOTION FOR SUMMARY JUDGMENT** on the following parties and those parties listed on the Court's Master List in said action: **(NOTE: All parties not registered pursuant to Administrative Order 14-2 have been served by mail.):**

Law Offices of Michael F. Bohn, Esq.

Contact	Email
Eserve Contact	office@bohnlawfirm.com
Michael F Bohn Esq	mbohn@bohnlawfirm.com

I certify under penalty of perjury that the foregoing is true and correct and that this Certificate of Service was executed by me on the 23rd day of October, 2015, at Las Vegas, Nevada.

An Employee of BROOKS HUBLEY, LLP

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DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 9641 CHRISTINE VIEW, Plaintiff, v. FEDERAL NATIONAL MORTGAGE ASSOCIATION; THE COOPER CASTLE LAW FIRM, LLP; DON MORENO AND RIETA MORENO, Defendants.	Case No.: A-13-690924-C Dept.: VI

FANNIE MAE'S REQUEST FOR JUDICIAL NOTICE OF DOCUMENTS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT ON ALL CLAIMS INVOLVING TITLE

Federal National Mortgage Association ("Fannie Mae"), the defendant, counter-claimant, and third-party plaintiff, by and through its counsel of record, BROOKS HUBLEY LLP, hereby respectfully requests that this honorable court take judicial notice of the

documents attached as support for Fannie Mae's Second Supplemental Opposition to Motion for Summary Judgment and Countermotion for Summary Judgment.

Nevada Revised Statute ("NRS") 47.130 allows this Court to take judicial notice of facts generally known within the territorial jurisdiction or capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. NRS 47.130 is based upon Federal Rule of Evidence 201.[1]

Here, Fannie Mae respectfully requests that this court take judicial notice of the following public records, all documents duly noticed on FHFA's official government website:

A. Announcement of FHFA as Conservator to Fannie Mae and Freddie Mac, a true and correct copy of which is attached as Exhibit I.

B. FHFA's Statement on HOA Super-Priority Lien Foreclosures (Apr. 21, 2015), www.fhfa.gov/Media/PublicAffairs/Pages/Statement-on-HOA-Super-Priority-Lien Foreclosures.aspx, a true and correct copy of which is attached as Exhibit J.

DATE: October 23, 2015

BROOKS HUBLEY, LLP

By: _____
Michael R. Brooks, Esq.
Kyle N. Foster, Esq.
Attorneys for Defendant, Federal National Mortgage Association

[1] Federal Rule of Evidence 201 reads, in pertinent part:
(b) Kinds of Facts That May Be Judicially Noticed. The court may judicially notice a fact that is not subject to reasonable dispute because it:
(1) is generally known within the trial court's territorial jurisdiction; or
(2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.

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CERTIFICATE OF SERVICE

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

I HEREBY CERTIFY that on this 23rd day of October, 2015, pursuant to Eighth Judicial District Court Administrative Order 14-2 and EDCR 8.05(i), I electronically served, via the Eighth Judicial District Court electronic filing system and in place of service by mail, **FANNIE MAE'S STATEMENT OF MATERIAL FACTS AS TO WHICH THERE IS NO GENUINE DISPUTE** on the following parties and those parties listed on the Court's Master List in said action:

Law Offices of Michael F. Bohn, Esq.	
Contact	**Email**
Eserve Contact	office@bohnlawfirm.com
Michael F Bohn Esq	mbohn@bohnlawfirm.com

I certify under penalty of perjury that the foregoing is true and correct and that this Certificate of Service was executed by me on the 23rd day of October, 2015, at Las Vegas, Nevada.

An Employee of Brooks Hubley, LLP

1163.0050/166143

EXHIBIT I

EXHIBIT I

FHFA AS CONSERVATOR OF FANNIE MAE AND FREDDIE MAC

On September 6, 2008, FHFA used its authorities to place Fannie Mae and Freddie Mac into conservatorship. This was in response to a substantial deterioration in the housing markets that severely damaged Fannie Mae and Freddie Macs' financial condition and left them unable to fulfill their mission without government intervention.

A key component of the conservatorships is the commitment of the U.S. Department of the Treasury to provide financial support to Fannie Mae and Freddie Mac to enable them to continue to provide liquidity and stability to the mortgage market.

The Treasury Department has provided $189.5 billion in support, which includes an initial placement of $1 billion in both Fannie Mae and Freddie Mac at the time of the conservatorships and an additional cumulative $187.5 billion investment from the Treasury Department.

In accordance with the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 as amended by HERA, FHFA is authorized to "take such action as may be: (i) necessary to put the regulated entity in a sound and solvent condition; and (ii) appropriate to carry on the business of the regulated entity and preserve and conserve the assets and property of the regulated entity."

In addition, as conservator, FHFA assumed the authority of the management and boards of Fannie Mae and Freddie Mac during the period of the conservatorship. However, Fannie Mae and Freddie Mac continue to operate legally as business corporations and FHFA has delegated to the chief executive officers and boards of directors responsibility for much of the day-to-day operations of the companies. Fannie Mae and Freddie Mac must follow the laws and regulations governing financial disclosure, including the requirements of the Securities and Exchange Commission.

While FHFA has broad authority over Fannie Mae and Freddie Mac, the focus of the conservatorships is not to manage every aspect of their operations. Instead, FHFA leadership reconstituted Fannie Mae and Freddie Macs' boards of directors in 2008 and charged them with ensuring that normal corporate governance practices and procedures are in place. The boards are responsible for carrying out normal board functions, which are subject to FHFA review and approval on critical matters. This division of duties represents the most efficient structure for FHFA to carry out its responsibilities as conservator.

The agency launched initiatives to recover losses resulting from the housing crisis of 2008 and avoid further

liability to Fannie Mae and Freddie Mac. FHFA sought to reduce the amount of outstanding repurchases and worked to reduce the number of loans originated with manufacturing defects due to poor underwriting standards. Finally, FHFA undertook the necessary actions to reduce the number of operational loss events at Fannie Mae and Freddie Mac.

The 2012 **Strategic Plan for Enterprise Conservatorships** envisioned a new securitization infrastructure to replace Fannie Mae's and Freddie Mac's (the Enterprises) outdated infrastructures and attract private capital to share credit risk, which is now borne solely by the Enterprises.

FHFA proposed a common platform that would support the Fannie Mae's and Freddie Mac's existing business and upgrade their aging and inflexible infrastructures. This would save taxpayers the costs of maintaining and upgrading two parallel structures in the future, although building such a platform means up-front information technology costs. FHFA worked with the Enterprises to develop a plan for the design of a common securitization platform of hardware and software to serve both companies and also potentially be used in a post conservatorship market (which would depend on decisions by Congress).

We also worked with Fannie Mae and Freddie Mac on recommendations for an improved contractual and disclosure framework to support a more efficient and effective secondary mortgage market. The contractual and disclosure framework includes a complex set of rules, regulations, contractual agreements, and enforcement mechanisms that define the process of securitization.

In October 2012, FHFA released a white paper, **Building a New Infrastructure for the Secondary Mortgage Market**, proposing a framework for a common securitization platform and an improved contractual and disclosure framework and requested public input. The white paper sought to identify the core components (proposed as data validation, issuance, disclosure, bond administration, and master servicing) of mortgage securitization that will be needed in the housing finance system in the future. The securitization platform could be used by multiple issuers to process payments and perform other functions.

Along with the white paper, FHFA joined Fannie Mae and Freddie Mac (the Enterprises) in outreach to a full range of stakeholders, including a variety of industry participants—small and large companies, trade groups, advocacy organizations, vendors, originators, servicers, investors, and mortgage insurers, among others. We worked with the Enterprises to use the feedback gathered on the securitization platform prototype, to align key contract features and practices, and address additional protections investors require. This effort will take several years.

Long-term, continued operation in a government-run conservatorship is not sustainable for Fannie Mae and Freddie Mac because each company lacks capital, cannot rebuild its capital base, and is operating on a remaining, finite line of capital from taxpayers. Until Congress determines the future of Fannie Mae and Freddie Mac and the housing finance market, FHFA will continue to carry out its responsibilities as Conservator.

For the most recent information read FHFA's **2014 Strategic Plan for the Conservatorships.**

FHFA-Related Documents

Fact Sheet: FHFA Conservatorship (9/7/2008)
Fact Sheet: Questions and Answers on Conservatorship (9/7/2008)

Amended and Restated Fannie Mae Senior Preferred Stock Purchase Agreement (9/26/2008)
Amended and Restated Freddie Mac Senior Preferred Stock Purchase Agreement (9/26/2008)

News Releases Statements

Statement of OFHEO Director James B. Lockhart RE: Support of Secretary Paulson, the Administration, and the Federal Reserve in their efforts to stabilize the housing finance system) (7/13/2008)

Statement of FHFA Director James B. Lockhart at News Conference Announcing Conservatorship of Fannie Mae and Freddie Mac (9/7/2008)

FHFA Director Lockhart Remarks on Housing GSE Actions (9/7/2008)

FHFA Statement in Support for Multifamily Housing Finance Activities of the Enterprises While in Conservatorship (9/12/2008)

Statement of Federal Housing Finance Agency Regarding Contracts of Enterprises in Conservatorship (9/7/2008)
Interim Final Rule on Golden Parachute Payments (9/16/2008)

Corrected Statement of the Honorable James B. Lockhart III, Director, FHFA Before the Senate Committee on banking, Housing and Urban Affairs on the Appointment of FHFA as Conservator for Fannie Mae and Freddie Mac (9/23/2008)

Corrected Statement of the Honorable James B. Lockhart III, Director, FHFA, Before the House Committee on Financial Services on the Conservatorship of Fannie Mae and Freddie Mac (9/25/208)

Miscellaneous

Paulson Letter Re: Amended and Restated Senior Preferred Stock Purchase Agreements between the United States Department of the Treasury and the Federal National Mortgage Association and Federal Home Loan Mortgage Corporation (9/26/2008)

Related Documents/Links

Treasury and Federal Reserve Purchase Programs for GSE and Mortgage-Related Securities
Fact Sheet: Treasury Preferred Stock Purchase Agreement (9/7/2008)
Fact Sheet: Treasury MBS Purchase Program (9/7/2008)
Fact Sheet: Treasury GSE Credit Facility

Paulson Announces GSE Initiatives (7/13/2008)
Paulson Statement on Fannie Mae and Freddie Mac (7/11/2008)

Freddie Mac Warrant to Purchase Common Stock
Freddie Mac Certificate

Fannie Mae Senior Preferred Stock Purchase Agreement
Fannie Mae Warrant to Purchase Common Stock
Fannie Mae Certificate

Fannie Mae Senior Preferred Stock Purchase Agreement

EXHIBIT J

EXHIBIT J

Statement

Statement on HOA Super-Priority Lien Foreclosures

FOR IMMEDIATE RELEASE

4/21/2015

Title 12 United States Code Section 4617(j)(3) states that, while the Federal Housing Finance Agency acts as Conservator, "[no] property of the Agency shall be subject to levy, attachment, garnishment, foreclosure, or sale without the consent of the Agency." This law precludes involuntary extinguishment of Fannie Mae or Freddie Mac liens while they are operating in conservatorships and preempts any state law that purports to allow holders of homeownership association (HOA) liens to extinguish a Fannie Mae or Freddie Mac lien, security interest, or other property interest.

As noted in our December 22, 2014 statement on certain super-priority liens, FHFA has an obligation to protect Fannie Mae's and Freddie Mac's rights, and will aggressively do so by bringing or supporting actions to contest HOA foreclosures that purport to extinguish Enterprise property interests in a manner that contravenes federal law. Consequently, FHFA confirms that it has not consented, and will not consent in the future, to the foreclosure or other extinguishment of any Fannie Mae or Freddie Mac lien or other property interest in connection with HOA foreclosures of super-priority liens.

12/22/2014: **Statement of the Federal Housing Finance Agency on Certain Super-Priority Liens**

###

The Federal Housing Finance Agency regulates Fannie Mae, Freddie Mac and the 12 Federal Home Loan Banks. These government-sponsored enterprises provide more than $5.6 trillion in funding for the U.S. mortgage markets and financial institutions. Additional information is available at **www.FHFA.gov**, on Twitter **@FHFA**, **YouTube** and **LinkedIn**.

Contacts:

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DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 9641 CHRISTINE VIEW, Plaintiff, vs. FEDERAL NATIONAL MORTGAGE ASSOCIATION; DON MORENO; and RIETA MORENO, Defendants.	CASE NO.: A-13-690924-C DEPT NO.: VI Date of hearing: November 17, 2015 Time of hearing: 8:30 a.m.

PLAINTIFF'S REPLY TO SECOND SUPPLEMENTAL OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND OPPOSITION TO COUNTERMOTION FOR SUMMARY JUDGMENT

Plaintiff, Saticoy Bay LLC Series 9641 Christine View (hereinafter "plaintiff"), by and through its attorney, Michael F. Bohn, Esq. submits the following points and authorities in response to the second supplemental opposition to motion for summary judgment and countermotion for summary judgment filed by defendant Federal National Mortgage Association (hereinafter"Fannie Mae") on October 23, 2015.

POINTS AND AUTHORITIES

1. The provisions of 12 U.S.C. § 4617(j)(3) do not apply to the HOA foreclosure sale held in this case.

At page 6 of its supplemental opposition, Fannie Mae asserts that 12 U.S.C. § 4617(j)(3) "automatically bars any nonconsensual limitation or extinguishment through foreclosure of any interest in property held by Fannie Mae while in conservatorship." On the other hand, when properly read in the context of 12 U.S.C. § 4617 as a whole, the language in subsection (j)(3) does not apply to the HOA's nonjudicial foreclosure of its super priority lien against the Property.

By reading subsection (j)(3) out of context with the other provisions of 12 U.S.C. § 4617(j), Fannie Mae seeks to have this court apply subsection (j)(3) to a situation never contemplated by Congress. The United States Supreme Court has applied the following principles when interpreting statutory language: 1) "The plainness or ambiguity of statutory language is determined by reference to the language itself, **the specific context in which that language is used**, and the broader context of the statute as a whole." Robinson v. Shell Oil Co., 519 U.S. 337, 341 (1997); 2) "In ascertaining the plain meaning of the statute, the court must look to the particular statutory language at issue, as well as **the language and design of the statute as a whole**." Kmart Corp. v. Cartier, Inc., 486 U.S. 281, 291 (1988); and 3) "In determining the meaning of the statute, we look not only to the particular statutory language, but to **the design of the statute as a whole and to its object and policy.**" Crandon v. United States, 494 U.S. 152, 158 (1990). (emphasis added)

In the present case, the heading for subsection (j) of 12 U.S.C. § 4617 states that subsection (j) involves "Other Agency exemptions." The heading for subparagraph 1 of 12 U.S.C. § 4617(j) is the word "Applicability," and subparagraph 1 states that "[t]he **provisions of this subsection** shall **apply with respect to the Agency** in any case in which the Agency is acting as a conservator or receiver." (emphasis added) 12 U.S.C. § 4502(2) defines the term "Agency" to mean "the Federal Housing Finance Agency established under section 4511 of this title." 12 U.S.C. §4502(20) defines the term "regulated entity" to mean "the Federal National Mortgage Association and any affiliate thereof." In this case, Bank of America, N.A. assigned its deed of trust to Fannie Mae (the "regulated entity") and not to FHFA (the "Agency").

The heading for subparagraph (2) of 12 U.S.C. § 4617(j) is the word "Taxation," and subparagraph (2) of § 4617(j) states:

> The **Agency, including its franchise, its capital, reserves, and surplus, and its income**, shall be **exempt from all taxation imposed by any State, county, municipality, or local taxing authority**, except that **any real property of the Agency** shall be subject to State, territorial, county, municipal, or local taxing taxation to same extent according to its value as other real property is taxed, except that, notwithstanding the failure of any person to challenge an assessment under State law of the value of such property, and the tax thereon, shall be determined as of the period for which such tax is imposed. (emphasis added)

Consistent with the heading for "[o]ther Agency exemptions" at the beginning of Section 4617(j), subparagraph (2) provides the Agency (and not Fannie Mae) with an "exemption" **from all taxation** except for real property taxes assessed against "any real property of the Agency." Subparagraph (2) of Section 4617(j) does not exempt the Agency or any real property of the Agency from claims or liens by a person or entity other than "any State, county, municipality, or local taxing authority." Absolutely no language in subparagraph (2) grants the Agency or its real property any exemption from attachment or foreclosure of an HOA assessment lien.

Subparagraph (4) of Section 4617(j) bears the heading "[p]enalties and fines" and provides:

> The Agency shall not be liable for any amounts in the nature of penalties or fines, including those arising from the failure of any person to pay **any real property, personal property, probate, or recording tax** or any recording or filing fees when due. (emphasis added)

It is in this context (sandwiched between two subparagraphs exempting "the Agency" from taxation) that subparagraph (3) of 12 U.S.C. § 4617(j) bears the heading of "[p]roperty protection" and states:

> No **property of the Agency** shall be subject to levy, attachment, garnishment, foreclosure, or sale without the consent of the Agency, nor shall any involuntary lien attach to the **property of the Agency.** (emphasis added)

By taking this language out of context, Fannie Mae asserts that this language applies not only as an exemption from taxation by "any State, county, municipality, or local taxing authority" against property of FHFA, but that it also prevents the deed of trust recorded against property owned by Don and Rieta Moreno and assigned to Fannie Mae on October 19, 2012 from being extinguished by the nonjudicial foreclosure of the assessment lien (Exhibit 3 to motion for summary judgment, filed on April 22, 2015) recorded by the HOA on March 19, 2010 against property owned by Don and Rieta Moreno.

In the case of Robinson v. Shell Oil Co., 519 U.S. 337 (1997), the United States Supreme Court was faced with the task of interpreting the term "employees" in section 704(a) of Title VII of the Civil Rights Act of 1964 and whether the term referred only to current employees. The Court acknowledged that although the term may "have a plain meaning in the context of a particular section," the term did not have "the same meaning in all other sections and in all other contexts." As a result, the Court stated:

> Once it is determined that the term "employees" includes former employees in some sections, but not in others, **the term standing alone is necessarily ambiguous** and **each section must be analyzed to determine whether the context gives the term a further meaning** that would resolve the issue in dispute. (emphasis added)

Read in the context of the main heading and the other subparagraphs in 12 U.S.C. § 4617(j), the language in 12 U.S.C. § 4617(j)(3) clearly did not require that the HOA obtain "the consent of the Agency" before completing the nonjudicial foreclosure of its super priority lien recorded against the Property owned by Don and Rieta Moreno.

At page 3 of its second supplemental opposition, Fannie Mae asserts that 12 U.S.C. § 4617(j)(3) "expressly excludes the involuntary extinguishment of Fannie Mae's property interest," and Fannie Mae requests that this court adopt the interpretation of 12 U.S.C. § 4617(j)(3) adopted by the court in Skylights LLC v. Byron, No. 2:15-cv-0043-GMN-VCF, 2015 WL 3887061 (D. Nev. June 24, 2015) and other cases pending in the United States District Court, District of Nevada identified at pages 3 and 10 of the second supplemental opposition. As noted above, however, 12 U.S.C. § 4617(j)(3) only protects "property of the Agency," i.e. FHFA, and not "property of Fannie Mae." In each of the eight cases cited at pages 3 and 10 of Fannie Mae's second supplemental opposition, FHFA intervened in the action and joined in the motion filed with the court. FHFA is not a party to the present action, and FHFA has not intervened to file an opposition to plaintiff's motion for summary judgment.

At page 7 of its second supplemental opposition, Fannie Mae acknowledges that Section 4617(j)(3) is modeled after "the companion statute governing Federal Deposit Insurance Corporation ('FDIC') receiverships" in 12 U.S.C. § 1825(b)(2). Fannie Mae also cites cases that interpret 12 U.S.C. § 1825(b)(2) at pages 9 and 10 of its second supplemental opposition.

In the case of FDIC v. McFarland, 243 F.3d 876 (5th Cir. 2001), the Court of Appeals for the Fifth

Circuit affirmed the district court's holding that the FDIC lost its priority to an intervening judgment lien when the FDIC failed to reinscribe its deed of trust within the statutory period provided by Louisiana law. First, the court recognized that "[w]e read the provisions of FIRREA in context, cognizant of the statute's structure and purpose." Id. at 885. Second, the court considered the history of the statutory language at issue:

> Before the passage of FIRREA, section 1825 only included the provision currently codified as 1825(a), which articulated the FDIC's exemption from taxation while acting in its corporate capacity. FIRREA added subsection (b) to extend this exemption to the FDIC's role as receiver. **We are persuaded that section 1825(b)(2) merely extends the general exemption of the FDIC from taxation to the receivership context**. (emphasis added)
>
> Id. at 886.

Taking into account the title to section 1825 ("Exemption from taxation"), the heading assigned to subsection (a) ("General rule"), and the heading assigned to subsection (b)("Other exemptions"), the language confirmed "that section 1825(b)(2) was intended to address other exemptions from taxation than those stipulated in the 'general rule.'" Id.

The court then concluded:

> This Court has consistently interpreted section 1825(b)(2) in this fashion. We have found that this section prohibits state and local taxing authorities from foreclosing on property subject to an FDIC lien without its consent. **This Court has not applied the exemption of section 1825(b)(2) to liens not attached by state and local taxing authorities**. Indeed, we have repeatedly found that section 1825(b)(2) "represents the express will of Congress that the FDIC must consent to any deprivation of property *initiated by a state.*" (emphasis added)
>
> Id.

Consequently, by reading the language used in 12 U.S.C. §1825(b)(2) in context, the Fifth Circuit interpreted the exemption created by section 1825(b)(2) as protecting the "property of the Corporation" only from liens by state and local taxing authorities. This interpretation exactly matches plaintiff's reading of the similar language used in 12 U.S.C. § 4617(j)(3) set forth at pages 2 and 3 above.

In the case of Federal Deposit Insurance Corporation v. Lowery, 12 F.3d 995 (10th Cir. 1993), cited at page 7 of defendant's second supplemental opposition, the property owners conveyed title to their property to FDIC in satisfaction of a promissory note, and the Treasurer for Cleveland County, Oklahoma

notified FDIC that the property would be sold at public auction to pay delinquent ad valorem taxes. In affirming the granting of injunctive relief to the FDIC, the Court of Appeals stated: "We note, however, section 1825(b)(2) does not excuse payment of tax by the FDIC, it simply denies authorities the ability to lien a FDIC property **as a vehicle for collection of delinquent tax**." Id. at 996. (emphasis added)

In the case of GWN Petroleum Corp. v. Ok-Tex Oil & Gas, Inc., 998 F.2d 853 (10th Cir. 1993) the district court entered a summary judgment denying the plaintiff's attempt to garnish the production of oil and gas from leasehold estates and mineral interests subject to mortgages held by FDIC as receiver for First City Bank. The Court of Appeals approved the application of 12 U.S.C. § 1825(b)(2) to "FDIC when it is acting in its corporate capacity," but the Court of Appeals recognized that according to 12 U.S.C. § 1821(d)(13)(C), "[n]o attachment or execution may issue by any court upon assets in the possession of the receiver." Id. at 856.

The counterpart to 12 U.S.C. § 1821(d)(13)(C) appears in 12 U.S.C. § 4617(b)(11)(C) and provides:

> No attachment or execution **may issue by any court** upon **assets in the possession of the receiver**, or upon the charter, of a regulated entity **for which the Agency has been appointed receiver.** (emphasis added)

No counterpart of 12 U.S.C. § 1821(d)(13)(C) exists in 12 U.S.C. § 4617 for a regulated entity for which the Agency (FHFA) is acting "as conservator."

In the present case, no court was involved in the nonjudicial foreclosure of the HOA's super priority lien, and FHFA is acting only as a conservator, so the decision in GWN Petroleum Corp. does not support the arguments made by Fannie Mae.

At page 10 of its second supplemental opposition, Fannie Mae cites other cases that have applied 12 U.S.C. § 1825(b)(2) to prevent taxing units from extinguishing a mortgage acquired by the FDIC. At the bottom of page 10, Fannie Mae states that "foreclosure sales do not extinguish property interests of Fannie Mae under Section 4617(j)(3) without FHFA's consent" and cites the decisions in Trembling Prairie Land Co. v. Verspoor, 145 F. 3d 686 (5th Cir. 1998), and FDIC v. Lee, 130 F.3d 1139 (5th Cir. 1997). Both of those cases invalidated tax sales where the FDIC was named as a receiver of the bank holding a mortgage on the subject property. Neither case mentions 12 U.S.C. § 4617 or the application

of any statute to avoid the nonjudicial foreclosure of an HOA lien.

Because the language in 12 U.S.C. § 4617(j)(3) was clearly intended by Congress to protect FHFA only from the collection of taxes by a State or municipal authority, and because 12 U.S.C. § 4617(b)(11)(C) protects the FHFA only from attachment or execution issued by a court when FHFA has been appointed as a receiver, the HOA was not required to obtain the consent of FHFA before conducting the HOA foreclosure sale held on September 6, 2013.

2. The appointment of FHFA as conservator for Fannie Mae did not impair the right of the HOA to foreclose its super priority lien against the Property.

The deed of trust that Fannie Mae claims is protected by 12 U.S.C. § 4617(j)(3) was assigned to Fannie Mae on October 6, 2012 and not to FHFA. The assignment was recorded on October 19, 2012. The deed of trust has never been assigned to FHFA. As a result, the deed of trust is property of Fannie Mae and not "property of the Agency."

At page 11 of its second supplemental opposition, however, Fannie Mae asserts that because FHFA, as conservator, has "succeeded by law" to all of Fannie Mae's "right, titles, powers, and privileges" pursuant to 12 U.S.C. § 4617(b)(2)(A)(i), property interests held by Fannie Mae also qualify for protection as "property of the Agency." Fannie Mae quotes from the decision in Skylights LLC v. Byron, 2015 WL 3887061 (D. Nev. June 24, 2015), that "the property of Fannie Mae effectively becomes the property of FHFA once it assumes the role of conservator, and that property is protected by section 4617(j)'s exemptions."

On the other hand, while it might make sense to treat the property of an entity as if it was property of a receiver when the receiver is assigned the task of liquidating the entity, it makes no sense to treat the property of an entity that is not being liquidated as if the property was property of a conservator. This distinction is highlighted by the different goals assigned by 12 U.S.C. § 4617 to FHFA when it acts as a receiver than when it acts as a conservator. In particular, 12 U.S.C. § 4617(b)(2)(D) states that the Agency, as conservator, may take the actions "necessary to put the regulated entity in a sound and solvent condition" and "appropriate to carry on the business of the regulated entity and **preserve and conserve the assets and property of the regulated entity.**" (emphasis added)

On the other hand, when the Agency acts as a receiver, 12 U.S.C. § 4617(b)(2)(E) mandates:

> In any case in which the Agency is **acting as receiver**, the Agency **shall place the regulated entity in liquidation and proceed to realize upon the assets of the regulated entity** in such manner as the Agency deems appropriate, including the sale of assets, the transfer of assets to a limited-life regulated entity established under subsection (i), or the exercise of any other rights or privileges granted to the Agency under this paragraph. (emphasis added)

12 U.S.C. § 4617(b)(2)(H) directs the Agency, both as conservator and receiver, to "pay all valid obligations of the regulated entity that are due and payable at the time of the appointment of the Agency as conservator or receiver," but 12 U.S.C. § 4617(b)(2)(K)(i) expressly provides that it is **only when the Agency is appointed as receiver** that the language in 12 U.S.C. § 4617(b)(2)(A) affects the rights of creditors in the property of the regulated entity. In this regard, 12 U.S.C. § 4617(b)(2)(K)(i) states:

> Notwithstanding any other provision of law, **the appointment of the Agency as receiver** for a regulated entity pursuant to paragraph (2) or (4) of subsection (a) and its succession, by operation of law, to the rights, titles, powers, and privileges described in subsection (b)(2)(A) **shall terminate all rights and claims that the stockholders and creditors of the regulated entity may have against the assets or charter of the regulated entity or the Agency** arising as a result of their status as stockholders or creditors, except for the right to payment, resolution, or other satisfaction of their claims, as permitted under subsections (b)(9), (c), and (e). (emphasis added)

Because 12 U.S.C. § 4671(b) contains no similar language terminating the rights and claims of creditors against the assets of the regulated entity when the Agency is appointed as conservator for a regulated entity, the statute provides that the HOA's super priority lien was not affected by the language in 12 U.S.C. § 4617(b)(2)(A).

Similarly, 12 U.S.C. § 4617(b)(9) relating to payment of creditor claims "to the extent that funds are available from the assets of the regulated entity" only applies when the Agency serves as a receiver. As noted above, 12 U.S.C. § 4617(b)(11)(C) prohibits "attachment or execution" by any court upon "assets in the possession of the receiver" only when the Agency "has been appointed receiver." No limits are placed on attachment or execution of the assets of the regulated entity when the Agency serves as conservator.

As a result, because 12 U.S.C. § 4617 contains absolutely no language that restricts an HOA, or any other secured creditor, from conducting a nonjudicial foreclosure of its lien following the appointment of FHFA as conservator, no grounds exist to invalidate the HOA foreclosure sale held on

September 6, 2013. Instead, 12 U.S.C. § 4617(b)(2)(H) expressly provides that FHFA, as conservator, had the same obligation as Fannie Mae to "pay all valid obligations of the regulated entity that are due and payable at the time of the appointment of the Agency as conservator or receiver," including the obligation to pay the HOA all amounts necessary to avoid the foreclosure of the HOA's super priority lien. Having failed to make these required payments prior to the HOA foreclosure sale, Fannie Mae has no right to contest the validity of the sale.

3. Fannie Mae does not have prudential standing to assert rights that belong to FHFA.

In the case of Freedom Mortgage Corporation v. Las Vegas Development Group, LLC, ___F. Supp. 3d ___, 2015 WL 2398402 (D. Nev. May 19, 2015), the lender filed an action challenging the extinguishment of its deed of trust by an HOA foreclosure sale because the loan was insured by HUD. The court noted that prudential standing "encompasses 'the general prohibition on a litigant's raising another person's legal rights, the rule barring adjudication of generalized grievances more appropriately addressed in representative branches, and the requirement that a plaintiff's complaint fall within the zone of interests protected by the law invoked.'" Id. at 3, quoting United States v. Lazarenko, 476 F.3d 642, 649-50 (9th Cir. 2007)(quoting Allen v. Wright, 468 U.S. 737, 751, 104 S.Ct. 3315, 82 L.Ed.2d 556 (1984)).

The court also stated: "Essentially, the standing question in such cases is whether the constitutional . . . provision on which the claim rests properly can be understood as granting persons in plaintiff's position a right to judicial relief." Id. at 3, quoting The Wilderness Soc'y v. Kane Cnty., Utah, 632 F.3d 1162, 1169 (10th Cir. 2011)(quoting Warth v. Seldin, 422 U.S. 490, 500, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975)). The court concluded that:

> **The federal government is not a party to this case**. Its rights are being championed by private lender Freedom Mortgage, which acknowledges it is " neither attempting to sue under HUD'S name nor asserting HUD's rights, because *Freedom* is the real party in interest." **Because HUD is the best proponent of its interests and has not sought to raise the challenge Freedom Mortgage brings, it would be imprudent for the court to recognize Freedom Mortgage's standing to pursue Property Clause claims in this case**. I thus decline to recognize Freedom Mortgage's prudential standing to challenge the HOA's foreclosure on the Castro property under the Property Clause. (footnotes omitted) (emphasis added)
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> Id. at *4.

A copy of this order is attached as Exhibit 1.

In the present case, 12 U.S.C. § 4617(j)(3) protects "property of the Agency" and requires "consent of the Agency." 12 U.S.C. § 4617(j)(3) does not mention "property of the regulated entity" or "consent of the regulated entity." Because Fannie Mae is "the regulated entity" and not the "Agency," Fannie Mae has no standing to assert rights that belong only to FHFA. As noted above, in every case cited by Fannie Mae at pages 3 and 10 of its second supplemental opposition, FHFA intervened in the action and joined in the motion asserting its rights under 12 U.S.C. § 4617(j)(3).

In the present case, on the other hand, FHFA is not a party to the present action, and FHFA has not intervened to assert that 12 U.S.C. § 4617(j)(3) required its consent for the HOA foreclosure sale that extinguished Fannie Mae's deed of trust. Fannie Mae does not have prudential standing to assert arguments and rights that belong to FHFA and not to Fannie Mae.

4. FHFA's conduct as conservator has manifested its consent to the enforcement of association liens against property encumbered by a trust deed assigned to Fannie Mae.

At paragraph 8 on page 5 of its second supplemental opposition, Fannie Mae asserts that a statement on HOA Super-Priority Lien Foreclosures issued by FHFA on April 21, 2015 (Exhibit J to Fannie Mae's request for judicial notice) proves that FHFA did not consent to the foreclosure of the HOA's super-priority lien in this case. The law recognizes several forms of "implied consent," which may be inferred from conduct or failure to act.

Page 302-2 of the Fannie Mae Single Family 2011 Servicing Guide from June 10, 2011, attached as Exhibit 2, recognizes that Fannie Mae's security may be impaired by HOA dues. It states in part:

> When the HOA of a PUD or condo project notifies the servicer that a borrower is 60 days' delinquent in the payment of assessments or charges levied by the association, the servicer should advance the funds to pay the charges if necessary to protect the priority of Fannie Mae's mortgage lien. If the project is located in a state that has adopted the Uniform Condominium Act (UCA), the Uniform Common Interest Ownership Act (UCIOA), or a similar statute that provides for up to six months of delinquent assessments to have lien priority over the mortgage lien, Fannie Mae will reimburse the servicer for up to six months of such advances. However, Fannie Mae will not reimburse the servicer for any fees or costs related to attempts to collect the delinquent assessments.

The same language appears at page 302-2 in the Fannie Mae Single Family 2012 Servicing Guide (Mar.14, 2012). See Exhibit 3.

Fannie Mae's Selling Guide Announcement from January 14, 2014 has similar language. It states:

> Fannie Mae supports maintaining the maximum six-month limited priority lien for common expense assessments (typically known as homeowner association or HOA fees) that currently applies in most jurisdictions. The six-month period is clear and provides discrete and measureable risk exposure for mortgage lending on units located in condo and PUD projects. The six-month period sufficiently balances the rights and needs of lenders (including mortgage servicers and secondary market investors), HOAs and borrowers.

A copy of this Selling Guide Announcement is Exhibit 4.

More recently at page 391 of its Servicing Guide: Fannie Mae Single Family (Jan. 14, 2015), FHFA directs servicers for Fannie Mae loans to "take all reasonable actions to prevent new liens that would be superior to Fannie Mae's mortgage lien from being attached against the property." A copy of these pages are Exhibit 5.

If FHFA truly believed that an HOA's priority assessment lien against a property subject to a Fannie Mae deed of trust could not be foreclosed without FHFA's consent, these directives to servicers of Fannie Mae loans would not be necessary. Moreover, these directives are indicative of implied consent. Should the servicer fail to comply, Fannie Mae has right of recourse against it's servicer and would not suffer any damage.

Furthermore, even though FHFA was established in July of 2008, FHFA has never announced a procedure by which a foreclosing HOA could request the consent of FHFA to foreclose its lien against property encumbered by a deed of trust owned by Fannie Mae. The fact that no such procedure exists supports an interpretation of 12 U.S.C. § 4617(j)(3) that consent by FHFA is not required before an HOA can foreclose its super priority lien and extinguish a "subordinate" deed of trust assigned to Fannie Mae.

CONCLUSION

The foreclosure sale held on September 6, 2013 pursuant to NRS Chapter 116 and the CC&Rs for the HOA extinguished the trust deed assigned to defendant Fannie Mae. The foreclosure deed received by the plaintiff is conclusive as to defendant Fannie Mae.

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As a result, plaintiff's motion for summary judgment should be granted.

DATED this 4th day of November, 2015.

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By: / s / Michael F. Bohn, Esq. /
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CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of November, 2015, I electronically transmitted the above **PLAINTIFF'S REPLY TO SECOND SUPPLEMENTAL OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND OPPOSITION TO COUNTERMOTION FOR SUMMARY JUDGMENT** to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to all counsel in this matter; all counsel being registered to receive Electronic Filing.

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/s/ /*Marc Sameroff* /
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Michael F. Bohn, Esq., Ltd.

EXHIBIT 1

EXHIBIT 1

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

Freedom Mortgage Corporation,

Plaintiff

v.

Las Vegas Development Group, LLC, Maria Teresa Castro, Tierra de las Palmas Owners Association,

Defendants

Case No.: 2:14-cv-01928-JAD-NJK

Order Granting Motion to Dismiss
[##13, 20]

In the years following Las Vegas's real estate crash, lenders and investors were at loggerheads over the legal effect of a homeowners association's (HOA's) nonjudicial foreclosure of a superpriority lien on a lender's first trust deed. The Nevada Supreme Court settled the debate last September in *SFR Investments Pool 1, LLC v. U.S. Bank*, holding that "NRS 116.3116(2) gives an HOA a true superpriority lien, proper foreclosure of which will extinguish a first deed of trust."[1] The *SFR* decision made winners out of the investors who purchased foreclosure properties in HOA sales and losers of the lenders who gambled on the opposite result, elected not to satisfy the HOA liens to prevent foreclosure, and thus saw their interests wiped out by sales that often yielded a small fraction of the loan balance.

Freedom Mortgage Corporation is one of these lenders. Its first-trust-deed interest in Maria Castro's Tierra de las Palmas Village home was extinguished when the HOA foreclosed on its liens after Castro defaulted on her HOA assessments.[2] Freedom Mortgage brings this action to challenge the extinguishment of its interest in the Castro property. It alleges that, because its loan to Castro was insured by the Department of Housing and Urban Development (HUD), the federal government has an interest in the property, and permitting the lender's security interest to be extinguished under

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[1] *SFR Inv. Pool 1 v. U.S. Bank*, 334 P.3d 408, 419 (Nev. 2014).

[2] Doc. 1-2.

NRS 116.3116(2) as clarified in *SFR* violates the Property and Supremacy Clauses of the United States Constitution. The investors who bought the Castro property from the HOA move to dismiss Freedom Mortgage's claims as legally unsound.

I find that Freedom Mortgage lacks standing to assert HUD's rights under the Property Clause and, regardless, HUD has no property interest in the Castro property. I also conclude that the Supremacy Clause does not preempt NRS 116.3116(2)'s application to HUD-insured mortgaged properties because Nevada's HOA superpriority lien law is consistent with HUD's single-family mortgage-insurance program.

Background

A. The Castro Property

Castro purchased her home at 2119 Spanish Town Avenue in North Las Vegas, Nevada in 2009 with a $98,188 loan from Freedom Mortgage, secured by a note and first deed of trust.[3] The loan was insured through the Federal Housing Administration (FHA) by HUD.[4] The property is subject to a 1997 Declaration of Covenants, Conditions, and Restrictions of the Tierra de las Palmas Owners Association (CC&Rs) that obligates homeowners in the Tierra de las Palmas neighborhood to pay certain dues and assessments for the HOA's operation and its common-area maintenance.[5]

B. The HOA Foreclosure on the Castro Property

Castro defaulted on her HOA assessment payments, and the HOA conducted a proper, nonjudicial foreclosure sale in August 2011 at which it bought the property on a credit bid.[6] The HOA then sold the property to Las Vegas Development Group (LVDG) for $3,000 by quitclaim

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[3] *Id.*

[4] Doc. 1 at 3, ¶ 11.

[5] Doc. 1-3 at 11; Doc. 20-2.

[6] Docs. 1-4, 1-5, 1-6, 1-7. At oral argument, *see* Doc. 37 (minutes), Freedom Mortgage acknowledged that the foreclosure process was properly performed; it disputes only the legal effect of that foreclosure on its first deed of trust.

deed.[7]

C. HOA Liens under Nevada's Chapter 116

"NRS 116.3116(1) gives an HOA a lien on its homeowners' residences" for unpaid assessments and fines, and NRS 116.3116(2) gives that lien priority over all other liens and encumbrances with limited exceptions.[8] NRS Chapter 116 permits HOAs to enforce those liens through nonjudicial foreclosure.[9]

As the Nevada Supreme Court explained in *SFR*, Nevada's HOA statutory-lien scheme, codified as NRS Chapter 116, "is a creature of Uniform Common Interest Ownership Act of 1982 . . . (UCIOA), which Nevada adopted in 1991."[10] After an extensive discussion of UCIOA history and Nevada's adoption in Chapter 116 of many of the UCIOA's provisions, the Nevada Supreme Court concluded in *SFR* that "NRS 116.3116(2) establishes a true superpriority lien" that is "senior to" a lender's first deed of trust.[11] The *SFR* court explained the importance of this enforcement tool for property owners in common-interest communities:

> [T]he recent foreclosure crisis . . . created [incentives] for first security holders to strategically delay foreclosure . . . . An HOA's sources of revenues are usually limited to common assessments. This makes an HOA's ability to foreclose on the unpaid dues portion of its lien essential for common-interest communities. Otherwise, when a homeowner walks away from the property and the first deed of trust holder delays foreclosure, the HOA has to either increase the assessment burden on the remaining unit/parcel owners or reduce the services the association provides (e.g. by deferring maintenance on common amenities). To avoid having the community subsidize first security holders who delay foreclosure, whether strategically or for some other reason, [the UCIOA provision on which NRS 116.3116 is

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[7] Doc. 1-8.

[8] *SFR*, 334 P.3d at 410.

[9] *See id.* at 411, 414–15 (describing the steps an HOA must take to initiate a Chapter 116 nonjudicial foreclosure); Nev. Rev. Stat. §§ 116.3116(1), 116.31162.

[10] *Id.* at 410 (citing the Uniform Common Interest Ownership Act of 1982, § 3-116, 7 U.L.A., part II 121–24 (2009) (amended 1994, 2008)).

[11] *Id.* at 412–19.

based] creates a true superpriority lien . . . .[12]

Thus, the court concluded, an HOA lien is much like "other inchoate liens such as real estate taxes and mechanics liens": proper foreclosure on these liens extinguishes the lien of the otherwise first mortgagee.[13]

D. This Lawsuit and the Defendants' Motions to Dismiss

On November 19, 2014, two months after the *SFR* decision was handed down and more than three years after the foreclosure on the Castro property, Freedom Mortgage filed this complaint. It sues Castro, the HOA, and LVDG for declaratory and injunctive relief, quiet title, and an equitable lien. All claims hinge on the theory that its first trust deed on Castro's property could not have been extinguished by the HOA's foreclosure because the loan was insured by HUD, HUD thus "holds a mortgage interest in the Property," and the Constitution's Supremacy and Property Clauses preempt NRS 116.3116 from being "applied to loans insured by HUD."[14]

LVDG and the HOA now move to dismiss all claims.[15] LVDG argues that *SFR* is squarely dispositive because it supplies the rule that the lender's mortgage interest was extinguished by the HOA's foreclosure sale, and Freedom's claims fail because it no longer has any interest in the property as a matter of law. The HOA joins in LVDG's motion and additionally contends that Freedom Mortgage's claims against it are unripe because the lender failed to first bring them before the Nevada Real Estate Division (NRED) under NRS 38.310 and also failed to provide the affidavit required by NRS 116.760.[16] Because I grant LVDG's motion and dismiss Freedom Mortgage's claims as legally unsound, I decline to reach the HOA's additional arguments.

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[12] *Id.* at 413–14 (internal citations omitted) (internal quotation marks omitted).

[13] *Id.* at 413 (quoting 1994 & 2008 UCIOA § 3-116 cmt. 1).

[14] Doc. 1 at 4.

[15] Castro has not appeared in this case.

[16] Doc. 20 at 2–4.

Discussion

A. The Property Clause

The Property Clause provides that "Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belong[ing] to the United States."[17] In simple terms, it precludes states and private individuals from divesting the federal government—through state laws or otherwise—of title to property without congressional consent. As the Supreme Court explained in *Wilcox v. Jackson*, a "state has an undoubted right to legislate as she may please in regard to the remedies to be prosecuted in her Courts, and to regulate the disposition of the property of her citizens by descent, devise, or alienation. But [when the property is] part of the public domain of the United States: Congress is invested by the Constitution with the power of disposing of, and making needful rules and regulations respecting it."[18] "If a state were able to pass laws that could dispose of federal lands . . . the practical result . . . would be, by force of state legislation to take from the United States their own land, against their own will, and against their own laws."[19]

Freedom Mortgage contends that NRS 116.3116(2) is precisely that type of law and that allowing it to extinguish first trust deeds securing federally insured lender loans violates the Property Clause.[20] Freedom Mortgage's argument fails for two reasons: (1) it lacks standing to assert the federal government's Property Clause challenge and (2) the foreclosure on the Castro property deprived the federal government of no property interest.

1. Freedom Mortgage lacks standing to raise a Property Clause challenge.

For this court to have jurisdiction over any case, "the party bringing the suit must establish

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[17] U.S. Const. art. IV, § 3, cl. 2.

[18] *Wilcox v. Jackson*, 38 U.S. 498, 516 (1839).

[19] *Yunis v. United States*, 118 F. Supp. 2d 1024, 1032 (quoting *Wilcox v. Jackson*, 38 U.S. 498, 517 (1839)) (internal quotation marks omitted).

[20] Doc. 18 at 10.

standing."[21] There are two aspects to standing: Article III standing, which requires a case or controversy, and prudential standing, which "encompasses 'the general prohibition on a litigant's raising another person's legal rights, the rule barring adjudication of generalized grievances more appropriately addressed in representative branches, and the requirement that a plaintiff's complaint fall within the zone of interests protected by the law invoked.'"[22] "The question of prudential standing is often resolved by the nature and source of the claim. 'Essentially, the standing question in such cases is whether the constitutional . . . provision on which the claim rests properly can be understood as granting persons in the plaintiff's position a right to judicial relief.'"[23]

"The Supreme Court's reasons for the general rule against third-party standing counsel against" granting Freedom Mortgage standing "to enforce the federal government's property rights" in the Castro property. As the Tenth Circuit expressed en banc in *The Wilderness Society v. Kane County, Utah*:

> We "must hesitate before resolving a controversy on the basis of the rights of third persons not parties to the litigation" for two reasons. "First, the courts should not adjudicate such rights unnecessarily, and it may be that in fact the holders of those rights do not wish to assert them." . . . "Second, third parties themselves usually will be the best proponents of their own rights. The courts depend on effective advocacy, and therefore should prefer to construe legal rights only when the most effective advocates of those rights are before them."[24]

In short, "the federal government is the best advocate of its *own* interests."[25]

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[21] *Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1, 11 (2004), *abrogated in part on other grounds in Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 134 S. Ct. 1377, 1387 (2014).

[22] *United States v. Lazarenko*, 476 F.3d 642, 649–50 (9th Cir. 2007) (quoting *Allen v. Wright*, 468 U.S. 737, 751 (1984)).

[23] *The Wilderness Soc'y v. Kane Cnty., Utah*, 632 F.3d 1162, 1169 (10th Cir. 2011) (quoting *Warth v. Seldin*, 422 U.S. 490, 500 (1975)).

[24] *Wilderness Soc'y*, 632 F.3d at 1171–72 (quoting *Singleton v. Wulff*, 428 U.S. 106, 113–14 (1976)).

[25] *Id.* at 1172 (emphasis in original). Although the court undertook this analysis in response to the plaintiff's Supremacy Clause claim, it appears the court construed the Wilderness Society's argument as one more akin to a Property Clause challenge. *See id.* at 1171 (noting this was "essentially a property dispute between two landowners" in which the plaintiff "lack[ed] any

The federal government is not a party to this case. Its rights are being championed by private lender Freedom Mortgage, which acknowledges it is "neither attempting to sue under HUD's name nor asserting HUD's rights, because *Freedom* is the real party in interest."[26] Because HUD is the best proponent of its interests and has not sought to raise the challenge Freedom Mortgage brings, it would be imprudent for the court to recognize Freedom Mortgage's standing to pursue Property Clause claims in this case. I thus decline to recognize Freedom Mortgage's prudential standing to challenge the HOA's foreclosure on the Castro property under the Property Clause.

2. Freedom Mortgage's Property Clause theory lacks merit because the foreclosure did not dispose of property belonging to the United States.

A lack of standing would typically end my analysis. But because there can be disagreement about how to apply prudential-standing principles,[27] I also consider the merits of Freedom Mortgage's Property Clause challenge. Even assuming that this private lender could stand in HUD's shoes to challenge the extinguishment of the bank's first trust deed under the Property Clause, it cannot state a plausible claim because it can identify no federal-government-owned property disposed of by the HOA's foreclosure on the Castro property. Freedom Mortgage contends that "HUD's insurance of the mortgage, by itself, created a federal property interest that is protected by the Property Clause"[28] because "Ninth Circuit law . . . provides that the guarantee of a mortgage, by itself, is sufficient to create a federal property interest for purposes of the Property Clause."[29] Freedom Mortgage overstates the law.

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independent property rights of its own."); *see also id.* at 1174 (rejecting the characterization of the claim as merely a Supremacy Clause issue, explaining, "we think that more than vindicating the federal government's right to regulate is at issue here. That right is expressly conditioned on the recognition of existing local property rights and necessarily entails the discretion of the United States as a property owner.").

[26] Doc. 18 at 5 (emphasis in original).

[27] *See, e.g.*, Bradford C. Mank, *Judge Posner's "Practical" Theory of Standing: Closer to Justice Breyer's Approach to Standing Than to Justice Scalia's*, 50 Hous. L. Rev. 71, 81 (2012).

[28] Doc. 18 at 10.

[29] *Id.* at 7.

The Ninth Circuit has not held that a HUD insurance policy on a bank loan gives the federal government a property interest protected by the Property Clause. It has held that a deed of trust securing a purchase-price mortgage is a protected interest.[30] And lower courts in this circuit have held that an HOA's foreclosure on property owned by a federal agency violates the Property and Supremacy Clauses.[31]

The key to a successful Property Clause challenge is that the federal government either held a deed of trust against, or owned, the property.[32] Freedom Mortgage has not demonstrated that HUD had, has, or will ever acquire a constitutionally protected interest in the Castro property. At oral argument, despite pointed questions from the bench, counsel for Freedom Mortgage was unable to

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[30] In *Rust v. Johnson*, 597 F.2d 174, 176, 181 (9th Cir. 1979), a case relied on by Freedom Mortgage (Doc. 18 at 8–9), the Ninth Circuit panel held that the City of Los Angeles's foreclosure on property in which the federal government held an assignment of a purchase-money mortgage interest "was an unconstitutional exercise of state power over property of the United States." The panel found the conclusion consistent with the long-recognized principle that "local governments cannot take any action to collect unpaid taxes assessed against property [that] would have the effect of reducing or destroying the value of a federally held purchase-money mortgage lien." *Id.* at 179 (quoting *United States v. General Douglas MacArthur Senior Village, Inc.*, 470 F.2d 675, 680 (2d Cir. 1972)).

[31] In *Secretary of HUD v. Sky Meadow Association*, 117 F. Supp. 2d 970 (C.D. Cal. 2000), Ninth Circuit Judge Paez, sitting by designation, held that an HOA's nonjudicial foreclosure on a HUD-owned property for failure to pay assessments was barred. Although the judge "recognize[d] that the homeowners association has a legitimate need to collect the assessment fees to maintain the common areas," he concluded that "its resort to a non-judicial foreclosure sale of property owned by the United States [wa]s improper." *Sky Meadow*, 117 F. Supp. 2d at 978. Judge Paez emphasized he was "concerned with the role of the government as a property owner" and noted that "the end result, i.e. the taking of property from the government without its consent, interferes with the government's property rights by definition." *Id.* at 979, 981 n.5. On the same day he issued *Sky Meadow*, Judge Paez held in *Yunis v. United States*, 118 F. Supp. 2d 1024, that the same HOA's foreclosure on a property owned by the Department of Veterans Affairs (VA) violated the Property and Supremacy Clauses and was similarly void.

[32] *See, e.g.*, *Rust*, 597 F.2d at 179 (FNMA held "an assignment of a purchase money mortgage interest in the property"); *Yunis*, 118 F. Supp. 2d at 1027 (federal government owned the property after lender foreclosed and deeded the property to the VA); *Sky Meadow*, 117 F. Supp. 2d at 973 (federal government owned the property after lender foreclosed and deeded the property to HUD); *United States v. Stadium Apts., Inc.*, 425 F.2d 358, 359 (9th Cir. 1970) (HUD owned the property after assignment by the bank, paid the mortgage-insurance claim, and foreclosed on the property); *United States v. View Crest Garden Apts., Inc.*, 268 F.2d 380, 381 (9th Cir. 1959) (mortgage was assigned to the FHA). *See* additional cases cited *infra* note 38.

identify any HUD property interest at the time of the foreclosure or since. This is unsurprising when Freedom Mortgage makes clear in its opposition brief that it is "neither attempting to sue under HUD's name nor asserting HUD's rights, because *Freedom* is the real party in interest."[33] And it stresses that, "[a]s the holder and beneficiary of the mortgage, Freedom owns the associated property and contract rights pursuant to Nevada law."[34]

Counsel also conceded at oral argument that the only way that HUD could become financially impacted by this foreclosure would be for Freedom Mortgage to make a claim against the HUD mortgage-insurance policy. But that occurrence is now improbable. A lender must make a claim under a HUD policy within 30 days of the foreclosure.[35] This foreclosure occurred nearly four years ago,[36] and Freedom Mortgage never made a claim. The policy also terminated upon foreclosure.[37] Thus, HUD's status with respect to this property will likely never be anything more than a former insurer of the Castro loan, which collected premium payments but never incurred a claim-payment obligation. That interest is far too attenuated to reasonably consider the HOA's foreclosure as disposing of "[p]roperty belong[ing] to the United States" in contravention of the Property Clause.[38]

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[33] Doc. 18 at 5 (emphasis added).

[34] *Id.*

[35] *See* 24 C.F.R. § 203.368(i)(5)(ii) ("Where a mortgagee files a claim for the insurance benefits without conveying title to the property to the Commissioner, as authorized by this section . . . [t]he mortgagee shall file its claim . . . (ii) [w]ithin 30 days after a party other than the mortgagee acquired good marketable title to the property").

[36] Doc. 1 at 3 (alleging August 16, 2011, foreclosure sale).

[37] *See* 24 C.F.R. §§ 203.315(a)(2)(i), (b)(2) (providing that the insurance contract "shall be terminated" if "[t]he property is bid in and acquired at a foreclosure sale by a party other than the mortgagee").

[38] Two courts in this district have considered Property Clause challenges to foreclosure sales of properties with federally insured mortgages and found the sales invalid. In *Washington & Sandhill Homeowners Association v. Bank of America, N.A.*, 2014 WL 4798565, at *6 (D. Nev. Sept. 25, 2014), the court suggested without finding that "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 be divested only by an act of Congress." And in *Saticoy Bay LLC, Series 7342 Tanglewood Park v. SRMOF II 2012-1 Trust*, 2015 WL 1990076, at

B. The Supremacy Clause

I also cannot conclude that enforcing NRS 116.3116 against a property with a HUD-insured mortgage violates the Supremacy Clause. Federal law can preempt state law under the Supremacy Clause in three ways: express, field, or conflict preemption.[39] Freedom Mortgage's theory that HUD's mortgage-insurance program preempts the application of NRS 116.3116(2) as interpreted by *SFR* against properties carrying a HUD-insured mortgage is purely a conflict-preemption one. This lender argues that permitting HUD's interest to be extinguished by an HOA foreclosure would have two results. First, it "would undermine—in fact, *eliminate*—HUD's ability to obtain title after foreclosure and resell the Property (or to receive an assignment of the mortgage and foreclose in its own name)," thus "imped[ing] the purpose of the program, which is 'to make decedent [sic] housing available to all citizens.'"[40] Second, it would make "HUD subject to the vagaries of different states' laws [and] would impede the purpose of the Single Family Mortgage Insurance Program[] to enable

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*4 (D. Nev. Apr. 30, 2015), the court rejected the notion that a federal ownership interest must exist to implicate the Property Clause. The *Saticoy Bay* court relied, in part, on the Eighth Circuit's notation "that federal law, not [state] law, governs the rights and liabilities of the parties in cases dealing with the remedies available upon default of a federally held *or insured* loan" in *United States v. Victory Highway Village, Inc.* 662 F.2d 488, 497 (8th Cir. 1981) (emphasis added).

But the cases cited in *Victory Highway* support this notion only as to federally *held* loans or property, not as to federally *insured* loans. *See Victory Highway*, 662 F.2d at 498 (citing *Stadium Apts.*, 425 F.2d at 359 (ruling involved HUD-owned property); *View Crest*, 268 F.2d at 381 (FHA held the mortgage after assignment); *United States v. Scholnick*, 606 F.2d 160, 164 (6th Cir. 1979) (ruling involved HUD-held mortgage); *United States v. Chester Park Apts., Inc.*, 332 F.2d 1, 4 (8th Cir. 1964) (noting the issue was the same as in *View Crest* and concluding that federal law applied to appointment of receiver under the express terms of a mortgage that was assigned to the FHA before foreclosure)). Indeed, *Victory Highway* itself involved federally owned mortgages assigned to HUD pre-foreclosure, suggesting that the "or insured" language relied upon in *Saticoy Bay* is *gratis dictum*. *See Victory Highway*, 662 F.2d at 491.

Freedom Mortgage has supplied—and I find—no legal justification to conclude that the Property Clause also bars HOA foreclosure sales of properties with private-lender-owned mortgages that HUD has merely insured.

[39] *Aguayo v. U.S. Bank*, 653 F.3d 912, 918 (9th Cir. 2011) (citing *Bank of Amer. v. City & Cnty. of S.F.*, 309 F.3d 551, 558 (9th Cir. 2002)).

[40] Doc. 18 at 10–14 (quoting *Sky Meadow Ass'n*, 117 F. Supp. 2d at 973–74) (emphasis in original).

low-income borrowers to obtain loans with the least risk of loss upon foreclosure."[41] Freedom Mortgage's apocalyptic predictions are unsupportable, and permitting a lender to lose its security interest when it fails to protect its collateral by satisfying HOA liens is not just consistent with—but contemplated by—HUD's program.

1. No conflict preemption

Conflict preemption occurs where "there is an actual conflict between state and federal law"[42] because "(1) compliance with both federal and state regulations is a physical impossibility, or . . . (2) state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress."[43] Neither circumstance exists here because the lender controls its ability to comply with both state law and the federal program, and because Nevada's superpriority law for HOA-assessment foreclosures is no obstacle to the purpose and objective of HUD's program.

As HUD's website and various publications explain, the single-family mortgage-insurance "program provides mortgage insurance to protect lenders against the risk of default on mortgages to qualified buyers."[44] The federal regulations governing the program are contained in the Code of Federal Regulations (CFR), Title 24.[45]

When a HUD-insured mortgage goes into default, the lender may make a claim for the

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[41] *Id.*

[42] *Altria Grp., Inc. v. Good*, 555 U.S. 70, 76–77 (2008) (citing *Freightliner Corp. v. Myrick*, 514 U.S. 280, 287 (1995)).

[43] *Bank of Am.*, 309 F.3d at 558 (quoting *Fla. Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142–43 (1963); *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941)) (internal citations omitted) (internal quotation marks omitted).

[44] U.S. Dep't of Hous. & Urban Dev., Mortgage Insurance for One to Four Family Homes Section 203(b), *available at* http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/sfh/ins/203b--df (last visited May 14, 2015); U.S. Dep't of Housing & Urban Dev., Lender's Guide to the Single Family Mortgage Insurance Process, 4155.2, Ch. 1, § A at 2, *General Information on Programs, Process and Loan Origination Requirements/Restrictions*, *available at* http://portal.hud.gov/hudportal/documents/huddoc?id= 4155-2_1_secA.pdf (last visited May 15, 2015).

[45] The CFRs governing the program are available on the Cornell University Law School's Legal Information Institute website at https://www.law.cornell.edu/cfr/text/24/chapter-II/subchapter-B/.

remaining principal amount owed under the loan. Typically, the lender must assign the mortgage to HUD[46] and certify that the mortgage is "prior to all liens and encumbrances, or defects which may arise except such liens or other matters as may have been approved by the Commissioner."[47] Alternatively, the lender may foreclose, acquire title, and make a claim for the deficiency.[48] The insurance contract "shall be terminated" if "[t]he property is bid in and acquired at a foreclosure sale by a party other than the mortgagee"—which is to say, any party except the lender.[49] In short, a lender has two primary ways to obtain benefits under the program: (1) assign the first-position mortgage interest to HUD before foreclosure or (2) initiate foreclosure and make a claim for the deficiency.

Nothing prevents a lender from simultaneously complying with HUD's program and Nevada's HOA-foreclosure laws. Freedom Mortgage's argument that "[a]llowing HUD's interest to be extinguished pursuant to Nevada law would undermine—in fact, *eliminate*—HUD's ability to obtain title after foreclosure and resell the [p]roperty (or to receive an assignment of the mortgage and foreclose in its own name)"[50] mischaracterizes the effect of NRS 116.3116 in this case by skipping a crucial step in the claim process. The lender's interest is extinguished by the foreclosure, not HUD's. And the lender's inability to convey good and marketable title to HUD results in a loss to the lender, not to HUD.

The lender gets itself into this predicament only by ignoring HUD's directives. To ensure that it remains able to make a claim, a participating lender has an affirmative obligation to protect its security so it can convey good and marketable title to HUD along with its claim. The lender must

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[46] 24 C.F.R. § 203.350(a)(1); 24 C.F.R. § 203.366. The parties never state that Castro has defaulted on her mortgage, though this fact seems implicit because Freedom Mortgage is bringing suit to quiet title in itself. *See, e.g.*, Doc. 1 at 6 (quiet-title claim against all defendants).

[47] 24 C.F.R. § 203.353(a).

[48] 24 C.F.R. § 203.401(b)(1); 24 C.F.R. § 203.368.

[49] 24 C.F.R. § 203.315(a)(2)(i), (b)(2).

[50] Doc. 18 at 12–13 (emphasis in original).

ensure that all taxes and all other assessments are paid to prevent liens from attaching to the property.[51] This obligation specifically includes HOA fees and assessments.[52] The lender must negotiate a release of outstanding HOA fees and assessments and ensure that liens are removed from title, and HUD will reimburse the lender for these amounts.[53]

Lenders "must consider the comparative effects of their elective servicing actions, and must take those appropriate actions which can reasonably be expected to generate the smallest financial loss to the Department."[54] HUD has specifically directed its participating lenders "to (a) implement procedures that will result in them being notified when mortgagors default on HOA fees; and/or (b) establish escrows for HOA fees."[55]

In superpriority lien states, the HUD-insured lenders' obligation to prevent foreclosure by satisfying HOA liens is not an aspirational goal: it's a requirement. A 2002 HUD publication sent to participating mortgagees—and in effect at the time of the foreclosure on the Castro property—warned lenders that, in states where unpaid HOA assessments are deemed a priority lien, lenders had an obligation to satisfy those liens. HUD took the risk away by making those expenditures "100 percent reimbursable to the lender":

> At this time, condominium and homeowners' association (HOA) fees are not required escrow items for FHA-insured single-family mortgages. Therefore, payment of condo/HOA fees as they become due is the mortgagor's responsibility. When the mortgagor defaults and foreclosure action becomes necessary, lenders must name and properly serve HOAs and condominium associations in the foreclosure proceedings in order to eliminate or reduce HUD's responsibility for unpaid condominium/HOA fees. **Further, lenders must take any action necessary to protect HUD's interest in the property against foreclosure actions brought by a condominium/HOA.**

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[51] *See* U.S. Dep't of Hous. & Urban Dev., Mortgagee Letter 2013-18, Updated Clarification Regarding Title Approval at Conveyance (2013), *available at* http://portal.hud.gov/hudportal/documents/huddoc?id= 13-18ml.pdf.

[52] *Id.* at 2.

[53] *Id.* at 3–4; *see also* 24 C.F.R. § 203.402(j).

[54] 24 C.F.R. § 203.501.

[55] HUD Mortgage Letter 2013-18 at 5, *supra* note 51.

> **For those states where unpaid condo/HOA assessments constitute a priority lien against the property, lenders must first attempt to negotiate with the condo/HOA to waive or accept reduced payments for delinquent fees. Should the negotiations prove unsuccessful, lenders should pay all condominium/HOA fees prior to conveyance, whether or not the association has filed a lien.**
>
> Also, in non-priority states, HUD may request that the lender voluntarily pay delinquent condo/HOA fees to ensure the viability of the homeowner's association, which in turn will assist in maintaining property values and may also reduce future mortgage insurance claims. For these same reasons, **HUD will not object if lenders voluntarily pay delinquent condo/HOA fees that were the responsibility of the former borrower to pay.**
>
> **Condominium/HOA fees paid by the lender are 100 percent reimbursable to the lender** in accordance with 24 CFR 203.402(j). **Lenders may also claim reimbursement for penalties, interest, and/or late fees incurred by the former mortgagor and paid by the lender . . . .** [56]

This directive is entirely consistent with Nevada's superpriority law for unpaid HOA assessments. The drafters of the UCIOA (on which NRS 116.3116 is modeled) recognized that, "As a practical matter, secured lenders will most likely pay the . . . nine . . . months' assessments demanded by the association rather than having the association foreclose on the unit."[57] The Nevada Supreme Court cited this easy fix in *SFR* in response to the banks' lament that allowing a nominal lien to extinguish often hundreds of thousands of dollars in security would be unfair:

> [A]s a junior lienholder, [the bank] could have paid off the [HOA] lien to avert loss of its security; it also could have established an escrow for [HOA] assessments to avoid having to use its own funds to pay delinquent dues. **The inequity [the bank] decries is thus of its own**

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[56] U.S. Dep't of Hous. & Urban Dev., Mortgagee Letter 2002-19 at 2–3, *available at* http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/letters/mortgagee/2002ml (emphasis added). Letter 2002-19 was superseded by HUD Mortgagee Letter 2012-11 effective November 1, 2012. *See* U.S. Dep't of Hous. & Urban Dev., Mortgagee Letter 2012-11, *available at* http://portal.hud.gov/hudportal/documents/huddoc?id=12-11ml.pdf; and U.S. Dep't of Hous. & Urban Dev., Mortgagee Letter 2012-14, *available at* http://portal.hud.gov/hudportal/documents/huddoc?id=12-14ml.pdf. Letter 2012-11 was superseded by Mortgagee Letter 2013-18, *supra* note 49. In each iteration of the publication, HUD has warned participating banks that the ultimate responsibility to keep properties free and clear of HOA liens falls on the banks.

[57] *SFR*, 334 P.3d at 413 (quoting 1982 UCIOA § 3-116 cmt. 1; 1994 & 2008 UCIOA § 3-116 cmt. 2).

making . . . .[58]

The First Circuit relied on similar considerations in *Chicago Title Insurance v. Sherred Village Associates* in rejecting a Supremacy Clause challenge to Maine's statute that gives mechanics' liens priority over a HUD-insured mortgage interest. The panel reasoned:

> [E]ven if HUD holds the mortgage, if a contractor seeks to enforce a mechanics' lien, in most cases the mortgagee will decide that it is better off advancing the money to pay off the mechanics' lien so that the project can continue than allowing the property to be sold, even if the mortgagee is entitled to the bulk of the proceeds.
>
> The result of allowing state law to govern in this case, then, would not be to establish two different sets of priorities for disposition of sale proceeds, but only to allow a contractor to force HUD, or someone to whom HUD has passed the risk, to make sure that the contractor gets paid for all work done with the consent of the owner. A contrary rule . . . would mean that a contractor would have no way of forcing recovery for work performed with the consent of the owner, or even with the consent of HUD, unless he could file his lien prior to the recording of the mortgage.[59]

Applying Nevada's superpriority HOA-lien law here simply recognizes that the HOA has a right to payment of the dues and assessments it requires to maintain the community's common areas and homeowners' property values.[60] By choosing not to satisfy those obligations, prevent foreclosure, and preserve its collateral, Freedom Mortgage has only itself—not a conflict of laws—to blame for its loss.

2. Allowing NRS 116.3116 to apply to HUD-insured mortgaged properties comports with Kimbell Foods.

Allowing Nevada's HOA-lien superpriorty law to extinguish a lender's first trust deed, despite the lender's participation in HUD's single-family mortgage-insurance program, is also consistent with the United States Supreme Court's decision in *United States v. Kimbell Foods, Inc.*[61] In *Kimbell Foods*, the high court noted that federal law governs questions involving the rights of the

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[58] *Id.* at 414 (emphasis added).

[59] *Chicago Title Ins. v. Sherred Village Assocs.*, 708 F.2d 804, 809–10 (1st Cir. 1983).

[60] *SFR*, 334 P.3d at 413–14.

[61] *United States v. Kimbell Foods, Inc.*, 440 U.S. 715, 726 (1979).

United States arising under nationwide federal programs, but even "[c]ontroversies directly affecting the operations of federal programs, although governed by federal law, do not inevitably require resort to uniform federal rules."[62] "Whether to adopt state law or to fashion a nationwide federal rule is a matter of judicial policy 'dependent upon a variety of considerations always relevant to the nature of the specific governmental interests and to the effects upon them of applying state law.'"[63] The court articulated three factors for a federal court to consider "in determining whether federal law should adopt a state rule of decision to govern federal programs": (1) "the likelihood that application of state law would frustrate specific objectives of the federal program," (2) "the need for a nationally uniform body of law," and (3) "the extent to which application of a federal rule would disrupt commercial relationships predicated on state law."[64] Analyzing HUD's mortgage-insurance program and NRS 116.3116 in light of these factors also compels the conclusion that federal law would adopt the state law here.

a. NRS 116.3116(2) does not frustrate specific objectives of the single-family mortgage-insurance program.

Freedom Mortgage's main preemption argument is that allowing NRS 116.3116(2) to extinguish its first trust deed "would impede the purpose of the Single Family Mortgage Insurance Program, to enable low-income borrowers to obtain loans with the least risk of loss upon foreclosure."[65] Freedom Mortgage does not explain how requiring a lender to protect its collateral from an HOA foreclosure by satisfying unpaid HOA assessments would, in fact, impede the program's goals, and I find no support for this conclusion.[66]

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[62] *Kimbell Foods*, 440 U.S. at 727–28.

[63] *Id.* at 728 (quoting *United States v. Standard Oil Co.*, 332 U.S. 301, 310 (1947)).

[64] *Chicago Title*, 708 F.2d at 810 (citing *Kimbell Foods*, 440 U.S. 728–29).

[65] Doc. 18 at 14.

[66] Freedom Mortgage has not persuaded me—and I have independently found no reason—to reach the conclusion in *Washington & Sandhill*, 2014 WL 4798565 at *6–7, that an HOA foreclosure under NRS 116.3116 on a "[p]roperty with a mortgage insured under the FHA insurance program" is barred by the Supremacy Clause because it "would have the effect of limiting the effectiveness of the

The policy behind the program[67] is to boost "housing production and related community development sufficient to remedy the serious housing shortage, the elimination of substandard and other inadequate housing through the clearance of slums and other blighted areas, and the realization as soon as feasible of a decent home and a suitable living environment for every American family."[68] As part of that policy, Congress directed HUD to exercise its "powers, functions, and duties" to "encourage and assist . . . the increase of efficiency in residential construction and maintenance" and "the development of well-planned, integrated, residential neighborhoods and the development and redevelopment of communities."[69]

Nevada's HOA laws—and NRS 116.3116(2) in particular—are entirely consistent with these goals of improving residential community development, eliminating blight, and preserving property values. "The tight restrictions on home design and maintenance, and the overall conformity required by homeowner associations, tends to preserve the character of the community and enhance the value of the property."[70] HOAs require budgets to operate and, as the Nevada Supreme Court explained in *SFR*:

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remedies available to the United States." And unlike the court in *Saticoy Bay*, 2015 WL 1990076, at *4, I find no reason to conclude that HUD's mere insuring of the mortgage renders the HOA foreclosure sale invalid.

[67] One of the other primary goals of the single-family mortgage-insurance program is to protect lenders against the risk of default on mortgages to qualified buyers. *See* HUD Lender's Guide 4155.2, Ch. 1, § A at p.2, *supra* note 42. But the program is not intended to protect lenders from their own poor strategic decisions—like the decision not to pay the HOA assessments that had accrued on the Castro property and to stand silently by while the HOA foreclosed. No congressional policy is impeded when lenders bear the economic risks of their calculated decisions to not protect their collateral.

[68] 42 U.S.C. § 1441(a) (reaffirming the goals of the Housing Act of 1949); *see also* 12 U.S.C. § 1701t.

[69] *Id.*

[70] Richard Damstra, *Don't Fence Us Out: The Municipal Power to Ban Gated Communities and the Federal Takings Clause*, 35 Val. U.L. Rev. 525, 534 (2001) (citing David J. Kennedy, *Residential Associations as State Actors: Regulating the Impact of Gated Communities on Nonmembers*, 105 Yale L.J. 761, 766 (1995)).

> an HOA's ability to foreclose on the unpaid dues portion of its lien [is] essential for common-interest communities. Otherwise, when a homeowner walks away from the property and the first deed of trust holder delays foreclosure the HOA has to "either increase the assessment burden on the remaining unit/parcel owners or reduce the services the association provides (e.g., by deferring maintenance on common amenities)."[71]

The superpriority lien created by NRS 116.3116(2) is a powerful tool for an HOA "[t]o avoid having the community subsidize first security holders who delay foreclosure."[72]

Giving the HOAs a superpriority lien also helps keep homebuyers in their homes. It incentivizes banks to satisfy liens to avoid HOA foreclosure on the homeowners, enhancing the federal policy of keeping people in their homes. Thus, NRS 116.3116(2) furthers Congress's goals for the HUD program.

b. Freedom Mortgage has shown no need for national uniformity, and homebuyers and HOAs should be able to rely on Nevada's superpriority rule to maintain common-interest communities.

Freedom Mortgage has demonstrated no need for a nationally uniform body of HOA lien priority law. It contends (without evidence) that it is "doubtful . . . that Congress in enacting the Single Family Mortgage Insurance Program, intended 'the outcome to depend upon varying characterizations of state law.'"[73] But the HUD program has the built-in flexibility for individual state priority rules to operate symbiotically with the program's requirements. This flexibility exists because HUD puts the burden on participating lenders to ensure that taxes, fees, and other assessments are paid so that liens do not attach and states' various lien-priority rules are never triggered. It also takes the economic risk away from lenders by promising to reimburse their

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[71] *SFR*, 334 P.3d at 414 (quoting Joint Editorial Bd. for Uniform Real Property Act, *The Six-Month "Limited Priority Lien" for Association Fees Under the Uniform Common Interest Ownership Act*, 5–6 (2013)).

[72] *Id.* at 414.

[73] Doc. 18 at 13 (quoting *Sky Meadow*, 117 F. Supp. 2d at 978).

expenditures.[74] Thus, Nevada's superpriority-lien law allows HUD's mortgage-insurance program to function in exactly the way federal law contemplates.

Nevada's legislature has developed a rich body of law for common-interest communities in this state, and superpriority status for HOA liens is a key means of enforcing those laws.[75] If private lenders could earn an exemption from those laws merely by buying mortgage insurance from the federal government, lenders would be disincentivized to ensure their mortgagors' HOA dues and assessments are paid so that common areas and property values can be maintained. This result is inharmonious with Congress's intent to help stabilize the housing market. Nevadans who purchase homes in these common-interest neighborhoods should have the certainty of knowing that they will not have to subsidize the private lenders who fund mortgages in their communities but make the strategic choice not to satisfy the related HOA obligations.

Just like the First Circuit panel in *Chicago Title* was "not persuaded that Congress has spoken on the need for a federal rule of priority in all disputes involving HUD mortgages,"[76] neither am I. As the Supreme Court reasoned—when concluding in *Kimbell Foods* that a uniform, federal mechanics' lien priority rule is not "necessary to ease program administration or to safeguard the Federal Treasury from defaulting debtors"—Nevada law "furnish[es] convenient solutions in no way inconsistent with adequate protection of the federal interests,"[77] and "the prudent course is to adopt the readymade body of state law as the federal rule of decision until Congress strikes a different accommodation."[78]

Conclusion

Neither the Property Clause nor the Supremacy Clause barred Tierra de las Palmas's nonjudicial foreclosure sale of the Castro property nor NRS 116.3116(2)'s extinguishment of

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[74] *See generally* HUD Mortgagee Letter 2013-18, *supra* note 51.

[75] *SFR*, 334 P.3d at 414.

[76] *Chicago Title*, 708 F.2d at 810.

[77] *Kimbell Foods*, 440 U.S. at 729 (quoting *Standard Oil*, 332 U.S. at 309).

[78] *Id.* at 740.

Freedom Mortgage's security interest in that property. Freedom Mortgage's interest in the property was wiped out at the time of that sale, and it no longer has any cognizable interest in the Castro property. Because all of Freedom Mortgage's claims are predicated on the assertion that it retained a legal interest in the property despite the foreclosure—a premise that fails as a matter of law—all of its claims must be dismissed with prejudice.[79] The dismissal of all claims on this basis moots the HOA's motion for summary judgment.[80]

Accordingly, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Las Vegas Development Group, LLC's Motion to Dismiss, in which the Tierra de las Palmas Owners Association has joined, **[Doc. 13] is GRANTED. Plaintiff's claims are dismissed with prejudice.**

IT IS FURTHER ORDERED that the HOA's Motion to Dismiss **[Doc. 20] is DENIED** as moot.

The Clerk of Court is instructed to enter judgment accordingly and close this case.

DATED this 19th day of May, 2015

Jennifer A. Dorsey
United States District Judge

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[79] Amendment is futile if it "would merely enlarge on the legal theory rejected" by the court. *Kentmaster Mfg. v. Jarvis Prods. Corp.*, 146 F.3d 691, 696 (9th Cir. 1998).

[80] Doc. 20.

EXHIBIT 2

EXHIBIT 2

Chapter 2. Taxes and Assessments (07/01/99)

Part of a servicer's responsibility for protecting the priority of Fannie Mae's lien on a property securing a mortgage Fannie Mae has purchased or securitized is the maintenance of accurate records on the status of taxes, ground rents, or other assessments that could become a lien against the property—and paying the related bills if it maintains an escrow deposit account for that purpose.

Section 201 Taxes and Ground Rents (08/24/03)

The servicer must maintain accurate records on the status of real estate taxes and ground rents. The servicer of a ***first-lien mortgage loan*** usually accomplishes this by paying the bills itself using funds in the borrower's escrow deposit account. When the servicer has waived the escrow deposit account for a specific borrower, it still remains responsible for the timely payment of taxes and ground rents. Therefore, if the borrower fails to pay the taxes or ground rents, the servicer must advance its own funds to pay them, revoke the waiver, and begin escrow deposit collections to pay future bills. (Also see *Section 103.01, Waiver of Escrow Deposits (01/01/05).*)

The servicer of a ***second*** mortgage does not have to pay the bills for taxes and ground rents, but it must satisfy itself that these items are paid when due—either by the borrower or the first-lien mortgage loan servicer. If the second-lien mortgage loan servicer wishes (and the mortgage loan documents permit), it may establish an escrow deposit account to ensure that these expenses are paid promptly.

When the property securing the mortgage loan is a manufactured home, servicers must take the appropriate steps to ensure that both the manufactured home and land are taxed as real property and that a single tax bill is issued. In most cases, manufactured homes that have been converted to real property also will be taxed as real property. If this is not possible under applicable law and the dwelling must be taxed separately as personal property, the servicer's escrow systems must be adjusted to escrow for both real and personal property taxes. Further, in this event, all of Fannie Mae's requirements relating to real estate taxes apply equally to personal property taxes applicable to the dwelling.

The servicer should use the funds in the borrower's escrow deposit account to pay taxes and other related charges before any penalty date. Whenever funds are available, the servicer must pay these expenses early enough to take advantage of the maximum discounts allowed. If the deposit account balance is not sufficient to pay these obligations, the servicer should notify the borrower and then advance its own funds. The borrower may be billed for the amount the servicer advanced if (and in the manner) permitted by the mortgage loan documents, applicable law, and government regulations. If a penalty is incurred for late payments of taxes—and the borrower was a factor in delaying the payment—the servicer may bill the borrower for the penalty. Otherwise, the servicer must pay the penalty from its own funds. In such cases, Fannie Mae will reimburse the servicer for any funds it has to advance (including those for late fees and tax penalties). (Also see *Part VIII, Section 108.01, Delinquent Tax Late Fees or Penalties (01/31/03).*)

Section 202 Special Assessments (01/31/03)

Special assessments may be imposed by special tax, municipal utility, or community facilities districts in some states; by the HOA of a PUD or condo project; or by the co-op corporation of a co-op project. The servicer must maintain accurate records on the status of any special assessments that could become a lien against a property. Generally, the borrower will pay special assessments directly, but if he or she fails to do so, the servicer must advance its own funds to pay them if that is necessary to protect the priority of Fannie Mae's lien. In a few instances, deposits to pay special assessments will be collected as part of the mortgage loan payment.

When the HOA of a PUD or condo project notifies the servicer that a borrower is 60 days' delinquent in the payment of assessments or charges levied by the association, the servicer should advance the funds to pay the charges if necessary to protect the priority of Fannie Mae's mortgage lien. If the project is located in a state that has adopted the Uniform Condominium Act (UCA), the Uniform Common Interest Ownership Act (UCIOA), or a similar statute that provides for up to six months of delinquent regular condo assessments to have lien priority over the mortgage lien, Fannie Mae will reimburse the servicer for up to six months of such advances. However, Fannie Mae will not reimburse the servicer for any fees or costs related to attempts to collect the delinquent assessments.

EXHIBIT 3

EXHIBIT 3

Servicing Guide Announcement SVC-2012-05

April 11, 2012

Payment of Homeowners' Association Dues and Condo Assessments

Fannie Mae requires servicers to protect the priority of the mortgage lien and to clear all liens for delinquent homeowners' association (HOA) dues and condo assessments on properties acquired through foreclosure or deed-in-lieu of foreclosure.

Servicers must follow the policies outlined herein for all conventional mortgage loans held in Fannie Mae's portfolio, those purchased for Fannie Mae's portfolio but subsequently securitized into MBS pools (known as Pooled from Portfolio or PFP mortgage loans), those originally delivered as part of an MBS pool that have either a special or regular servicing option or a shared-risk MBS pool for which Fannie Mae or the servicer markets the acquired property, or other mortgage loans sold to Fannie Mae under a recourse or other credit enhancement arrangement.

Effective Date

Unless otherwise indicated, all policy changes specified in this Announcement are effective July 1, 2012; however, Fannie Mae encourages servicers to implement them as soon as possible. All other requirements provided in the associated sections of the *Servicing Guide* remain unchanged.

Property Assessments

Servicing Guide, Part III, Section 202: Special Assessments

Currently, Fannie Mae requires servicers to advance funds when the servicer is notified by an HOA for a PUD or condo project that the borrower is 60 days delinquent in the payment of assessments or charges levied by the association if necessary to protect the priority of Fannie Mae's mortgage lien. Fannie Mae provides for reimbursement to the servicer for up to six months of such advances in certain states.

In addition, Fannie Mae currently requires servicers to ensure any priority liens for delinquent HOA dues and assessments on acquired properties are cleared immediately, but no later than 30 days, after the foreclosure sale or acceptance of a deed-in-lieu of foreclosure.

For properties located in states providing priority for assessment liens over a previously-recorded mortgage document, servicers must take steps to protect the priority of the mortgage lien. When pursuing foreclosure, the servicer must determine the amount to be paid in order to clear the association's claim of lien and preserve the priority of the mortgage lien. The amount is generally the lowest of:

- the actual delinquent assessment balance and allowed costs,
- the maximum amount due from the foreclosing first mortgage entity based on the provisions in the project's declaration, or
- the maximum amount due from a foreclosing first mortgage entity under the relevant state statute.

The servicer must pay that amount immediately following, but no later than 30 days after, the foreclosure sale date or acceptance of a deed-in-lieu of foreclosure. Clearing the priority lien within this time frame will ensure that Fannie Mae's lien position is preserved and costly delays are avoided when selling the property.

If an association refuses to release its claim of lien against a property for the amount determined to be the obligated amount after reasonable efforts to reach agreement, the servicer or its foreclosure attorney must contact the Fannie Mae legal department at nonroutine_litigation@fanniemae.com to seek further guidance.

Revision of Reimbursable Limits

Servicing Guide, Part III, Section 202: Special Assessments and Part VIII, Section 110: Expenses During Foreclosure Process

Fannie Mae is revising the reimbursement policy to servicers to align with the amount the servicer must pay to protect Fannie Mae's mortgage lien position and ensure acquired properties are clear of any liens for HOA dues and assessments. After completion of the foreclosure sale or acceptance of the deed in lieu of foreclosure, Fannie Mae will reimburse the servicer for the advances made up to the lowest of:

- the actual advances paid,
- the maximum limit provided in the project declaration, or
- the state statutory maximums.

Servicer Responsibility on Acquired Properties

Servicing Guide, Part VIII, Section 302.01: Servicer's Responsibilities

Servicers are reminded of their responsibility to continue advancing funds to pay for HOA dues and property taxes as they come due following a foreclosure sale as required under applicable state law. A servicer must also perform the following property management duties until notified by Fannie Mae that the property has been sold and that the final settlement has occurred:

- Request that the tax rolls be changed to reflect Fannie Mae's ownership of the property (specifying that the tax bills should continue to be directed to the servicer), and pay the appropriate taxes and assessments as they come due; and
- Contact the management company if the acquired property was part of a condominium, PUD, or cooperative project to ensure that all future bills for homeowners' association (or cooperative corporation) assessments or fees are sent to the servicer, and pay the bills as they come due.

Noncompliance

Servicing Guide, Part I, Section 201.10.02: Alternatives to Contract Termination

Fannie Mae reminds servicers that it may pursue any of its available remedies, which may include, but are not limited to, repurchase, "make whole," or indemnification for failure to comply with Fannie Mae's policies regarding delinquent homeowners' association dues and assessments.

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Servicers should contact their Servicing Consultant, Portfolio Manager or Fannie Mae's National Servicing Organization's Servicing Solutions Center at 1-888-FANNIE5 (888-326-6435) with any questions regarding this Announcement.

Gwen Muse-Evans
Vice President
Chief Risk Officer for Credit Portfolio Management

EXHIBIT 4

EXHIBIT 4

FannieMae

Selling Guide Announcement SEL-2014-02

January 14, 2014

Priority of Common Expense Assessments

Fannie Mae is revising its policy concerning priority of common expense assessments for mortgages secured by units in condo and planned unit development (PUD) projects to permit no more than six months of regular common expense assessments to have priority over Fannie Mae's mortgage lien. This policy change does not apply to projects located in a jurisdiction that enacted a law on or before January 14, 2014 that provides for such lien priority for a period greater than six months (for example, Connecticut and Florida). If applicable state law allows for greater than six months of lien priority for assessments, but provides an exception for Fannie Mae's requirements, then the six-month maximum applies (such as Nevada).

Fannie Mae supports maintaining the maximum six-month limited priority lien for common expense assessments (typically known as homeowner association or HOA fees) that currently applies in most jurisdictions. The six-month period is clear and provides discrete and measureable risk exposure for mortgage lending on units located in condo and PUD projects. The six-month period sufficiently balances the rights and needs of lenders (including mortgage servicers and secondary market investors), HOAs, and borrowers.

This policy change will be included in a future version of the *Selling Guide.* Until that time, the updated version of the applicable *Selling Guide* topic is as follows:

B4-2.1-06, Priority of Common Expenses

Fannie Mae allows a limited amount of regular common expense assessments (typically known as homeowner association or HOA fees) to have priority over Fannie Mae's mortgage lien for mortgage loans secured by units in a condo project or planned unit development (PUD). This applies if the condo or PUD project is located in a jurisdiction that has enacted

- the Uniform Condominium Act,
- the Uniform Common Interest Ownership Act, or
- a similar statute that provides for unpaid assessments to have priority over first mortgage liens.

The table below describes the permitted priority of common expense assessments for purposes of determining eligibility of a mortgage loan secured by a unit in a condo or PUD project for purchase by Fannie Mae.

If ...	Then ...
The condo or PUD project is located in a jurisdiction that enacted a law on or before January 14, 2014, that provides that regular common expense assessments will have priority over Fannie Mae's mortgage lien for a maximum amount greater than six months,	The maximum number of months of regular common expense assessments permitted under the applicable jurisdiction's law as of January 14, 2014, may have priority over Fannie Mae's mortgage lien, provided that if the applicable jurisdiction's law as of that date referenced an exception for Fannie Mae's requirements, then no more than six months of regular common expense assessments may have priority over Fannie Mae's mortgage lien.

If ...	Then ...
The condo or PUD project is located in any other jurisdiction,	No more than six months of regular common expense assessments may have priority over Fannie Mae's mortgage lien, even if applicable law provides for a longer priority period.

Notwithstanding any provisions to the contrary in the Guide, which do not require the lender to represent or warrant compliance with Fannie Mae project legal document requirements, the condo or PUD project legal documents must evidence compliance with the above requirements.

Effective Date

This change is effective for all mortgage applications dated after January 14, 2014.

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Lenders who have questions about this Announcement should contact their Account Team.

Carlos T. Perez
Vice President
Chief Credit Officer for Single-Family

EXHIBIT 5

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- the covenants or restrictions in the security instrument,
- any obligation that the borrower has under the note or security instrument,
- any of the noteholder's rights to receive certain notifications, or
- the provisions of the legal documents for a condo, PUD, or co-op project.

The servicer must refer all such requests to Fannie Mae's NSO (see F-4-03, List of Contacts).

D1-6-02, Handling Notices of Liens, Legal Action, Other Actions Impacting Fannie Mae's Interest (11/12/2014)

Introduction

This topic contains information on handling notices of liens, legal action, other actions impacting Fannie Mae's interest.

Fannie Mae reserves the right to direct and control all litigation involving a Fannie Mae mortgage loan, and the servicer and any law firm handling the litigation must cooperate fully with Fannie Mae in the prosecution, defense, or handling of the matter. The servicer must describe Fannie Mae as "Federal National Mortgage Association ("Fannie Mae"), a corporation organized and existing under the laws of the United States of America" in legal proceedings. Fannie Mae may not be referred to as a government agency.

The servicer must not initiate legal proceedings or intervene in legal proceedings on Fannie Mae's behalf without Fannie Mae's prior written approval, with the exception of routine foreclosures, bankruptcy matters, and possessory actions for certain mortgage loans.

The servicer must take all reasonable actions to prevent new liens that would be superior to Fannie Mae's mortgage lien from being attached against the property.

From time to time, servicers may be served with a summons and complaint relating to a Fannie Mae mortgage loan (e.g., a condemnation action, a probate proceeding, a partition action, a quiet title action, a code violation notice, a tax sale, or a subordinate loan foreclosure). The servicer is responsible for handling these types of legal actions, including retaining any legal

counsel necessary to represent Fannie Mae's interests. The following table outlines the servicer's responsibilities upon receipt of notice of a legal action impacting Fannie Mae's interest.

✓	**The servicer must...**
	Notify Fannie Mae's Single Family Legal department (see F-4-03, List of Contacts) immediately of any non-routine litigation and certain matters requiring escalation as required in accordance with this Guide. See E-1.3-02, Reporting Non-Routine Litigation to Fannie Mae for additional information.
	Use counsel selected and engaged pursuant to Fannie Mae's requirements. See A4-2.2-01, Selecting and Retaining Law Firms for additional information. **Note:** If a legal proceeding involves allegations that would trigger Fannie Mae's right to indemnification from the servicer (e.g., allegations of origination issues or servicing errors), the servicer is authorized to retain any counsel of its choice.
	Obtain excess fee approval from its Fannie Mae Servicing Representative (see F-4-03, List of Contacts) if the legal proceeding does not involve allegations that would trigger Fannie Mae's right to indemnification from the servicer.
	Instruct counsel to • notify the borrower about his or her responsibility for expenses when the deed of trust or mortgage loan provides for the borrower to reimburse any legal fees or costs incurred by the servicer, and • handle such matters by stipulation or any other expeditious matter that will reduce fees and costs.

MERS Notices: If the servicer receives an electronic notice from MERS related to a mortgage loan that it services for Fannie Mae, it must take the actions listed in the following table.

✓	**The servicer must...**
	Take appropriate and timely action based on the notice.
	Advise MERS that it is the servicer for any notice in which the servicer is unidentified but becomes aware by checking all electronic messages on a daily basis.

The servicer of a co-op share loan must protect Fannie Mae's interest in the share loan under the terms of any recognition agreement.