

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

LN Management LLC Series 5105 Portraits
Place

Appellant,

v.

Green Tree Loan Servicing LLC

Respondent.

No. 69477

Electronically Filed
Jan 20 2016 09:04 a.m.

DOCKETING STATEMENT
CIVIL APPEALS
Tara K. Milne
Clerk of Supreme Court

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District 8th Department 8
County Clark Judge Douglas E. Smith
District Ct. Case No. A-13-679816-C

2. Attorney filing this docketing statement:

Attorney Kerry P. Faughnan, Esq. Telephone 702-301-3096
Firm Law Office of Kerry P. Faughnan
Address PO Box 335361
North Las Vegas, NV

Client(s) LN Management LLC Series 5105 Portraits Place

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney Colt B. Dodrill, Esq. Telephone (702) 476-0100
Firm WOLFE & WYMAN LLP
Address 980 Kelly Johnson Drive, Ste. 140
Las Vegas NV 89119

Client(s) Green Tree Loan Servicing LLC

Attorney _____ Telephone _____
Firm _____
Address _____

Client(s) _____

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- | | |
|---|---|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal: |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input checked="" type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify): _____ |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input type="checkbox"/> Other disposition (specify): _____ |

5. Does this appeal raise issues concerning any of the following?

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

N/A

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

William and Betty Webster filed for bankruptcy protection under Chapter 13 in the Eastern District of Texas June 3, 2011, Case #11-41748. The case was converted to Chapter 7 3/25/2013. The case remains open at this time.

8. Nature of the action. Briefly describe the nature of the action and the result below:

This is an action to quiet title and to determine the rights and obligations of the parties after a NRS Chapter 116 HOA lien foreclosure sale.

Plaintiff/Appellant purchased the real property in question at an HOA foreclosure auction. At the time of the HOA auction, Defendant/Respondent Green Tree held a first deed of trust against the property.

Default judgments were entered against the prior homeowners William and Betty Webster in the case.

At the time of the HOA foreclosure sale, unbeknownst to the HOA, the Websters had filed for bankruptcy. Green Tree moved for summary judgment asserting on behalf of the Websters that the automatic stay voided the foreclosure sale, which was granted by the District Court, leading to this appeal.

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

Was the District Court erroneous in applying 9th Circuit law to a 5th Circuit bankruptcy concerning the effect of the automatic stay.

Was the District Court erroneous in allowing Green Tree to have standing to raise the automatic stay defense to the validity of the foreclosure sale for a party the District Court already granted judgment in favor of LN Management?

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

None known.

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☒ A substantial issue of first impression

☐ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain: While there are federal court decisions from other states in the 9th Circuit concerning standing of a lender to raise for a third party as a defense a violation of the "automatic stay" under the Bankruptcy Code, there is no Nevada state court decision on the issue.

13. Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

This matter would be presumed to be retained by the Supreme Court because the matter is not one of the enumerated case categories presumptively assigned to the Court of Appeals under NRAP 17(b).

14. Trial. If this action proceeded to trial, how many days did the trial last? _____

Was it a bench or jury trial? _____

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

N/A

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from Sep 23, 2015

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

17. Date written notice of entry of judgment or order was served Dec 3, 2015

Was service by:

☐ Delivery

☒ Mail/electronic/fax

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☐ NRCP 59 Date of filing _____

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. ____, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion _____

(c) Date written notice of entry of order resolving tolling motion was served _____

Was service by:

☐ Delivery

☐ Mail

19. Date notice of appeal filed Dec 18, 2015

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other

NRAP 4(a)(1)

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

- | | |
|---|---------------------------------------|
| <input checked="" type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205 |
| <input type="checkbox"/> NRAP 3A(b)(2) | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3) | <input type="checkbox"/> NRS 703.376 |
| <input type="checkbox"/> Other (specify) _____ | |

(b) Explain how each authority provides a basis for appeal from the judgment or order:

Appeal from a final judgment with no other parties remaining in the case.

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

LN Management LLC Series 5105 Portraits Place, Plaintiff, Intervenor Defendant
Green Tree Loan Servicing LLC, Intervenor and successor in interest to Bank of America, Defendant
Zions First National Bank, Defendant
Portraits at Painted Desert Homeowners Association, Intervenor Defendant

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

Betty Webster, default judgment entered against party 11/19/2014
William Webster, default judgment entered against party 11/19/2014
Zions First National Bank dismissed pursuant to NRCP 41 12/13/2015
Portraits at Painted Desert Homeowners Association, Intervenor Defendant did not join in this appeal after summary judgment granted against it.

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

Plaintiff sought quiet title and declaratory relief.
Green Tree Loan Servicing sought quiet title, declaratory relief, unjust enrichment, and violation of the bankruptcy stay.

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☒ Yes

☐ No

25. If you answered "No" to question 24, complete the following:

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

None.

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☐ No

26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

LN Mgmt Llc Ser. 5105 Portraits Place
Name of appellant

Kerry P. Faughnan
Name of counsel of record

Jan 19, 2016
Date

/s/ Kerry P. Faughnan
Signature of counsel of record

Clark County, Nevada
State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 19th day of January, 2016, I served a copy of this completed docketing statement upon all counsel of record:

- ☐ By personally serving it upon him/her; or
- ☐ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

☒ By allowing electronic service through the courts ECF system to:

Colt B. Dodrill, Esq.
WOLFE & WYMAN LLP
980 Kelly Johnson Drive, Ste. 140
Las Vegas NV 89119

Dated this 19th day of January, 2016

/s/ Kerry P. Faughnan
Signature

CIVIL COVER SHEET

A - 13 - 679816 - C

County, Nevada

XXVI

Case No. _____
(Assigned by Clerk's Office)**I. Party Information**

Plaintiff(s) LN Management LLC Series 5105 Potraits
Place
P.O. Box 36208
Las Vegas, NV 89133
Attorney : Kerry P. Faughnan, Esq. (702) 301-3096
P.O. Box 335361, NLV, NV 89033

Defendants: William/Betty Webster; 5105 Portraits Pl, , LV, NV 89149

Attorney (name/address/phone):

II. Nature of Controversy (Please check applicable bold category and applicable subcategory, if appropriate)☐ **Arbitration Requested****Civil Cases**


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

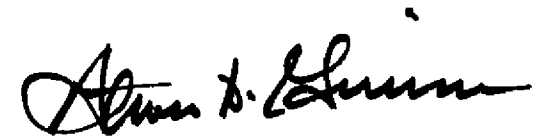
III. Business Court Requested (Please check applicable category; for Clark or Washoe Counties only.)

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

April 9, 2013

Date


Signature of initiating party or representative



CLERK OF THE COURT

COMP

Kerry Faughnan, Esq.
Nevada Bar No.12204
P.O. Box 335361
North Las Vegas, NV 89086
(702) 301-3096
(702) 331-4222- Fax
Kerry.faughnan@gmail.com

Attorney for Plaintiff

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

LN MANAGEMENT LLC SERIES 5105
POTRAITS PLACE

Plaintiff,

v.

WILLIAM WEBSTER, an individual;
BETTY WEBSTER, an individual; BANK
OF AMERICA N.A.; ZIONS FIRST
NATIONAL BANK; and DOES 1 through
10, inclusive;

Defendants.

Case No. A - 13 - 679816 - C

Dept. No. XXVI

**COMPLAINT FOR QUIET TITLE AND
DECLARATORY RELIEF**

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

Plaintiff LN MANAGEMENT LLC SERIES 5105 POTRAITS PLACE, by and through
its counsel of record, Kerry P. Faughnan, Esq., hereby complains against the above-named
Defendants as follows:

PARTIES, JURISDICTION AND VENUE

1. This action relates to the ownership and title of certain real property located in
Clark County, Nevada, commonly known as 5105 Portraits Place., Las Vegas, Nevada 89149 (the
"Property"). Accordingly, jurisdiction and venue are appropriate in Clark County, Nevada.

2. Plaintiff LN MANAGEMENT LLC SERIES 5105 POTRAITS PLACE
("Plaintiff") is a Nevada Limited Liability Company formed under the laws of the state of
Nevada.

3. Upon information and belief, Defendants, William and Betty Webster, were Nevada residents holding title to the Property prior to a foreclosure sale through which Plaintiff derives its title.

4. Upon information and belief, Defendant Bank of America, N.A., is the successor in interest to American Home Mortgage Corp. which held a mortgage against the Property prior to a foreclosure sale through which Plaintiff derives its title.

5. Upon information and belief, Defendant Zions First National Bank held a mortgage against the Property prior to a foreclosure sale through which Plaintiff derives its title.

6. The true names and capacities of Does 1 through 10 (“Doe Defendants”) are currently unknown to Plaintiff, who therefore sues such Doe Defendants by fictitious names. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of each of the Doe Defendants as and when such information is ascertained. (The above-identified defendants, including the Doe Defendants, are referred to collectively herein as “Defendants.”)

GENERAL ALLEGATIONS

7. On or about April 9, 2013, Plaintiff acquired by deed that certain real property commonly known as 5105 Portraits Place., Las Vegas, Nevada 89149 (the "Property") from the 5105 Portraits Pl Trust. A true and correct copy of the Quitclaim Deed is attached hereto as Exhibit 1.

8. The 5105 Portraits Pl Trust acquired the Property at a properly noticed foreclosure sale in accordance with NRS 116.3116 through 116.31168, inclusive.

9. The Foreclosure Deed conveying the Property to 5105 Portraits Pl Trust was recorded on January 29, 2013 with the Clark County Recorder's Office in Book/Instrument Number 201301290002528. A true and correct copy of the Foreclosure Deed is attached hereto as Exhibit 2.

10. Upon information and belief, Defendants may have had an interest in the Property at one time.

1 11. Upon information and belief, none of the Defendants have a valid interest in the
2 Property subsequent to the foreclosure sale.

3 12. Plaintiff is unable to obtain title insurance on the Property without first quieting
4 claims against all known persons and/or entities claiming legal or equitable interests in the
5 Property.

6 **FIRST CLAIM FOR RELIEF**

7 **(Quiet Title)**

8 13. Plaintiff repeats and re-alleges each and every allegation contained in paragraphs 1
9 through 11 of this Complaint, as though fully set forth herein.

10 14. Plaintiff is the rightful owner of the Property by virtue of their Quitclaim Deed.

11 15. Upon information and belief, none of the Defendants have a valid interest in the
12 Property subsequent to the foreclosure sale.

13 16. Plaintiff is entitled to a determination from this Court, pursuant to NRS 40.010,
14 that Plaintiff is the rightful owner of the Property and that Defendants, and each of them, have no
15 right, title, or interest in the Property.

16 17. In the alternative, Plaintiff is entitled to a determination of what remaining interest
17 Defendants have in the Property, an accounting of Defendant's claims, an order of the Court
18 recognizing Plaintiff as the legal owner of the Property, subject to any unextinguished claims, and
19 an order of the Court requiring Defendant(s) to accept payments under the terms of any surviving
20 lien, from Plaintiff.

21 **SECOND CLAIM FOR RELIEF**

22 **(Declaratory Relief)**

23 18. Plaintiff repeats and re-alleges each and every allegation contained in paragraphs 1
24 through 16 of this Complaint, as though fully set forth herein.

25 19. Plaintiff seeks a declaration from this Court, pursuant to NRS 30.010, that title in
26 the Property is vested in Plaintiff free and clear of all claims of Defendants, and that Defendants
27 herein have no estate, right, title or interest in the Property, and that Defendants are forever
28 enjoined from asserting any estate, title, right, or interest in the Property adverse to Plaintiff.

1
2 20. In the alternative, for a determination of what remaining interest Defendants have
3 in the Property, an accounting of Defendant's claims, an order of the Court recognizing Plaintiff
4 as the legal owner of the Property, subject to any unextinguished claims, and an order of the Court
5 requiring Defendant(s) to accept payments under the terms of any surviving lien, from Plaintiff.

6 WHEREFORE, Plaintiff prays for the following relief:

7 1. For a determination and declaration that Plaintiff is the rightful holder of title to
8 the Property, free and clear of all claims of the Defendants;

9 2. In the alternative, for a determination of what remaining interest Defendants have
10 in the Property, an accounting of Defendant's claims, an order of the Court recognizing Plaintiff
11 as the legal owner of the Property, subject to any unextinguished claims, and an order of the
12 Court requiring Defendant(s) to accept payments under the terms of any surviving lien, from
13 Plaintiff;

14 3. For such other and further relief as this Court may deem just and proper.

15 DATED April 9, 2013.

16 /s/ Kerry P. Faughnan
17 Kerry P. Faughnan, Esq.
18 Nevada Bar No. 12204
19 P.O. Box 335361
20 North Las Vegas, Nevada 89033
21 (702) 301-3096
22 (702) 331-4222- Fax
23 Kerry.faughnan@gmail.com

24 Attorney for Plaintiff
25
26
27
28

EXHIBIT 1

③-1

A.P.N.: 125-34-711-005

R.P.T.T.: \$None-Exempt 7

When Recorded Mail To and Mail Tax Statements To:
LN MANAGEMENT LLC SERIES 5105 POTRAITS PLACE
PO Box 36208
Las Vegas NV 89133

Inst #: 201304090001824
Fees: \$18.00 N/C Fee: \$25.00
RPTT: \$0.00 Ex: #007
04/09/2013 11:54:44 AM
Receipt #: 1567393
Requestor:
LAW OFFICES OF KERRY
FAUGHN
Recorded By: ANI Pgs: 3
DEBBIE CONWAY
CLARK COUNTY RECORDER

QUITCLAIM DEED

FOR NO CONSIDERATION,

5105 POTRAITS PL Trust do(es) hereby remise, release and forever quitclaim to

LN MANAGEMENT LLC SERIES 5105 POTRAITS PLACE

the real property situate in the County of Clark, State of Nevada, described as follows:

PARCEL ONE (1):

LOT NINETY-SEVEN (97) IN BLOCK "A" OF PORTRAITS AT PAINTED DESERT-PHASE III, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 43 OF PLATS, PAGE 21, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA AND AMENDED BY CERTIFICATE OF AMENDMENT RECORDED JANUARY 17, 1992 IN BOOK 920117 AS DOCUMENT NO. 00911, OF OFFICIAL RECORDS.

PARCEL TWO (2):

A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS AND OTHER PURPOSES OVER THE PRIVATE DRIVES AND COMMON AREAS OF PORTRAITS AT PAINTED DESERT-PHASE I AS SHOWN BY MAP THEREOF ON FILE IN BOOK 42 OF PLATS, PAGE 41, PORTRAITS AT PAINTED DESERT-PHASE II AS SHOWN BY MAP THEREOF ON FILE IN BOOK 42 OF PLATS, PAGE 42 AND PORTRAITS AT PAINTED DESERT PHASE III AS SHOWN BY MAP THEREOF ON FILE IN BOOK 43 OF PLATS, PAGE 21 IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA. SAID EASEMENT IS APPURTENANT TO PARCEL ONE (1) ABOVE.

PARCEL THREE (3):

A NON-EXCLUSIVE EASEMENT FOR THE BENEFIT OF AND APPURTENANT TO PARCEL ONE (1), ABOVE DESCRIBED FOR INGRESS, EGRESS AND UTILITY PURPOSES OVER ALL STREETS AND ROADWAYS AS SHOWN BY MAP OF PAINTED DESERT ON FILE IN BOOK 35 OF PLATS, PAGE 53, AND BY AMENDED MAP OF PAINTED DESERT, AS SHOWN BY MAP ON FILE IN BOOK 40 OF PLATS, PAGE 50, AND BY SECOND AMENDED MAP OF PAINTED DESERT, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 41 OF PLATS, PAGE 28, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA, WHICH HAVE NOT BEEN DEDICATED TO AND ACCEPTED FOR PUBLIC USE AND OWNERSHIP BY THE CITY OF LAS VEGAS, CLARK COUNTY, NEVADA.

Subject to:

1. All general and special taxes for the current fiscal year.
2. Covenants, Conditions, Restrictions, Reservations, Rights, Rights of Way and Easements now of record.

TOGETHER with all tenements, hereditaments and appurtenances, including easements and water rights, if any, thereto belonging or appertaining, and any reversions, remainders, rents, issues or profits thereof.

Date: 4/8/2013

5105 POTRAITS PL Trust

Ryan Welch

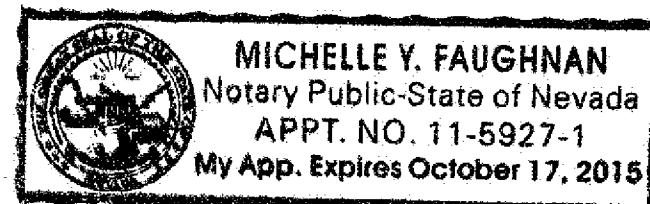
By: Ryan Welch, Trustee

STATE OF **NEVADA**)
) : **SS.**
COUNTY OF **CLARK**)

On April 9 2013, before me, a Notary Public, personally appeared Ryan Welch ^(initials) ~~Iyad Haddad~~, known to me to be the person who executed the foregoing, and who acknowledged to me he executed it on behalf of the entity named therein.

[Signature]
Notary Public

(My commission expires: 10/17/2015)



**STATE OF NEVADA
DECLARATION OF VALUE**

1. Assessor Parcel Number(s)

- a) 125-34-711-005
b) _____
c) _____
d) _____

2. Type of Property

- a) ☐ Vacant Land b) ☒ Single Fam. Res.
c) ☐ Condo/Twnhse d) ☐ 2-4 Plex
e) ☐ Apt. Bldg. f) ☐ Comm'l/Ind'l
g) ☐ Agricultural h) ☐ Mobile Home
i) ☐ Other _____

FOR RECORDERS OPTIONAL USE

Book _____ Page: _____

Date of Recording: _____

Notes: Trust Agreement - Amended

3. Total Value/Sales Price of Property: _____

\$ 0

Deed in Lieu of Foreclosure Only (value of property) (\$ _____)

Transfer Tax Value: \$N/A

Real Property Transfer Tax Due \$NONE

4. **If Exemption Claimed:**

a. Transfer Tax Exemption, per 375.090, Section: 7

b. Explain reason for exemption: Transfer from a trust without consideration

5. Partial Interest: Percentage being transferred: 100 %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature: Ryan Welch

Capacity: Grantor

Signature: Ryan Welch

Capacity: Grantee

SELLER (GRANTOR) INFORMATION
(REQUIRED)

BUYER (GRANTEE) INFORMATION
(REQUIRED)

Print Name: 5105 Portraits PI Trust

Print Name: Place

Address: PO Box 36208

Address: PO Box 36208

City: Las Vegas

City: Las Vegas

State: NV Zip: 89133

State: NV Zip: 89133

COMPANY/PERSON REQUESTING RECORDING (required if not seller or buyer)

Print Name: Kerry Faughnan, Esq.

File Number: _____

Address: PO Box 335361

City: North Las Vegas

State: NV Zip: 89086

(AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED)

EXHIBIT 2

Inst #: 201301290002528

Fees: \$17.00 N/C Fee: \$0.00

RPTT: \$119.85 Ex: #

01/29/2013 02:49:12 PM

Receipt #: 1476500

Requestor:

ALESSI & KOENIG LLC

Recorded By: ANI Pgs: 2

DEBBIE CONWAY

CLARK COUNTY RECORDER

When recorded mail to and
Mail Tax Statements to:
5105 Portraits PI Trust
PO Box 36208
Las Vegas, NV 89133

2

APN No. 125-34-711-005

TS No. 25734-5105

TRUSTEE'S DEED UPON SALE

The Grantee (Buyer) herein was: **5105 Portraits PI Trust**

The Foreclosing Beneficiary herein was: **Portraits at Painted Desert Homeowners Association**

The amount of unpaid debt together with costs: \$5,276.00

The amount paid by the Grantee (Buyer) at the Trustee's Sale: **\$23,100.00**

The Documentary Transfer Tax: \$119.85

Property address: **5105 PORTRAITS PL, Las Vegas, NV 89149**

Said property is in [] unincorporated area: City of Las Vegas

Trustor (Former Owner that was foreclosed on): **WILLIAM & BETTY WEBSTER**

Alessi & Koenig, LLC (herein called Trustee), as the duly appointed Trustee under that certain Notice of Delinquent Assessment Lien, recorded **March 31, 2011** as instrument number **0002891**, in **Clark County**, does hereby grant, without warranty expressed or implied to: **5105 Portraits PI Trust** (Grantee), all its right, title and interest in the property legally described as: **LOT 97 BLOCK A**, as per map recorded in **Book 43, Pages 21** as shown in the Office of the County Recorder of **Clark County Nevada**.

TRUSTEE STATES THAT:

This conveyance is made pursuant to the powers conferred upon Trustee by NRS 116 et seq., and that certain Notice of Delinquent Assessment Lien, described herein. Default occurred as set forth in a Notice of Default and Election to Sell which was recorded in the office of the recorder of said county. All requirements of law regarding the mailing of copies of notices and the posting and publication of the copies of the Notice of Sale have been complied with. Said property was sold by said Trustee at public auction on **January 23, 2013** at the place indicated on the Notice of Trustee's Sale.

Ryan Kerbow, Esq.

Signature of AUTHORIZED AGENT for Alessi&Koenig, LLC

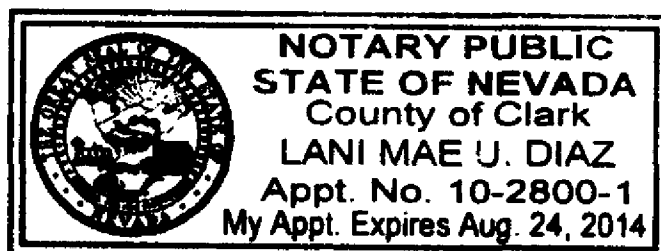
[Handwritten Signature]

State of Nevada)
County of Clark)

SUBSCRIBED and SWORN to before me 1/29/13

WITNESS my hand and official seal.
(Seal)

(Signature)



**STATE OF NEVADA
DECLARATION OF VALUE**

1. Assessor Parcel Number(s)

a. 125-34-711-005

b. _____

c. _____

d. _____

2. Type of Property:

a. ☐ Vacant Land

b. ☒ Single Fam. Res.

c. ☐ Condo/Twnhse

d. ☐ 2-4 Plex

e. ☐ Apt. Bldg

f. ☐ Comm'l/Ind'l

g. ☐ Agricultural

h. ☐ Mobile Home

☐ Other

FOR RECORDERS OPTIONAL USE ONLY

Book _____ Page: _____

Date of Recording: _____

Notes: _____

3.a. Total Value/Sales Price of Property

\$ 23,100.00

b. Deed in Lieu of Foreclosure Only (value of property (_____))

c. Transfer Tax Value:

\$ 23,100.00

d. Real Property Transfer Tax Due

\$ 119.85

4. **If Exemption Claimed:**

a. Transfer Tax Exemption per NRS 375.090, Section _____

b. Explain Reason for Exemption: _____

5. Partial Interest: Percentage being transferred: 100 %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature _____

Capacity: Grantor

Signature _____

Capacity: _____

SELLER (GRANTOR) INFORMATION

(REQUIRED)

Print Name: Alessi&Koenig, LLC

Address: 9500 W Flamingo 205

City: Las Vegas

State: NV

Zip: 89147

BUYER (GRANTEE) INFORMATION

(REQUIRED)

Print Name: 5105 Portraits PI Trust

Address: PO Box 36208

City: Las Vegas

State: NV

Zip: 89133

COMPANY/PERSON REQUESTING RECORDING (Required if not seller or buyer)

Print Name: Alessi&Koenig, LLC

Escrow # N/a Foreclosure

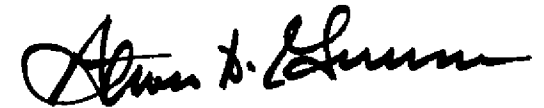
Address: 9500 W Flamingo 205

City: Las Vegas

State: NV

Zip: 89147

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED



CLERK OF THE COURT

COMP
COLT B. DODRILL, ESQ.
Nevada Bar No. 9000
WOLFE & WYMAN LLP
980 Kelly Johnson Drive, Suite 140
Las Vegas, NV 89119
Tel: (702) 476-0100
Fax: (702) 476-0101
cbdodrill@wolfewyman.com

Attorneys for Plaintiff-in-Intervenor,
GREEN TREE SERVICING LLC

DISTRICT COURT
CLARK COUNTY, NEVADA

LN MANAGEMENT LLC SERIES 5105
POTRAITS PLACE,

Plaintiff,

v.

WILLIAM WEBSTER, an individual; BETTY
WEBSTER, an individual; BANK OF AMERICA,
N.A.; ZIONS FIRST NATIONAL BANK; and
DOES 1 through 10,

Defendants.

CASE NO. A-13-679816-C
DEPT.: XXVI

COMPLAINT IN INTERVENTION

GREEN TREE SERVICING LLC,

Plaintiff,

v.

LN MANAGEMENT LLC SERIES 5105
PORTRAITS PLACE, a Nevada limited liability
corporation, AS TRUSTEE FOR 5105
PORTRAITS PL. TRUST; and PORTRAITS AT
PAINTED DESERT HOMEOWNERS
ASSOCIATION, a Nevada non-profit cooperative
corporation without stock;

Defendants.

Plaintiff-in-Intervenor GREEN TREE SERVICING LLC ("Green Tree"), by and through its
counsel of record, Wolfe & Wyman LLP, hereby complains against Defendants as follows:

///



PARTIES AND JURISDICTION

1. Green Tree is a Delaware limited liability company lawfully doing business in the state of Nevada, county of Clark .

2. Defendant, LN MANAGEMENT LLC SERIES 5105 PORTRAITS PLACE is a Nevada limited liability company doing business in the State of Nevada.

3. Defendant PORTRAITS AT PAINTED DESERT HOMEOWNERS ASSOCIATION (“HOA”) is a Nevada non-profit corporation doing business in Clark County, Nevada.

4. This matter involves certain real estate located at 5105 Portraits Place, Las Vegas, Nevada 89149 (Assessor’s Parcel No. 125-34-711-005) (“Subject Property”).

5. ALESSI & KOENIG, LLC (“Alessi”), is a Nevada limited liability company doing business in the state of Nevada, and serves as the agent of the HOA. All of Alessi’s actions herein occurred in the course and scope of that agency.

6. The acts and omissions complained of herein pertain to the Subject Property which is located in the County of Washoe and fall under the jurisdiction of this Court.

7. Green Tree is unaware of the true names and capacities, whether corporate, individual, associate, or otherwise of the other Defendants, and therefore sues those Defendants by fictitious names DOE or ROE BUSINESS ENTITY. When Green Tree ascertains the identities and exact nature of such fictitious Defendants, it will seek leave of this Court to amend this Complaint to assert the true names thereupon.

8. Green Tree is informed and believes and thereon alleges that the Defendants, and all of them, were at all material times, the agents, principal, servants, employees, employers, or partners of each of the other Defendants and in doing the things alleged herein Defendants and each of them, were acting within the course and scope of their agency, and with the consent, approval and/or ratification of each of the other Defendants.

GENERAL ALLEGATIONS

9. Green Tree repeats, re-alleges, and incorporates herein by reference, the allegations set forth in Paragraphs 1 through 8, inclusive, with the same force and effect as though fully set forth at length herein.

1 10. Green Tree is informed and believes and thereon alleges that the Subject Property
2 falls within the Covenants, Conditions, and Restrictions of the HOA.

3 11. Green Tree is informed and believes and thereon alleges that William and Betty
4 Webster were title owners of record of the Subject Property.

5 12. Green Tree is informed and believes and thereon alleges that on or about October 21,
6 2003, the Websters entered into a mortgage loan transaction in which they borrowed \$192,000.00
7 from American Home Mortgage Corp, evidenced by a Note and secured by a Deed of Trust
8 encumbering the Subject Property recorded in the official records of the Clark County Recorder on
9 October 29, 2003 as Document Number 20031029.02155.

10 13. On or about July 19, 2011, Mortgage Electronic Registration Systems, Inc.
11 (“MERS”), as nominee for American Home Mortgage Corp, and its successors and assigns, assigned
12 the Note and Deed of Trust to Bank of America, N.A., as successor by merger to BAC Home Loans
13 Servicing, LP (“BANA”). The Assignment was recorded in the official records of the Clark County
14 Recorder on July 29, 2011 as Document Number 201107290001107.

15 14. Another Assignment from MERS to BANA was recorded on August 16, 2011 in the
16 official records of the Clark County Recorder as Document No. 201108160000025.

17 15. On or about November 12, 2014, Everbank assigned the Note and Deed of Trust to
18 Green Tree. The Assignment was recorded on December 2, 2014 as Document No. 20141202-
19 0004020.

20 16. On or about March 31, 2011, the HOA recorded a Notice of Lien on the Subject
21 Property.

22 17. On or about June 3, 2011, the Websters filed a Chapter 13 bankruptcy petition in the
23 Eastern District of Texas.

24 18. On or about August 4, 2011, the HOA, and/or its agent, recorded a Notice of Default
25 of the Lien on the Subject Property.

26 19. On or about September 21, 2012, the bankruptcy court confirmed the Websters’
27 bankruptcy plan.

28 20. On or about November 19, 2012, Alessi, as the HOA’s foreclosure agent, recorded a

1 Notice of Sale of the Subject Property under the delinquent lien.

2 21. On or about January 23, 2013, Alessi purported to sell the property to LN
3 Management for \$23,100.00 at an HOA foreclosure of the delinquent lien.

4 22. On or about January 29, 2013, Alessi recorded a Trustee's Deed Upon Sale in the
5 official records of the Clark County Recorder as Document Number 201301290002528 purporting to
6 indicate a January 23, 2013 sale to LN Management for \$23,100.00.

7 23. On or about March 21, 2013, the Websters filed in their bankruptcy, a Voluntary
8 Conversion from Chapter 13 to Chapter 7.

9 24. On or about March 25, 2013, the court converted the Websters' bankruptcy to a
10 Chapter 7.

11 25. On or about December 3, 2013, EverBank obtained relief from the automatic
12 bankruptcy stay.

13 26. Neither the HOA, nor Alessi obtained relief of the automatic bankruptcy stay.

14 27. Green Tree is informed and believes and thereon alleges that the HOA foreclosure
15 was not conducted in a commercially reasonable manner.

16 28. Green Tree is informed and believes and thereon alleges that the HOA foreclosure
17 was not conducted in good faith.

18 29. Green Tree is informed and believes and thereon alleges that the HOA foreclosure
19 violated the automatic bankruptcy stay provided in 11 U.S.C. § 362.

20 30. Green Tree is informed and believes and thereon alleges that Green Tree, and/or its
21 predecessors advanced payment of taxes, insurance and HOA assessments regarding the Subject
22 Property prior to and after the HOA sale.

23 31. Green Tree is informed and believes and thereon alleges that Defendants' acceptance
24 and/or ratification of Green Tree's payments of taxes, insurance, and HOA assessments regarding
25 the Subject Property before and after the HOA sale were to the prejudice of Green Tree.

26 32. Green Tree is informed and believes and thereon alleges that Defendants' acceptance
27 and/or ratification of Green Tree's payments of taxes, insurance, and HOA assessments regarding
28 the Subject Property estops Defendants from asserting that the HOA foreclosure extinguished Green

1 Tree's interest in the Subject Property.

2 33. At all times relevant to this litigation, the loan secured by Green Tree Deed of Trust,
3 did not and does not have a zero balance.

4 **FIRST CAUSE OF ACTION**

5 **(Quiet Title)**

6 34. Green Tree repeats, re-alleges, and incorporates herein by reference, the allegations
7 set forth in Paragraphs 1 through 33, inclusive, with the same force and effect as though fully set
8 forth at length herein.

9 35. Green Tree is informed and believes and thereon alleges that the HOA foreclosure is
10 void, invalid, and of no force and effect.

11 36. As a direct and proximate result of the above, Green Tree is entitled to have the
12 Trustee's Deed upon Sale stricken from the record of title.

13 37. Alternatively, Green Tree is informed and believes and thereon alleges that the HOA
14 foreclosure did not extinguish Green Tree's Deed of Trust.

15 38. As a direct and proximate result of the above, Green Tree is entitled to have its title to
16 the subject property quieted insofar as its Deed of Trust remain and continue to encumber the subject
17 property unless and until it is naturally extinguished following payment of the Note it secures.

18 39. As a direct and proximate result of the above, Green Tree is entitled to a judgment of
19 quiet title in its favor.

20 40. It has been necessary for Green Tree to retain counsel in order to file this lawsuit, and
21 as a result, Green Tree is entitled to its costs and a reasonable attorneys' fee.

22 **SECOND CAUSE OF ACTION**

23 **(Declaratory Relief)**

24 41. Green Tree repeats, re-alleges, and incorporates herein by reference, the allegations
25 set forth in Paragraphs 1 through 40, inclusive, with the same force and effect as though fully set
26 forth at length herein.

27 42. A dispute has arisen between Green Tree and Defendants as to the validity of the
28 HOA foreclosure and/or the legal effect of the HOA foreclosure on enforceability of Green Tree's

1 Deed of Trust.

2 43. Green Tree is informed and believes and thereon alleges that LN Management did not
3 take the Subject Property free and clear of Green Tree's Deed of Trust, because the HOA's Trustee's
4 Sale was void and/or did not extinguish Green Tree's Deed of Trust.

5 44. Green Tree is entitled to a judgment from this court declaring the HOA Trustee's Sale
6 void.

7 45. Alternatively, Green Tree is entitled to a judgment from this court declaring that the
8 HOA foreclosure did not extinguish Green Tree's Deed of Trust, and that LN Management took the
9 Subject Property free and clear of Green Tree's Deed of Trust.

10 46. It has been necessary for Green Tree to retain counsel in order to file this lawsuit, and
11 as a result, Green Tree is entitled to its costs and a reasonable attorneys' fee.

12 **THIRD CAUSE OF ACTION**

13 **(Unjust Enrichment)**

14 47. Green Tree repeats, re-alleges, and incorporates herein by reference, the allegations
15 set forth in Paragraphs 1 through 46, inclusive, with the same force and effect as though fully set
16 forth at length herein.

17 48. That Defendants have been unjustly enriched by Green Tree's payments of taxes,
18 insurance, and HOA assessments regarding the Subject Property.

19 49. That in equity and in good conscience, Defendants may not retain the benefit of
20 Green Tree's payments of taxes, insurance, and HOA assessments regarding the Subject Property.

21 50. Green Tree is entitled to a judgment from this court declaring and return of all
22 payments of taxes, insurance, and HOA assessments regarding the Subject Property.

23 51. That Green Tree has been damaged in an amount in excess of ten thousand dollars.

24 52. It has been necessary for Green Tree to retain counsel in order to file this lawsuit, and
25 as a result, Green Tree is entitled to its costs and a reasonable attorneys' fee.

26 **FOURTH CAUSE OF ACTION**

27 **(Violation of the Bankruptcy Stay)**

28 53. Green Tree repeats, re-alleges, and incorporates herein by reference, the allegations

1 set forth in Paragraphs 1 through 52, inclusive, with the same force and effect as though fully set
2 forth at length herein.

3 54. That the HOA violated 11 U.S.C. § 362 by noticing and conducting the HOA sale
4 during the pendency of the Webster's bankruptcy while the automatic bankruptcy stay was in effect.

5 55. Because the HOA sale violated the automatic bankruptcy stay, it is invalid and should
6 be set aside.

7 56. That in the event the HOA sale is not set aside as invalid, Green Tree has been
8 damaged by the HOA's violation of the automatic bankruptcy stay to the extent the HOA sale
9 extinguished Green Tree's Deed of Trust.

10 57. That Green Tree is entitled to damages in an amount in excess of \$10,000.00.

11 58. It has been necessary for Green Tree to retain counsel in order to file this lawsuit, and
12 as a result, Green Tree is entitled to its costs and a reasonable attorneys' fee.

13 WHEREFORE, Plaintiff-in-Intervenor GREEN TREE SERVICING LLC prays for relief
14 against Defendants LN MANAGEMENT LLC SERIES 5105 PORTRAITS PLACE and
15 PORTRAITS AT PAINTED DESERT HOMEOWNERS ASSOCIATION as follows:

16 1. Green Tree is entitled to a judgment that the HOA Sale conducted by the HOA did
17 not affect or extinguish Green Tree's rights, status, legal relations and interest in the Property.

18 2. For Judgment declaring the Trustee's Deed Upon Sale void;

19 3. For general damages in excess of \$10,000;

20 4. For declaratory relief;

21 5. For costs and reasonable attorneys' fee; and

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1 || 6. For other relief the court may find just and proper in the premises.

2 || DATED: March 19, 2015

WOLFE & WYMAN LLP

By: /s/ Colt B. Dodrill

COLT B. DODRILL, ESQ.

Nevada Bar No. 9000

980 Kelly Johnson Drive, Suite 140

Las Vegas, NV 89119

Attorneys for Plaintiff-in-Intervenor

GREEN TREE SERVICING LLC

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of March 2015, the foregoing **COMPLAINT IN INTERVENTION** was served upon each of the parties listed below via **Electronic Service** through the Eighth Judicial District Court's Odyssey E-File and Serve System:

Kerry Faughnan, Esq.
P.O. Box 335361
North Las Vegas, NV 89086

Attorneys for Plaintiff
LN MANAGEMENT LLC SERIES 5105
PORTRAITS PLACE

Darren T. Brenner, Esq.
Natalie L. Winslow, Esq.
AKERMAN LLP
1160 Town Center Drive, Suite 330
Las Vegas, NV 89144

Counsel for Defendant, Bank of America, N.A.

Huong Lam, Esq.
Bradley Bace, Esq.
ALESSI & KOENIG, LLC
9500 W. Flamingo, Ste. 205
Las Vegas, NV 89147

Attorneys for ALESSI & KOENIG, LLC

James A. Kohl, Esq.
HOWARD & HOWARD ATTORNEYS, PLLC
3800 Howard Hughes Pkwy., Ste. 1000
Las Vegas, NV 89169

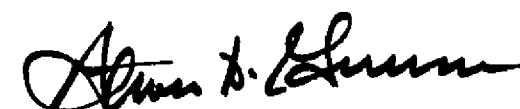
Attorneys for Zions First National Bank

By: /s/ Katia Ioffe

KATIA IOFFE
An employee of Wolfe & Wyman LLP



ORDR



CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

LN MANAGEMENT LLC SERIES 5105
POTRAITS PLACE,

Plaintiff,

v.

WILLIAM WEBSTER, an individual; BETTY
WEBSTER, an individual; BANK OF AMERICA,
N.A.; ZIONS FIRST NATIONAL BANK; and
DOES 1 through 10,

Defendants.

GREEN TREE SERVICING LLC,

Plaintiff,

v.

LN MANAGEMENT LLC SERIES 5105
POTRAITS PLACE, a Nevada limited liability
corporation, AS TRUSTEE FOR 5105
PORTRAITS PL. TRUST; and PORTRAITS AT
PAINTED DESERT HOMEOWNERS
ASSOCIATION, a Nevada non-profit cooperative
corporation without stock;

Defendants.

CASE NO. A-13-679816-C
DEPT. 8

ORDER GRANTING GREEN TREE
SERVICING LLC's MOTION FOR
SUMMARY JUDGMENT

Date of Hearing: August 18, 2015
Time of Hearing: 8:00 a.m.

This action came on for hearing before the Court, Honorable Douglas E. Smith, District Judge, presiding, by Green Tree Servicing LLC now known as Ditech Financial LLC ("Green Tree")'s Motion for Summary Judgment filed on July 9, 2015. The issues having been duly heard and a decision having been duly rendered based on all written and oral submissions by the parties, the Court hereby finds and concludes as follows:

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I. FINDINGS OF FACT

That on or about October 21, 2003, William and Betty Webster ("The Websters") borrowed \$192,000.00 from American Home Mortgage Corporation ("AHMC") secured by a first-priority deed of trust ("Deed of Trust") encumbering real property located at 5105 Portraits Place, Las Vegas, Nevada, 89149, A.P.N. 125-34-711-005 ("Property").

That said Deed of Trust named Mortgage Electronic Registration Systems, Inc. ("MERS") as the nominee for Lender and Lender's successors and assigns and as the beneficiary thereunder.

That an Assignment of Deed of Trust recorded on July 29, 2011 assigned all beneficial interest under the Deed of Trust, together with the note or notes described or referred to therein, to BAC Home Loans Servicing, LP ("BAC").

That a Corporation Assignment of Deed of Trust recorded on August 16, 2011 assigned all beneficial interest under the Deed of Trust, together with the note or notes described or referred to therein, to Bank of America N.A., as successor by merger to BAC Home Loans Servicing, LP FKA Countrywide Home Loans Servicing LP ("BANA").

That an Assignment of Deed of Trust recorded on July 15, 2013 assigned all beneficial interest under the Deed of Trust, together with the note or notes described or referred to therein, to Everbank.

That an Assignment of Deed of Trust recorded on December 2, 2014 assigned all beneficial interest under the Deed of Trust to Green Tree.

That Green Tree is the current beneficiary under the Deed of Trust.

That on June 3, 2011, the Websters petitioned for Chapter 13 Bankruptcy protection in the Eastern District of Texas, Case No. 11-41748. Schedule A of the bankruptcy petition lists the Property.

That on August 4, 2011, Portraits at Painted Desert Homeowners Association ("HOA"), by and through its agent, Alessi & Koenig, LLC ("A&K"), recorded a Notice of Default and Election to Sell under Homeowners Association Lien ("Notice of Default") based on a

1 delinquent assessment lien against the Property.

2 That on November 19, 2012, HOA, by and through A&K, recorded a Notice of
3 Trustee's Sale ("Notice of Sale") based on a delinquent assessment lien against the Property.

4 That on January 23, 2013, A&K purported to sell the Property ("HOA Foreclosure
5 Sale") on behalf of the HOA to 5105 Portraits Pl Trust ("The Trust") for \$23,100.00.

6 That on April 9, 2013, the Trust quitclaimed its interest in the Property to Plaintiff, LN
7 Management LLC Series 5105 Potraits Place ("Plaintiff").

8 That on April 10, 2013, Plaintiff filed the underlying quiet title action in the Eighth
9 Judicial District Court of Clark County, Nevada regarding the Property.

10 That based on the foregoing chronology, HOA recorded the Notice of Default and
11 Notice of Sale in furtherance of its foreclosure proceedings and conducted the HOA foreclosure
12 sale during the pendency of the Websters' bankruptcy case.

13 That the Property remained subject to the Websters' bankruptcy estate at the time when
14 A&K recorded the Notice of Default and Notice of Sale in furtherance of the HOA's
15 foreclosure proceedings.

16 That the Property remained subject to the Websters' bankruptcy estate at the time when
17 A&K conducted the HOA foreclosure sale.

18 That neither HOA nor A&K obtained relief from automatic stay pursuant to 11 U.S.C. §
19 362(d) prior to recording the Notice of Default and Notice of Sale in furtherance of the HOA's
20 foreclosure proceedings.

21 That neither HOA nor A&K obtained relief from automatic stay pursuant to 11 U.S.C. §
22 362(d) prior to conducting the HOA foreclosure sale.

23 That the Property was not sold, abandoned or exempted from the bankruptcy estate
24 prior to A&K's recordation of notices in furtherance of HOA's foreclosure proceedings or
25 conduct of the HOA foreclosure sale.

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II. CONCLUSIONS OF LAW

That, under Nevada's conflict of law principles and rules, Ninth Circuit law controls the instant proceeding because the Property at issue resides in Nevada.

That Green Tree, as the current beneficiary under the Deed of Trust and as a creditor of the Websters' bankruptcy estate, has standing to enforce the automatic stay protection pursuant to 11 U.S.C. § 362(a).

That A&K's recordation of the Notice of Default and Notice of Sale in furtherance of HOA's foreclosure proceedings violates the automatic stay protection instituted by the filing of the Websters' bankruptcy petition pursuant to 11 U.S.C. § 362(a).

That A&K's conduct of the HOA foreclosure sale further violates the automatic stay protection instituted by the filing of the Websters' bankruptcy petition pursuant to 11 U.S.C. § 362(a).

It is hereby ORDERED AND ADJUDGED:

That Green Tree's Motion for Summary Judgment is GRANTED in its entirety.

That recordation of the Notice of Default is void for violating the automatic stay protection of the Bankruptcy Code.

That recordation of the Notice of Sale is void for violating the automatic stay protection of the Bankruptcy Code.

That the HOA foreclosure sale is void for violating the automatic stay protection of the Bankruptcy Code.

Green Tree's Deed of Trust recorded on October 29, 2003 as book and instrument number 20031029-02155 in Clark County, Nevada Recorder's Office continues to encumber the Property.

That any prior judgment, order or decree entered in this action enjoining Green Tree from proceeding with foreclosure of its Deed of Trust as to the Property is hereby vacated.

That any and all *lis pendens* concerning the underlying action recorded against the Property shall be expunged upon recordation of this Order.

1 That this Order Granting Green Tree's Motion for Summary Judgment shall become
2 effective and enforceable sixty (60) days from the date this order is filed.

3 That this decision is stayed for sixty (60) days to allow for any possible appeals or
4 bankruptcy requests Plaintiff may file.

5 That sixty (60) days after the filing of this Order, a copy of this Order may be recorded
6 in Clark County, Nevada Recorder's Office.

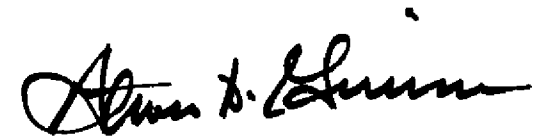
7 Dated this 23 day of September, 2015.

8
9
10 
11 DISTRICT COURT JUDGE 

12
13 I hereby certify that on the date filed, I caused to be
14 placed a copy of the foregoing Order in the folder(s)
15 in the Clerk's Office or mailed to the following:

16 Kerry Faughnan, Esq.
17 Michael Li, Esq., WOLFE & WYMAN LLP

18 
19 SUSANNE ANDERSON, Judicial Assistant
20
21
22
23
24
25
26
27
28



CLERK OF THE COURT

NEOJ
COLT B. DODRILL, ESQ.
Nevada Bar No. 9000
WOLFE & WYMAN LLP
980 Kelly Johnson Drive, Suite 140
Las Vegas, NV 89119
Tel: (702) 476-0100
Fax: (702) 476-0101
cbdodrill@wolfewyman.com

Attorneys for Intervenor,
GREEN TREE LOAN SERVICING LLC

DISTRICT COURT
CLARK COUNTY, NEVADA

LN MANAGEMENT LLC SERIES 5105
POTRAITS PLACE,

Plaintiff,

v.

WILLIAM WEBSTER, an individual; BETTY
WEBSTER, an individual; BANK OF AMERICA,
N.A.; ZIONS FIRST NATIONAL BANK; and
DOES 1 through 10,

Defendants.

GREEN TREE SERVICING LLC,

Plaintiff,

v.

LN MANAGEMENT LLC SERIES 5105
PORTRAITS PLACE, , a Nevada limited liability
corporation, AS TRUSTEE FOR 5105
PORTRAITS PL. TRUST; and PORTRAITS AT
PAINTED DESERT HOMEOWNERS
ASSOCIATION, a Nevada non-profit cooperative
corporation without stock;

Defendants.

CASE NO. A-13-679816-C
Dept.: 8

**NOTICE OF ENTRY OF ORDER
GRANTING GREEN TREE SERVICING
LLC's MOTION FOR SUMMARY
JUDGMENT**

WOLFE & WYMAN LLP
ATTORNEYS & COUNSELORS AT LAW



ALESSI & KOENIG, LLC, a Nevada limited liability company,

Plaintiff,

v.

WILLIAM WEBSTER, an individual; BETTY WEBSTER, an individual; ZIONS FIRST NATIONAL BANK, an unknown entity; BANK OF AMERICA, N.A. AS SUCCESSOR BY MERGER TO BAC HOME LOANS SERVICING, LP, an unknown entity; CITY OF LAS VEGAS, a governmental entity; DOES I-X, inclusive; and ROE CORPORATIONS 1-10, inclusive,

Defendants.

TO: ALL PARTIES HEREIN AND TO THEIR RESPECTIVE ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on September 23, 2015, the court in the above-captioned action entered an Order Granting Green Tree Servicing LLC's Motion for Summary Judgment. The order is attached hereto as Exhibit "A" and incorporated by this reference as though fully set forth herein.

DATED: December 3, 2015

WOLFE & WYMAN LLP

By: /s/ Colt B. Dodrill

COLT B. DODRILL, ESQ.

Nevada Bar No. 9000

980 Kelly Johnson Drive, Suite 140

Las Vegas, NV 89119

Attorneys for Intervenor,

GREEN TREE SERVICING LLC

CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of December 2015, the foregoing **NOTICE OF ENTRY OF ORDER GRANTING GREEN TREE SERVICING LLC's MOTION FOR SUMMARY JUDGMENT** was served upon each of the parties listed below via **Electronic Service** through the Eighth Judicial District Court's Odyssey E-File and Serve System:

(All Parties on E-service List)

By: /s/ Tristan McMahon

TRISTAN McMAHILL
An employee of Wolfe & Wyman LLP

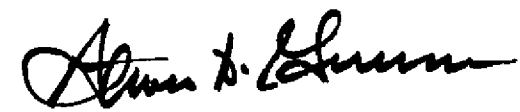


EXHIBIT “A”

EXHIBIT “A”

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CLERK OF THE COURT

ORDR

**DISTRICT COURT
CLARK COUNTY, NEVADA**

LN MANAGEMENT LLC SERIES 5105
POTRAITS PLACE,

Plaintiff,

v.

WILLIAM WEBSTER, an individual; BETTY
WEBSTER, an individual; BANK OF AMERICA,
N.A.; ZIONS FIRST NATIONAL BANK; and
DOES 1 through 10,

Defendants.

CASE NO. A-13-679816-C
DEPT. 8

**ORDER GRANTING GREEN TREE
SERVICING LLC's MOTION FOR
SUMMARY JUDGMENT**

Date of Hearing: August 18, 2015

Time of Hearing: 8:00 a.m.

GREEN TREE SERVICING LLC,

Plaintiff,

v.

LN MANAGEMENT LLC SERIES 5105
POTRAITS PLACE, a Nevada limited liability
corporation, AS TRUSTEE FOR 5105
PORTRAITS PL. TRUST; and PORTRAITS AT
PAINTED DESERT HOMEOWNERS
ASSOCIATION, a Nevada non-profit cooperative
corporation without stock;

Defendants.

This action came on for hearing before the Court, Honorable Douglas E. Smith, District Judge, presiding, by Green Tree Servicing LLC now known as Ditech Financial LLC ("Green Tree")'s Motion for Summary Judgment filed on July 9, 2015. The issues having been duly heard and a decision having been duly rendered based on all written and oral submissions by the parties, the Court hereby finds and concludes as follows:

DOUGLAS E. SMITH
DISTRICT JUDGE

DEPARTMENT EIGHT
LAS VEGAS NV 89155

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I. FINDINGS OF FACT

That on or about October 21, 2003, William and Betty Webster ("The Websters") borrowed \$192,000.00 from American Home Mortgage Corporation ("AHMC") secured by a first-priority deed of trust ("Deed of Trust") encumbering real property located at 5105 Portraits Place, Las Vegas, Nevada, 89149, A.P.N. 125-34-711-005 ("Property").

That said Deed of Trust named Mortgage Electronic Registration Systems, Inc. ("MERS") as the nominee for Lender and Lender's successors and assigns and as the beneficiary thereunder.

That an Assignment of Deed of Trust recorded on July 29, 2011 assigned all beneficial interest under the Deed of Trust, together with the note or notes described or referred to therein, to BAC Home Loans Servicing, LP ("BAC").

That a Corporation Assignment of Deed of Trust recorded on August 16, 2011 assigned all beneficial interest under the Deed of Trust, together with the note or notes described or referred to therein, to Bank of America N.A., as successor by merger to BAC Home Loans Servicing, LP FKA Countrywide Home Loans Servicing LP ("BANA").

That an Assignment of Deed of Trust recorded on July 15, 2013 assigned all beneficial interest under the Deed of Trust, together with the note or notes described or referred to therein, to Everbank.

That an Assignment of Deed of Trust recorded on December 2, 2014 assigned all beneficial interest under the Deed of Trust to Green Tree.

That Green Tree is the current beneficiary under the Deed of Trust.

That on June 3, 2011, the Websters petitioned for Chapter 13 Bankruptcy protection in the Eastern District of Texas, Case No. 11-41748. Schedule A of the bankruptcy petition lists the Property.

That on August 4, 2011, Portraits at Painted Desert Homeowners Association ("HOA"), by and through its agent, Alessi & Koenig, LLC ("A&K"), recorded a Notice of Default and Election to Sell under Homeowners Association Lien ("Notice of Default") based on a

1 delinquent assessment lien against the Property.

2 That on November 19, 2012, HOA, by and through A&K, recorded a Notice of
3 Trustee's Sale ("Notice of Sale") based on a delinquent assessment lien against the Property.

4 That on January 23, 2013, A&K purported to sell the Property ("HOA Foreclosure
5 Sale") on behalf of the HOA to 5105 Portraits Pl Trust ("The Trust") for \$23,100.00.

6 That on April 9, 2013, the Trust quitclaimed its interest in the Property to Plaintiff, LN
7 Management LLC Series 5105 Potraits Place ("Plaintiff").

8 That on April 10, 2013, Plaintiff filed the underlying quiet title action in the Eighth
9 Judicial District Court of Clark County, Nevada regarding the Property.

10 That based on the foregoing chronology, HOA recorded the Notice of Default and
11 Notice of Sale in furtherance of its foreclosure proceedings and conducted the HOA foreclosure
12 sale during the pendency of the Websters' bankruptcy case.

13 That the Property remained subject to the Websters' bankruptcy estate at the time when
14 A&K recorded the Notice of Default and Notice of Sale in furtherance of the HOA's
15 foreclosure proceedings.

16 That the Property remained subject to the Websters' bankruptcy estate at the time when
17 A&K conducted the HOA foreclosure sale.

18 That neither HOA nor A&K obtained relief from automatic stay pursuant to 11 U.S.C. §
19 362(d) prior to recording the Notice of Default and Notice of Sale in furtherance of the HOA's
20 foreclosure proceedings.

21 That neither HOA nor A&K obtained relief from automatic stay pursuant to 11 U.S.C. §
22 362(d) prior to conducting the HOA foreclosure sale.

23 That the Property was not sold, abandoned or exempted from the bankruptcy estate
24 prior to A&K's recordation of notices in furtherance of HOA's foreclosure proceedings or
25 conduct of the HOA foreclosure sale.

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II. CONCLUSIONS OF LAW

That, under Nevada's conflict of law principles and rules, Ninth Circuit law controls the instant proceeding because the Property at issue resides in Nevada.

That Green Tree, as the current beneficiary under the Deed of Trust and as a creditor of the Websters' bankruptcy estate, has standing to enforce the automatic stay protection pursuant to 11 U.S.C. § 362(a).

That A&K's recordation of the Notice of Default and Notice of Sale in furtherance of HOA's foreclosure proceedings violates the automatic stay protection instituted by the filing of the Websters' bankruptcy petition pursuant to 11 U.S.C. § 362(a).

That A&K's conduct of the HOA foreclosure sale further violates the automatic stay protection instituted by the filing of the Websters' bankruptcy petition pursuant to 11 U.S.C. § 362(a).

It is hereby ORDERED AND ADJUDGED:

That Green Tree's Motion for Summary Judgment is GRANTED in its entirety.

That recordation of the Notice of Default is void for violating the automatic stay protection of the Bankruptcy Code.

That recordation of the Notice of Sale is void for violating the automatic stay protection of the Bankruptcy Code.

That the HOA foreclosure sale is void for violating the automatic stay protection of the Bankruptcy Code.

Green Tree's Deed of Trust recorded on October 29, 2003 as book and instrument number 20031029-02155 in Clark County, Nevada Recorder's Office continues to encumber the Property.

That any prior judgment, order or decree entered in this action enjoining Green Tree from proceeding with foreclosure of its Deed of Trust as to the Property is hereby vacated.

That any and all *lis pendens* concerning the underlying action recorded against the Property shall be expunged upon recordation of this Order.

1 That this Order Granting Green Tree's Motion for Summary Judgment shall become
2 effective and enforceable sixty (60) days from the date this order is filed.

3 That this decision is stayed for sixty (60) days to allow for any possible appeals or
4 bankruptcy requests Plaintiff may file.

5 That sixty (60) days after the filing of this Order, a copy of this Order may be recorded
6 in Clark County, Nevada Recorder's Office.

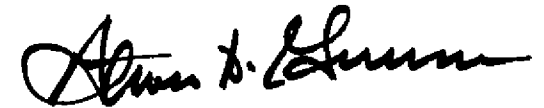
7 Dated this 23 day of September, 2015.

8
9
10 
11 DISTRICT COURT JUDGE 
12

13 I hereby certify that on the date filed, I caused to be
14 placed a copy of the foregoing Order in the folder(s)
15 in the Clerk's Office or mailed to the following:

16 Kerry Faughnan, Esq.
17 Michael Li, Esq., WOLFE & WYMAN LLP

18 
19 SUSANNE ANDERSON, Judicial Assistant
20
21
22
23
24
25
26
27
28



CLERK OF THE COURT

NEOJ
COLT B. DODRILL, ESQ.
Nevada Bar No. 9000
WOLFE & WYMAN LLP
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Attorneys for Intervenor,
GREEN TREE LOAN SERVICING LLC

DISTRICT COURT
CLARK COUNTY, NEVADA

LN MANAGEMENT LLC SERIES 5105
POTRAITS PLACE,

Plaintiff,

v.

WILLIAM WEBSTER, an individual; BETTY
WEBSTER, an individual; BANK OF AMERICA,
N.A.; ZIONS FIRST NATIONAL BANK; and
DOES 1 through 10,

Defendants.

GREEN TREE SERVICING LLC,

Plaintiff,

v.

LN MANAGEMENT LLC SERIES 5105
PORTRAITS PLACE, , a Nevada limited liability
corporation, AS TRUSTEE FOR 5105
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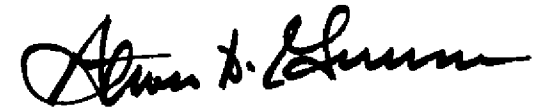
Defendants.

CASE NO. A-13-679816-C
Dept.: 8

**NOTICE OF ENTRY OF ORDER
GRANTING GREEN TREE SERVICING
LLC's MOTION FOR SUMMARY
JUDGMENT**

WOLFE & WYMAN LLP
ATTORNEYS & COUNSELORS AT LAW





CLERK OF THE COURT

1 **NDWP**

2 Kerry P. Faughnan, Esq., NSB #12204

3 P.O. Box 335361

4 North Las Vegas, NV 89086

(702) 301-3096

(702) 331-4222- Fax

Kerry.faughnan@gmail.com

5 Attorney for Plaintiff

6 **EIGHTH JUDICIAL DISTRICT COURT FOR**
7 **CLARK COUNTY, NEVADA**

8 LN MANAGEMENT LLC SERIES 5105
9 PORTRAITS PLACE

Plaintiff,

10 v.

11 WILLIAM WEBSTER, an individual;
12 BETTY WEBSTER, an individual; BANK
13 OF AMERICA N.A.; ZIONS FIRST
14 NATIONAL BANK; and DOES 1 through
15 10, inclusive;

Defendants.

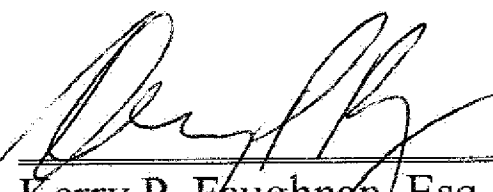
Case No. A-13-679816-C

Dept. No. VIII

**NOTICE OF VOLUNTARY
DISMISSAL OF ZIONS FIRST
NATIONAL BANK
PURSUANT TO NRCP 41(a)(1)**

16 Defendant ZIONS FIRST NATIONAL BANK not having appeared in this matter,
17 Plaintiff dismisses ZIONS FIRST NATIONAL BANK pursuant to NRCP 41(a)(1), without
18 prejudice. No matters are currently calendared in this case and there is no trial scheduled.

19 Dated November 24, 2015.



Kerry P. Faughnan, Esq., NSB #12204

P.O. Box 335361

North Las Vegas, NV 89033

(702) 301-3096

(702) 331-4222- Fax

Kerry.faughnan@gmail.com

Attorney for Plaintiff

<input checked="" type="checkbox"/> Voluntary Dismissal	<input type="checkbox"/> Summary Judgment
<input type="checkbox"/> Involuntary Dismissal	<input type="checkbox"/> Stipulated Judgment
<input type="checkbox"/> Stipulated Dismissal	<input type="checkbox"/> Default Judgment
<input type="checkbox"/> Motion to Dismiss by (Def(s))	<input type="checkbox"/> Judgment of Arbitration