

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2 K&P HOMES, A SERIES LLC OF DEK
3 HOLDINGS, LLC, a Nevada Limited Liability
4 Company,

5 Appellant.

6 vs.

7 CHRISTIANA TRUST, A DIVISION OF
8 WILMINGTON SAVINGS FUND SOCIETY,
9 FSB, NOT IN ITS INDIVIDUAL CAPACITY
10 BUT AS TRUSTEE OF ARLP TRUST 3,

11 Respondent.

Case No.: 69966

US District Court Case No. 2:15-cv-01534
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Clerk of Supreme Court

12 **RESPONDENT'S APPENDIX**

13 **VOLUME III**

14 WRIGHT, FINLAY & ZAK, LLP

15 Dana Jonathon Nitz, Esq.

16 Nevada Bar No. 0050

17 Natalie C. Lehman, Esq.

18 Nevada Bar No. 12995

19 7785 W. Sahara Ave, Suite 200

20 Las Vegas, NV 89117

21 (702) 475-7964; Fax: (702) 946-1345

22 dnitz@wrightlegal.net

23 nlehman@wrightlegal.net

24 Attorneys for Plaintiff,

25 Christiana Trust, A Division of Wilmington Savings Fund Society, Not in Its Individual Capacity

26 But As Trustee of ARLP Trust 3

DOCUMENT	VOLUME	BATE NO
Answer to Complaint and Counterclaim and Third Party Complaint	I	WFZ 0138-0152
Complaint for Quiet Title and Declaratory Relief	I	WFZ 0001-0137
Counter Motion for Summary Judgment	II	WFZ 0323-0429
Errata to Request for Judicial Notice in Support of Motion to Dismiss with Prejudice Defendant's Counterclaim	IV	WFZ 0758-0762
Motion for Reconsideration	IV	WFZ 0549-0698
Motion to Certify Question of Law to the Supreme Court	IV	WFZ 0703-0713
Motion to Dismiss w Prejudice Defendants' Counterclaim	I	WFZ 0153-0180
Opposition to Motion to Certify	IV	WFZ 0714-0721
Order Accepting Certified Question	IV	WFZ 0755-0757
Order Denying Deft K&P Homes' Motion to Reconsider	IV	WFZ 0699-0702
Order Granting Motion to Certify Question of Law	IV	WFZ 0750-0754
Order Granting Motion to Dismiss and Denying Motion for Summary Judgment	III	WFZ 0537-0548
Reply to Opposition to Motion to Certify	IV	WFZ 0722-0749
Request for Judicial Notice	II	WFZ 0181-0322

RESPONDENT'S APPENDIX VOLUME III

DATE	DOCUMENT	VOLUME	BATE NO
2015-10-14	Response to Motion to Dismiss	III	WFZ 0430-0536
2015-11-9	Order Granting Motion to Dismiss and Denying Motion for Summary Judgment	III	WFZ 0537-0548

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PROOF OF SERVICE

I certify that I electronically filed, on the 27 day of ~~April~~^{June}, 2016, the foregoing **APPENDIX VOLUME III** with the Clerk of the Court for the Nevada Supreme Court by using the CM/ECF system. I further certify that all parties of record to this appeal either are registered with the CM/ECF or have consented to electronic service.

☐ By placing a true copy enclosed in sealed envelope(s) addressed as follows:

☒ (By Electronic Service) Pursuant to CM/ECF System, registration as a CM/ECF user constitutes consent to electronic service through the Court's transmission facilities. The Court's CM/ECF systems sends an e-mail notification of the filing to the parties and counsel of record listed above who are registered with the Court's CM/ECF system.

John Henry Wright, Esq.
THE WRIGHT LAW GROUP, P.C.
2340 Paseo Del Prado
Suite D-305
Las Vegas, NV 89102
dayana@wrightlawgroupnv.com

☒ (Nevada) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.



An Employee of Wright, Finlay & Zak, LLP

1 JOHN HENRY WRIGHT
2 THE WRIGHT LAW GROUP, P.C.
3 2340 Paseo Del Prado, Suite D-305
4 Las Vegas, Nevada 89102
5 Telephone: (702) 405-0001
6 Facsimile: (702) 405-8454
7 Email: john@wrightlawgroupnv.com
8 Attorneys for Defendants
9 K&P HOMES, A SERIES LLC OF
10 DEK HOLDING, LLC

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

CHRISTIANA TRUST, A DIVISION OF
WILMINGTON SAVINGS FUND
SOCIETY, FSB NOT IN ITS INDIVIDUAL
CAPACITY BUT AS TRUSTEE OF ARLP
TRUST 3,

Plaintiff,

vs.

K&P HOMES, A SERIES LLC OF DEK
HOLDINGS, LLC, a Nevada Limited
Liability Company,

Defendants.

K&P HOMES, A SERIES LLC OF DEK
HOLDINGS, LLC, a Nevada Limited
Liability Company,

Counterclaimant,

vs.

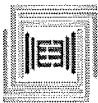
CHRISTIANA TRUST, A DIVISION OF
WILMINGTON SAVINGS FUND
SOCIETY, FSB NOT IN ITS INDIVIDUAL
CAPACITY BUT AS TRUSTEE OF ARLP
TRUST 3,

Counterdefendant.

CASE NO: 2:15-CV-01534-RCJ-VCF

**K&P HOMES, A SERIES LLC OF DEK
HOLDINGS, LLC'S
OPPOSITION TO CHRISTIANA
TRUST'S MOTION TO DISMISS
and
K&P HOMES' COUNTERMOTION
FOR SUMMARY JUDGMENT**

THE WRIGHT LAW GROUP P.C.
2340 Paseo Del Prado, Suite D-305
Las Vegas, Nevada 89102
Tel: (702) 405-0001 Fax: (702) 405-8454



1
2 K&P HOMES, A SERIES LLC OF DEK
3 HOLDINGS, LLC, a Nevada Limited
Liability Company,

4 Third-Party Plaintiff,

5 vs.

6 RITA WIEGAND, an individual,

7 Third-Party Defendant.
8

9 Defendant and Third-Party Plaintiff, K&P HOMES, A SERIES LLC OF DEK HOLDINGS,
10 LLC, (K&P) by and through its counsel of record, JOHN HENRY WRIGHT, ESQ., of THE
11 WRIGHT LAW GROUP, P.,C., hereby submits this Opposition to Defendant Christiana Trust's
12 Motion to Dismiss and files K&P's Countermotion for Summary Judgment. This Opposition is
13 made and based upon the records and files in this case, the attached memorandum of points and
14 authorities and any arguments adduced at the hearing hereof.

15 K&P's Countermotion for Summary Judgment is made pursuant to FRCP 56 and is made
16 and based upon the records and files in this case, the attached memorandum of points and
17 authorities, the exhibits attached hereto and any arguments adduced at the hearing hereof.

18 **MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO MOTION**

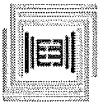
19 **TO DISMISS**

20 **I.**

21 **INTRODUCTION**

22 On May 31, 2013, K&P was the successful bidder on property located at 7461 Glimmering
23 Sun Avenue, Las Vegas, 89178, APN 176-27-312-159, (the "Property") and purchased the Property
24 for Forty Thousand dollars (\$40,000). The foreclosure sale was conducted by Nevada Association
25 Services, Inc., (hereinafter "NAS") on behalf of the Tuscalante Homeowners Association (the
26 "Association"). The foreclosure deed issued by the Association pursuant to NRS 116.31164(3)
27 contains recitals which must be considered conclusively proven under the statute. In accordance
28 with NRS 116.31166(2) the foreclosure deed is conclusive proof of compliance with the statutes

THE WRIGHT LAW GROUP P.C.
2340 Paseo Del Prado, Suite D-305
Las Vegas, Nevada 89102
Tel: (702) 405-0001 Fax: (702) 405-8454



1 and ownership of the Property vested in K&P without equity or right of redemption.

2 Plaintiff Christiana Trust, A Division of Wilmington Savings Fund Society, FSB,
3 (“Christiana”) filed a Complaint for Quiet Title and Declaratory Relief on August 21, 2015 (ECF
4 #1), naming K&P as the defendant. Christiana also filed a Certificate of Interested Parties, stating
5 that Christiana is not aware of any other interested parties to this action. (ECF #2)

6 On September 10, 2015, K&P filed an Answer to Complaint and a Counterclaim against
7 Christiana requesting quiet title and declaratory relief (ECF #8).

8 Christiana files its instant motion to dismiss claiming that NRS Chapter 116 violates due
9 process; NRS 116.3116 violates the takings clause of the United States and Nevada Constitutions;
10 K&P’s act of requesting quiet title and declaratory relief invokes government action; the non-
11 judicial foreclosure provisions of NRS Chapter 116 violate due process; the ramifications of NRS
12 Chapter 116 violates public policy; and, the Nevada Supreme Court’s decision in SFR should not
13 be applied retroactively.

14 II.

15 LEGAL STANDARDS

16 A. Standard for Motion to Dismiss:

17 Nevada law holds that for a motion to dismiss, the Court treats all of the factual allegations
18 as true and draws all inferences in favor of the non-moving party and the complaint should be
19 dismissed only if it can be shown beyond a doubt that there is no set of facts that, if true, would
20 entitle the plaintiff to relief. Buzz Stew, LLC. V. City of N. Las Vegas, (2008) 124 Nev. 224, 227-
21 228; 181 P.3d 670, 672. (Cited in Converse Prof'l Group, v. Eighth Judicial Dist. Court (2013) 310
22 P.3d 574, 579).

23 B. Standard for Constitutional Challenge:

24 A court’s function, when the constitutionality of a statute is put at issue, is limited to a
25 determination of the validity or invalidity of the legislative provisions, In re Assessments for Year
26 2005 of Certain Real Property Owned by Askins Properties, L.L.C., 161 P.3d 303 (Okla. 2007).
27 Every law found on the statute books is presumptively constitutional until declared otherwise by
28 the court. Salt Lake City v. Ohms, 881 P.2d 844 (Utah 1994). Courts should endeavor to



THE WRIGHT LAW GROUP P.C.
 2340 Paseo Del Prado, Suite D-305
 Las Vegas, Nevada 89102
 Tel: (702) 405-0001 Fax: (702) 405-8454



1 implement the legislative intent of statutes and should avoid constitutional issues wherever
 2 possible, State v. Mozo, 655 So. 2d 1115 (Fla. 1995); In re SRBA Case No. 39576, 912 P.2d 614
 3 (Idaho. 1995).

4 The court's power to declare a statute or ordinance unconstitutional is tempered by the
 5 court's respect for the legislative process. Ames Rental Property Ass'n v. City of Ames, 736
 6 N.W.2d 255 (Iowa 2007). Courts rule against the constitutionality of a statute only as a last resort,
 7 Tulkisarmute Native Community Council v. Heinze, 898 P.2d 935 (Alaska 1995). A court
 8 considering a constitutional challenge to a statute is only to inquire into whether the legislature had
 9 the power to enact the statute, Cote-Whitacre v. Department of Public Health, 844 N.E.2d 623
 10 (Mass. 2006). Actions attacking the validity of a statute or ordinance generally must be brought
 11 by a direct suit for that purpose rather than by a collateral attack in order to ensure due process of
 12 law, Daniel v. Williams, 189 So.2d 640 (Fla. Dist. Ct. App. 2d Dist. 1966). As a general rule, no
 13 one can obtain a decision as to the invalidity of a law on the ground that it impairs the rights of
 14 others, County Court of Ulster County, N.Y. v. Allen, 442 U.S. 140 (1979); William F. West
 15 Ranch., LLC v. Tyrrell, 206 P.3d 722 (Wyo. 2009).

16 A facial challenge is a species of third-party standing by which a party seeks to vindicate
 17 not only his or her own rights but also those of others who may also be adversely impacted by the
 18 statute in question. Thibodeau v. Portuonado, 486 F.3d 61 (2d Cir. 2007). Facial challenges to the
 19 constitutionality of a statute are generally disfavored. Washington State Grange v. Washington
 20 State Republican Party, 552 U.S. 442 (2008); Sabri v. U.S., 541 U.S. 600 (2004); Center for
 21 Individual Freedom v. Carmouche, 449 F.3d 655 (5th Cir. 2006). One reason is that such claims
 22 are often based upon speculation and raise the risk of "premature interpretation of statutes on the
 23 basis of factually barebones records." Washington State Grange, 552. U.S. at 450 (citing, Sabri).
 24 Facial challenges also run contrary to the fundamental principle of judicial restraint that courts
 25 should neither anticipate a question of constitutional law in advance of the necessity of deciding
 26 it nor formulate a rule of constitutional law broader than is required by the precise facts to which
 27 it is to be applied. *Id.* (citing, Ashwander v. TVA, 297 U.S. 288 (1936)(Brandeis, J., concurring.)
 28 Such challenges also threaten to short circuit the democratic process by frustrating the will of the

1 people and the intent of the elected representatives thereof. *Id.* at 451 (citing, Ayotte v. Planned
 2 Parenthood of Northern New Eng., 546 U.S. 320 (2006). More importantly, the burden of a facial
 3 challenge is on the plaintiff to establish NO SET OF CIRCUMSTANCES under which the law
 4 would be valid. *Id.* at 449. Christiana has failed to meet this burden.

5 III.

6 ARGUMENT IN OPPOSITION TO MOTION TO DISMISS

7 A. There is no due process violation because the Statutes Mandate Notice to Deed of 8 Trust Holders; The Bank received Actual Notice; and Christiana has no standing:

9 1. *The Statues Mandate Notice on Deed of Trust Holders:*

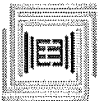
10 Christiana contends that NRS 116.31163(2) and NRS 116.31165 (1)(b)(2)¹ require the
 11 holder of a security interest to “opt in” to the foreclosure process by providing some additional
 12 notice to the Association of the security interest either 30 days before the notice of default is
 13 recorded or before the notice of sale is mailed. This is completely false because, as shown below,
 14 the bank having recorded its security interest in accordance with the applicable statutes is required
 15 to be sent notice of the Associations notice of default and notice of sale.

16 It is important to first recognize that under Nevada law, when a bank records its Deed of
 17 Trust, such recordation automatically, and by operation of law, notifies the HOA of the existence
 18 of the Bank’s security interest. NRS 111.320 states as such:

19 **NRS 111.320 Filing of conveyances or other instruments is notice to all**
persons: Effect on subsequent purchasers and mortgagees.

20 Every such conveyance or instrument of writing, acknowledged or proved and
 21 _____

22 ¹Christiana contends that the language of NRS 116.31163 and 116.31165 are specific
 23 and the language of NRS 116.31168 and 107.090 are general and, thus, under the principle of
 24 *generalia specialibus non derogant*, the language of NRS 116.31163 and 116.31165 are
 25 controlling over the language of NRS 116.31168 and 107.090. The doctrine that specific
 26 language governs the general applies only to a conflict of language between laws of equal
 27 dignity. United States v. Mackay, 757 P3d 195, 199 (5th Cir. 2014)(citing, Nitro-Lift Techs.,
 28 L.L.C. v. Howard, 133 S. Ct. 500, 504, 184 L. Ed.2d 328 (2012). *Cf.* When General Statutes
and Specific Statutes Conflict, 57 State Tax Notes 113 (2010). There is no conflict of the
 language of the statutes in this situation. Christiana cites to no conflict. Christiana merely
 contends that this Court should ignore the language of NRS 116.31168 and 107.090 because
 the language of NRS 116.31163 and 116.31165 are specific. This flawed claim for statutory
 interpretation fails.



certified, and recorded in the manner prescribed in this chapter or in NRS 105.010 to 105.080, inclusive, must from the time of filing the same with the Secretary of State or recorder for record, impart notice to all persons of the contents thereof; and subsequent purchasers and mortgagees shall be deemed to purchase and take with notice.

(Emphasis added)

Thus, when the bank recorded their first deed of trust it put the Association and all other persons on notice of its security interest. There is no disputing this fact. Having placed the HOA on notice, merely by recording its deed and no other act, the HOA is required by NRS 116 to mail a notice of the Default and Election to Sell to the bank. NRS 116.31163(2), so provides:

The association or other person conducting the sale shall also mail, within 10 days after the notice of default and election to sell is recorded, a copy of the notice by first-class mail to:

2. Any holder of a recorded security interest encumbering the unit's owner's interest who has notified the association, 30 days before the recordation of the notice of default, of the existence of the security interest; and

Therefore, because the bank recorded its first deed of trust, the Association is required to mail a copy of the notice of default and election to sell to Christiana's predecessor, U.S. Bank.

Further, as to the Notice of Sale, the same rule, but under another section of NRS 116, requires it to be mailed to the bank as well. NRS 116.311635(1) provides, in pertinent part that :

1. The association or other person conducting the sale shall also, after expiration of the 90 days and before selling the unit:

(a) Give notice of the time and place of the sale in the manner and for a time not less than required by law for the sale of real property upon execution, except that in lieu of following the procedure for service on a judgment debtor pursuant to NRS 21.130, service must be made on the unit's owner as follows:

(1) a copy of the notice of sale must be mailed, on or before the date of first publication or posting, by certified or registered mail, return receipt requested, to the unit's owner or his or her successor at his or her address, if known, and to the address of the unit; and

(2) a copy of the notice of sale must be served, on or before the date of the first publication or posting, in the manner set forth in subsection 2; and

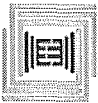
(b) Mail, on or before the date of first publication or posting, a copy of the notice by certified or registered mail, return receipt requested, to:

(1) Each person entitled to receive a copy of the notice of default and election to sell notice under NRS 116.31163;

(2) The holder of a recorded security interest or the purchaser of the unit, if either of them has notified the association, before the mailing of the notice of sale, of the existence of the security interest, lease or contract of sale, as applicable; and

(Emphasis added)

THE WRIGHT LAW GROUP P.C.
2340 Paseo Del Prado, Suite D-305
Las Vegas, Nevada 89102
Tel: (702) 405-0001 Fax: (702) 405-8454



Thus, because 116.31163(2) requires notice to the recorded security interest holders, the bank must likewise be mailed a copy of the notice of sale per section 1. Section 2 further provides that the bank be mailed the notice of sale in addition thereto. Thus, there are two sections of NRS 116.311645 which mandate mailing of the Notice of Sale to the bank - without any action required by the bank other than the recording of the Deed of Trust itself.

Further still, NRS 116.3118 incorporates other notice requirements contained in Chapter 107. NRS 116.31168 provides, in pertinent part:

1. The provisions of NRS 107.090 apply to the foreclosure of an association's lien as if a deed of trust were being foreclosed.

NRS 116.31168 requires the Association to put itself in the shoes of the holder of the deed of trust and further incorporates the notice requirements in NRS 107.090.

NRS 107.090(3)(a) and (b) provide:

1. As used in this section, "person with an interest" means any person who has or claims any right, title or interest in, or lien or charge upon, the real property described in the deed of trust, as evidenced by any document or instrument recorded in the office of the county recorder of the county in which any part of the real property is situated.

3. The trustee or person authorized to record the notice of default shall, within 10 days after the notice of default is recorded and mailed pursuant to NRS 107.080, cause to be deposited in the United States mail an envelope, registered or certified, return receipt requested and with postage prepaid, containing a copy of the notice, addressed to:

(a) Each person who has recorded a request for a copy of the notice; and

(b) Each other person with an interest whose interest or claimed interest is subordinate to the deed of trust.

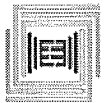
Subsections 3 (a) and (b) require that a person with an interest must be sent notice. A person with interests is defined as follows:

NRS 107.090(1): As used in this section, "person with an interest" means any person who has or claims any right, title or interest in, or lien or charge upon, the real property described in the deed of trust, as evidenced by any document or instrument recorded in the office of the county recorder of the county in which any part of the real property is situated.

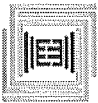
Again, a person with an interest is a person who has a recorded interest. Therefore, according to the statute, having recorded its Deed of Trust, the Bank is required to be sent notice.

All of these provisions and how they operate to give the bank notice were specially

THE WRIGHT LAW GROUP P.C.
2340 Paseo Del Prado, Suite D-305
Las Vegas, Nevada 89102
Tel: (702) 405-0001 Fax: (702) 405-8454



THE WRIGHT LAW GROUP P.C.
 2340 Paseo Del Prado, Suite D-305
 Las Vegas, Nevada 89102
 Tel: (702) 405-0001 Fax: (702) 405-8454



discussed by the Nevada Supreme Court in SRF - which is the law of the State of Nevada and must be applied in this case. The fact that Christiana has ignored this FACT and mis-labeled these notice requirements as "opt in" or "request-notice" provisions does not change the fact that the Nevada Supreme Court has already determined the bank is required to be sent notice under NRS Chapters 116 and 107. In its opinion, the SFR court laboriously explained:

"The provisions of NRS 107.090," governing notice to junior lienholders and others in deed-of-trust foreclosure sales, **"apply to the foreclosure of an association's lien as if a deed of trust were being foreclosed."** NRS 116.31168(1). The HOA must provide the homeowner notice of default and election to sell; **it also must notify** "[e]ach person who has requested notice pursuant to NRS 107.090 or 116.31168" and **"[a]ny holder of a recorded security interest encumbering the unit's owner's interest who has notified the association, 30 days before the recordation of the notice of default, of the existence of the security interest."** NRS 116.31163(1), (2). The homeowner must be given at least 90 days to pay off the lien. NRS 116.31162. If the lien is not paid off, then the HOA may proceed to foreclosure sale. *Id.* Before doing so, the HOA must give notice of the sale to the owner and to the holder of a recorded security interest if the security interest holder "has notified the association, before the mailing of the notice of sale of the existence of the security interest." NRS 116.31163(1)(b)(2); *see* NRS 107.090(3)(b), (4) (requiring notice of default and notice of sale to **"[e]ach other person with an interest whose interest or claimed interest is subordinate to the deed of trust"**).

334 P.3d 408, at 411-412 (emphasis added)

The Nevada Supreme Court determined that Christiana's deed of trust is junior to the Association's super-priority lien.² Thus, Christiana's "opt-in" or "request-notice" arguments are meaningless because the statute states that all persons whose interests are subordinate to the Association lien **must** be sent notice. This is the notice that Christiana complains the statute does not provide for. In reality the statute does provide for mandatory notice to lenders, such as Christiana, because their deed of trust is a recorded interest.

Even the dissent in SFR recognized the duty to notify junior lien holders who claim an interest in the property, regardless of whether or not they have requested notice.

.. As the majority points out, by incorporating certain notice provisions from Chapter 107, Chapter 116 appears to **mandate** that the association mail the notice of default and notice of sale to the first security holders **who have recorded their security interest** when the association is foreclosing on its lien. (Emphasis Added) (334 P.3d at 422)

This is not a constitutional question. It only requires a rudimentary application of the

²*See*, 334 P.3d 408, at 412

THE WRIGHT LAW GROUP P.C.
2340 Paseo Del Prado, Suite D-305
Las Vegas, Nevada 89102
Tel: (702) 405-0001 Fax: (702) 405-8454



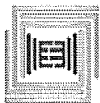
1 existing and previously evaluated state law's operation to understand that the banks are required
2 to be served with both the notice of default and the notice of sale - which also explains why the
3 bank was in fact served both such notices in this case. One would have to willfully ignore, fail to
4 consider or even acknowledge the presence of both statutory language and specific findings of the
5 highest court in this state to bring this baseless and repeatedly rejected non-issue in the form of a
6 constitutional challenge in the pursuit of an outcome driven analysis. It is utterly without merit and
7 intellectually dishonest.

8 In United States constitutional law, the doctrine of constitutional avoidance dictates that
9 a federal court should refuse to rule on a constitutional issue if the case can be resolved on a
10 nonconstitutional basis. When a federal court is faced with a choice of ruling on a statutory,
11 regulatory or constitutional basis, the Supreme Court has instructed the lower court to decide the
12 federal constitutional issue only as a last resort. "The Court will not pass upon a constitutional
13 question although properly presented by the record if there is also present some other ground upon
14 which the case may be disposed of" Ashwander v. Tennessee Valley Auth., 297 U.S. 288, 347
15 (1936). Thus, this court should consider the constitutionality of NRS 116.3116 only as a last resort.
16 Having shown that the state law does in fact require service to security holders such as the banks,
17 the constitutional analysis must cease at such point.

18 Further, in this case, Christiana fails to even explain how a conflict exists between the
19 notice provisions of NRS 107.090 and the requirements of NRS 116.31168 and 107.090 (3) and
20 (4). NRS 116.31163(2) and NRS 116.31165 (1)(b)(2) discuss the difference between recorded and
21 unrecorded interests in property and how each is provided notice. This is consistent with the
22 recording statutes that provide that recorded interests provide notice to all persons. Tae-Si Kim
23 v. Kearney, 838 F. Supp. 2d 1077, 1087-1088 (U.S. Dist. Nev. 2012).

24 NRS 116.31168 and 107.090 (3) and (4) do not change or otherwise limit those provisions.
25 NRS 116.31168 merely incorporates the service requirements of NRS 107.090 treating the
26 Association's lien as if it were a deed of trust. NRS 107.090 talks about the same two types of
27 persons, recorded and unrecorded, using the language "person with an interest" in place of the
28 language "holder of a recorded security interest", two different terms of art meaning the same thing

THE WRIGHT LAW GROUP P.C.
2340 Paseo Del Prado, Suite D-305
Las Vegas, Nevada 89102
Tel: (702) 405-0001 Fax: (702) 405-8454



1 and requiring service on all interests subordinate to the interest being foreclosed. The effect and
2 application of the statutes are the same.

3 Christiana argues that since it is claiming an interest through a deed of trust and NRS
4 107.090 (3) and (4) refer to a deed of trust, then its interest is not subordinate because it is a deed
5 of trust. This is legal sophistry and obfuscation. As shown above, the Association's lien is, under
6 NRS 116.31168 (1) foreclosed "as if it were a deed of trust" under NRS 107.090. The statutes do
7 not change the priority of the foreclosing document. They simply inform all that the Association's
8 lien will be treated as a deed of trust and needs to comply with the service requirements of NRS
9 107.090. Since the Association's lien is treated as a deed of trust under NRS 116.31168 and
10 107.090, the only issue is whether Christiana's interest is subordinate to the Association's lien.
11 This question was answered in the affirmative in SFR.

12 The statutes do not conflict with one another. They either get notice because they are
13 recorded or because they are subordinate. The banks deed of trust was recorded. No additional
14 action by the bank is required in order to receive notice. Notice must be given to recorded interests
15 and subordinate interests. Christiana's interest is both recorded and subordinate. These four
16 statutes are not in conflict. The facial constitutional challenge fails because the recording of the
17 deed of trust pursuant to NRS 111.320 provides notice to the Association and there is no further
18 action required on the part of the lender.

19 In this case, and likely every case where a mortgage is involved, **THE RECORDING OF**
20 **THE DEED OF TRUST WITH THE COUNTY RECORDER IN ACCORDANCE WITH**
21 **NRS 111.320 IS THE "NOTICE" TO THE ASSOCIATION OF THE LENDER'S**
22 **SECURITY INTEREST.** Thus, there is no requirement that the lender "opt-in" in order for the
23 Association to have notice of the lender's security interest.

24 **2. Christiana's Predecessor, U.S. Bank, received Actual Notice:**

25 As noted above, The Nevada Supreme Court in SFR has stated that as a junior lienholder,
26 Christiana is required to be given notice in accordance with NRS 116.31163(2), 116.311635(1)(b)
27 and 107.090(3)(b). In this instance, it is undisputed that Christiana's predecessor not only received
28 legal notice by the recording of the various notices with the county recorder's office, but also

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received actual notice. Indeed, in its motion Christiana does not even attempt to argue that it did not receive the notices. Rather, Christiana merely complains about the content of the notices. There is no doubt that Christiana's predecessor, U.S. Bank, received actual notice in this case. Therefore there is no violation of due process.

U.S. Bank after receiving both legal and actual notice, failed to protect its security interest by ensuring that the Association's assessments were timely paid. U.S. Bank erroneously believed that its Deed of Trust was superior to the Association's super-priority lien and ignored the notices. Both the Federal District Court and the Nevada Supreme Court, as well as the Nevada Real Estate Board and the Nevada Legislative Counsel Bureau, have determined unequivocally that the Association's super-priority lien extinguishes the First Deed of Trust and all other **junior** liens. So now, in an effort to avoid the consequences of U.S. Bank's nonfeasance, Christiana is claiming that the statute is unconstitutional. Why? Because its not fair to Christiana, U.S. Bank, and other lenders. These arguments have been presented to the Nevada Supreme Court and have been soundly rejected.

3. *Christiana does not have standing to raise this constitutional argument:*

As established, Christiana is required to get notice and has received actual notice. As such, Christiana has not been harmed by the law's application and therefore does not have standing to challenge the statute. To have standing to raise a constitutional question, one must show that the alleged unconstitutional feature of the statute injures the person and so operates as to deprive the person of a constitutional right, Woeller v. Neilston Warehouse Co., 311 U.S. 531 (1941); Hom v. Chico Unified School Dist. 61 Cal. Rpter. 920 (3d Dist. 1967); New York State Thruway Authority v. Ashley Motor Court, Inc., 12 A.D.2d 223 (N.Y. 1961). An individual launching a constitutional challenge to a statute must be injured by it. People ex rel. J.C.S., 169 P.3d 240 (Colo. App 2007); Mason v. Home Depot U.S.A., Inc., 658 S.E.2d (2008); Com v. McCoy, 895 A.2d 18 (PA. 2006). A party must show that the conduct of which the party complains has caused the party to suffer an injury in fact that a favorable judgment will redress. Chamber of Commerce of U.S. v. Securities and Exchange Com'm, 412 F.3d 133 (D.C. Cir. 2005); State ex rel. Ohio Academy of Trial Lawyers v. Sheward, 715 N.E.2d 1062 (1999). The injury complained of must be fairly

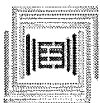
1 traceable to the government conduct that is being challenged. Allen v. Wright, 468 U.S. 737
 2 (1984). In this instance, there is no doubt that Christiana, through its predecessor U.S. Bank, is
 3 required to and in fact did receive notice. Therefore, Christiana cannot show the requisite “injury
 4 in fact” required to establish standing.

5 **B. NRS 116.3116, et seq. does not constitute a regulatory taking:**

6 It is undisputed that the Association foreclosed on its super-priority lien in this case.
 7 Likewise, it is undeniable that it is the Association’s foreclosure of its super-priority lien that
 8 relieved Christiana, U.S. Bank and Wiegand of their interests in the property. The Tuscalante
 9 Homeowners Association is not a public entity, it is a non-profit corporation. Therefore, the
 10 foreclosure of its lien is not a “public taking” as misrepresented by Christiana and there is no
 11 violation of the takings clauses of either the United States or Nevada State Constitutions on the part
 12 of the Association. Christiana attempts to get around this by arguing that it is the statute, not the
 13 Association, that is doing the taking, claiming the enactment of the statute is the government
 14 conduct that resulted in a taking. Of course, the reason for this is that every case upon which
 15 Christiana relies is based on an actual governmental taking. Christiana has not presented a single
 16 case where a court has determined that a private actor, exercising his legal rights in accordance with
 17 the law, has been deemed to have deprived another person of their Fifth Amendment rights.

18 Further, Christiana’s reliance on Indus and Louisville Joint Stock to support its claim of a
 19 statutory taking is misplaced, as those cases are easily distinguished from the facts of this case.
 20 Indus involved debtors in seven separate bankruptcy proceedings in the Bankruptcy Courts of the
 21 District of Kansas and Colorado who sought to avoid liens on exempt property under 11 USCS
 22 522(f)(2). The liens had been perfected *prior to the enactment* of the Bankruptcy Reform Act of
 23 1978 (11 USCS 101 et seq.). Louisville Joint Stock involved the property rights of holders of farm
 24 mortgages that existed *prior to the enactment* of the Frazier-Lemke Act of June 28, 1934.

25 In the cases relied upon by Christiana the statute or code constituting or resulting in a taking
 26 was enacted *after* the persons or entities had already perfected their liens against the property. That
 27 is not the case in this instance. The statute complained of here was adopted by the Nevada
 28 legislature in 1991. The Association recorded its CC&R’s in January 2007. The deed of trust was



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not recorded until July 2007, and the purported assignment of the deed of trust to Christiana was not recorded until January 2014. Christiana's predecessor negotiated the deed of trust subject to the statutes on the books at that time as well as the previously recorded CC&R's. Both the enactment of the statute and the recording of the CC&R's occurred *before* Wiegand, U.S. Bank or Christiana acquired any property or security interests. In essence, the State cannot take what Christiana did not have or what Wiegand did not own at the time the statute was enacted. There can be no prospective taking by the legislature of a property right not yet in existence.

Further, the Statute itself does not result in a taking of any kind. The statute merely provides a remedy to the Association in the event assessments are not paid by the homeowner. This loss of the property interest on the part of the owner and the loss of any security interest on the part of Christiana is not caused by the statutes or any governmental act. Rather, it is caused by the failure on the part of the owner and the lender to pay the assessments. Lacking a default on the part of the owner, the statute has no affect.

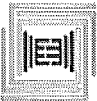
Lastly, for there to be a taking under Christiana's theory, there must be a state actor. The Association is not a state actor. Christiana has failed to identify any connection between the Association and the state. The State has not taken the property for the benefit of the public and certainly has not taken the property for the benefit of the Association. Thus, there is no violation of the Takings Clause of the Constitution.

C. K&P's Counterclaim Does Not Implicate Government Action:

Christiana also argues that K&P's Counterclaim for quiet title implicates government action under Shelley v. Kraemer, 334 U.S. 1 (1948) and asks the court to use the filing of the counterclaim as a basis to conduct a due process analysis of the Statute.

Shelley stands for the proposition that when the court imposes a ruling or penalty without allowing due process within the case itself, for example, not allowing the other side to present evidence, then the court is depriving someone of due process, not that the court does so because it enforces a law. In Naoko Ohno v. Yuko Yasuma, 723 F.3d 984 (9th Cir. 2013), a case involving the application a California Uniform Act, the Ninth Circuit Court of Appeals stated:

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1 *Shelley* established the judicial enforcement of a legal right or obligation whose
2 source is not domestic governmental action *can* constitute state action triggering
constitutional scrutiny...

3 But *Shelley* has not been interpreted as meaning that domestic judicial enforcement
4 of *any* monetary obligation necessarily transforms the circumstance that gave rise
5 to that obligation into state action for constitutional purposes. Instead, *Shelley's*
attribution of state action to judicial enforcement has generally been confined to the
context of discrimination claims under the Equal protection Clause.

6 ...

7 Courts' reluctance, since *Shelley*, to expand that cases' holding too far beyond its
8 original context stems from a concern for preserving a sphere for private action and
9 private actors, not subject to constitutional constraints designed to protect our
populace from governmental control and overreaching. "[I]f for constitutional
10 purposes, every private right were transformed into governmental action by
the mere fact of court enforcement of it, the distinction between private and
governmental action would be obliterated." *Edwards v. Habib*, 397 F.2d687
(D.C. Cir. 1968).

11 723 F.3d at 998-999 (emphasis added)

12 This case does not present any facts that would necessitate such scrutiny. It does not
13 involve any governmental actors, far from it. As noted in Section B, *supra*, The Association is a
14 private actor, which followed the statutory foreclosure requirements to the letter. K&P is an
15 innocent purchaser and was one of many persons who attended a foreclosure auction. Christiana,
16 on the other hand, comes to the court having done nothing to protect its interests and is seeking to
17 have the court determine that the foreclosure statutes are unconstitutional. These are not the facts
18 that warrant judicial scrutiny under *Shelley*.

19 Christiana asks this court to scrutinize the notice provisions of the foreclosure statutes.
20 K&P has provided a court with a complete analysis of the Notice requirements of NRS 116.3116
21 and 107.090, as well as 111.320 in section A, *supra*. Further, K&P has provided this court with
22 ample proof that all required notices were sent via certified mail to Christiana's predecessor, U.S.
23 Bank.

24 **D. This Court Has Previously Rejected Christiana's Due Process Arguments Relating to**
25 **Non-Judicial Foreclosures and the Mortgage Savings Clause:**

26 Christiana argues that NRS 116.3116, et seq., deprives lenders of the fundamental right to
27 property and that the decision rendered by the Nevada Supreme Court in *SFR* allows for the
28 deprivation of property rights in a manner not foreshadowed by the parties involved. Christiana

1 claims, “[a] reasonable lender, giving a first deed of trust secured by a property within and HOA
 2 bound by a mortgage protection clause in its CC&Rs, would not have anticipated that the Nevada
 3 Supreme Court would years later interpret the Statute the way they did in the SFR decision. Thus,
 4 this Court should consider that more than one year after the SFR decision, the issue of whether the
 5 Statute (pre-SB 306) violates due process has not been fully resolved and is ripe for this Court’s
 6 adjudication.” (ECF No. 11 at 20:16-21).

7 However, Christiana is apparently unaware that this Court has in fact addressed Christiana’s
 8 due process arguments in this regard and has rejected them, even before the SFR decision was
 9 rendered. On July 23, 2014 this Court issued an opinion in Nationstar Mortgage, LLC v. Rob and
 10 Robbie, LLC, 2014 WL 3661398, Case No. 2:13-cv-01241-RCJ-PAL. This court stated:

11 The statutes governing HOA foreclosure were in place when Plaintiff gave the
 12 mortgage at issue. The recording statute provides a general statutory exception to
 13 the first-in-time, first-in-right rule provided by the common law. That is, under the
 14 recording statute, a person who received a competing interest in the same property
 15 before the recording party received his interest. The HOA foreclosure statutes
 16 provide that certain HOA liens are prior even to first mortgages so long as the CC
 17 & R permitting foreclosure are recorded before the first mortgage. The recordation
 18 of the CC & R puts a potential mortgagee on notice of the risk of a future HOA
 19 foreclosure. Plaintiff has long been on notice of the statutory scheme that would
 20 permit its mortgage to potentially be extinguished by an HOA lien in some
 21 circumstances, and it has been able to protect itself by periodically checking the
 22 postings at the front entrance of the Washoe County Courthouse or the electronic
 23 records available online for free. Plaintiff was on constructive notice of the CC &
 24 R permitting and HOA foreclosure (recorded before the first mortgage), the notice
 25 of HOA lien, and the notice of sale. The fact that Plaintiff gave its mortgage at a
 26 time when no actual lien had been placed against the Property does not matter. It is
 27 notice of the possibility of an action against the security by a senior party that
 28 matters. When a mortgagee considers giving a deed of trust against a property
 where, as here, CC & R permitting an HOA foreclosure for delinquent dues has
 been recorded, the putative mortgagee is on notice of the possibility that a lien may
 arise thereunder in the future that will be superior to the lien for the putative first
 mortgagee, just as putative second mortgage is on notice when it considers giving
 a deed of trust against a property where a first mortgage has been recorded. The
 first mortgagee has no better notice-based argument against the HOA than the
 second mortgagee has against the first mortgagee. In neither case has the senior
 party’s potential future notice of default been recorded when the junior party takes
 its security interest. But in both cases the putative junior party is aware when
 deciding whether to take its security interest that the putative senior party may
 foreclose upon a future delinquency, and in both cases the junior party receives
 constructive notice of sale. A junior secured party cannot be heard to complain that
 he was too lazy or disorganized to keep abreast of the freely available public notices
 as to property in which he has an interest. Recordation provides constructive
 notice.

(2014WL 3661398 at 3)



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1 Basically, what Christiana argues, without any supporting evidence, is that the original
2 lender, Universal American Mortgage Company, LLC, *believed* that its deed of trust was senior to
3 the HOA, despite statutory language to the contrary, based on a mortgage savings clause in the
4 CC&R, which the Nevada Supreme Court has ruled violates NRS 116.1104. Christiana has
5 offered no evidence to support its arguments regarding what the original lender *believed or did not*
6 *believe* nor has it supplied any authority for the proposition that a party's subjective belief of what
7 the law was, no matter how contrary to the actual effect of the law, has the ability to determine the
8 law's application on an *ad hoc* basis resulting in an different outcome each time one presents their
9 misguided beliefs as justification for con-compliance. The bank's call for anarchy
10 notwithstanding, as this court previously noted, the statutory scheme was in place prior to the
11 creation of the deed of trust, regardless of the original lender's *belief* at the time. The fact of the
12 matter is that the CC&R's were of record prior the original lender's recording of the Deed of Trust
13 and Chapter 116 has been in place since 1991. Further, because NRS 116.3116(5) directs that
14 recording of the CC&Rs constitutes record notice and perfection of the lien, the HOA's lien is
15 prior in time to the deed of trust and has superiority for that reason alone, without discussion of the
16 9 month "super priority" - which is actually a reduction (for the bank's benefit) of the superiority
17 of the whole lien which would otherwise be in place due to the prior recording and perfection.

18 Further, it is disingenuous for Christiana to argue that the SFR decision was not
19 foreshadowed by the parties involved in this case. The assignment of the deed of trust to Christiana
20 occurred on January 30, 2014, *after* the foreclosure sale and recording of the Foreclosure Deed
21 granting title to K&P. It also occurred during a time when the Nevada Supreme Court was hearing
22 arguments in SFR and after the Nevada Real Estate Division's opinion was issued indicating
23 extinguishment of deeds of trust. Christiana cannot make a good faith argument that it took the
24 assignment of the deed of trust without the reasonable expectation that the Supreme Court might
25 rule in favor of the HOA. The bottom line is simple, Christiana, like most lenders, interpreted the
26 law differently than the Nevada Supreme Court and investors, ignored the notices and did nothing.
27 They gambled and lost.
28

E. The Statute does not violate Public Policy:

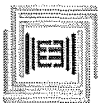
“Public Policy” consists of the principles and standards regarded by the legislature or by the courts as being of fundamental concern to the state and the whole of society. Bolz v. State Farm Mut. Auto. Ins. Co., 52 P.3d 898 (Kan. 2002), and a court may consider legislation or judicial decisions to determine public policy considerations, All Star Bonding v. State, 119 Nev. 47, 62 P.3d 1124 (2003). Christiana argues that the Nevada Supreme Court’s recent interpretation of the Statute in SFR violates Nevada’s public policy and creates an absurd result by directly contradicting the statutory provisions in place protecting homeowners. These arguments were presented to the Supreme Court in the multiple Amicus Curiae briefs filed in support of U.S. Bank’s Petition for Rehearing and were considered by the court and rejected. Accordingly, NRS 116 and the SFR decision *is* the public policy in Nevada.

It is painfully obvious that Christiana does not like the decision of the Nevada Supreme Court. So now, Christiana, and many other banks resort to attacking the Nevada Supreme Court itself and calling its opinion absurd.³ In its motion, Christiana makes four arguments as to why the SFR decision will create absurd results. First, Christiana argues that permitting an Association foreclosure sale, without a commercial reasonableness requirement, exposes the homeowner to substantial financial loss and risk, primarily because the bank will still go after the homeowner for the balance of the mortgage. This was addressed on page 7 of United Trustees’ amicus brief.^{4 5}

³Christiana’s motion at 21:24.

⁴“Second, the Majority opinion exposes Nevada borrowers to litigation by the first mortgagees to recover deficiency judgments for the amounts owed on the underlying Note which would otherwise have been offset in a judicial foreclosure by the value of the property. Petition at 7. Thousands of Nevada borrowers are thus exposed to damages and attorneys’ fees in lawsuits by the first mortgagees, causing many to file bankruptcy, creating a downward spiral and making it harder for the borrowers and Nevada’s housing market to get back on their feet.”

⁵In reality, despite the fact that these circumstances have been occurring for several years, the banks have yet to initiate any action against a former property owner to collect a deficiency. This is because the banks are fully aware that the property owner’s would have a number of affirmative defenses against that banks taking actions, primarily because the deficiency was caused by the banks own failure to protect its security interests.



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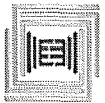


1 As noted, this argument was also presented on p.7 of U.S. Bank's Petition for rehearing in
 2 SFR. Clearly, this argument has been presented to the Nevada Supreme Court by multiple parties
 3 and it has been rejected. Now, being fully aware of the fact that the Nevada Supreme Court has
 4 considered and rejected the same, Christiana is now apparently asking the court to substitute the
 5 Nevada Supreme Court's opinion with that of Christiana.

6 Next, Christiana argues that the Supreme Court's interpretation of the Statute will prevent
 7 lenders from considering foreclosure alternatives, claiming that banks will be required to rush to
 8 foreclose in order to protect their secured interests from eradication by an Association foreclosure.⁶
 9 This too was addressed in the amicus brief filed by United Trustees. In its brief to the Nevada
 10 Supreme Court United Trustees pointed out that effective October 1, 2013, the statute precludes
 11 a homeowners association from proceeding with a foreclosure while the borrower and lender are
 12 in the Foreclosure Mediation Program exploring the borrower staying in his home through
 13 modification, among other things. So, it is obvious that the legislature has already addressed any
 14 perceived unfairness and the statute does not permit homeowners associations to foreclose while
 15 the owner and lender are in mediation. Of course, if lenders were seriously concerned about
 16 rushing to avoid an Association foreclosure this issue would be fixed by establishing an escrow
 17 payment of the Association assessment, much like lenders do for property taxes and homeowners
 18 insurance and special improvement districts. This is a non-issue that is easily resolved by lenders,
 19 as it would not be difficult at all for lenders to require an up-front payment of the 9 months of
 20 assessments at closing of the original loan or as part of any loan modification or refinance.
 21 Therefore, the SFR court's decision does not lead to absurd results. This argument also fails for
 22 the reason that certainty in the outcome of the HOA sales, that the deeds of trust are in fact
 23 extinguished, means that sales will bring higher prices and the bank's liens will be paid off
 24 without the need for them to foreclose. It is the chaos created by these continued attacks that drives
 25 prices down as investors must calculate additional risk and costs of inevitable litigation against a
 26 bank with seemingly unlimited resources.

27
 28 ⁶K&P is not aware of, and Christiana has not identified, a single instance where the
 banks have opted to foreclose on their deeds.

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1 Third, Christiana claims the SFR decision will likely result in Christiana, and presumably
2 others, taking their ball and going home. They claim that banks will not lend money for residential
3 property purchases when their deed can be extinguished and that the banks may be forced to leave
4 the Nevada market altogether.⁷ Thus, threatening the judiciary, the legislature, and even the
5 citizens of Nevada with economic retaliation if Christiana doesn't get its way. Alas, this too was
6 included in the amicus brief of United Trustees at page 9, Section 3. In its brief, United Trustees
7 stated:

8 In the short-term, any lender will have to weigh the enormous risks before making
9 a loan on a property subject to a Nevada HOA. Prospective homebuyers' access to
10 money will be significantly impacted, harming Nevada's rebounding housing
11 market.

12 In the long-term, prospective lenders would undoubtedly have to increase costs,
13 fees, and out of pocket expenses to make up for the additional risk associated with
14 lending money to individuals on properties located in HOAs. Many borrowers
15 would be unable to qualify for new loans due to the increases. Market values would
16 decrease due to glut of unsellable properties.

17 Understandably, the Nevada Supreme Court rejected these arguments as well.

18 Fourth, Christiana resorts to insulting Homeowners Associations, claiming the associations
19 provide the least amount of service to a homeowner. As apposed to who? Christiana or a bank that
20 refuses to pay just 9 months of HOA assessments to support the infrastructure of the HOA, which
21 relieves the tax base of this obligation, to avoid a sale so that it can fight endless battles in court a
22 hundred times the expense? It is most unfortunate that Christiana would resort to these types of
23 derogatory and insulting arguments. Inasmuch as these comments are meaningless and do not set
24 forth a legal argument, the same should be disregarded by the court and stricken from the record.

25 As stated above, the SFR court considered all of Christiana's arguments and ruled against
26 them. In doing so, the court established public policy. Further, these arguments are inappropriate
27 in a motion to dismiss, as they do not address any of the allegations in the Counterclaim.

28 **F. SFR Applies to the Law at Issue, a statute enacted in 1991, and all subsequent transactions subject to that law:**

Christiana again strains credibility by alleging that the decision in SFR should not be

⁷Christiana's motion at 23:3-8

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1 applied retroactively. This frivolous claim is a FRCP 11 violation. Christiana suggests that SFR
2 does not apply to the litigants in SFR when the Nevada Supreme Court clearly remanded the case
3 for further proceedings consistent with the decision. Christiana's contention also means that the
4 decision of the Nevada Supreme Court resolving a conflict by the lower courts did not overturn
5 and/or reverse those court's decisions with which the Nevada Supreme Court disagreed. *Since this*
6 *case is being decided after SFR and Christiana claims it does not apply, then SFR has no*
7 *application retroactively or prospectively.* This is an absurd contention.

8 SFR interprets a statute from 1991. The language at issue was written in 1991 and this case,
9 and all other cases generically referred to by Christiana occurred factually subject to that law.
10 There is no change in the law. The apparent fact that Christiana and other lenders chose to interpret
11 the statute in a manner inconsistent with the express language is not a basis for relief. In fact, this
12 issue was raised in SFR and the Nevada Supreme Court rejected the argument relying, in part, on
13 language in 7912 Limbwood Court Trust v. Wells Fargo Bank., N.A., 979 F Supp. 2d 1142, 1152
14 (D. Nev. 2013), specifically addressing the fact that the law was adopted in 1991 and the statute
15 might entitle an Association to a super priority lien over a first deed of trust. SFR at 418. This also
16 dismissed the alleged due process violation claims Christiana is raising as a basis for the denial of
17 retroactive application. This issue was argued, denied and there is no good faith basis such as a
18 change in the law for Christiana to continue to disregard the decision of the Nevada Supreme
19 Court.

20 Christiana claims that SFR overrules clear precedent. This is not true. SFR is the first case
21 to address the claims by lenders that the specific language of NRS 116.3116(2) should not be read
22 to permit an association lien to have priority over a first deed of trust. There is not one single
23 authoritative case to which Christiana can point from the date of the first deed of trust in this case
24 indicating any precedent that an Association assessment lien does not have a limited super priority
25 over a first deed of trust.

26 The cases cited by the Chevron court make the distinction clear. Chevron relied upon
27 Hanover Shoe v. United Shoe Mach. Corp., 392 U.S. 481, 496 (1968) wherein it was determined
28 that no prior long-standing precedent exists upon which the actor was relying until a subsequent

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1 decision reversed the precedent making the actions wrongful. In that situation, nonretractile
2 application would be appropriate. Chevron relied upon a different case, Allen v. State Board of
3 Elections, 393 U.S. 544, 572 (1969) to highlight an issue of first impression. That case involved
4 consolidated matters regarding the application of the Voting Rights Act of 1965 and specifically
5 the prohibition under Section 5 that no new voting procedures could be enacted by a state without
6 receiving a declaratory judgment in the USDC for the District of Columbia that the new law does
7 not deny or abridge the right to vote by race or color. The question was whether the new laws fell
8 within Section 5. The United States Supreme Court determined that the new enactments were not
9 clearly subject to Section 5 although determining that the result was that they were. Therefore, the
10 court declined to make its decision retroactive and did not require new elections but the laws would
11 not be effective in the future.

12 These are not the same factual situations as in SFR. The law at issue is over 20 years old.
13 The language has not changed and there is no question the law applies. There is no question if the
14 actions were subject to the law. The only issue is whether Christiana and other lenders were
15 interpreting the law correctly. It is not whether they relied upon a long-standing case precedent.
16 They were not. This is not a brand new law or a new provision that had no predecessor in the prior
17 version of the law. This only arises because Christiana and other lenders chose to, internally, read
18 the statute in one manner. A manner which, ultimately, was proven wrong. The doctrine of
19 nonretroactivity has no application herein.

20 **K&P HOMES, LLC'S COUNTERMOTION FOR SUMMARY JUDGMENT**

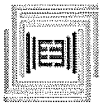
21 **I.**

22 **SEPARATE STATEMENT OF FACTS**

23
24 1. In January 2007, the Association recorded its Declaration of Covenants, Conditions and
25 Restrictions with the office of the Clark County Recorder as Instrument No. 20070109:0000868,
26 establishing its lien rights in accordance with Chapter 116 of Nevada Revised Statutes (ECF No.
27 1-1, pp.43-121).

28 2. In July 2007, Rita Wiegand ("Wiegand") acquired the property through a Grant Bargain

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1 Sale Deed. The property was financed through Universal Home Mortgage Company, LLC., who
2 recorded a first deed of trust with the Clark County Recorder's office as Instrument No.
3 20070725:0005226 (ECF No. 1-1, pp. 9-27). The deed of trust was assigned to BAC Home Loan
4 Servicing and U.S. Bank, N.A ("U.S. Bank"), and ultimately assigned to Christiana on January 30,
5 2014 (ECF No. 1-1, p.29).⁸

6 3. Wiegand became delinquent in the payment of the Association assessments and on July 31,
7 2012, the Association, through NAS, recorded a Notice of Delinquent Assessment Lien with the
8 Clark County Recorder as Instrument No. 20120731:0002531. (ECF No. 1-1, p.31)

9 4. Wiegand failed to pay the Associations assessment lien and on January 30, 2013, the
10 Association recorded a Notice of Default and Election to Sell Real Property to Satisfy Delinquent
11 Assessment Lien with the Clark County Recorder as Instrument No. 20130130:0000690. (ECF No.
12 1-1, pp. 33-34). The Notice of Default was mailed via certified mail to both Wiegand and U.S.
13 Bank, the then holder of the deed of trust.⁹

14 5. Neither Wiegand nor any other person paid the Association's lien and on May 7, 2013, the
15 Association recorded a Notice of Foreclosure Sale with the Clark County Recorder as Instrument
16 No. 20130507:0000897 (ECF 1-1, pp.36-37). The Notice of Sale was mailed to both Wiegand and
17 U.S. Bank via certified mail.¹⁰

18 6. The Notice of Sale was published for three consecutive weeks in the Nevada Legal News.¹¹
19 It was also posted on the Property and three of the most public places in Clark County, Nevada, as
20 well as three of the most public places in the Las Vegas, Nevada.¹²

21 _____
22 ⁸The assignment to Christiana occurred seven months after the property was sold at the
23 foreclosure sale. At the time of the foreclosure sale the deed of trust was held by U.S. Bank,
24 N.A., which is not a party to this case and, according to Christiana's Notice of Interested Parties
(ECF 2) has no interest in this case.

25 ⁹**Exhibit 1**, Affidavit of Custodian of Record for Nevada Association Services and
26 proof of mailing Notice of Default.

27 ¹⁰**Exhibit 2**, proof of mailing Notice of Sale.

28 ¹¹**Exhibit 3**, Affidavit of Publication.

¹²**Exhibit 4**, Affidavit of Posting.

7. Again, neither Wiegand nor any other person paid the Association's assessment lien. Therefore, the Property was sold at a foreclosure auction on May 31, 2013.

8. At the foreclosure auction held on May 31, 2013, K&P was the highest bidder and purchased the Property for Forty Thousand dollars (\$40,000). The Association, through its agent NAS, provided K&P with a Foreclosure Deed containing all the recitals permitted under NRS 116.31164 which constitute conclusive proof that the Property passed to K&P free of any claims by Wiegand or any other persons, including U.S. Bank or Christiana. (ECF No. 1-1, pp.39-41).

II.

STANDARD FOR SUMMARY JUDGMENT

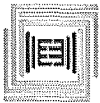
A court must grant summary judgment when "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). Material facts are those which may affect the outcome of the case. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986). A dispute as to a material fact is genuine if there is sufficient evidence for a reasonable jury to return a verdict for the nonmoving party. *See id.* A principal purpose of summary judgment is "to isolate and dispose of factually unsupported claims." Celotex Corp. v. Catrett, 477 U.S. 317, 323-324, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986). In determining summary judgment, a court uses a burden-shifting scheme:

When the party moving for summary judgment would bear the burden of proof at trial, it must come forward with evidence which would entitle it to a directed verdict if the evidence went uncontroverted at trial. In such a case, the moving party has the initial burden of establishing the absence of a genuine issue of fact on each issue material to its case.

C.A.R. Transp. Brokerage Co. v. Darden Rests., Inc., 213 F.3d 474, 480 (9th Cir.2000) (citations and internal quotation marks omitted). In contrast, when the nonmoving party bears the burden of proving the claim or defense, the moving party can meet its burden in two ways: (1) by presenting evidence to negate an essential element of the nonmoving party's case; or (2) by demonstrating that the nonmoving party failed to make a showing sufficient to establish an essential element of that party's case on which that party will bear the burden of proof at trial. *See Celotex Corp.*, 477 U.S. at 323-24. If the moving party fails to meet its initial burden, summary



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2340 Paseo Del Prado, Suite D-305
Las Vegas, Nevada 89102
Tel: (702) 405-0001 Fax: (702) 405-8454



judgment must be denied and the court need not consider the nonmoving party's evidence. *See Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 159-60, 90 S. Ct. 1598, 26 L. Ed. 2d 142 (1970).

If the moving party meets its initial burden, the burden then shifts to the opposing party to establish a genuine issue of material fact. *See Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586, 106 S. Ct. 1348, 89 L. Ed. 2d 538 (1986). To establish the existence of a factual dispute, the opposing party need not establish a material issue of fact conclusively in its favor. It is sufficient that "the claimed factual dispute be shown to require a jury or judge to resolve the parties' differing versions of the truth at trial." *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass'n*, 809 F.2d 626, 631 (9th Cir.1987). The nonmoving party cannot avoid summary judgment by relying solely on conclusory allegations unsupported by facts. *See Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir.1989). Instead, the opposition must go beyond the assertions and allegations of the pleadings and set forth specific facts by producing competent evidence that shows a genuine issue for trial. *See Fed.R.Civ.P. 56(e); Celotex Corp.*, 477 U.S. at 324.

At the summary judgment stage, a court's function is not to weigh the evidence and determine the truth, but to determine whether there is a genuine issue for trial. *See Anderson*, 477 U.S. at 249. The non-movant's evidence is "to be believed, and all justifiable inferences are to be drawn in his favor." *Id.* at 255. But if the evidence of the nonmoving party is merely colorable or is not significantly probative, summary judgment may be granted. *See id.* at 249-50.

III. ARGUMENT

A. The foreclosure of the Association's Lien Extinguished The First Deed of Trust:

The Nevada Supreme Court has now ruled, unequivocally, that the foreclosure of the super-priority portion of the Association lien extinguishes a bank's first deed of trust and that the foreclosure deed reciting compliance with the notice provision of NRS 116.31162 through NRS 116.31168 'is conclusive' as to the recitals "against the unit's former owner, his or her heirs and assigns, and all other persons." *SFR Investments Pool I, LLC v. U.S. Bank, N.A.*, 334 P.3d 408 (Nev. 2014). In its opinion, the Nevada Supreme Court explained as follows:

To initiate foreclosure under NRS 116.31162 through NRS 116.31168, a Nevada HOA must notify the owner of the delinquent assessments. NRS 116.31162(1)(a). If the owner does not pay within 30 days, the HOA may record a notice of default and election to sell. NRS 116.31162(1)(b). Where the UCIOA

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2340 Paseo Del Prado, Suite D-305
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Tel: (702) 405-0001 Fax: (702) 405-8454



states general third-party notice requirements, *see* 1982 UCIOA § 3-116(j)(4) (“in the case of foreclosure under [insert reference to state power of sale statute], the association shall give reasonable notice of its action to all lien holder of the unit whose interest would be affected.”), NRS 116.31168 imposes specific timing and notice requirements.

“The provisions of NRS 107.090,” governing notice to junior lienholders and other in deed-of-trust foreclosure sales, “apply to the foreclosure of an association’s lien as if a deed of trust were being foreclosed.” NRS 116.31168(1). The HOA must provide the homeowner notice of default and election to sell; it also must notify “[e]ach person who has requested notice pursuant to NRS 107.090 or 116.31168” and “[a]ny holder of a recorded security interest encumbering the unit’s owner’s interest who has notified the association, 30 days before the recordation of the notice of default, of the existence of the security interest.” NRS 116.31163(1), (2). The homeowner must be given at least 90 days to pay off the lien. NRS 116.31162. If the lien is not paid off, then the HOA may proceed to foreclosure sale. *Id.* Before doing so, the HOA must give notice of the sale to the owner and to the holder of a recorded security interest if the security interest holder “has notified the association, before the mailing of the notice of sale of the existence of the security interest.” NRS 116.31163(1)(b)(2); *see* NRS 107.090(3)(b), (4) (requiring notice of default and notice of sale to “[e]ach other person with an interest whose interest or claimed interest is subordinate to the deed of trust”).

NRS 116.31164 addresses the procedure for sale upon foreclosure of an HOA lien and specifies the distribution order for the proceeds of sale. **A trustee’s deed reciting compliance with the notice provision of NRS 116.31162 through NRS 116.31168 ‘is conclusive’ as to the recitals ‘against the unit’s former owner, his or her heirs and assigns, and all other persons.’ NRS 116.31166(2). And, ‘[t]he sale of a unit pursuant to NRS 116.31162, 116.31163 and 116.31164 vests in the purchaser the title of the unit’s owner without equity or right of redemption.’ NRS 116.31166(3).**

334 P.3d 408, at 411-412 (emphasis added)

The Supreme Court concluded that “NRS 116.3116(2) gives an HOA a true superpriority lien, proper foreclosure of which will extinguish a first deed of trust.”¹³ In this case, the Association’s lien was properly foreclosed and K&P owns the property free and clear of any claims by Wiegand or Christiana.

B. The First Deed of Trust was *NOT* First Recorded:

K&P anticipates that in an effort to avoid the obvious consequences of the SFR decision Christiana may attempt to claim that its First Deed of Trust was “first recorded.” However, that is not the case. On January 9, 2007, The Association recorded a Declaration of Covenants, Conditions and Restrictions in the Official Records of the Clark County Recorder as instrument

¹³*See*, 334 P.3d at 419

number 20070109:0000868. The First Deed of Trust upon which Christiana relies was recorded on July 25, 2007. Therefore, Deed of Trust is not “first-recorded” and is in fact junior to the Association’s super-priority lien. NRS 116.3116(5) provides:

NRS 116.3116 Liens against units for assessments.

5. Recording of the declaration constitutes record notice and perfection of the lien. No further recordation of any claims of lien for assessment under this section is required.

In SFR, the Nevada Supreme Court confirmed that under the Uniform Common Interest Ownership Act of 1982 (“UCIOA”) (NRS Chapter 116) the recording of the CC&R’s establishes the Association’s lien rights. In addressing this issue the court in SFR relied on an earlier federal case, 7912 Limbwood Court Trust, 979 F.Supp 2d 1142. Specifically, the court quoted Limbwood as follows:

Chapter 116 was enacted in 1991, and thus the lender] was on notice that by operation of the statute, the [earlier recorded] CC&Rs might entitle the HOA to a super priority lien at some future date which would take priority over a [later recorded] first deed of trust Consequently, the conclusion that foreclosure on an HOA super priority lien extinguishes all junior liens, including a first deed of trust recorded prior to a notice of delinquent assessments, does not violate [the lender’s] due process rights.

334 P.3d 408, at 418, quoting Limbwood

The Nevada courts’ interpretation of the UCIOA is not unique. In BAC Home Loans Servicing, LP v. Fulbright, 328 P.3d 895 (Wash. 2014), a recent case decided by the Supreme Court of the State of Washington under a similar statute the court stated the following opinions and conclusion:

The common law doctrine of lien priority was “first in time, first in right.” Under the common law doctrine, an interest created prior in time took priority over any subsequent competing interest. This rule was universally clarified and now every state has some form of statutory recording system.

...

Under the terms of the Act, **when an association records its declaration, it establishes its lien priority** to secure future obligations to make payments of condominium assessment even though payments are not actually due at the time the declaration is recorded.

...

... viewed in this light, **a future lien for unpaid condominium assessments is established at the time the condominium declaration is recorded**, even though it may not be enforceable until the unit owner defaults on his or her assessment, if



1 ever.

2 . . .

3 We hold that a condominium **association establishes its priority to collect unpaid**
 4 **condominium assessments at the time the condominium declaration is**
 5 **recorded**, even though it is not enforceable until the unit owner defaults on his or
 6 her assessments. The condominium Act creates an exception to the recording act
 and can alter the established priorities. Here, the effect of the foreclosure lawsuit
 was to give the Condominium Associations's lien priority over Bank of America's
 interest... (Emphasis added)

7 It is readily apparent that the Nevada Supreme Court's decision in SFR is consistent with
 8 the analyses and opinions of courts in other jurisdictions and the Association's lien was recorded
 9 prior to the First Deed of Trust and is therefore first in priority.

10 **C. Commercial Reasonableness:**

11 **1. *The Price Paid At Auction IS the Commercially Reasonable Price:***

12 K&P further anticipates that Christiana will attempt to argue that the price paid at the
 13 foreclosure sale was not commercially reasonable. However, that is a faulty argument. First, there
 14 is no requirement in NRS 116.3116 through 116.31168 that the foreclosure sale price be
 15 commercially reasonable. Second, even if there were such a requirement, the foreclosure sale price
 16 is reasonable under the circumstances as a matter of law. As recently stated by Federal District
 17 Court Judge Phillip Pro for the District of Nevada in a similar case, Bourne Valley Court Trust v.
 18 Wells Fargo Bank, N.A., et al., Case No. CV-00649-PMP-NJK:

19 The commercial reasonableness here must be assessed as of the time the sale
 20 occurred. Wells Fargo's argument that the HOA foreclosure sale was commercially
 21 unreasonable due to the discrepancy between the sale price and the assessed value
 22 of the property ignores the practical reality that confronted the purchaser at the sale.
 23 Before the Nevada Supreme Court issued SFR Investments, purchasing property at
 an HOA foreclosure sale was a risky investment, akin to purchasing a lawsuit.
 Nevada state trial courts and decisions from the United States District Court for the
 District of Nevada were divided on the issue of whether HOA liens are true priority
 liens such that their foreclosure extinguishes the first deed of trust on the property.
SFR Investments, 334 P.3d at 412. Thus, a purchaser at an HOA foreclosure sale
 24 risked purchasing merely a possessory interest in the property subject to the first
 deed of trust. This risk is illustrated by the fact that title insurance companies
 25 refused to issue title insurance policies on titles received from foreclosures of HOA
 super priority liens absent a court order quieting title. (Mot. to Remand to State
 Court (Doc. #6, Decl. of Ron Bloecker.) Given these risks, a large discrepancy
 26 between the purchase price a buyer would be willing to pay and the assessed value
 of the property is to be expected.

27 Moreover, Wells Fargo does not point to any evidence of legal authority
 28 indicating the Court must void an HOA foreclosure sale because the purchaser bid
 only a fraction of the property's assessed value. Wells Fargo does not point to



1 evidence of fraud or any other procedural defects or other irregularities in the
 2 conduct of the sale that would require the court to void the sale, or any evidence
 3 indicating the HOA acted in bad faith by selling the property for an amount that
 4 would satisfy the unpaid assessments. Nor does Wells Fargo point to any evidence
 or legal authority indicating that beyond selling the property to the highest bidder,
 the HOA was responsible for protecting Wells Fargo and Johnson's interest in
 addition to the homeowners' interests.

5 Judge Pro's opinion in this regard is consistent with the United States Supreme Court's opinion in
 6 In BFP v. Resolution Trust, 511 U.S. 531 (1994). In BFP, when addressing the issue of what a
 7 reasonable value of a foreclosed property is the United States Supreme Court stated as follows:

8 We deem, as the law has always deemed that a fair and proper price, or a
 9 "reasonably equivalent value" for foreclosed property, is the price in fact received
 10 at the foreclosure sale, so long as all the requirements of the State's foreclosure law
 have been complied with.

11 ...

12 ... the fact that a piece of property is legally subject to forced sale, like any other
 13 fact bearing upon the property's use or alienability, necessarily affects its worth.
 14 Unlike most other legal restrictions, however, foreclosure has the effect of
 15 completely redefining the market in which the property is offered for sale; normal
 16 free-market rules of exchange are replaced by the far more restrictive rules
 governing forced sales. Given this altered reality, and the concomitant inutility of
 the normal tool for determining what a property is worth (fair market value), the
 only legitimate evidence of the property's value at the time it is sold is the
 foreclosure-sale price itself.

17 511 U.S. 531, at 545-549

18 Thus, the U.S. Supreme Court and the Federal District Court of Nevada have ruled that,
 19 absent any evidence of fraud, the fair price at a foreclosure sale is the price received at the
 20 foreclosure sale. Further, the forced sale at foreclosure has the effect of redefining the market in
 21 which the property is offered. The decision in BFP has been extended to the language in 11 U.S.C.
 22 49, "present fair equivalent value", in T.F. Stone v. Harper, 72 F.3d 466 (5th Cir. 1995) and Kojima
 23 v. Grandote Int'l Ltd. Co., 252 F.3d 1146 (10th Cir. 2001). It has also been adopted by the
 24 Bankruptcy Appellate Panel of the Ninth Circuit for tax-defaulted sales of real property with
 25 adherence to requirements of state law. In re Tracht Gut, LLC, 503 B.R. 804, 815-818 (9th Cir.
 26 B.A.P. 2014). In this case, all of Nevada's foreclosure laws, NRS 116.31162 through NRS
 27 116.31168, have been complied with and actual notice was given to the lender. Thus, as a matter
 28 of law, the price paid at the foreclosure auction is the best evidence of the fair and proper, or in this

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1 context the “best”, price for the Property.

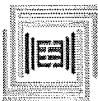
2 **2. Commercial Reasonableness is NOT Required:**

3 Neither NRS §116.31164 nor §116.31166 require the sale conducted by or on behalf of the
 4 Association to be “commercially reasonable”. Neither statute includes a requirement that the
 5 Association sale be made to a “bona fide purchaser” either. These are impermissible limitations
 6 of the clear and unambiguous terms of the statute. The Nevada Supreme Court has held when
 7 interpreting a statute: “where the language of a statute is plain and unambiguous, and its meaning
 8 clear and unmistakable, there is no room for construction, and the courts are not permitted to search
 9 for its meaning beyond the statute itself.” Pro-Max Corp. V. Feenstra, (2001) 117 Nev. 90, 95; 16
 10 P.3d 1074, 1077. (Interpreting NRS §106.240). In Promax, the district court read the statute as
 11 providing protection for bona fide purchasers. The Nevada Supreme Court held that the statute was
 12 clear and unambiguous and the addition of a requirement of bona fide purchaser status before the
 13 application of the statute was an improper limitation. The court stated that at the time of the
 14 statute’s enactment the legislature could have added language limiting the application of the statute
 15 to bona fide purchaser, but it did not. Thus, the Nevada Supreme Court held that there could be
 16 no addition to the statute of a bona fide purchaser requirement. *Id.* 117 Nev. at 95; 16 P.3d at 1078.
 17 NRS §116.31164 and §116.31166 are clear and unambiguous. Neither contain a requirement that
 18 the sale be “commercially reasonable” nor that the purchaser at the sale satisfy the requirements
 19 of a “bona fide purchaser.”

20 For the reasons stated by the Nevada Supreme Court in Promax, defendants’ commercial
 21 reasonableness arguments must fail. Commercial reasonableness is not a requirement for the sale
 22 under NRS 116.31164 or any other provision of NRS 116.3116 through 116.31168. The court
 23 cannot add to the statute a requirement that the legislature did not provide for.

24 **3. There are no Allegations of Fraud or Oppression:**

25 Even if there were a requirement of commercial reasonableness under the statute, which
 26 there is not, the mere inadequacy of price is not evidence of the lack of commercial reasonableness.
 27 The Nevada Supreme Court has reviewed the issue of commercial reasonableness and has held that
 28 the mere inadequacy of price, without some proof of some element of fraud, unfairness or



1 oppression as accounts for and brings about the inadequacy of price is not sufficient to support a
2 judgment setting aside the sale.” Golden v. Tomiyazu, 79 Nev. 503, 504, 387 P.2d 989 (1963).

3 There are no allegations of fraud or conspiracy in this case. In fact, Christiana’s Complaint
4 is void of any averments of any kind regarding fraud, collusion or oppression. In Golden, the
5 Nevada Supreme Court conducted an in-depth review of C.J.S. Mortgages § 601 and 8 A.L.R. 1001
6 and determined that the mere inadequacy of price, without evidence of fraud or collusion, is not
7 sufficient to set aside a trustee’s sale. *Id* 79 Nev. at 510-518, 387 P.2d at 992-997.

8 It is anticipated that Christiana will attempt to argue that Golden adopted the proposition
9 if the price was so low as to “shock the conscience” it is grounds to set aside the foreclosure sale.
10 However, that was not the holding in Golden. In Golden, the court rejected the “shock the
11 conscience” arguments and stated there must be evidence of fraud. The court stated:

12 We have studied a vast number of these cases, as well as the cases cited in A.L.R.
13 Annot., 8 A.L.R. 1001, under the title “Sale under power in mortgage or trust deed
14 as affected by inadequacy of price. The rule as there stated is the one cited by the
15 learned trial judge: ‘Mere inadequacy of price alone is not sufficient to invalidate
16 the sale of land under a power in a mortgage or deed of trust.’ In support, many
17 cases are cited where the inadequacy of price was far greater than appears here. In
18 the present case, accepting the court’s conclusion that the value of the land was
19 \$2,500 an acre or an aggregate in round figures of \$200,000 as against the aggregate
20 debt evidence by the first and second deeds of trust of approximately \$57,000, the
21 property sold for a mere 28.5% of its value. The A.L.R. note cited refers to
22 numerous cases in which the property was sold for a far smaller proportion of its
23 value than 28.5%, in which cases the court refused to invalidate the sale. The cases
24 cited are too numerous to discuss.

...

25 However, a study of the cases indicates that the courts in thus parroting the rule had
26 no occasion to insert the shock-the conscience clause in the particular cases under
27 consideration, and such quotation appeared in virtually every case to be pure
28 dictum, as there were other elements indicating fraud or imposition on the debtor,
or such irregularities as would throw doubt on the good faith of the trustee.

...

29 ...In each such cases the inadequacy in price is coupled with fraud, unfairness,
30 concealment, oppression, or other satisfying grounds to warrant the court in its
31 judgment setting aside the sale. Such being the case, the recital of the rule relied
32 on by respondents in dictum. (citations omitted) To discuss the hundreds of cases
33 involving attacks on public sales by trustees under powers of a deed of trust where
34 inadequacy of price is claimed, with or without the additional elements of fraud,
35 would be neither necessary nor desirable... **(in approving the rule thus stated, we
36 necessarily reject the dictum in *Dazet v. Landry*, *supra*, implying that the rule
37 requiring more than mere inadequacy of price will not be applied if ‘the
38 inadequacy be so great as to shock the conscience.’)**

...

THE WRIGHT LAW GROUP P.C.
2340 Paseo Del Prado, Suite D-305
Las Vegas, Nevada 89102
Tel: (702) 405-0001 Fax: (702) 405-8454



1 We think there can be no doubt under the authorities that where, in addition to gross
 2 inadequacy of price, the purchaser has, in the language of the United States
 3 Supreme Court, 'been guilty of any unfairness or has taken any undue advantage,
 4 resulting in such gross inadequacy and consequent injury to the owner of the
 5 property, he will be deemed guilty of fraud warranting the interposition of a court
 6 of equity in favor of the owner who is himself without fault.' (emphasis supplied)

7 Thus, Golden affirmed that there must be an element of fraud or unfairness on the part of
 8 the purchaser of the property at a public auction, which act drove the price down, before the sale
 9 would be set aside.

10 There are no allegations of fraud on the part of K&P in this case. To the extent Christiana
 11 would attempt to argue otherwise, allegations of fraud must be stated with particularity. FRCP Rule
 12 9(b) states as follows:

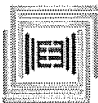
13 **Rule 9 Pleading Special Matters**

14 (b) Fraud, Mistake, Condition of the Mind. In all averments of fraud or mistake,
 15 the circumstances constituting fraud or mistake shall be stated with particularity.
 16 Malice, intent, knowledge, or other conditions of mind of a person may be averred
 17 generally.
 18 (emphasis added)

19 Thus, Christiana is required to set forth, with particularity, all the circumstances constituting
 20 fraud on the part of K&P and prove same by clear and convincing evidence. Christiana's Complaint
 21 does not contain a single averment alleging fraud, let alone stating any circumstances with
 22 particularity. Therefore, because a finding of fraud by the trier of fact is required before a
 23 determination of commercial unreasonableness can be found, defendants must be barred from
 24 setting forth any arguments regarding the commercial reasonableness of the foreclosure sales price.

25 There is a reason Christiana has not, and cannot, allege fraud or collusion. In this case, all
 26 of Nevada's foreclosure laws have been complied with and the foreclosure deed is conclusive proof
 27 that title to the Property has passed to K&P free of any claims by defendants in accordance with
 28 NRS 116.31166(3) and SFR Investments. There are no circumstances that can be set forth with
 particularity that would support an allegation of fraud. Accordingly, any potential arguments
 relating to the economic reasonableness of the purchase price must fail. Because there are no
 elements of fraud, unfairness or oppression that brought about the allegedly inadequate price, the
 only true evidence of the property's value is the amount that was paid at the foreclosure sale.

/////



VI.

CONCLUSION

This Court should deny Christiana's Motion to Dismiss. NRS 116.3116, et seq., does not violate Christiana's due process rights because, as junior lien holder, Christiana is required to to mailed notice. The Nevada Supreme Court has already considered Christiana's arguments and has rejected the same. There is no conflict between the applicable statutes because when the bank records its security interest the Association has notice per NRS 111.320.

Also, a Homeowners Association's foreclosure does not constitute a taking under the United States Constitution or the Nevada State Constitution. The Nevada Supreme Court's Decision in SFR does not violate public policy, it is public policy, as well as the statutes.

Further, the SFR decision applies retrospectively because it interprets a statute that was enacted in 1991 and there was no precedent upon which litigants would reasonably be said to have relied. Therefore, all of Christiana's arguments fail.

Pursuant to SFR Investment Pool 1, LLC v. U.S. Bank, N.A., 334 P.3d 408 (Nev. 2014) the first deed of trust was extinguished by the Association foreclosure and K&P own title to the Property free and clear of any claims by Wiegand, U.S. Bank or Christiana.

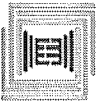
K&P HOMES, LLC asks this court to deny Christiana's Motion To Dismiss and Grant K&P HOMES, LLC'S Motion for Summary Judgment.

DATED this 14th day of October, 2015

THE WRIGHT LAW GROUP, P.C.

JOHN HENRY WRIGHT, ESQ.
WRIGHT LAW GROUP, P.C.
2340 Paseo Del Prado, Suite D-305
Las Vegas, Nevada 89102
Attorney for K&P HOMES, A SERIES LLC
OF DEK HOLDINGS, LLC LLC

THE WRIGHT LAW GROUP P.C.
2340 Paseo Del Prado, Suite D-305
Las Vegas, Nevada 89102
Tel: (702) 405-0001 Fax: (702) 405-8454



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the ¹⁴14 day of October 2015, I electronically filed the **K&P HOMES, LLC'S OPPOSITION TO CHRISTIANA TRUST'S MOTION TO DISMISS and K&P HOMES, LLC'S COUNTERMOTION FOR SUMMARY JUDGMENT** using the CM/ECF system, which will cause the document to be served upon the following counsel of record:

WRIGHT FINLAY & ZAK, LLP

Dana J. Nitz, Esq.
Natalie C. Lehman, Esq.
Attorneys for Christiana Trust

Dnitz@wrightlegal.net
Nlehman@wrightlegal.net


An Employee of WRIGHT LEGAL GROUP, P.C.

THE WRIGHT LAW GROUP P.C.
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Las Vegas, Nevada 89102
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EXHIBIT 1

Certified Addresses

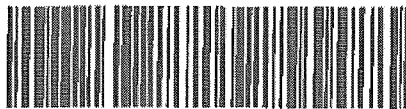
Trustees Sale No.: N71583
 HOA: Tuscalanta
 Date: 2/5/2013

Address	Recipient	Selected
BAC HOME LOANS SERVICING, LP FKA COUNTRYWIDE HOME LOANS SERVICING, LP C/O BAC HOME LOANS SERVICING 400 COUNTRYWIDE WAY SV-35 SIMI VALLEY, CA 93065	Hmnr1	No
LYNN BURKE 7461 GLIMMERING SUN AVE. LAS VEGAS, NV 89178	Hmnr2	No
LYNN BURKE HC 33 BOX 2725 LAS VEGAS, NV 89161-9206	Hmnr2	No
MERS MIN 100059600055838515 P.O. BOX 2026 FLINT, MI 48501-2026	Hmnr1	No
MOUNTAIN'S EDGE MASTER ASSOCIATION C/O SILVER STATE TRUSTEE SERVICES, LLC T.S. # 104207 1424 S. JONES BLVD. LAS VEGAS, NV 89146	Hmnr1	No
REPUBLIC SERVICES ACCT. # 24-30588-0 P.O. BOX 98508 LAS VEGAS, NV 89193-8508	Hmnr1	No
REPUBLIC SERVICES ACCT. # 620-2430588 P.O. BOX 98508 LAS VEGAS, NV 89193-8508	Hmnr1	No
RITA WIEGAND 7461 GLIMMERING SUN AVE. LAS VEGAS, NV 89178	Hmnr1	No
RITA WIEGAND C/O LYNN BURKE HC 33 BOX 2725 LAS VEGAS, NV 89161-9206	Hmnr1	No
RITA WIEGAND HC 33 BOX 2725 LAS VEGAS, NV 89161-9206	Hmnr1	No
State of Nevada Ombudsman for Common-Interest Communities 2501 East Sahara Avenue, #102 Las Vegas, Nevada 89104	Hmnr1	No
THE REGENTS OF THE UNIVERSITY OF CALIFORNIA CASE # A-09-602715-C C/O PHILIP T. VARRICCHIO, ESQ. 1320 S. CASINO CENTER BLVD. LAS VEGAS, NV 89104	Hmnr1	No
Tuscalanta c/o Kelly Rosenfield Las Vegas Valley Community Management 10501 W. Gowan Rd. Suite 160 Las Vegas, NV 89129	Hmnr1	No
U.S. BANK, NA, N.D. C/O JOHN P. WANDERER, ESQ.	Hmnr1	No

Certified Addresses

Address	Recipient	Selected
CASE # A-11-832453-C 1830 EAST SAHARA AVE., #102 LAS VEGAS, NV 89104		
UNIVERSAL AMERICAN MTG COMPANY, LLC MIN 100059600056838516 700 NW 107TH AVE., 3RD FL MIAMI, FL 33172-3139	Hmnr1	No

NAS
6224 W Desert Inn Rd
Las Vegas, NV 89146



9171 9000 0718 5000 8293 80

N71583

UNIVERSAL AMERICAN MTG COMPANY, LLC
MIN 100059600055838515
700 NW 107TH AVE., 3RD FL
MIAMI, FL 33172-3139

"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."

APN # 176-27-312-159
 NAS # N71583
 North American Title # 38121
 Property Address: 7461 Glimmering Sun Ave

DOCUMENT RECORDED ON 1/30/2013

DOCUMENT # 0000690 Book 20130130

Clark

COUNTY

DATE MAILED

2/6/2013

NOTICE OF DEFAULT AND ELECTION TO SELL UNDER HOMEOWNERS ASSOCIATION LIEN

IMPORTANT NOTICE

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

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NAS # N71583

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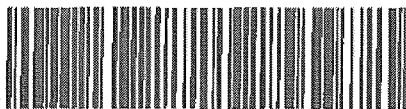
Dated: January 28, 2013



By: Auburn Fessel, of Nevada Association Services, Inc.
on behalf of Tuscalante

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

NAS
6224 W Desert Inn Rd
Las Vegas, NV 89146



9171 9000 0718 5000 8293 97

N71583

MERS
MIN 100059600055838515
P.O. BOX 2026
FLINT, MI 48501-2026

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APN # 176-27-312-159
 NAS # N71583
 North American Title # 38121
 Property Address: 7461 Glimmering Sun Ave

DOCUMENT RECORDED ON 1/30/2013

DOCUMENT # 0000690 Book 20130130

Clark

COUNTY

DATE MAILED 2/6/2013

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NAS #N71583

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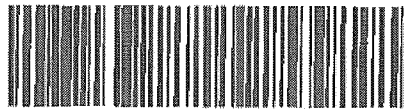
Dated: January 28, 2013



By: Autumn Fessel of Nevada Association Services, Inc.
on behalf of Tuscalante

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

NAS
6224 W Desert Inn Rd
Las Vegas, NV 89146



9171 9000 0718 5000 8294 03

N71583

BAC HOME LOANS SERVICING, LP
FKA COUNTRYWIDE HOME LOANS SERVICING, LP
C/O BAC HOME LOANS SERVICING LP
400 COUNTRYWIDE WAY SV-35
SIMI VALLEY, CA 93065

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APN # 176-27-312-159
 NAS # N71583
 North American Title # 38121
 Property Address: 7461 Glimmering Sun Ave

DOCUMENT RECORDED ON	1/30/2013	
DOCUMENT #	0000890 Book 20130130	
	Clark	COUNTY
DATE MAILED	2/6/2013	

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NAS # N71583

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Legal Description: MOUNTAINS EDGE POD 211 PLAT BOOK 131 PAGE 17 LOT 226 in the County of Clark

Dated: January 28, 2013

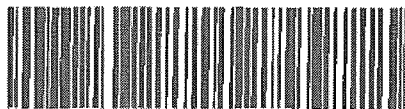


By: Autumn Fennel of Nevada Association Services, Inc.
on behalf of Tuscalante

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

NAS

6224 W Desert Inn Rd
Las Vegas, NV 89146



9171 9000 0718 5000 8294 10

N71583

REPUBLIC SERVICES
ACCT. # 24-30588-0
P.O. BOX 98508
LAS VEGAS, NV 89193-8508

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APN # 176-27-312-159
 NAS # N71583
 North American Title # 38121
 Property Address: 7461 Glimmering Sun Ave

DOCUMENT RECORDED ON	1/30/2013	
DOCUMENT #	0000690 Book 20130130	
	Clark	COUNTY
DATE MAILED	2/6/2013	

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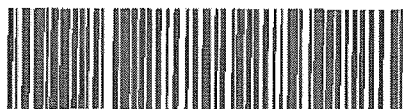
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By: Autumn Fessel of Nevada Association Services, Inc.
on behalf of Tuscalante

When Recorded Mail To:
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Las Vegas, NV 89146
(702) 804-8885
(888) 627-5544

NAS
6224 W Desert Inn Rd
Las Vegas, NV 89146



9171 9000 0718 5000 8294 27

N71583

REPUBLIC SERVICES
ACCT. # 620-2430588
P.O. BOX 98508
LAS VEGAS, NV 89193-8508

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APN # 176-27-312-159
 NAS # N71583
 North American Title # 38121
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DOCUMENT RECORDED ON 1/30/2013

DOCUMENT # 0000690 Book 20130130

Clark

COUNTY

DATE MAILED 2/6/2013

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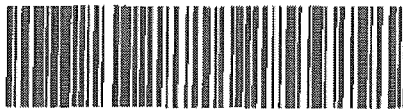
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NAS
6224 W Desert Inn Rd
Las Vegas, NV 89146



9171 9000 0718 5000 8294 34

N71583

RITA WIEGAND
C/O LYNN BURKE
HC 33 BOX 2725
LAS VEGAS, NV 89161-9206

"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."

APN # 176-27-312-159
 NAS # N71583
 North American Title # 38121
 Property Address: 7461 Glimmering Sun Ave

DOCUMENT RECORDED ON 1/30/2013

DOCUMENT # 0000690 Book 20130130

Clark

COUNTY

DATE MAILED 2/6/2013

NOTICE OF DEFAULT AND ELECTION TO SELL UNDER HOMEOWNERS ASSOCIATION LIEN

IMPORTANT NOTICE

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

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

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

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

NAS # N71583

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

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TAKE PROMPT ACTION.**

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Legal Description: MOUNTAINS EDGE POD 211 FLAT BOOK 131 PAGE 17 LOT 226 in the County of Clark

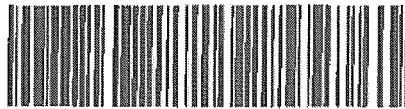
Dated: January 28, 2013



By: Autumn Fessel of Nevada Association Services, Inc.
on behalf of Tuscalante

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

NAS
6224 W Desert Inn Rd
Las Vegas, NV 89146



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N71583

MOUNTAINĠ"Ā+Ā-S EDGE MASTER ASSOCIATION
C/O SILVER STATE TRUSTEE SERVICES, LLC
T.S. # 104207
1424 S. JONES BLVD.
LAS VEGAS, NV 89146

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APN # 176-27-312-159
 NAS # N71583
 North American Title # 38121
 Property Address: 7461 Glimmering Sun Ave

DOCUMENT RECORDED ON 1/30/2013

DOCUMENT # 0000690 Book 20130130

Clark

COUNTY

DATE MAILED 2/6/2013

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NAS #N71583

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Legal Description: MOUNTAINS EDGE POD 211 PLAT BOOK 131 PAGE 17 LOT 226 in the County of Clark

Dated: January 28, 2013



By: Autumn Fessel of Nevada Association Services, Inc.
on behalf of Tuscalante

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

NAS
6224 W Desert Inn Rd
Las Vegas, NV 89146



9171 9000 0718 5000 8294 58

N71583
THE REGENTS OF THE UNIVERSITY
OF CALIFORNIA
CASE # A-09-602715-C
C/O PHILIP T. VARRICCHIO, ESQ.
LAS VEGAS, NV 89104

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APN # 176-27-312-159
 NAS # N71583
 North American Title # 38121
 Property Address: 7461 Glimmering Sun Ave

DOCUMENT RECORDED ON	1/30/2013
DOCUMENT #	0000690 Book 20130130
	Clark COUNTY
DATE MAILED	2/6/2013

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NAS #N71583

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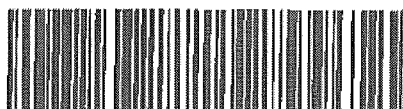
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When Recorded Mail To:
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(702) 804-8885
(888) 627-5544

NAS
6224 W Desert Inn Rd
Las Vegas, NV 89146



9171 9000 0718 5000 8294 65

N71583

U.S. BANK, NA, N.D.
C/O JOHN P. WANDERER, ESQ.
CASE # A-11-632452-C
1830 EAST SAHARA AVE., #102
LAS VEGAS, NV 89104

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APN # 176-27-312-159
 NAS # N71583
 North American Title # 38121
 Property Address: 7461 Glimmering Sun Ave

DOCUMENT RECORDED ON 1/30/2013

DOCUMENT # 0000690 Book 20130130

Clark

COUNTY

DATE MAILED

2/6/2013

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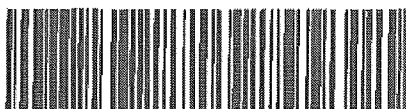
Dated: January 28, 2013



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Las Vegas, NV 89146
(702) 804-8885
(888) 627-5544

NAS
6224 W Desert Inn Rd
Las Vegas, NV 89146



9171 9000 0718 5000 8294 72

N71583

Tuscalante
c/o Kelly Rosenfield
Las Vegas Valley Community Management
10501 W. Gowan Rd. Suite 160
Las Vegas, NV 89129

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APN # 176-27-312-159
 NAS # N71583
 North American Title # 38121
 Property Address: 7461 Glimmering Sun Ave

DOCUMENT RECORDED ON	1/30/2013
DOCUMENT #	0000690 Book 20130130
	Clark COUNTY
DATE MAILED	2/6/2013

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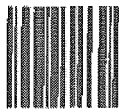


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NAS

6224 W Desert Inn Rd
Las Vegas, NV 89146



N71583

State of Nevada
Ombudsman for Common-Interest Communities
2501 East Sahara Avenue, #102 .ties
Las Vegas, Nevada 89104

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NAS # N71583

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Legal Description: MOUNTAINS EDGE POD 211 PLAT BOOK 131 PAGE 17 LOT 226 in the County of Clark

Dated: January 28, 2013

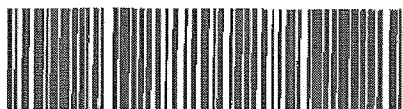


By: Autumn Fessel, of Nevada Association Services, Inc.
on behalf of Tuscalante

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

NAS

6224 W Desert Inn Rd
Las Vegas, NV 89146



9171 9000 0718 5000 8294 89

N71583

RITA WIEGAND
7461 GLIMMERING SUN AVE.
LAS VEGAS, NV 89178

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APN # 176-27-312-159
 NAS # N71583
 North American Title # 38121
 Property Address: 7461 Glimmering Sun Ave

DOCUMENT RECORDED ON	1/30/2013
DOCUMENT #	0000690 Book 20130130
	Clark COUNTY
DATE MAILED	2/6/2013

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NAS #N71583

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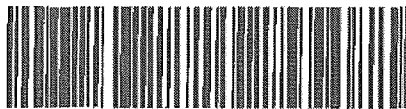
Dated: January 28, 2013



By: Autumn Fessel of Nevada Association Services, Inc.
on behalf of Tuscalante

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

NAS
6224 W Desert Inn Rd
Las Vegas, NV 89146



9171 9000 0718 5000 8294 96

N71583

RITA WIEGAND
HC 33 BOX 2725
LAS VEGAS, NV 89161-9206

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APN # 176-27-312-159
 NAS # N71583
 North American Title # 38121
 Property Address: 7461 Glimmering Sun Ave

DOCUMENT RECORDED ON 1/30/2013

DOCUMENT # 0000690 Book 20130130

Clark

COUNTY

DATE MAILED 2/6/2013

NOTICE OF DEFAULT AND ELECTION TO SELL UNDER HOMEOWNERS ASSOCIATION LIEN

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NAS #N71583

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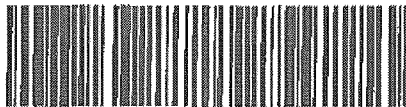
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When Recorded Mail To:
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Las Vegas, NV 89146
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(888) 627-5544

NAS
6224 W Desert Inn Rd
Las Vegas, NV 89146



9171 9000 0718 5000 8295 02

N71583

LYNN BURKE
7461 GLIMMERING SUN AVE.
LAS VEGAS, NV 89178

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APN # 176-27-312-159
 NAS # N71583
 North American Title # 38121
 Property Address: 7461 Glimmering Sun Ave

DOCUMENT RECORDED ON	1/30/2013
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DATE MAILED	2/6/2013

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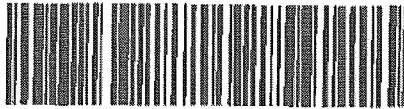
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NAS
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Las Vegas, NV 89146



9171 9000 0718 5000 8295 19

N71583

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HC 33 BOX 2725
LAS VEGAS, NV 89161-9206

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 NAS # N71583
 North American Title # 38121
 Property Address: 7461 Glimmering Sun Ave

DOCUMENT RECORDED ON 1/30/2013

DOCUMENT # 0000690 Book 20130130

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COUNTY

DATE MAILED

2/6/2013

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Dated: January 28, 2013



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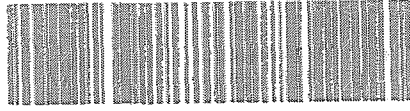
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Las Vegas, NV 89146
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Notice of Default:

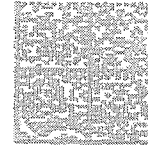
Sent by First Class Mail &
Certified Mail with a Return
Receipt requested.

The following is the returned,
unclaimed or signed for mail for
this mailing that we received
back.

NAS
6224 W Desert Inn Rd
Las Vegas, NV 89146



9171 9000 0718 5000 8294 89

PRESORTED
FIRST CLASS

02 1R
0006554859 FEB06 2013
MAILED FROM ZIP CODE 89120

RECEIVED

APR 06 2013

NEVADA ASSN SERVICES

N71583

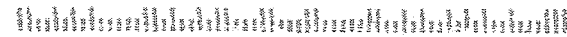
RITA WIEGAND
7461 GLIMMERING SUN AVE.
LAS VEGAS, NV 89178

NIXIE 891 DE 1 00 05/03/13

RETURN TO SENDER
UNCLAIMED
UNABLE TO FORWARD

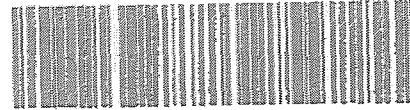
BC: 89146661224 *0194-06213-03-35

54 LADFN11 89178
89146661224

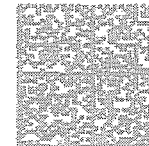


CERTIFIED MAIL

NAS
6224 W Desert Inn Rd
Las Vegas, NV 89146



9171 9000 0718 5000 8295 02

PRESORTED
FIRST CLASS

02 1R
0006554859 FEB06 2013
MAILED FROM ZIP CODE 89120

RECEIVED

APR 06 2013

NEVADA ASSN SERVICES

N71583

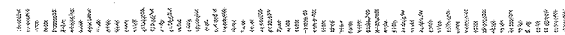
LYNN BURKE
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LAS VEGAS, NV 89178

NIXIE 891 DE 1 00 05/03/13

RETURN TO SENDER
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BC: 89146661224 *0194-06214-03-35

54 LADFN11 89178
89146661224



WFZ0512

K&P00211

✓ PRT-3

NAS
6224 W Desert Inn Rd
Las Vegas, NV 89146

9171 9000 0718 5000 8294 34

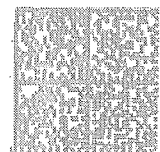


CERTIFIED MAIL

RITA WIEGAND
C/O LYNN BURKE
HC 33 BOX 2725
LAS VEGAS, NV 89161-9206

N71583

PRESORTED
FIRST CLASS



02 1R
000654659
MAILED FROM ZIP CODE 89120



NEVADA ASSN SERVICES

Handwritten:
LH
2/11
2/18/13
2/18/13

71583
NAS
6224 W Desert Inn Rd, Las Vegas, Nevada 89146
Priority Service Required

N71583

THE REGENTS OF THE UNIVERSITY
OF CALIFORNIA
CASE # A-09-602715-C
C/O PHILIP T. VARRICCHIO, ESQ.
UNIVERSITY OF CALIFORNIA
5 L.R.D. 3/14/13

MIXIE

891 DE 1 00 07/09/13

RETURN TO SENDER
INSUFFICIENT ADDRESSES
UNDELIVERABLE

SC: 89146561224 *1314-03185-07-45

PRESORTED
FIRST CLASS



FEB 12 2013

000654659
MAILED FROM ZIP CODE 89120

\$00.43

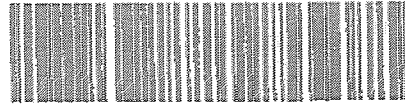
FEB 06 2013



NEVADA ASSN SERVICES

✓ KRTS

6224 W Desert Inn Rd
Las Vegas, NV 89146

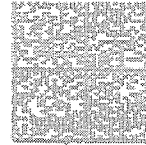


9171 9000 0718 5000 8294 96

N71583

RITA WIEGAND
HC 33 BOX 2725
LAS VEGAS, NV 89161-9206

PRESORTED
FIRST CLASS



02 1R \$04.78³
0006554859 FEB 06 2013
MAILED FROM ZIP CODE 89120

RECEIVED

UNCLAIMED

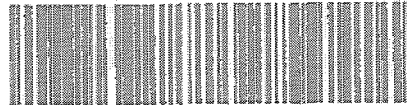
NEVADA ASSN SERVICES

LN
2/1
gnd 2-21-13
RTN 2-28-13

CERTIFIED MAIL

✓ KRTS

NAS
6224 W Desert Inn Rd
Las Vegas, NV 89146

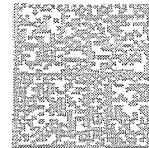


9171 9000 0718 5000 8295 19

N71583

LYNN BURKE
HC 33 BOX 2725
LAS VEGAS, NV 89161-9206

PRESORTED
FIRST CLASS



02 1R \$04.78³
0006554859 FEB 06 2013
MAILED FROM ZIP CODE 89120

RECEIVED

UNCLAIMED

NEVADA ASSN SERVICES

LN
2/1
gnd 2-21-13
RTN 2-28-13

K&P00213

WFZ0514



N71583

LYNN BURKE
7461 GLIMMERING SUN AVE.
LAS VEGAS, NV 89178

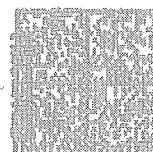
NIXIE

RETURN TO SENDER
ATTEMPTED - NOT KNOWN
UNABLE TO FORWARD

BC: 89146661224 *0294-08265-09-35

54 LK9146661224

PRESORTED
FIRST CLASS



UNITED STATES POSTAGE
\$00.43
02 1R
0006554858 FEB06 2013
MAILED FROM ZIP CODE 89120

FEB 11 2013

NEW/ADDITIONAL SERVICES

891 FEB 1 00 02/09/13



N71583

RITA WIRGAND
7461 GLIMMERING SUN AVE.
LAS VEGAS, NV 89178

NIXIE

RETURN TO SENDER
ATTEMPTED - NOT KNOWN
UNABLE TO FORWARD

BC: 89146661224 *0294-08265-09-35

54 LK9146661224

PRESORTED
FIRST CLASS



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02 1R
0006554858 FEB06 2013
MAILED FROM ZIP CODE 89120

RECEIVED

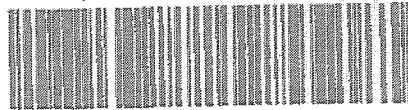
NEW/ADDITIONAL SERVICES

891 FEB 1 00 02/09/13

71583

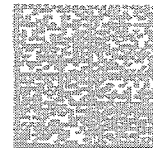
CERTIFIED MAIL

NAS
6224 W Desert Inn Rd
Las Vegas, NV 89146



9171 9000 0718 5000 8294 58

RESORTED
FIRST CLASS



UNITED STATES POSTAGE
EFTWY \$0.02
\$ 04.78³
02 1R
E006554859 FEB 06 2013
MAILED FROM ZIP CODE 89120

FFR 11 013
NEVADA ASSN SERVICES

N71583

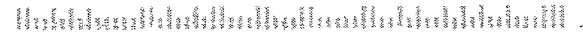
THE REGENTS OF THE UNIVERSITY
OF CALIFORNIA
CASE # A-09-602715-C
C/O PHILIP T. VARRICCHIO, ESQ.
LAS VEGAS, NV 89104

NIXIE 891 DE 1 00 02/08/13

RETURN TO SENDER
IF ADDRESSEE
CHANCE TO CHANGE

RC: 89146661774 86694-06463-06-45

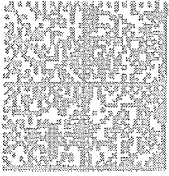
E LADF78914666104



WFZ0516

K&P00215

CERTIFIED MAIL™



US POSTAGE
\$ 04.81
FIRST CLASS
Mailed From 89146
03/08/2013
031A 0002309592

RECEIVED

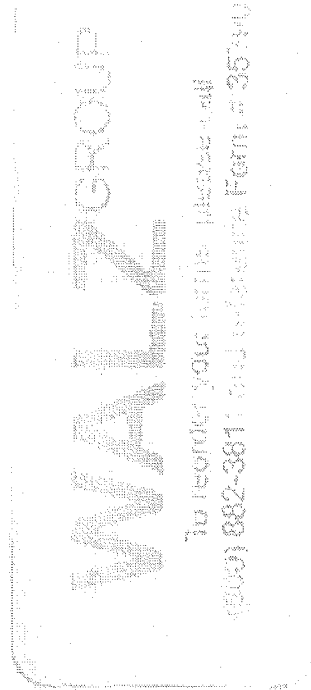
7/28/13

MAR 11 2013

R

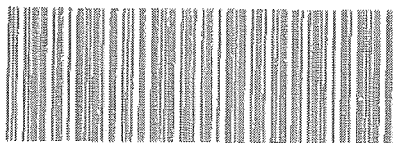
NEVADA AGENT SERVICES

4/2



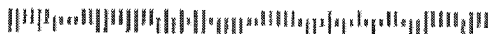
Silver State Trustee Services, LLC
1424S. Jones Blvd.

Las Vegas, NV 89146-1231



7196 9006 9296 5869 1021

RETURN RECEIPT (ELECTRONIC)



Tuscalante HOA
"c/o Nevada Association Services, Inc."
"6224 W. Desert Inn Rd., Suite A"
TS: N71583
Las Vegas, NV 89146

Total Postage: \$4.81

Batch ID:

Reference: NOD-TS#104207-MEMA

EXHIBIT 2

Trustee's Sale Number 7183

[Attachments Here]

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

The declarant, whose signature appears below, and who is an employee of Nevada Association Services, Inc., states that he/she is now and at all times herein mentioned was, a citizen of the United States and over the age of eighteen (18) years; on the date date as set forth below, he/she personally served the Notice, of which the annexed is a true copy, upon the addressee attached hereto, by depositing in the United States Mail in the County set forth above, an envelope, certified and with postage prepaid thereon, containing a copy of such Notice, addressed to the above named person at the address hereinabove stated

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

Dated MAY 02 2013

Signature Susana E. Pachett

WFZ0520

K&P00240

7196 9008 9111 0065 6120

7196 9008 9111 0065 6311

TO:
 State of Nevada
 Ombudsman for Common-Interest Con
 2501 East Sahara Avenue, #102
 Las Vegas, Nevada 89104

TO:
 LYNN BURKE
 HC 33 BOX 2725
 LAS VEGAS, NV 89161-9206

SENDER: TS No.: N71583

SENDER: TS No.: N71583

REFERENCE:

REFERENCE:

PS Form 3800, January 2005

RETURN RECEIPT SERVICE	Postage	0.11
	Certified Fee	
	Return Receipt Fee	
	Restricted Delivery	
	Total Postage & Fees	

PS Form 3800, January 2005

RETURN RECEIPT SERVICE	Postage	0.11
	Certified Fee	
	Return Receipt Fee	
	Restricted Delivery	
	Total Postage & Fees	

USPS®

POSTMARK OR DATE

**Receipt for
 Certified Mail™**

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 Do Not Use for International Mail

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POSTMARK OR DATE

**Receipt for
 Certified Mail™**

No Insurance Coverage Provided
 Do Not Use for International Mail

7196 9008 9111 0065 6304

7196 9008 9111 0065 6328

TO:
 Tuscalante
 c/o Kelly Rosenfield
 Las Vegas Valley Community Manager
 10501 W. Gowan Rd. Suite 160
 Las Vegas, NV 89129

TO:
 RITA WIEGAND
 HC 33 BOX 2725
 LAS VEGAS, NV 89161-9206

SENDER: TS No.: N71583

SENDER: TS No.: N71583

REFERENCE:

REFERENCE:

PS Form 3800, January 2005

RETURN RECEIPT SERVICE	Postage	0.11
	Certified Fee	
	Return Receipt Fee	
	Restricted Delivery	
	Total Postage & Fees	

PS Form 3800, January 2005

RETURN RECEIPT SERVICE	Postage	0.11
	Certified Fee	
	Return Receipt Fee	
	Restricted Delivery	
	Total Postage & Fees	

USPS®

POSTMARK OR DATE

**Receipt for
 Certified Mail™**

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**Receipt for
 Certified Mail™**

No Insurance Coverage Provided
 Do Not Use for International Mail

WFZ0521

K&P00241

7196 9008 9111 0065 6335

7196 9008 9111 0065 6359

TO:
 LYNN BURKE
 7461 GLIMMERING SUN AVE.
 LAS VEGAS, NV 89178

TO:
 U.S. BANK, NA, N.D.
 C/O JOHN P. WANDERER, ESQ.
 CASE # A-11-632452-C
 1830 EAST SAHARA AVE., #102
 LAS VEGAS, NV 89104

SENDER: TS No.: N71583

SENDER: TS No.: N71583

REFERENCE:

REFERENCE:

PS Form 3800, January 2005

PS Form 3800, January 2005

RETURN RECEIPT SERVICE	Postage	6.11
	Certified Fee	
	Return Receipt Fee	
	Restricted Delivery	
	Total Postage & Fees	

RETURN RECEIPT SERVICE	Postage	6.11
	Certified Fee	
	Return Receipt Fee	
	Restricted Delivery	
	Total Postage & Fees	

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Certified Mail™
 No Insurance Coverage Provided
 Do Not Use for International Mail

POSTMARK OR DATE

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Certified Mail™
 No Insurance Coverage Provided
 Do Not Use for International Mail

POSTMARK OR DATE

7196 9008 9111 0065 6342

7196 9008 9111 0065 6366

TO:
 RITA WIEGAND
 7461 GLIMMERING SUN AVE.
 LAS VEGAS, NV 89178

TO:
 THE REGENTS OF THE UNIVERSITY
 CASE # A-09-602715-C
 C/O PHILIP T. VARRICCHIO, ESQ.
 1320 S. CASINO CENTER BLVD.
 LAS VEGAS, NV 89104

SENDER: TS No.: N71583

SENDER: TS No.: N71583

REFERENCE:

REFERENCE:

PS Form 3800, January 2005

PS Form 3800, January 2005

RETURN RECEIPT SERVICE	Postage	6.11
	Certified Fee	
	Return Receipt Fee	
	Restricted Delivery	
	Total Postage & Fees	

RETURN RECEIPT SERVICE	Postage	6.11
	Certified Fee	
	Return Receipt Fee	
	Restricted Delivery	
	Total Postage & Fees	

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Receipt for
Certified Mail™
 No Insurance Coverage Provided
 Do Not Use for International Mail

POSTMARK OR DATE

WFZ0522

K&P00242

7196 9008 9111 0065 6373

TO: MOUNTAIN'S EDGE MASTER ASSOC
C/O SILVER STATE TRUSTEE SERVI
T.S. # 104207
1424 S. JONES BLVD.
LAS VEGAS, NV 89146

SENDER: TS No.: N71583

REFERENCE:

PS Form 3800, January 2005

6.11

RETURN RECEIPT SERVICE	Postage	
	Certified Fee	
	Return Receipt Fee	
	Restricted Delivery	
	Total Postage & Fees	

USPS®

POSTMARK OR DATE

**Receipt for
Certified Mail™**

No Insurance Coverage Provided
Do Not Use for International Mail

7196 9008 9111 0065 6397

TO: BAC HOME LOANS SERVICING, LP F
C/O BAC HOME LOANS SERVICING
400 COUNTRYWIDE WAY SV-35
SIMI VALLEY, CA 93065

SENDER: TS No.: N71583

REFERENCE:
COUNTRYWIDE HOME LOANS SERVICING, LP

PS Form 3800, January 2005

6.11

RETURN RECEIPT SERVICE	Postage	
	Certified Fee	
	Return Receipt Fee	
	Restricted Delivery	
	Total Postage & Fees	

COUNTRYWIDE HOME LOANS SERVICING, LP

USPS®

POSTMARK OR DATE

**Receipt for
Certified Mail™**

No Insurance Coverage Provided
Do Not Use for International Mail

7196 9008 9111 0065 6380

TO: REPUBLIC SERVICES
ACCT. # 620-2430588
P.O. BOX 98508
LAS VEGAS, NV 89193-8508

SENDER: TS No.: N71583

REFERENCE:

PS Form 3800, January 2005

6.11

RETURN RECEIPT SERVICE	Postage	
	Certified Fee	
	Return Receipt Fee	
	Restricted Delivery	
	Total Postage & Fees	

USPS®

POSTMARK OR DATE

**Receipt for
Certified Mail™**

No Insurance Coverage Provided
Do Not Use for International Mail

7196 9008 9111 0065 6526

TO: MERS
MIN 100059600055838515
P.O. BOX 2026
FLINT, MI 48501-2026

SENDER: TS No.: N71583

REFERENCE:

PS Form 3800, January 2005

6.11

RETURN RECEIPT SERVICE	Postage	
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	Return Receipt Fee	
	Restricted Delivery	
	Total Postage & Fees	

USPS®

POSTMARK OR DATE

**Receipt for
Certified Mail™**

No Insurance Coverage Provided
Do Not Use for International Mail

WFZ0523

K&P00243

7196 9008 9111 0065 6533

TO: UNIVERSAL AMERICAN MTG COMP/
 MIN 100059600055838515
 700 NW 107TH AVE., 3RD FL
 MIAMI, FL 33172-3139

SENDER: TS No.: N71583

REFERENCE:

PS Form 3800, January 2006

6.11

RETURN RECEIPT SERVICE	Postage	
	Certified Fee	
	Return Receipt Fee	
	Restricted Delivery	
	Total Postage & Fees	

USPS®

Receipt for Certified Mail™

POSTMARK OR DATE

No Insurance Coverage Provided
 Do Not Use for International Mail

WFZ0524

K&P00244

Notice of Sale:

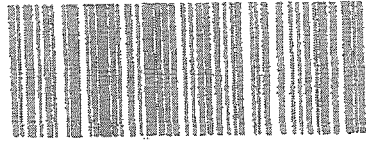
Sent by First Class Mail &
Certified Mail with a Return
Receipt requested.

71583

NAS6224 W. Desert Inn Rd., Las Vegas, Nevada 89148
Return Service Requested

RTS

CERTIFIED MAIL™



7196 9006 7111 0065 6311

PRESORTED
FIRST CLASS02 1R \$06.08³
0002002257 MAY02 2013
MAILED FROM ZIP CODE 89120
RECEIVED

JUN 06 2013

TS No.: N71583

LYNN BURKE
HC 33 BOX 2725
LAS VEGAS, NV

NEVADA ASSN SERVICES

5/3

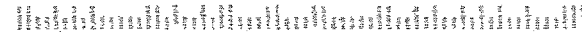
NTXTF

891 DE 1

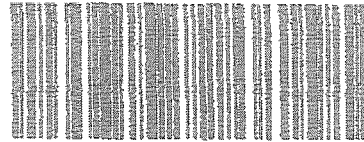
00 06/04/13

RETURN TO SENDER
UNCLAIMED
UNABLE TO FORWARD

BC: 89146661224 *0914-01127-03-05



CERTIFIED MAIL™



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PRESORTED
FIRST CLASS02 1R \$06.08³
0002002257 MAY02 2013
MAILED FROM ZIP CODE 89120

JUN 06 2013

TS No.: N71583

RITA WIEGAND
HC 33 BOX 2725
LAS VEGAS, NV -9206

NEVADA ASSN SERVICES

5/3

NTXTF

891 DE 1

00 06/04/13

RETURN TO SENDER
UNCLAIMED
UNABLE TO FORWARD

BC: 89146661224 *0194-07034-04-35



WFZ0526

K&P00246

NAS6224 W. Desert Inn Rd., Las Vegas, Nevada 89146
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0002002257 MAY 02 2013
MAILED FROM ZIP CODE 89120

APR 16 2013

NEVADA ASSN SERVICES

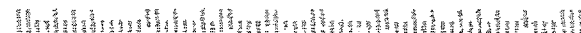
TS No.: N71583

LYNN BURKE
7461 GLIMMERING SUN AVE.
LAS VEGAS, NV 89178

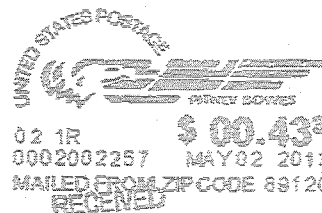
NIXIE 891 DE 1 00 05/04/13

RETURN TO SENDER
UNCLAIMED
UNABLE TO FORWARD

BC: 89146661224 *0194-08032-04-42

891466612
54 LRDPNM

71583

NAS6224 W. Desert Inn Rd., Las Vegas, Nevada 89146
Return Service RequestedREGISTERED
FIRST CLASS02 1R \$00.43
0002002257 MAY 02 2013
MAILED FROM ZIP CODE 89120
RECEIVED

APR 16 2013

NEVADA ASSN SERVICES

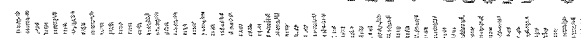
TS No.: N71583

RITA WIEGAND
7461 GLIMMERING SUN AVE.
LAS VEGAS, NV 89178

NIXIE 891 DE 1 00 05/04/13

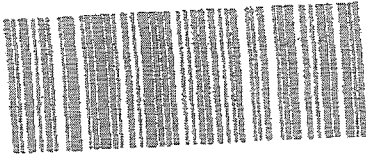
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UNCLAIMED
UNABLE TO FORWARD

BC: 89146661224 *0194-08033 04-42

891466612
54 LRDPNM

WFZ0527

K&P00247



7196 9008 9111 0065 6342

PRESORTED
FIRST CLASS02 1R \$ 06.08³
0002002257 MAY 02 2013
MAILED FROM ZIP CODE 89120

RECEIVED

APR 05 2013

NEVADA ASSN SERVICES

TS No.: N71583

RITA WIEGAND
7461 GLIMMERING SUN AVE.
LAS VEGAS, NV 89178

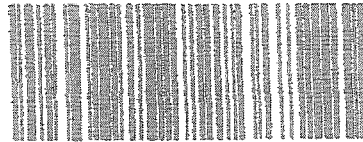
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VACANT
UNABLE TO FORWARD

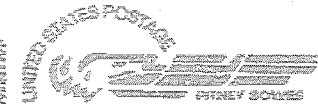
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891466612
54 DPDFM

CERTIFIED MAIL



7196 9008 9111 0065 6335

PRESORTED
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0002002257 MAY 02 2013
MAILED FROM ZIP CODE 89120

RECEIVED

APR 06 2013

NEVADA ASSN SERVICES

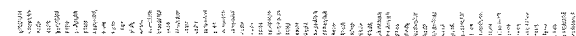
TS No.: N71583

LYNN BURKE
7461 GLIMMERING SUN AVE.
LAS VEGAS, NV 89178

NIXIE 891 CE 1 84 05/05/13

RETURN TO SENDER
VACANT
UNABLE TO FORWARD


BC: 89146661224 *0194-11447-04-42

891466612
54 DPDFM

WFZ0528

K&P00248

2. Article Number



7196 9008 9111 0065 6304

3. Service Type **CERTIFIED MAIL™**

4. Restricted Delivery? (Extra Fee) ☐ Yes


1. Article Addressed to:

Tuscalante
c/o Kelly Rosenfield
Las Vegas Valley Community Management
10501 W. Gowan Rd. Suite 160
Las Vegas, NV 89129

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) B. Date of Delivery

C. Signature

X  ☐ Agent
☐ Addressee

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

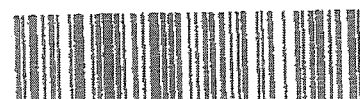
RECEIVED
MAY 3 2013
LVWCM

RECEIVED
APR 06 2013
NEVADA ASSN SERVICES
TS No. N71583
Wiegand
Tuscalante

PS Form 3811, January 2005

Domestic Return Receipt

2. Article Number



7196 9008 9111 0065 6373

3. Service Type **CERTIFIED MAIL™**

4. Restricted Delivery? (Extra Fee) ☐ Yes


1. Article Addressed to:

MOUNTAIN'S EDGE MASTER ASSOCIATION
C/O SILVER STATE TRUSTEE SERVICES, LLC
T.S. # 104207
1424 S. JONES BLVD.
LAS VEGAS, NV 89146

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) B. Date of Delivery

C. Signature

X  ☐ Agent
☐ Addressee

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No


RECEIVED
APR 06 2013
NEVADA ASSN SERVICES

RECEIVED
APR 06 2013
NEVADA ASSN SERVICES
TS No.: N71583
Wiegand
Tuscalante

PS Form 3811, January 2005

Domestic Return Receipt

2. Article Number



7196 9008 9111 0065 6366

3. Service Type **CERTIFIED MAIL™**

4. Restricted Delivery? (Extra Fee) ☐ Yes


1. Article Addressed to:

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA
CASE # A-09-602715-C
C/O PHILIP T. VARRICCHIO, ESQ.
1320 S. CASINO CENTER BLVD.
LAS VEGAS, NV 89104

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) B. Date of Delivery

C. Signature

X  ☐ Agent
☐ Addressee

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

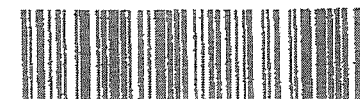
RECEIVED
MAY 3 2013
LVWCM

RECEIVED
APR 06 2013
NEVADA ASSN SERVICES
TS No.: N7
Wiegand
Tuscalante

PS Form 3811, January 2005

Domestic Return Receipt

2. Article Number



7196 9008 9111 0065 6380

3. Service Type **CERTIFIED MAIL™**

4. Restricted Delivery? (Extra Fee) ☐ Yes


1. Article Addressed to:

REPUBLIC SERVICES
ACCT. # 620-2430588
P.O. BOX 98508
LAS VEGAS, NV 89193-8508

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) B. Date of Delivery

C. Signature

X  ☐ Agent
☐ Addressee

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

RECEIVED
MAY 03 2013
LVWCM

RECEIVED
APR 06 2013
NEVADA ASSN SERVICES
TS No.: N7
Wiegand
Tuscalante

PS Form 3811, January 2005

Domestic Return Receipt

WEZ0529

K&P00249

2. Article Number

71583



7196 9008 9111 0065 6526

3. Service Type CERTIFIED MAIL™

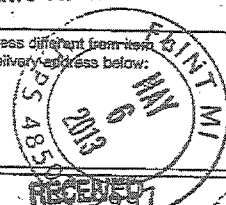
4. Restricted Delivery? (Extra Fee)

☐ Yes

1. Article Addressed to:

MERS
MIN 100059600055838515
P.O. BOX 2026
FLINT, MI 48501-2026

COMPLETE THIS SECTION ON DELIVERY	
A. Received by (Please Print Clearly)	B. Date of Delivery
C. Signature X <i>Katie Richardson</i>	<input type="checkbox"/> Agent <input type="checkbox"/> Addressee
D. Is delivery address different from item 1? If YES, enter delivery address below:	
<input type="checkbox"/> Yes <input type="checkbox"/> No	



APR 08 2013 TS No.: N71583

NEVADA ASSN SERVICES

Wiegand
Tuscalante

PS Form 3811, January 2005

Domestic Return Receipt

2. Article Number



7196 9008 9111 0065 6359

3. Service Type CERTIFIED MAIL™

4. Restricted Delivery? (Extra Fee)

☐ Yes

1. Article Addressed to:

U.S. BANK, NA, N.D.
C/O JOHN P. WANDERER, ESQ.
CASE # A-11-632452-C
1830 EAST SAHARA AVE., #102
LAS VEGAS, NV 89104

COMPLETE THIS SECTION ON DELIVERY	
A. Received by (Please Print Clearly)	B. Date of Delivery
C. Signature X <i>A. Hendrix</i>	<input type="checkbox"/> Agent <input type="checkbox"/> Addressee
D. Is delivery address different from item 1? If YES, enter delivery address below:	
<input type="checkbox"/> Yes <input type="checkbox"/> No	

RECEIVED

APR 08 2013

NEVADA ASSN SERVICES

TS No.: N71583

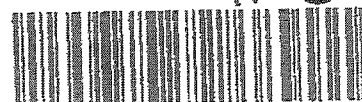
Wiegand
Tuscalante

PS Form 3811, January 2005

Domestic Return Receipt

2. Article Number

71583



7196 9008 9111 0065 6397

3. Service Type CERTIFIED MAIL™

4. Restricted Delivery? (Extra Fee)

☐ Yes

1. Article Addressed to:

BAC HOME LOANS SERVICING, LP FKA COUNTRYWIDE HOME LOANS SER
C/O BAC HOME LOANS SERVICING
400 COUNTRYWIDE WAY SV-35
SIMI VALLEY, CA 93065

COMPLETE THIS SECTION ON DELIVERY	
A. Received by (Please Print Clearly)	B. Date of Delivery
C. Signature X <i>DAVID Quintanilla</i>	<input type="checkbox"/> Agent <input type="checkbox"/> Addressee
D. Is delivery address different from item 1? If YES, enter delivery address below:	
<input type="checkbox"/> Yes <input type="checkbox"/> No	

RECEIVED

APR 13 2013

NEVADA ASSN SERVICES

TS No.: N71

Wiegand
Tuscalante

PS Form 3811, January 2005

Domestic Return Receipt

2. Article Number

71583



7196 9008 9111 0065 6120

3. Service Type CERTIFIED MAIL™

4. Restricted Delivery? (Extra Fee)

☐ Yes

1. Article Addressed to:

State of Nevada
Ombudsman for Common-Interest Communities
2501 East Sahara Avenue, #102
Las Vegas, Nevada 89104

COMPLETE THIS SECTION ON DELIVERY	
A. Received by (Please Print Clearly)	B. Date of Delivery
C. Signature X <i>L. M. L.</i>	<input type="checkbox"/> Agent <input type="checkbox"/> Addressee
D. Is delivery address different from item 1? If YES, enter delivery address below:	
<input type="checkbox"/> Yes <input type="checkbox"/> No	

RECEIVED

APR 06 2013

NEVADA ASSN SERVICES

TS No.: N71

Wiegand
Tuscalante

PS Form 3811, January 2005

Domestic Return Receipt

WFZ0530

K&P00250

2. Article Number

71583



7196 7008 7111 0065 6533

3. Service Type **CERTIFIED MAIL™**

4. Restricted Delivery? (Extra Fee) ☐ Yes

1. Article Addressed to:

UNIVERSAL AMERICAN MTG COMPANY
MIN 100059600055838515
700 NW 107TH AVE., 3RD FL
MIAMI, FL 33172-3139

NEVADA ASSN SERVICES

MAY 17 2013

TS No.: N71583

Wiegand

Tuscalante

COMPLETE THIS SECTION ON DELIVERY	
A. Received by (Please Print Clearly) <i>V. Lan</i>	B. Date of Delivery <i>5/6/13</i>
C. Signature <i>[Signature]</i>	<input type="checkbox"/> Agent <input checked="" type="checkbox"/> Addressee
D. Is delivery address different from item 1? If YES, enter delivery address below:	
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

2. Article Number

71583



7196 9008 7111 7088 3505

3. Service Type **CERTIFIED MAIL™**

4. Restricted Delivery? (Extra Fee) ☐ Yes

1. Article Addressed to:

State of Nevada
Ombudsman for Common-Interest Communities
2501 East Sahara Avenue, #102
Las Vegas, Nevada 89104

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly)

12/7

C. Signature

[Signature]

☐ Agent
☐ Addressee

D. Is delivery address different from item 1?
If YES, enter delivery address below:

☐ Yes
☐ No

RECEIVED
FEB 08 2013
NEVADA ASSN SERVICES

TS No.: N71583

Wiegand

Tuscalante

2. Article Number



71581 9008 9111 9087 9621

3. Service Type **CERTIFIED MAIL™**4. Restricted Delivery? (Extra Fee) ☐ Yes

1. Article Addressed to:

Tiffany & Bosco, P.A.
 7720 N. 16th Street, Ste. 300
 Phoenix, AZ 85020

N71581

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly)

B. Date of Delivery

C. Signature

X

☐ Agent
☐ Addressee

 D. Is delivery address different from item 1?
 If YES, enter delivery address below:

☐ Yes
☐ No

RECEIVED

JAN 15 2013

NEVADA ASSN SERVICES

TS No. N71581

V15101

Pecos Park-Sunflower HUA

EXHIBIT 3

AFFP

P1037043

Affidavit of PublicationSTATE OF NEVADA)
COUNTY OF CLARK)

SS

I, Rosalie Qualls state:

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


May 10, 2013

May 17, 2013

May 24, 2013

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

DATED: May 24, 2013


 Rosalie Qualls

APN # 176-27-312-159 NAS # N71583 Tuscalanla NOTICE OF FORECLOSURE SALE WARNING! A SALE OF YOUR PROPERTY IS IMMINENT! UNLESS YOU PAY THE AMOUNT SPECIFIED IN THIS NOTICE BEFORE THE SALE DATE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE. YOU MUST ACT BEFORE THE SALE DATE. IF YOU HAVE ANY QUESTIONS, PLEASE CALL NEVADA ASSOCIATION SERVICES, INC. AT (702) 804-8885. IF YOU NEED ASSISTANCE, PLEASE CALL THE FORECLOSURE SECTION OF THE OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE DIVISION, AT 1-877-829-9907 IMMEDIATELY. YOU ARE IN DEFAULT UNDER A DELINQUENT ASSESSMENT LIEN, July 25, 2012. UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDINGS AGAINST YOU, YOU SHOULD CONTACT A LAWYER. NOTICE IS HEREBY GIVEN THAT on 5/31/2013 at 10:00 am at the front entrance to the Nevada Association Services, Inc. 6224 West Desert Inn Road, Las Vegas, Nevada, under the power of sale pursuant to the terms of those certain covenants conditions and restrictions recorded on November 22, 2008 as Instrument number 0000748 BK 20061122 of official records of Clark County, Nevada Association Services, Inc., as duly appointed agent under that certain Delinquent Assessment Lien, recorded on July 31, 2012 as document number 0002531 Book 20120731 of the official records of said county, will sell at public auction to the highest bidder, for lawful money of the United States, all right, title, and interest in the following commonly known property known as: 7461 Glimmering Sun Ave, Las Vegas, NV 89178. Said property is legally described as: MOUNTAINS EDGE POD 211 PLAT BOOK 131 PAGE 17 LOT 226, official records of Clark County, Nevada. The owner(s) of said property as of the date of the recording of said lien is purported to be: Rita Wiegand, Lynn Burke The undersigned agent disclaims any liability for incorrectness of the street address and other common designations, if any, shown herein. The sale will be made without covenant or warranty, expressed or implied regarding, but not limited to, title or possession, or encumbrances, or obligations to satisfy any secured or unsecured liens. The total amount of the unpaid balance of the obligation secured by the property to be sold and reasonable estimated costs, expenses and advances at the time of the initial publication of the Notice of Sale is \$3,942.29. Payment must be in cash or a cashier's check drawn on a state or national bank, check drawn on a state or federal savings and loan association, savings association or savings bank and authorized to do business in the State of Nevada. The Notice of Default and Election to Sell the described property was recorded on 1/30/2013 as instrument number 0000690 Book 20130130 in the official records of Clark County. Nevada Association Services, Inc. is a debt collector. Nevada Association Services, Inc. is attempting to collect a debt. Any information obtained will be used for that purpose. May 1, 2013 Nevada Association Services, Inc. 6224 W. Desert Inn Road, Suite A Las Vegas, NV 89146 (702) 804-8885, (888) 627-5544 By: Elissa Hollander, Agent for Association and employee of Nevada Association Services, Inc. When Recorded Mail To: Nevada Association Services, Inc. 6224 W Desert Inn Road, Suite A Las Vegas, NV 89146 P1037043 5/10, 5/17, 05/24/2013

04107370 00349788

PRIORITY POSTING & PUBLISHING-2013
17501 IRVINE BLVD, SUITE 1
TUSTIN, CA 92780

WFZ0535

K&P00254

Priority Posting & Publishing
Order # P1037043
TS # N71583

AFFIDAVIT OF POSTING NOTICE OF SALE

State of Nevada)
County of Clark)

I, Jessica Pruett, state:

That at all times herein I have been a citizen of the United States, over 18 years of age, and am not a party to, or interested in, the proceeding in which this affidavit is made.

On 5/9/2013, I posted a copy of the Notice of Sale pursuant to NRS 116.311635, concerning Sale N71583, in a public place in the county where the property is situated, to wit:

NEVADA LEGAL NEWS, 930 S FOURTH ST, LAS VEGAS
CLARK COUNTY COURTHOUSE, 200 LEWIS ST, LAS VEGAS
CLARK COUNTY BUILDING, 309 S THIRD ST, LAS VEGAS

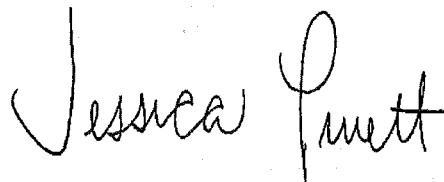
The purported owner and address of the property contained in the Notice of Sale being:

Rita Wiegand and Lynn Burke, 7461 Glimmering Sun Avenue, Las Vegas NV 89178.

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

Dated 5/9/2013

Nevada Legal Support Services LLC



Jessica Pruett
930 S. 4th Street, Suite 200
Las Vegas, NV 89101
(702) 382-2747
NV License #1711

NVLSS ID# 445644 71
COUNTY OF SERVICE: CLARK
SERVER: Jessica Pruett
NEVADA ASSOCIATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

CHRISTINA TRUST,)	
)	
Plaintiff,)	
)	
vs.)	
)	
K&P HOMES et al.,)	
)	
Defendants.)	

2:15-cv-01534-RCJ-VCF

ORDER

This case arises out of a homeowners' association foreclosure sale. Pending before the Court is a Motion to Dismiss the Counterclaim (ECF No. 11) and a Counter-Motion for Summary Judgment (ECF No. 14). For the reasons given herein, the Court grants the motion to dismiss and denies the motion for summary judgment.

I. FACTS AND PROCEDURAL HISTORY

On or about July 25, 2007, Rita Wiegand purchased real property located at 7461 Glimmering Sun Avenue, Las Vegas, Nevada, 89178 (the "Property"), giving lender Universal American Mortgage Co., LLC ("UAMC") a promissory note for \$284,200 (the "Note"), secured by a deed of trust (the "DOT") against the Property. (Compl. ¶¶ 5, 9–10, ECF No. 1). On January 30, 2014, Bank of America, N.A., successor by merger to BAC Home Loans Servicing, LP, f.k.a. Countrywide Home Loans Servicing, LP ("BOA"), assigned the Note and DOT to

1 Plaintiff Christina Trust. (*Id.* ¶ 13; Assignment, ECF No. 1-1, at 29).¹ After recording a Notice
2 of Delinquent Assessment Lien (the “NDAL”), a Notice of Default and Election to Sell (“the
3 “NOD”), and a Notice of Foreclosure Sale (the “NOS”), the Tuscalante Homeowners
4 Association (the “HOA”), through its agent Nevada Association Services, Inc. (“NAS”), sold the
5 Property at auction to Defendant K&P Homes (“K&P”) for \$40,000 on May 31, 2013. (Compl.
6 ¶¶ 6, 11–12, 14–17). None of the pre-sale notices identified what portion of the HOA lien was
7 for superpriority versus subpriority amounts, such as late fees, collection costs, interest, fines,
8 etc., or provided any notice of a right to cure. (*Id.* ¶¶ 19–22). Furthermore, the HOA and NAS
9 did not comply with notice requirements under Chapter 116 of the Nevada Revised Statutes
10 (“NRS”). (*Id.* ¶ 26).

11 Plaintiff sued Defendant in this Court for unjust enrichment and to quiet title to the
12 Property, i.e., for a declaration that the DOT still encumbers the Property because the HOA sale
13 was not in accordance with Chapter 116, did not provide an opportunity to cure the default, was
14 commercially unreasonable, and did not comport with due process.² K&P answered and filed a
15 Counterclaim to quiet title to the Property, i.e., for a declaration that K&P is the title owner of
16 the Property, that its deed is valid and enforceable, that the HOA sale extinguished Plaintiff’s
17 DOT, and that K&P’s title is superior to any adverse interest in the Property. K&P also filed a
18 Third-Party Complaint against Wiegand for the same declarations. Plaintiff has moved to
19

20 1 The Complaint contains no allegation of any assignment from UAMC to BOA, and neither the
21 Assignment attached as Exhibit 3 or any other attachment indicates any such transfer. Plaintiff
22 has sufficiently alleged beneficial ownership of the Note and DOT (reading the allegation that
23 Plaintiff is the beneficiary of the DOT favorably to Plaintiff to imply that she is also the
24 beneficiary of the Note), (*see* Compl. ¶ 5), but without further proof of the chain of assignment,
the Complaint could probably not survive a summary judgment motion as to Plaintiff’s standing.

2 The claim for a preliminary injunction is not a separate cause of action, and no motion for a
preliminary injunction has been filed.

1 dismiss the Counterclaim. K&P has opposed the motion and has moved for offensive summary
2 judgment on the Counterclaim.

3 **II. LEGAL STANDARDS**

4 Federal Rule of Civil Procedure 8(a)(2) requires only “a short and plain statement of the
5 claim showing that the pleader is entitled to relief” in order to “give the defendant fair notice of
6 what the . . . claim is and the grounds upon which it rests.” *Conley v. Gibson*, 355 U.S. 41, 47
7 (1957). Federal Rule of Civil Procedure 12(b)(6) mandates that a court dismiss a cause of action
8 that fails to state a claim upon which relief can be granted. A motion to dismiss under Rule
9 12(b)(6) tests the complaint’s sufficiency. *See N. Star Int’l v. Ariz. Corp. Comm’n*, 720
10 F.2d 578, 581 (9th Cir. 1983). When considering a motion to dismiss under Rule 12(b)(6) for
11 failure to state a claim, dismissal is appropriate only when the complaint does not give the
12 defendant fair notice of a legally cognizable claim and the grounds on which it rests. *See Bell*
13 *Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). In considering whether the complaint is
14 sufficient to state a claim, the court will take all material allegations as true and construe them in
15 the light most favorable to the plaintiff. *See NL Indus., Inc. v. Kaplan*, 792 F.2d 896, 898 (9th
16 Cir. 1986). The court, however, is not required to accept as true allegations that are merely
17 conclusory, unwarranted deductions of fact, or unreasonable inferences. *See Sprewell v. Golden*
18 *State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001).

19 A formulaic recitation of a cause of action with conclusory allegations is not sufficient; a
20 plaintiff must plead facts pertaining to his own case making a violation “plausible,” not just
21 “possible.” *Ashcroft v. Iqbal*, 556 U.S. 662, 677–79 (2009) (citing *Twombly*, 550 U.S. at 556)
22 (“A claim has facial plausibility when the plaintiff pleads factual content that allows the court to
23 draw the reasonable inference that the defendant is liable for the misconduct alleged.”). That is,
24

1 under the modern interpretation of Rule 8(a), a plaintiff must not only specify or imply a
2 cognizable legal theory (*Conley* review), but also must allege the facts of his case so that the
3 court can determine whether the plaintiff has any basis for relief under the legal theory he has
4 specified or implied, assuming the facts are as he alleges (*Twombly-Iqbal* review). Put
5 differently, *Conley* only required a plaintiff to identify a major premise (a legal theory) and
6 conclude liability therefrom, but *Twombly-Iqbal* requires a plaintiff additionally to allege minor
7 premises (facts of the plaintiff's case) such that the syllogism showing liability is logically
8 complete and that liability necessarily, not only possibly, follows (assuming the allegations are
9 true).

10 “Generally, a district court may not consider any material beyond the pleadings in ruling
11 on a Rule 12(b)(6) motion. However, material which is properly submitted as part of the
12 complaint may be considered on a motion to dismiss.” *Hal Roach Studios, Inc. v. Richard Feiner*
13 *& Co.*, 896 F.2d 1542, 1555 n.19 (9th Cir. 1990) (citation omitted). Similarly, “documents
14 whose contents are alleged in a complaint and whose authenticity no party questions, but which
15 are not physically attached to the pleading, may be considered in ruling on a Rule 12(b)(6)
16 motion to dismiss” without converting the motion to dismiss into a motion for summary
17 judgment. *Branch v. Tunnell*, 14 F.3d 449, 454 (9th Cir. 1994). Moreover, under Federal Rule
18 of Evidence 201, a court may take judicial notice of “matters of public record.” *Mack v. S. Bay*
19 *Beer Distribs., Inc.*, 798 F.2d 1279, 1282 (9th Cir. 1986). Otherwise, if the district court
20 considers materials outside of the pleadings, the motion to dismiss is converted into a motion for
21 summary judgment. *See Arpin v. Santa Clara Valley Transp. Agency*, 261 F.3d 912, 925 (9th Cir.
22 2001).

23 ///

III. ANALYSIS

Plaintiff argues against the Counterclaim on five bases: (1) NRS 116.3116 *et seq.* are unconstitutional under the Due Process Clause for lack of notice; (2) NRS 116.3116 is unconstitutional under the Takings Clause; (3) NRS 116.3116 is unconstitutional under the substantive component of the Due Process Clause of the federal and state Constitutions; (4) the interpretation of NRS 116.3116 by the Nevada Supreme Court in *SFR Invs. Pool I, LLC v. U.S. Bank, N.A.*, 334 P.3d 408 (Nev. 2014) is contrary to public policy; and (5) *SFR Invs. Pool I, LLC* should be applied only prospectively, i.e., only to HOA foreclosures occurring after the announcement of that opinion. The Court recently addressed each of these arguments (except the substantive due process argument) in a published case with similar facts. *See US Bank, N.A. v. SFR Invs. Pool I, LLC*, --- F. Supp. 3d ----, 2015 WL 5023450 (D. Nev. 2015) (Jones, J.). In dismissing (with leave to amend) a similar quiet title Counterclaim by the buyer at the HOA sale against the first deed of trust holder, the Court rejected the second, fourth, and fifth arguments made here, *id.* at *5–7, accepted the first argument, *id.* at *8–14, and invited the third argument upon potential amendment, *id.* at *5–7.

The basis for the Court’s dismissal of the Counterclaim in *US Bank* was that although Circuit law made clear that a litigant must allege direct state or local government involvement in a non-judicial foreclosure sale beyond mere creation of the non-judicial remedy to invoke the Due Process Clause as to his own claims and could not invoke the rule of *Shelley v. Kraemer*, 334 U.S. 1 (1948), such a litigant could invoke the rule of *Shelley* and the Due Process Clause in his capacity as a defendant or counterdefendant. *Id.* at *10–11. In cases such as *US Bank* and the present case, that means claims or counterclaims seeking judicial validation of non-judicial foreclosure sales are amenable to attack under the Due Process Clause (of the Fourteenth or Fifth

1 Amendments, respectively, depending on whether the case is decided in state or federal court)
2 for lack of notice. *See id.* The Court determined that the notice requirements of Chapter 116 did
3 not satisfy due process. *Id.* at *11–13. Because the counterplaintiff had alleged only compliance
4 with Chapter 116 and had not further alleged having provided notice in a way that would satisfy
5 due process, the Court dismissed the counterclaim with leave to amend. *Id.* at *14 (“In summary,
6 the relevant statutes do not satisfy due process where a sale can be characterized as government
7 action. SFR’s Counterclaim for a declaration by this Court of the extinguishment of U.S. Bank’s
8 interest via the HOA foreclosure sale implicates government action under the rule of *Shelley* and
9 the Due Process Clause of the Fifth Amendment. The Court therefore dismisses SFR’s
10 Counterclaim, with leave to amend. If SFR can affirmatively allege that it or its agent gave U.S.
11 Bank constitutionally sufficient notice, i.e., personal or mailed notice, the Counterclaim should
12 be permitted to proceed to summary judgment. As the Court has explained, *supra*, U.S. Bank’s
13 own quiet title claim cannot succeed on the due process issue without a showing of state action
14 in the non-judicial foreclosure sale itself, but that issue is not now before the Court.”).

15 Here, however, K&P has alleged more than mere compliance with Chapter 116’s
16 requirements. K&P has alleged that Christina Trust was “mailed by certified or registered mail,
17 return receipt requested, a notice of sale for the Property.” (Countercl. ¶ 15, ECF No. 8).
18 Because K&P has sufficiently alleged having mailed Christina Trust notice of the sale, the Court
19 will not dismiss the Counterclaim for a declaration that the sale extinguished Christina Trust’s
20 interest in the Property for lack of notice under *Shelley* and the Due Process Clause of the Fifth
21 Amendment.

22 The Court now addresses the substantive due process issue. As the Court noted in *US*
23 *Bank*, a federal court may strike down a state statute under the “substantive due process”
24

1 component of the Due Process Clause of the Fourteenth Amendment where a law deprives a
2 person of a right to life, liberty, or property that a court in its “reasoned judgment” believes is
3 “fundamental,” even if the proffered right is not specifically listed in the Constitution, so long as
4 the right can be perceived from history, tradition, or “new insight.” *Obergefell v. Hodges*, 135 S.
5 Ct. 2584, 2605 (2015) (liberty interest) (“[T]he Constitution contemplates that democracy is the
6 appropriate process for change, so long as that process does not abridge fundamental rights. . . .
7 [But] when the rights of persons are violated, the Constitution requires redress by the courts,
8 notwithstanding the more general value of democratic decisionmaking.” (citations and internal
9 quotation marks omitted)); *see also Lochner v. New York*, 198 U.S. 45, 56–57 (1905) (liberty and
10 property interests) (“This is not a question of substituting the judgment of the court for that of the
11 legislature. . . . It is a question of which of two powers or rights shall prevail, the power of the
12 state to legislate or the right of the individual to liberty of person and freedom of contract.”). A
13 court should only exercise its reasoned judgment to invalidate a democratically enacted law in
14 the absence of any clear constitutional requirement to do so after there has been “a quite
15 extensive discussion” concerning the right at issue in the halls of government and amongst the
16 general public. *Obergefell*, 135 S. Ct. at 2596.

17 Plaintiff argues that Chapter 116, or at least the Nevada Supreme Court’s interpretation of
18 it contrary to how a reasonable lender would have understood it when giving his loan, deprives
19 Plaintiff and others of their fundamental right to property. Under that recent interpretation, a
20 first mortgage recorded before an HOA lien even arises is extinguished by a foreclosure of the
21 HOA lien so long as the declaration creating the HOA was recorded before the first mortgage
22 was. In other words, the mere recordation of an HOA declaration that could in theory give rise
23
24

1 to future HOA liens is treated under Chapter 116 as essentially constituting record notice of yet-
2 nonexistent HOA liens.

3 The Court reserves judgment on the substantive due process issue and determines the
4 motion under *Chevron Oil Co. v. Huson*, 404 U.S. 97 (1971) (recognizing limitations on the
5 retroactive application of judicial rulings as a matter of common law equity), *abrogated in part*
6 *by Harper v. Va. Dep't of Taxation*, 509 U.S. 86 (1993) (holding that when the Supreme Court
7 interprets federal law, inferior courts should as a default apply that interpretation retroactively).
8 In *Huson*, the plaintiff sued his employer in 1968 for injuries sustained on the job in 1965. *Id.* at
9 98. Because the injury occurred on the Outer Continental Shelf, it was initially thought that the
10 action was limited only by the laches doctrine under federal admiralty law, and that no state
11 statute of limitations applied. *Id.* at 98–99. Before trial, however, the Supreme Court ruled in
12 another case that admiralty law did not apply in cases such *Huson*, and state statutes of
13 limitations applied. *Id.* at 99. The district court therefore applied a one-year state limitations
14 period and granted summary judgment to the defendant. *Id.* The plaintiff argued on appeal that
15 the intervening Supreme Court case should not be applied retroactively to bar actions before the
16 holding was announced. *Id.* The Court of Appeals ruled that the district court had misread the
17 intervening Supreme Court case, holding that laches, not any state statute of limitations was the
18 only potential time-bar, and remanding for trial. *Id.* The Supreme Court granted certiorari and
19 ruled that the district court had in fact read the disputed case properly but affirmed the Court of
20 Appeals because the rule should not have been applied retroactively. *Id.*

21 In reaching that conclusion, the Court cited ten of its own cases dating as far back as the
22 Civil War for the rule limiting the retroactivity of “judicial decisions” not only in criminal cases
23 but also “in cases of nonconstitutional, noncriminal state law.” *Id.* at 106 (collecting cases). The
24

1 Court identified three factors used to determine whether a rule of law should be applied by a
2 court only prospectively, i.e., “nonretroactively”:

3 [(1)] the decision to be applied nonretroactively must establish a new principle of
4 law, either by overruling clear past precedent on which litigants may have relied
5 or by deciding an issue of first impression whose resolution was not clearly
6 foreshadowed[; (2)] we must . . . weigh the merits and demerits in each case by
7 looking to the prior history of the rule in question, its purpose and effect, and
8 whether retrospective operation will further or retard its operation[; and (3)] we
9 have weighed the inequity imposed by retroactive application, for [w]here a
10 decision of this Court could produce substantial inequitable results if applied
11 retroactively, there is ample basis in our cases for avoiding the injustice or
12 hardship by a holding of nonretroactivity.

13 *Id.* (citations and internal quotation marks omitted; final alteration in original).

14 Because the interpretation of the relevant statute in that case was a matter of first
15 impression and overruled a long line of decisions by the Fifth Circuit, the first factor favored
16 nonretroactivity. *Id.* at 107. The Court noted, “We should not indulge in the fiction that the law
17 now announced has always been the law and, therefore, that those who did not avail themselves
18 of it waived their rights.” *Id.* (quoting *Griffin v. Illinois*, 351 U.S. 12, 26 (1956) (Frankfurter, J.,
19 concurring in the judgment)). The Court then noted that the purpose of the statute, as interpreted
20 by the Court in the intervening case, was to afford comprehensive remedies to injured
21 employees, and retroactive application in that case would have thwarted that purpose. *Id.* at 107–
22 08. Finally, the results of retroactive application would have been inequitable because it would
23 have punished the plaintiff for having purportedly slept on his rights at a time when he had no
24 reason to suspect his remedy would be imperiled by delay. *Id.* at 108.

25 In the present case, the first factor weighs heavily against the retroactive application of
26 *SFR Investments Pool 1, LLC v. U.S. Bank, N.A.*, 334 P.3d 408 (Nev. 2014). It is not disputed
27 that both the state and federal trial courts were in sharp disagreement as to whether an HOA
28 foreclosure sale under NRS 116.3116 extinguished a prior-recorded first mortgage, *see id.* at 412

1 (“Nevada’s state and federal district courts are divided on whether NRS 116.3116 establishes a
2 true priority lien.”), and that the practice in the real estate industry prior to the announcement of
3 the Nevada Supreme Court’s controversial decision was to treat such sales as not extinguishing
4 first mortgages, such that traditional investors would not bother to bid at such sales where the
5 home was worth less than the first mortgage. At best, the decision “decid[ed] an issue of first
6 impression whose resolution was not clearly foreshadowed.”

7 The second factor also weighs in favor of nonretroactivity. The retroactive application of
8 the rule would not further the purpose of the rule—to ensure HOAs are quickly made whole on
9 the superpriority portions of their liens by pressuring banks to pay that amount before the HOA
10 foreclosure, on pain of losing their own security interests—beyond mere prospective application.
11 Indeed, in no case of which the Court is aware has an HOA failed to obtain a bid at auction
12 sufficient to cover its entire lien, not just the relatively small superpriority amount. The real fight
13 is between mortgagees and speculators who gambled on an improbable interpretation of NRS
14 116.3116 and were able to capitalize on the confusion before banks caught on to the issue and
15 the Nevada Legislature imposed more stringent notice requirements.

16 The third factor also favors nonretroactivity. The extinguishment of a first-recorded
17 mortgage via the foreclosure of a lien worth a tiny fraction of that mortgage, particularly where
18 notice to the mortgagee is not robust enough to satisfy basic principles of due process were the
19 foreclosing entity a state actor and where the extinguishment rule was not only unclear but
20 presumed within the relevant industry at the time of the foreclosure sale to be to the contrary,
21 would be an extremely, not just a substantially, inequitable result.

22 In summary, the Court cannot sanction the retroactive application of *SFR Investments*
23 *Pool 1* under the *Huson* test. The remaining questions, although they are in realty antecedent
24

1 questions, are whether *Huson* presents a federal constitutional rule or merely a rule of federal
2 common law that the Court should not apply in diversity under *Erie*, and, if *Huson* is only a
3 matter of federal common law, whether an identical or similar rule is nevertheless supported as
4 against the states under the substantive component of the Due Process Clause of the Fourteenth
5 Amendment, or, if not, whether the Nevada Supreme Court nevertheless respects a similar rule
6 under state common law.

7 *Huson* does not mention due process or the Fifth or Fourteenth Amendments and must
8 therefore be considered as a rule of federal common law. The Court finds it need not address the
9 substantive due process issue, however, because the Nevada Supreme Court itself has quoted the
10 *Huson* rule in approval, such that the Court perceives no *Erie* problem with applying *Huson* here.
11 See *Breithaupt v. USAA Prop. & Cas. Ins. Co.*, 867 P.2d 402, 405 (Nev. 1994). The Court in *US*
12 *Bank, N.A. v. SFR Invs. Pool I, LLC* resolved the motions before it on different grounds and
13 therefore did not address the issue closely; rather, it assumed the Nevada Supreme Court would
14 apply its ruling retroactively. A closer look, however, shows both that *SFR Investments Pool I* is
15 silent on retroactivity and that the Nevada Supreme Court approves the *Huson* rule. In
16 conclusion, the Court finds that *SFR Investments Pool I* does not apply retroactively in this case
17 under the *Huson* rule, as approved in *Breithaupt*, and therefore grants the motion to dismiss the
18 Counterclaim on that basis.

19 In response, K&P argues that because NRS 116.3116 was enacted in 1991, Plaintiff
20 cannot have been surprised when the Nevada Supreme Court enforced it in 2014. But that
21 misperceives Plaintiff's argument and the case law, which concerns the fairness of retroactively
22 applying changed or first-impression interpretations of law. Plaintiff does not argue that NRS
23 116.3116 was clear in 1991 but that its 2014 interpretation in accordance therewith should not
24

1 apply except to HOA foreclosures occurring after the date of interpretation. That would indeed
2 be a frivolous argument. Such a plaintiff could not claim inequitable surprise. But Plaintiff does
3 not make that argument. Rather, Plaintiff argues that NRS 116.3116 was (at best) unclear until
4 the Nevada Supreme Court first interpreted it in 2014. That argument is fair and requires an
5 analysis under *Huson* and *Breithaupt*. K&P does not argue under the *Huson/Breithaupt* factors
6 but essentially proposes a rule that necessarily favors retroactive application where the statute
7 being interpreted predates a court's interpretation of it. Such a rule would of course obviate any
8 retroactivity analysis, because under the rule against advisory opinions, the American courts do
9 not generally interpret statutes that have not yet been adopted. The Court rejects this line of
10 argument. Finally, because the Court dismisses the Counterclaim, it also denies the counter-
11 motion for summary judgment.

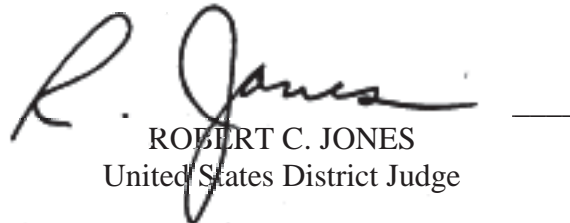
12 CONCLUSION

13 IT IS HEREBY ORDERED that the Motion to Dismiss (ECF No. 11) is GRANTED.

14 IT IS FURTHER ORDERED that the Counter-Motion for Summary Judgment (ECF No.
15 14) is DENIED.

16 IT IS SO ORDERED.

17 Dated this 9th day of November, 2015.

18
19 
20 ROBERT C. JONES
United States District Judge