

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

FREDERIC AND BARBARA  
ROSENBERG LIVING TRUST,

Appellant/Cross-Respondent,

vs.

MACDONALD HIGHLANDS  
REALTY, LLC, a Nevada Limited  
Liability Company; MICHAEL  
DOIRON, an Individual; and FHP  
VENTURES, a Nevada Limited  
Partnership,

Respondent/Cross-Appellants.

Case No. 69399

District Court Case No. A689113  
Electronically Filed  
Aug 10 2016 01:01 p.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

FREDERIC AND BARBARA  
ROSENBERG LIVING TRUST,

Appellant,

vs.

SHAHIN SHANE MALEK,

Respondent.

Case No. 70478

District Court Case No. A689113

**RESPONSE TO ORDER TO SHOW CAUSE**

Appellant/Cross-Respondent The Barbara and Frederick Rosenberg Living Trust (the “Trust”) hereby submits its response to this Court’s July 11, 2016 Order to Show Cause why the appeal in Docket No. 70478 should not be dismissed for lack of jurisdiction. This response is based on the papers on file herein, the memorandum of points and authorities below, and NRAP 3A(b)(1), 4(a)(6) and NRCF 54(b).

## **MEMORANDUM OF POINTS AND AUTHORITIES**

### **I. Introduction**

On July 11, 2016 this Court issued an Order to Show Cause based on a potential jurisdictional defect. Specifically, this Court was concerned as to whether or not final judgment had been entered in the matter because it appeared that the Trust's claims against BAC Home Loans Servicing, LP remained pending in the district court.

On or about March 10, 2016, a Stipulation and Order was entered in the district court case dismissing the Trust's claims against Bank of America, N.A. It was the intent at the parties at that time to dismiss BAC Home Loans Servicing, LP as well; but, as pointed out by this Court, it appears from a review of the entered stipulation and order that it only dismisses the Trust's claims against Bank of America, N.A. Accordingly, the parties have taken the necessary steps to properly dismiss all claims against BAC Home Loans Servicing, LP and resolve any potential jurisdictional defect.

### **II. Argument**

In response to this order, the Trust hereby submits the necessary documentation to establish this court's jurisdiction. A Stipulation and Order Dismissing BAC Home Loans Servicing, LLC was entered in the district court on August 9, 2016, notice of entry of which was served on August 10, 2016. A true

and correct copy of the Notice of Entry with the file-stamped Stipulation and Order Dismissing BAC Home Loans Servicing, LLC, is attached hereto as **Exhibit 1.**

This Court lacks jurisdiction if the order or judgment from which an appeal is taken does not finally resolve all claims against all defendants. *See* NRCP 54(b); *see also* NRAP 4(a)(6). If a premature notice of appeal is filed, but entry of final judgment is entered before this Court dismisses the premature appeal, then “the notice of appeal shall be considered filed on the date of and after entry of the order, judgement or written disposition. . . .” NRAP 4(a)(6). “A notice or stipulation of dismissal filed under NRCP 41(a)(1) has the same effect as a judgment or order signed by the judge and filed by the clerk and constitutes entry of a judgment or order for purposes of this Rule. If that notice or stipulation dismisses all unresolved claims pending in an action in the district court, the notice or stipulation constitutes entry of a final judgment or order for purposes of this Rule.” NRAP(4)(a)(3).

Here, the Stipulation and Order Dismissing BAC Home Loans Servicing, LLC served to fully and finally dismiss all unresolved claims pending in the action in the district court. The Stipulation and Order Dismissing BAC Home Loans Servicing, LLC was filed under NRCP 41(a)(1) and was entered on August 9,

2016, prior to this Court dismissing the pending appeal. Pursuant to NRAP 4(a)(3) the Stipulation and Order Dismissing BAC Home Loans Servicing, LLC constitutes entry of a final judgment or order for purposes of NRAP(4). Therefore, the Trust's notice of appeal was timely filed on August 9, 2016 and this Court has proper jurisdiction.

### **III. Conclusion**

For the reasons stated above, this Court should not dismiss the instant appeal as the jurisdictional defects have been cured.

Dated this 10th day of August, 2016.

KIM GILBERT EBRON

/s/Jacqueline A. Gilbert

Jacqueline A. Gilbert, Esq.

Nevada Bar No. 10593

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Email: jackie@KGElegal.com

*Attorney for The Barbara and  
Frederick Rosenberg Living Trust*

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 10, 2016, I filed the foregoing  
**RESPONSE TO ORDER TO SHOW CAUSE** via the Supreme Court Electronic Filing  
System, which shall be e-served to the following party:

J. Randall Jones, Esq.  
Nevada Bar No. 1927  
Spencer H. Gunnerson, Esq.  
Nevada Bar No. 8810  
Mathew S. Carter, Esq.  
Nevada Bar No. 9524  
3800 Howard Hughes Parkway, 17th Fl.  
Las Vegas, Nevada 89169  
*Attorneys for Respondents/Cross-Appellants MacDonald Highlands Realty, LLC,  
Michael Doiron and FHP Ventures, A Nevada Limited Partnership*

Preston P. Rezaee, Esq.  
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Nevada Bar No. 11950  
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Las Vegas, Nevada 89104  
*Attorneys for Shahin Shane Malek*

/s/ Jacqueline A. Gilbert  
an employee of KIM GILBERT EBRON

# EXHIBIT 1

Notice of Entry of Stipulation and  
Order to Dismiss BAC Home Loans  
Servicing, LP with Prejudice

**NESO**

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*Attorneys for Plaintiff*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

THE FREDRIC AND BARBARA  
ROSENBERG LIVING TRUST,

Plaintiff,

vs.

BANK OF AMERICA, N.A.; BAC HOME  
LOANS SERVICING, LP, a foreign limited  
partnership; MACDONALD HIGHLANDS  
REALTY, LLC, a Nevada limited liability  
company; MICHAEL DOIRON, an individual;  
SHAHIN SHANE MALEK, an individual;  
PAUL BYKOWSKI, an individual; THE  
FOOTHILLS AT MACDONALD RANCH  
MASTER ASSOCIATION, a Nevada limited  
liability company; THE FOOTHILLS  
PARTNERS, a Nevada limited partnership;  
DOES I through X; and ROE  
CORPORATIONS I through X, inclusive,

Defendants.

SHAHIN SHANE MALEK,

Counterclaimant,

vs.

THE FREDRIC AND BARBARA  
ROSENBERG LIVING TRUST,

Counter-Defendant.

Case No.: A-13-689113-C

Dept. No.: I

**NOTICE OF ENTRY OF  
STIPULATION AND ORDER TO  
DISMISS BAC HOME LOANS  
SERVICING, LP WITH PREJUDICE**

**KIM GILBERT EBRON**  
7625 DEAN MARTIN DRIVE, SUITE 110  
LAS VEGAS, NEVADA 89139  
(702) 485-3300 FAX (702) 485-3301

**NOTICE OF ENTRY OF STIPULATION AND ORDER TO DISMISS**  
**BAC HOME LOANS SERVICING, LP WITH PREJUDICE**

PLEASE TAKE NOTICE that on August 9, 2016, this Court entered a **STIPULATION AND ORDER TO DISMISS BAC HOME LOANS SERVICING, LP WITH PREJUDICE.**

A copy of said Stipulation and Order is attached hereto.

DATED this 10th day of August, 2016.

**KIM GILBERT EBRON**

/s/ Jacqueline A. Gilbert

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*Attorneys for Plaintiff*

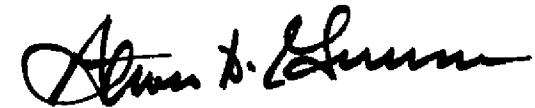


**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 10th day of August, 2016, pursuant to NRCP 5(b), I served via the Eighth Judicial District Court electronic service system the foregoing, **NOTICE OF ENTRY OF STIPULATION AND ORDER TO DISMISS BAC HOME LOANS SERVICING, LP WITH PREJUDICE** to the following parties:

| Akerman LLP                  |  |  |
|------------------------------|--|--|
| Contact                      | Email  |  |
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/s/ Jacqueline A. Gilbert  
an employee of Kim Gilbert Ebron



CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

THE FREDRIC AND BARBARA  
ROSENBERG LIVING TRUST,

Plaintiff,

vs.

BANK OF AMERICA, N.A.; BAC HOME  
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partnership; MACDONALD HIGHLANDS  
REALTY, LLC, a Nevada limited liability  
company; MICHAEL DOIRON, an individual;  
SHAHIN SHANE MALEK, an individual;  
PAUL BYKOWSKI, an individual; THE  
FOOTHILLS AT MACDONALD RANCH  
MASTER ASSOCIATION, a Nevada limited  
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DOES I through X; and ROE  
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Defendants.

SHAHIN SHANE MALEK,

Counterclaimant,

vs.

THE FREDRIC AND BARBARA  
ROSENBERG LIVING TRUST,

Counter-Defendant.

Case No.: A-13-689113-C

Dept. No.: 1

STIPULATION AND ORDER TO  
DISMISS BAC HOME LOANS  
SERVICING, LP WITH PREJUDICE

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

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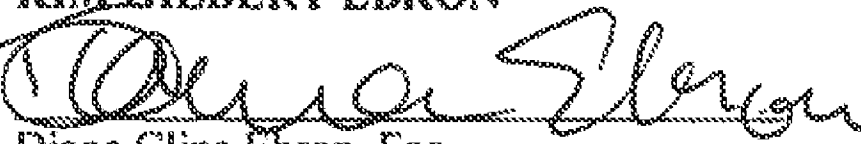
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THE FREDRIC AND BARBARA ROSENBERG LIVING TRUST ("Plaintiff") and BAC HOME LOANS SERVICING, LP ("BAC") (collectively, the "Parties"), by and through their counsel of record, stipulate and agree that Plaintiff's claims against BAC, as set forth in the Amended Complaint filed on January 12, 2015, shall be dismissed with prejudice, each party to bear its own attorney's fees and costs associated with this lawsuit.

IT IS SO STIPULATED.

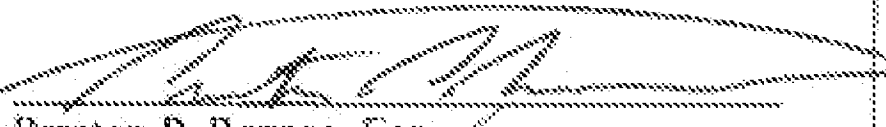
DATED this 29 day of July, 2016.

KIM GILBERT EBRON

  
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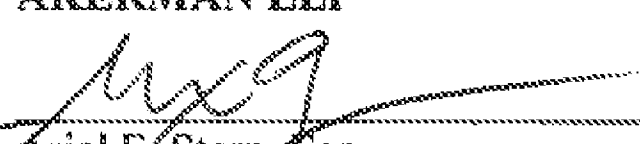
DATED this 5<sup>th</sup> day of ~~July~~ August, 2016.

THE FIRM, P.C.

  
~~Preston P. Reznicek, Esq.~~  
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*Attorneys for Shahin Shane Malek*

DATED this 27<sup>th</sup> day of July, 2016.

AKERMAN LLP

  
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Las Vegas, Nevada 89144  
*Attorneys for BAC Home Loans Servicing, LP*

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1 ORDER

2 Upon stipulation of the Parties, and good cause appearing therefore, it is hereby  
3 ORDERED that Plaintiff's claims against BAC Home Loans Servicing, LP, as set forth in the  
4 Amended Complaint filed on January 12, 2015, shall be dismissed with prejudice, with each  
5 party to bear its own fees and costs.

6 **IT IS SO ORDERED.**

7 DATED this 8 day of Aug, 2016.

8   
9 DISTRICT COURT JUDGE  
10

11 Respectfully Submitted By:

12 **KIM GILBERT EBRON**

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