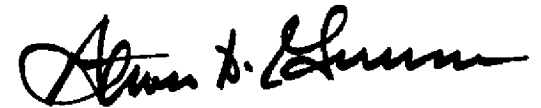


EXHIBIT 5

Bank of America, N.A.'s Amended Answer to Plaintiff's Complaint and Cross-Claims Against SFR Investments Pool 1, LLC and Sutter Creek Homeowners' Association

EXHIBIT 5



CLERK OF THE COURT

AACC
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Attorneys for Bank of America, N.A.

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

ALESSI & KOENIG, LLC,

Plaintiff,

v.

ARMANDO A. CARIAS, an individual, BANK
OF AMERICA, N.A., SUCCESSOR BY
MERGER TO BAC HOME LOANS
SERVICING, LP FKA COUNTRYWIDE
HOME LOANS SERVICING, LP, unknown
entity, DOES INDIVIDUALS 1-X, inclusive,
and ROE CORPORATIONS XI-XXX, inclusive,

Defendants.

BANK OF AMERICA, N.A., SUCCESSOR BY
MERGER TO BAC HOME LOANS
SERVICING, LP FKA COUNTRYWIDE
HOME LOANS SERVICING, LP, a National
Association,

Cross-Claimant,

v.

ARMANDO A. CARIAS, an individual, DOES
INDIVIDUALS 1 through 10, inclusive, and
ROE BUSINESS ENTITIES 1 through 10,
inclusive,

Cross-Defendants.

Case No.: A-13-684501-C
Dept. No.: XXI

**BANK OF AMERICA, N.A.'S AMENDED
ANSWER TO PLAINTIFF'S
COMPLAINT AND CROSS-CLAIMS
AGAINST SFR INVESTMENTS POOL 1,
LLC AND SUTTER CREEK
HOMEOWNERS' ASSOCIATION**

AKERMAN LLP

1160 TOWN CENTER DRIVE, SUITE 330
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1 BANK OF AMERICA, N.A., SUCCESSOR BY
2 MERGER TO BAC HOME LOANS
3 SERVICING, LP FKA COUNTRYWIDE
4 HOME LOANS SERVICING, LP, a National
5 Association,

6 Cross-Claimant,

7 v.

8 SFR INVESTMENTS POOL 1, LLC, a domestic
9 Limited Liability Company, SUTTER CREEK
10 HOMEOWNERS' ASSOCIATION, an unknown
11 entity, ALESSI & KOENIG, LLC, a domestic
12 Limited Liability Company, and DOES 1 through
13 10, and ROE BUSINESS ENTITIES 1 through
14 10,

15 Cross-Defendants.

16 **AMENDED ANSWER TO COMPLAINT BY ALESSI & KOENIG, LLC**

17 COMES NOW, Defendant, Bank of America, N.A., Successor by Merger to BAC Home
18 Loans Servicing, LP fka Countrywide Home Loans Servicing, LP (hereinafter "BANK"), by and
19 through undersigned counsel, and in Answer to the Complaint of Plaintiff on file herein, responds as
20 follows:

21 Answering paragraphs 1, 2, 3, 4, 5, 6, and 13 of the Complaint on file herein, BANK admits
22 each and every allegation contained therein.

23 Answering paragraph 20 of the Complaint on file herein, BANK denies each and every
24 allegation contained therein.

25 Answering paragraphs 7, 8, and 21 of the Complaint on file herein, BANK states that this is a
26 statement only, subject to multiple interpretations, and therefore denies the same in its entirety.

27 Answering paragraphs 10, 11, 12, 14, 16, 17, 18, 19, 22, 23, 24, 25, and 26 of the Complaint
28 on file herein, BANK states that it is without sufficient knowledge or information to form an opinion
as to the truth or veracity of the allegations contained therein and therefore denies the same in its
entirety.

1 Answering paragraph 9 and 15 of the Complaint on file herein, BANK admits that a
2 purported foreclosure on a homeowners association lien was held, resulting in the deed attached as
3 exhibit “2” to the Complaint, but denies the remainder of the paragraph for lack of sufficient
4 knowledge or information to form an opinion as to the truth and veracity of the allegations and in as
5 much as the effect of the purported sale is subject to multiple interpretations of the current and
6 existing law.

7
8 To the extent the “Prayer for Relief” section of the answer contains any allegations against
9 the BANK, the allegations are denied.

10 **AMENDED ANSWER TO THIRD-PARTY COUNTERCLAIM BY SFR INVESTMENTS**

11 **POOL 1, LLC**

12 COMES NOW, Defendant, Bank of America, N.A., Successor by Merger to BAC Home
13 Loans Servicing, LP fka Countrywide Home Loans Servicing, LP (hereinafter “BANK”), by and
14 through undersigned counsel, and in Answer to the Third-Party Complaint of SFR Investments Pool
15 I, LLC (hereinafter “SFR”) on file herein, denies and alleges as follows

16 Answering paragraphs, 1, 6, 7, 8, 9, 10, 46, and 55 of the Counterclaim on file herein,
17 Counter-Defendant BANK admits that the documents maintained by the Clark County Recorder
18 demonstrate the veracity of these allegations on their face but denies any further implications or
19 allegations therein for SFR may be interpreting said documents in a manner inconsistent with
20 Counter-Defendant and/or the terms and meanings of the documents.

21 Answering paragraphs 2, 16, 35, 36, 37, 39, 41, 45, 47 and 56 of the Counterclaim on file
22 herein, Counter-Defendant BANK admits the allegations contained therein.

23 Answering paragraph 3, 4, 5, 14, 15, 17, 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30, 31, 33,
24 38, 40, 48, 51 and 58 of the Counterclaim on file herein, Counter-Defendant BANK states that it is
25 without sufficient knowledge or information to form an opinion as to the truth or veracity of the
26 remaining allegations contained therein and therefore denies the same in its entirety.

1 Answering paragraphs 11, 12, 13 and 50 of the Counterclaim on file herein, Counter-
2 Defendant BANK asserts that these paragraphs are statements of law, subject to multiple
3 interpretations, and therefore denies any allegations arising therefrom.

4 Answering paragraphs 24, 32, 34, 42, 43, 49, 52, 53, 59, 60, 61, 62, 63 and 64 of the
5 counterclaim on file herein, Counter-Defendant BANK denies the allegations contained therein.

6 Answering paragraph 44 of the Counterclaim on file herein, Counter-Defendant BANK
7 repeats, realleges, and incorporates their responses to the allegations of paragraphs 1 through 43 of
8 the complaint as if fully set forth herein.

9 Answering paragraph 54 of the Counterclaim on file herein, Counter-Defendant BANK
10 repeats, realleges, and incorporates their responses to the allegations of paragraphs 1 through 53 of
11 the complaint as if fully set forth herein.

12 To the extent the “Prayer for Relief” section of the answer contains any allegations against
13 the BANK, the allegations are denied.

14 **AFFIRMATIVE DEFENSES TO CLAIMS BY ALESSI & KOENIG AND SFR**
15 **INVESTMENTS POOL 1, LLC**

16 1. That the allegations contained in Plaintiff’s Complaint fail to state a claim for relief
17 upon which relief can be granted.

18 2. That Plaintiff’s claims are barred by the statute of limitations.

19 3. That Plaintiff’s claims are barred by the equitable doctrines of waiver, release, laches,
20 unclean hands and equitable estoppels.

21 4. That Plaintiff has failed to comply with the necessary requirements in order to
22 maintain any action against Defendant BANK.

23 5. That any claims of damages suffered by Plaintiff, if any, were directly and
24 proximately caused by the actions of Plaintiff or forces of nature over which Defendant BANK had
25 no control.

26 6. That the damages and injuries, if any, suffered by Plaintiff, as set forth in the
27 Complaint, were caused in whole or in part by the negligence of third parties over whom Defendant
28 BANK had no control.

1 7. That the damages and injuries, if any, incurred by Plaintiff are not attributable to any
2 act, conduct or omission on the part of Defendant BANK.

3 8. That Plaintiff did not exercise ordinary care, caution or prudence in order to avoid the
4 events alleged in the Complaint, and the resulting damages and injuries, if any, complained of were
5 directly and proximately contributed to, and caused by, the fault, carelessness, and negligence of
6 Plaintiff.

7 9. That Plaintiff has failed to mitigate its damages, if any, and thus, its recovery, if any,
8 should be reduced accordingly.

9 10. That Defendant BANK denies each and every allegation of Plaintiff's Complaint
10 which is not specifically admitted or otherwise pleads to herein.

11 11. That Plaintiff's claims, if any be valid, are subject to offsets and credits, which are not
12 reflected in the amount claimed due by Plaintiff.

13 12. That Defendant BANK hereby incorporates by reference those affirmative defenses
14 enumerated in Rule 8 of the Nevada Rules of Civil Procedure as if fully set forth herein. In the event
15 further investigation or discovery reveals the applicability of any such defenses, Defendant BANK
16 reserves the right to seek leave of the Court to amend its Answer to Plaintiff's Complaint to
17 specifically assert the same. Such defenses are herein incorporated by reference for the specific
18 purpose of not waiving the same.
19

20 13. That it has been necessary for Defendant BANK to employ the services of an attorney
21 to defend this action and a reasonable sum should be allowed as and for attorney's fees, together
22 with the costs expended in this action.

23 14. That Defendant BANK's title to the property is superior to that of Plaintiff.

24 15. That Nevada Revised Statute 116.3116 does not support Plaintiff's position that it has
25 title to the property.
26
27
28

1 16. That the senior deed of trust beneficiary cannot be deprived of its interest in the
2 property in violation of the Procedural Due Process Clause of the 14th Amendment of the United
3 States Constitution and Article 1, Sec. 8 of the Nevada Constitution.

4 17. That Defendant BANK's priority lien interest is protected from the relief sought by
5 Plaintiff as set forth in the controlling homeowners' association documents of the homeowner's
6 association.

7 18. That the super-priority lien was satisfied prior to the homeowner's association
8 foreclosure under the doctrines of tender, estoppel, laches, or waiver.

9 19. That the circumstances of sale of the property violated the homeowner's association's
10 obligation of good faith and duty to act in a commercially reasonable manner.

11 20. That the damages complained of, if there were any, were proximately contributed to
12 or caused by the carelessness, negligence, fault or defects resulting from acts/omissions of other
13 persons unknown to Defendant BANK at this time, and were not caused in any way by Defendant
14 BANK or by persons for whom Defendant BANK is legally responsible.

15 21. Defendant BANK is entitled to have any award against it reduced or eliminated to the
16 extent that the negligence, carelessness, or defect resulted from the acts/omissions or comparative
17 fault of other persons that contributed to Plaintiff's damages, if any.

18 22. That Plaintiff, at all material times, calculated, knew and understood the risks
19 inherent in the situations, actions, omissions and transactions upon which it now bases its various
20 claims for relief, and with such knowledge, Plaintiff undertook and thereby assumed such risks and
21 is consequently barred from all recovery by such assumption of risk.

22 23. To the extent that Plaintiff's interpretation of NRS 116.3116 is accurate, the statute,
23 and Chapter 116, are void for vagueness as applied to this matter.
24
25
26
27
28

1 24. That Plaintiff lacks standing to bring some or all of its claims and causes of action.

2 25. That Defendant BANK was not provided proper notice of the “super-priority”
3 assessment amounts and the homeowner association foreclosure sale, and any such notice provided
4 to Defendant BANK failed to comply with the statutory and common law requirements of Nevada
5 and with state and federal constitutional law.

6 26. Defendant BANK avers the affirmative defense of failure to do equity.

7 27. That the homeowner association foreclosure sale is void for failure to comply with
8 the provisions of NRS Chapter 116, and other provisions of law.

9 28. That the HOA sale is void or otherwise fails to extinguish the applicable deed of trust
10 pursuant to the Supremacy Clause of the United States Constitution.

11 29. That the HOA sale is void or otherwise fails to extinguish the applicable deed of trust
12 pursuant to the Property Clause of the United States Constitution.

13 30. That Defendant BANK hereby reserves the right to add additional affirmative
14 defenses as discovery progresses.

15 WHEREFORE, Defendant BANK prays for the following:
16

- 17
- 18 1. That Plaintiff take nothing by way of its Complaint;
 - 19 2. That Plaintiff’s Complaint be dismissed in its entirety;
 - 20 3. That Defendant BANK be awarded reasonable attorney’s fees and the cost of suit
21 incurred in defending this action; and
 - 22 4. For such other and further relief as this Court may deem just and proper.
- 23

24 ...

25 ...

26 ...

27 ...

CROSS-CLAIM AGAINST ARMANDO A. CARIAS

COMES NOW, Defendant BANK OF AMERICA, N.A., SUCCESSOR BY MERGER TO BAC HOME LOANS SERVICING, LP FKA COUNTRYWIDE HOME LOANS SERVICING, LP, (hereinafter “BANK”), by and through undersigned counsel, and complains and avers against Cross-Defendant ARMANDO A. CARIAS, by way of this Cross-claim, as follows:

RELEVANT PARTIES AND JURISDICTION

1. The BANK is an entity properly conducting business in the State of Nevada, which holds a security interest in certain real property located at 3617 Diamond Spur Ave., North Las Vegas, Las Vegas, Nevada (hereinafter “Subject Property”).

2. That BANK’s security interest is in the form of a Note and Deed of Trust properly recorded on November 3, 2010, as instrument 201011030002714.

3. Defendant ARMANDO A. CARIAS is the borrower of the aforementioned debt and may be claiming an interest in the subject property (hereinafter “BORROWER”).

4. The Cross-Defendant DOES 1 through 10 and ROE BUSINESS ENTITIES 1 through 10, are set forth herein pursuant to Rule 10 of the Nevada Rules of Civil Procedure as all unknown persons or business entities currently unknown to BANK who have a claim to any interest in the subject matter of this action, whose true name(s) is (are) unknown to BANK, and who are believed to be responsible for the events and happenings referred to in this Cross-claim, causing injuries and damages to the BANK, or who are otherwise interested in the subject matter of this Cross-claim. At such time when the names of said DOES and ROE BUSINESS ENTITIES have been ascertained, BANK will request leave from the court to insert their true names and capacities and adjoin them in this action so that the Cross-claim will be amended to include the appropriate names of said DOES and ROE BUSINESS ENTITIES.

1 5. Jurisdiction and venue are properly set in the Eighth Judicial District Court for the
2 State of Nevada.

3 **GENERAL ALLEGATIONS**

4 6. The BORROWER is in default of the loan obligations owed BANK.

5 7. This same BORROWER was allegedly behind in his monthly homeowners
6 association assessments causing the association to record a lien on the subject property and
7 purportedly conduct a sale of the same on February 20, 2013, with a third party purchasing the same.
8

9 **FIRST CAUSE OF ACTION**

10 **(Declaratory Relief)**

11 8. BANK repeats and realleges each and every allegation contained in Paragraphs 1
12 through 7, and incorporates the same as though fully set forth herein.

13 9. A true and justifiable controversy exists between the BANK and the BORROWER
14 concerning their alleged interests in the Subject Property.

15 10. The association's lien sale may have transferred title to the subject property but it did
16 not abrogate or otherwise affect the BANK's security interest in the property in the form of the Note
17 and Deed of Trust which, if disputed by the BORROWER, causes the BANK's interests to be
18 adverse to those of the BORROWER.
19

20 11. The BANK's rights, status and claims in relation to those of the BORROWER in the
21 Subject Property are affected by multiple statutes and relevant case law regarding real estate and lien
22 priority.
23

24 12. This matter is filed in part under the Uniform Declaratory Judgment Act.

25 13. Pursuant to NRS 30.040, the BANK is entitled to declaratory relief as to rights, status,
26 and legal relations at issue in this matter.
27
28

14. The BANK has found it necessary to employ the undersigned attorneys to bring suit. Therefore, pursuant to state statutes and prevailing case law, the BANK is entitled to any and all expenses incurred including, without limitation, all attorney's fees and costs of suit.

SECOND CAUSE OF ACTION

(Quiet Title)

15. The BANK repeats and realleges each and every allegation contained in Paragraphs 1 through 14 and incorporates the same as though fully set forth herein.

16. A true and justifiable controversy exists between the BANK and the BORROWERS concerning their alleged interests in the Subject Property.

17. The BANK's interests are adverse and exclusive to those alleged by the BORROWERS.

18. The BANK's rights, status and ownership of its security interest in the form of a note and deed of trust needs to be determined by the effect of multiple statutes and relevant case law regarding real estate and lien priority.

19. BANK's security interest in the subject property should be absolute without the BORROWERS, or anyone else, claiming an adverse interest therein.

20. The BANK has found it necessary to employ the undersigned attorneys to bring suit. Therefore pursuant to state statutes and prevailing case law, the BANK is entitled to any and all expenses incurred including, without limitation, all attorney's fees and costs of suit.

WHEREFORE, BANK prays for relief as follows:

1. For a Declaratory Judgment properly adjudicating the parties' interest in the subject property;
2. For an order quieting title to the subject property recognizing BANK's security interest therein;

1 3. For reasonable attorney's fees;

2 4. For costs of suit; and,

3 5. For such other and further relief as this court may deem just and proper.

4 **COUNTERCLAIM AGAINST ALESSI & KOENIG, LLC AND CROSS-CLAIM AGAINST**
5 **SFR INVESTMENTS POOL 1, LLC AND**
6 **SUTTER CREEK HOMEOWNERS' ASSOCIATION, ET AL.**

7 COMES NOW, Defendant BANK OF AMERICA, N.A., SUCCESSOR BY MERGER TO
8 BAC HOME LOANS SERVICING, LP FKA COUNTRYWIDE HOME LOANS SERVICING, LP,
9 (hereinafter "BANK"), by and through undersigned counsel, asserts this counterclaim against
10 Counterclaim Defendant ALESSI & KOENIG and cross-claim against Cross-Defendants SFR
11 INVESTMENTS POOL 1, LLC ("SFR") and SUTTER CREEK HOMEOWNERS' ASSOCIATION
12 ("SUTTER CREEK"), as follows:

13 **RELEVANT PARTIES AND JURISDICTION**

14 1. The BANK is an entity properly conducting business in the State of Nevada, which
15 holds a security interest in certain real property located at 3617 Diamond Spur Ave., North Las
16 Vegas, Las Vegas, Nevada (hereinafter "Subject Property")

17 2. That BANK's security interest is in the form of a Note and Deed of Trust properly
18 recorded on November 3, 2010, as instrument number 201011030002714.

19 3. Cross-Defendant SFR is a Nevada Limited Liability Company conducting business in
20 the State of Nevada.

21 4. Cross-Defendant Sutter Creek Homeowners Association is a homeowner's
22 association located in Clark County, Nevada.

23 5. Counterclaim Defendant A&K is a domestic limited liability company authorized to
24 conduct business in the State of Nevada.

1 6. That Cross-Defendants DOES 1 through 10 and Cross-Defendants ROE BUSINESS
2 ENTITIES 1 through 10, are set forth herein pursuant to Rule 10 of the Nevada Rules of Civil
3 Procedure as all unknown persons or business entities currently unknown to BANK who have a
4 claim to any interest in the subject matter of this action, whose true name(s) is (are) unknown to
5 BANK, and who are believed to be responsible for the events and happenings referred to in this
6 Complaint, causing injuries and damages to the BANK, or who are otherwise interested in the
7 subject matter of this Complaint. At such time when the names of said DOES and ROE BUSINESS
8 ENTITIES have been ascertained, BANK will request leave from the court to insert their true names
9 and capacities and adjoin them in this action so that the Complaint will be amended to include the
10 appropriate names of said DOES and ROE BUSINESS ENTITIES.

11 7. Jurisdiction and venue are properly set in the Eighth Judicial District Court for the
12 State of Nevada.
13

14 GENERAL ALLEGATIONS

15 8. Under Nevada law, homeowners' associations have the right to charge property
16 owners residing within the community assessments to cover the homeowners' association's expenses
17 for maintaining or improving the community, among other things.
18

19 9. When these assessments are not paid, the homeowners' association may both impose
20 and foreclose on a lien.

21 10. A homeowners' association may impose a lien for "any penalties, fees, charges, late
22 charges, fines and interest charged" under NRS 116.3102(1)(j)-(n). NRS 116.3116(1).

23 11. NRS 116.3116 makes a homeowners' association lien for assessments junior to a first
24 deed of trust beneficiary's secured interest in the property, with one limited exception: a
25 homeowners' association lien is senior to a first deed of trust beneficiary's secured interest "to the
26 extent of any charges incurred by the association on a unit pursuant to NRS 116.310312 and to the
27 extent of the assessments for common expenses based on the periodic budget adopted by the
28 association pursuant to NRS 116.3115 which would have become due in the absence of acceleration

1 during the 9 months immediately preceding institution of an action to enforce the lien[.]" NRS
2 116.3116(2)(c).

3 12. According to the Nevada Supreme Court's recent decision in *SFR Investments Pool 1,*
4 *LLC v. U.S. Bank, N.A.*, 334 P.3d 408 (Nev. 2014), certain HOA liens have super-priority status and
5 proper HOA foreclosures of those liens can extinguish first deeds of trust.

6 The HOA Lien and Foreclosure

7 13. Upon information and belief, Borrower failed to pay the HOA, SUTTER CREEK, all
8 amounts due to it. Accordingly, SUTTER CREEK, through its trustee, ALESSI & KOENIG,
9 initiated foreclosure of its lien. SFR purportedly purchased the subject property at a homeowners'
10 association lien sale on February 20, 2013, which association lien was purportedly recorded on
11 February 28, 2013, as instrument number 201302260003889, approximately twenty-seven (27)
12 months after BANK's security interest was recorded.

13 14. Prior to the alleged foreclosure of the subject property, the BANK retained counsel
14 Miles, Bauer, Bergstrom, & Winters, LLP ("MILES BAUER") to determine the last nine months of
15 delinquent assessments, which was the maximum amount SUTTER CREEK could claim had super-
16 priority over the BANK's deed of trust. *See Exhibit 1.*

17 15. The BANK tendered to ALESSI & KOENIG the amount of the super-priority lien.
18 *See Exhibit 2.*

19 16. SUTTER CREEK through its trustee ALESSI & KOENIG refused to accept the
20 BANK's tender and proceeded with foreclosure of the subject property and, upon information and
21 belief, sold it for an amount far below the value of the BANK's deed of trust and far below market
22 value.

23 17. The sale of the subject property was commercially unreasonable and not in good faith
24 as required by NRS 116.1113.

25 18. ALESSI & KOENIG, SUTTER CREEK, and SFR were all aware prior to the sale of
26 the subject property of a split among Nevada courts concerning the ability to eliminate the BANK's
27 first deed of trust by foreclosing, and proceeded to sell the subject property for an extremely
28 depressed price due to the legal uncertainty.

1 19. This foreclosure sale was commercially unreasonable because the manner in which
2 ALESSI & KOENIG conducted the sale, including the notices it provided, the legal uncertainty
3 concerning the effect of the sale, and other circumstances surrounding the sale, was not calculated to
4 attract proper perspective purchasers, and thus could not promote an equitable sales price of the
5 subject property.

6 20. The foreclosure sale was commercially unreasonable because SUTTER CREEK
7 through ALESSI & KOENIG refused to accept the BANK's tender and thereby deprived the BANK
8 of its ability to reasonably protect its interest.

9 21. The foreclosure sale was invalid and did not extinguish the BANK's first deed of trust
10 because SUTTER CREEK through ALESSI & KOENIG's refusal to accept the BANK's tender
11 extinguished any super-priority lien held by SUTTER CREEK. To the extent that the sale
12 extinguished the BANK's first deed of trust due to the wrongful conduct of ALESSI & KOENIG
13 and SUTTER CREEK, both are liable to the BANK for damages.

14 22. SFR is taking the position that the association lien sale abrogated BANK's security
15 interest in the form of a note and deed of trust pursuant to NRS 116.3116.

16 23. That SFR is taking the position that its alleged ownership in the subject property is
17 free and clear of BANK's security interest in the form of a note and deed of trust.

18 24. The association's lien sale may have transferred title to the subject property but it did
19 not abrogate or otherwise affect the BANK's security interest in the property in the form of the note
20 and deed of trust which, if disputed by SFR and SUTTER CREEK, causes the BANK's interests to
21 be adverse to those of SFR and SUTTER CREEK.

22 **FIRST CAUSE OF ACTION**

23 **(Declaratory Relief)**

24 25. BANK repeats and realleges each and every allegation contained in Paragraphs 1
25 through 9, and incorporates the same as though fully set forth herein.
26
27
28

30. The BANK has found it necessary to employ the undersigned attorneys to bring suit. Therefore, pursuant to state statutes and prevailing case law, the BANK is entitled to any and all expenses incurred including, without limitation, all attorney's fees and costs of suit.

(Quiet Title)

35. The BANK's security interest in the subject property should be absolute without A&K, SFR or SUTTER CREEK, or anyone else, claiming an adverse interest therein.

1 36. The BANK has found it necessary to employ the undersigned attorney to bring suit.
2 Therefore, pursuant to state statutes and prevailing case law, the BANK is entitled to any and all
3 expenses incurred including, without limitation, all attorney's fees and costs of suit.

4 THIRD CAUSE OF ACTION

5 (Wrongful Foreclosure)

6 37. The BANK repeats and realleges each and every allegation contained in Paragraphs 1
7 through 21 and incorporates the same as though fully set forth herein.

8 38. Upon information and belief, prior to the foreclosure of the Property, A&K and
9 SUTTER CREEK failed to provide the BANK with, or accept tender of, the super-priority amount
10 of the HOA's lien.

11 39. The BANK's tender attempt extinguished the super-priority portion of the HOA's
12 lien. Consequently, A&K and SUTTER CREEK's foreclosure of the super-priority portion of
13 SUTTER CREEK'S lien was wrongful, as the Borrower was not in default for that portion of the
14 lien.
15

16 40. A&K and SUTTER CREEK's wrongful foreclosure has put the first priority position
17 of the BANK's deed of trust in dispute.
18

19 41. The BANK is entitled to an order establishing that its deed of trust is the senior lien
20 encumbering the Subject Property or, in the alternative, monetary damages equal to the value
21 secured by its first deed of trust that was purportedly extinguished as a direct result of A&K and
22 SUTTER CREEK's wrongful foreclosure.
23

24 42. The HOA sale also failed to comport with the Due Process Clause of the U.S.
25 Constitution.

26 43. Because the HOA sale was wrongful, SFR's title to the property is invalid and subject
27 to the BANA first deed of trust.
28

1 44. The BANK has found it necessary to employ the undersigned attorney to bring suit.
2 Therefore, pursuant to state statutes and prevailing case law, the BANK is entitled to any and all
3 expenses incurred including, without limitation, all attorney's fees and costs of suit.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, the BANK prays for relief as follows:

- 6 1. For a Declaratory Judgment properly adjudicating the parties' interests in the
7 subject property.
8
9 2. For an order quieting title to the subject property recognizing the BANK's
10 security interest therein;
11 3. For an order declaring the foreclosure sale wrongful and invalid;
12 4. For reasonable attorney's fees and costs of suit; and,
13 5. For such other and further relief as this court may deem just and proper.
14

15 DATED this 16th day of April, 2015.

16 **AKERMAN LLP**

17 /s/ Darren T. Brenner, Esq.
18 DARREN T. BRENNER, ESQ.
19 Nevada Bar No. 8386
20 TENESA S. SCATURRO, ESQ.
21 Nevada Bar No. 12488
22 1160 Town Center Drive, Suite 330
23 Las Vegas, Nevada 89144

24 *Attorneys for Bank of America, N.A.*
25
26
27
28

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of April, 2015 and pursuant to NRCP 5(b), I served through this Court's electronic service notification system ("Wiznet") a true and correct copy of the foregoing **BANK OF AMERICA, N.A.'S AMENDED ANSWER TO PLAINTIFF'S COMPLAINT AND CROSS-CLAIMS AGAINST SFR INVESTMENTS POOL 1, LLC AND SUTTER CREEK HOMEOWNERS' ASSOCIATION** addressed to:

Huong X. Lam, Esq.
Bradley Bace, Esq.
ALESSI & KOENIG, LLC
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Attorneys for Defendant SFR Investments Pool 1 LLC

/s/ Lucille Chiusano

An employee of AKERMAN LLP

EXHIBIT 1

EXHIBIT 1

DOUGLAS E. MILES
Also Admitted in California &
Illinois
JEREMY T. BERGSTROM
Also Admitted in Arizona
GINA M. CORENA
ROCK K. JUNG
KRISTA J. NIELSON
JORY C. GARABEDIAN
THOMAS M. MORLAN
Admitted in California
STEVEN E. STERN
Admitted in Arizona & Illinois
ANDREW H. PASTWICK
Also Admitted in Arizona &
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PATERNO C. JURANI



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CORI B. JONES
CATHERINE K. MASON
CHRISTINE A. CHUNG
HANH T. NGUYEN
S. SHELLY RAISZADEH
SHANNON C. WILLIAMS
ABTIN SHAKOURI
LAWRENCE R. BOIVIN
RICK J. NEHORA OFF
BRIAN M. LUNA

Sutter Creek Homeowners Association
C/o THE ALESSI & KOENIG, LLC
9500 West Flamingo Rd., Ste 205
Las Vegas, NV 89147

SENT VIA FIRST CLASS MAIL

Re: *Property Address: 3617 Diamond Spur Avenue, North Las Vegas, NV 89032*
MBBW File No. 12-H1126

Dear Sirs:

This letter is in response to your Notice of Default with regard to the HOA assessments purportedly owed on the above described real property. This firm represents the interests of MERS as nominee for Bank of America, N.A., as successor by merger to BAC Home Loans Servicing, LP (hereinafter "BANA") with regard to these issues. BANA is the beneficiary/servicer of the first deed of trust loan secured by the property.

As you know, NRS 116.3116 governs liens against units for assessments. Pursuant to NRS 116.3116:

The association has a lien on a unit for:

...

any penalties, fees, charges, late charges, fines and interest charged pursuant to paragraphs (j) to (n), inclusive, of subsection 1 of NRS 116.3102 are enforceable as assessments under this section

While the HOA may claim a lien under NRS 116.3102 Subsection (1), Paragraphs (j) through (n) of this Statute clearly provide that such a lien is JUNIOR to first deeds of trust to the extent the lien is for fees and charges imposed for collection and/or attorney fees, collection costs, late fees, service charges and interest. See Subsection 2(b) of NRS 116.3116, which states in pertinent part:

2. A lien under this section is prior to all other liens and encumbrances on a unit except:

(b) A first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent...

The lien is also prior to all security interests described in paragraph (b) to the extent of the assessments for common expenses...which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien.

Subsection 2b of NRS 116.3116 clearly provides that an HOA lien "is prior to all other liens and encumbrances on a unit except: a first security interest on the unit..." But such a lien is prior to a first security interest to the extent of the assessments for common expenses which would have become due during the 9 months before institution of an action to enforce the lien.

Based on Section 2(b), a portion of your HOA lien is arguably senior to BANA's first deed of trust, specifically the nine months of assessments for common expenses incurred before the date of your notice of delinquent assessment dated April 4, 2012. For purposes of calculating the nine-month period, the trigger date is the date the HOA sought to enforce its lien. It is unclear, based upon the information known to date, what amount the nine months' of common assessments pre-dating the NOD actually are. That amount, whatever it is, is the amount BANA should be required to rightfully pay to fully discharge its obligations to the HOA per NRS 116.3102 and my client hereby offers to pay that sum upon presentation of adequate proof of the same by the HOA.

Please let me know what the status of any HOA lien foreclosure sale is, if any. My client does not want these issues to become further exacerbated by a wrongful HOA sale and it is my client's goal and intent to have these issues resolved as soon as possible. Please refrain from taking further action to enforce this HOA lien until my client and the HOA have had an opportunity to speak to attempt to fully resolve all issues.

Thank you for your time and assistance with this matter. I may be reached by phone directly at (702) 942-0412. Please fax the breakdown of the HOA arrears to my attention at (702) 942-0411. I will be in touch as soon as I've reviewed the same with BANA.

Sincerely,

MILES, BAUER, BERGSTROM & WINTERS, LLP

Rock K. Jung, Esq.

EXHIBIT 2

EXHIBIT 2

DOUGLAS E. MILES
Also Admitted in California &
Illinois
JEREMY T. BERGSTROM
Also Admitted in Arizona
GINA M. CORENA
ROCK K. JUNG
KRISTA J. NIELSON
JORY C. GARABEDIAN
THOMAS M. MORLAN
Admitted in California
STEVEN E. STERN
Admitted in Arizona & Illinois
ANDREW H. PASTWICK
Also Admitted in Arizona &
California
PATERNO C. JURANI



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S. SHELLY RAISZADEH
SHANNON C. WILLIAMS
LAWRENCE R. BOIVIN
RICK J. NEHORAOFF
BRIAN M. LUNA

June 28, 2012

ALESSI & KOENIG, LLC
9500 W. FLAMINGO ROAD, SUITE 100
LAS VEGAS, NV 89147

Re: *Property Address:* 3617 Diamond Spur Avenue
HO #: 30455
LOAN #: 224417557
MBBW File No. 12-H1126

Dear Sir/Madame:

As you may recall, this firm represents the interests of Bank of America, N.A., as successor by merger to BAC Home Loans Servicing, LP (hereinafter "BANA") with regard to the issues set forth herein. We have received correspondence from your firm regarding our inquiry into the "Super Priority Demand Payoff" for the above referenced property. The Statement of Account provided by you in regards to the above-referenced address shows a full payoff amount of \$2,930.00. BANA is the beneficiary/servicer of the first deed of trust loan secured by the property and wishes to satisfy its obligations to the HOA. Please bear in mind that:

NRS 116.3116 governs liens against units for assessments. Pursuant to NRS 116.3116:

The association has a lien on a unit for:

...

any penalties, fees, charges, late charges, fines and interest charged pursuant to paragraphs (j) to (n), inclusive, of subsection 1 of NRS 116.3102 are enforceable as assessments under this section

While the HOA may claim a lien under NRS 116.3102 Subsection (1), Paragraphs (j) through (n) of this Statute clearly provide that such a lien is JUNIOR to first deeds of trust to the extent the lien is for fees and charges imposed for collection and/or attorney fees, collection costs, late fees, service charges and interest. See Subsection 2(b) of NRS 116.3116, which states in pertinent part:

2. A lien under this section is prior to all other liens and encumbrances on a unit except:

(b) A first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent...

The lien is also prior to all security interests described in paragraph (b) to the extent of the assessments for common expenses...which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien.

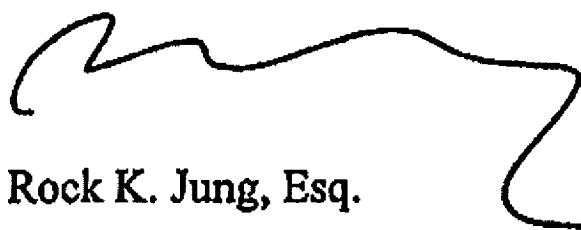
Based on Section 2(b), a portion of your HOA lien is arguably prior to BANA's first deed of trust, specifically the nine months of assessments for common expenses incurred before the date of your notice of delinquent assessment. As stated above, the payoff amount stated by you includes many fees that are junior to our client's first deed of trust pursuant to the aforementioned NRS 116.3102 Subsection (1), Paragraphs (j) through (n).

Our client has authorized us to make payment to you in the amount of \$720.00 to satisfy its obligations to the HOA as a holder of the first deed of trust against the property. Thus, enclosed you will find a cashier's check made out to Alessi & Koenig, LLC in the sum of \$720.00, which represents the maximum 9 months worth of delinquent assessments recoverable by an HOA. This is a non-negotiable amount and any endorsement of said cashier's check on your part, whether express or implied, will be strictly construed as an unconditional acceptance on your part of the facts stated herein and express agreement that BANA's financial obligations towards the HOA in regards to the real property located at 3617 Diamond Spur Avenue have now been "paid in full".

Thank you for your prompt attention to this matter. If you have any questions or concerns, I may be reached by phone directly at (702) 942-0412.

Sincerely,

MILES, BAUER, BERGSTROM & WINTERS, LLP



Rock K. Jung, Esq.

Payee: Alessi & Koenig, LLC

12-H1126

Initials: SRN

Check #: 15746

Date: 6/27/2012 Amount: 720.00

Inv. Date	Reference #	Description	Inv. Amount	Case #	Matter Description	Cost Amount
6/26/2012	30455	To Cure HOA Defiency	720.00			

Miles, Bauer, Bergstrom & Winters, LLP
Trust Account
1231 E. Dyer Road, #100
Santa Ana, CA 92705
Phone: (714) 481-9100

Bank of America
1100 N. Green Valley Parkway
Henderson, NV 89074
16-66/1220
1020
12-H1126
Loan # 224417557

15746

Date: 6/27/2012

Amount \$** 720.00**

Pay \$*****Seven Hundred Twenty & No/100 Dollars
to the order of

Alessi & Koenig, LLC

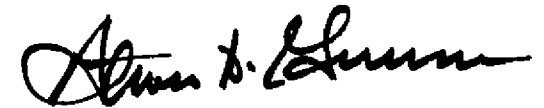
Check Void After 90 Days

015746 0122400724 501006876973

EXHIBIT 4

Notice of Entry of Order Denying Bank of America, N.A.'s Motion for Summary Judgment and Granting SFR Investments Pool 1, LLC's Motion for Summary Judgment

EXHIBIT 4



CLERK OF THE COURT

DIANA CLINE EBRON, ESQ.
Nevada Bar No. 10580
E-mail: diana@kgelegal.com
JACQUELINE A. GILBERT, ESQ.
Nevada Bar No. 10593
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Nevada Bar No. 9578
E-mail: karen@kgelegal.com
KIM GILBERT EBRON
7625 Dean Martin Drive, Suite 110
Las Vegas, Nevada 89139
Telephone: (702) 485-3300
Facsimile: (702) 485-3301
Attorneys for SFR Investment Pool 1, LLC

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

ARMANDO A. CARIAS, an individual;
BANK OF AMERICA, N.A., SUCCESSOR
BY MERGER TO BAC HOME LOANS
SERVICING, LP FKA COUNTRYWIDE
HOME LOANS SERVICING, LP, unknown
entity, DOES INDIVIDUALS I-X, inclusive,
and ROE CORPORATIONS XI-XXX,
inclusive,

Defendants.

AND RELATED CLAIMS.

Case No. A-13-684501-C

Dept. No. XXI

**NOTICE OF ENTRY OF ORDER
DENYING BANK OF AMERICA, N.A.'S
MOTION FOR SUMMARY JUDGMENT
AND GRANTING SFR INVESTMENTS
POOL 1, LLC'S MOTION FOR
SUMMARY JUDGMENT**

PLEASE TAKE NOTICE that on April 18, 2016 this Court entered an **Order Denying
Bank of America, N.A.'s Motion for Summary Judgment and Granting SFR Investments**

///

Pool 1, LLC’s Motion for Summary Judgment. A copy of said Order is attached hereto.

DATED this 27th day of April, 2016.

KIM GILBERT EBRON

/s/ Diana Cline Ebron
DIANA CLINE EBRON, ESQ.
Nevada Bar No. 10580
7625 Dean Martin Drive, Suite 110
Las Vegas, Nevada 89139
Attorney for SFR Investments Pool 1, LLC.

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of April, 2016, pursuant to NRCP 5(b), I served via the Eighth Judicial District Court electronic filing system, the foregoing **NOTICE OF ENTRY OF ORDER DENYING BANK OF AMERICA, N.A.’S MOTION FOR SUMMARY JUDGMENT AND GRANTING SFR INVESTMENTS POOL 1, LLC’S MOTION FOR SUMMARY JUDGMENT** to the following parties:

Akerman LLP

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Brieanne Siriwan	brieanne.siriwan@akerman.com
Darren T. Brenner, Esq.	darren.brenner@akerman.com
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Alessi & Koenig

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A&K eserve	eserve@alessikoenig.com

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/s/ Tomas Valerio
An Employee of Kim Gilbert Ebron

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ORDR

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Attorneys for SFR Investments Pool 1, LLC

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CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

ARMANDO A. CARIAS, an individual; BANK OF AMERICA, N.A., SUCCESSOR BY MERGER TO BAC HOME LOANS SERVICING, LP FKA COUNTRYWIDE HOME LOANS SERVICING, LP, unknown entity, DOES INDIVIDUALS I-X, inclusive, and ROE CORPORATIONS XI-XXX, inclusive,

Defendants.

AND RELATED CLAIMS.

Case No. A-13-684501-C

Dept. No. XXI

ORDER DENYING BANK OF AMERICA, N.A.'S MOTION FOR SUMMARY JUDGMENT AND GRANTING SFR INVESTMENTS POOL 1, LLC'S MOTION FOR SUMMARY JUDGMENT

This matter came before the Court on Bank of America, N.A., Successor by Merger to BAC Home Loans Servicing, LP fka Countrywide Home Loans Servicing, LP's ("BANA") Motion for Summary Judgment ("BANA MSJ"), filed on October 30, 2015, and SFR Investments Pool 1, LLC's ("SFR") Motion for Summary Judgment ("SFR MSJ"), filed on November 2, 2015. Alessi & Koenig, LLC ("Alessi") and Sutter Creek Homeowners Association ("Association") filed a Joinder to the SFR MSJ on November 20, 2015. SFR filed an Opposition to the BANA MSJ on November 20, 2015, to which Alessi and the Association filed a Joinder on November 21, 2015.

1 BANA filed its Opposition to the SFR MSJ on December 17, 2015, to which SFR filed its Reply
2 on January 27, 2016.¹ BANA filed its Reply to the SFR Opposition and Alessi and the
3 Association's Joinder on January 28, 2016. This Court heard arguments on the BANA MSJ, the
4 SFR MSJ, and Alessi and Association's Joinder on February 3, 2016 at 9:30 a.m. Ariel E. Stern,
5 Esq. appeared on behalf of BANA. Jacqueline A. Gilbert, Esq. appeared on behalf of SFR.
6 Chantel M. Schimming, Esq. appeared on behalf of Alessi and the Association.

7 Having reviewed and considered the full briefing and arguments of counsel, for the reasons
8 stated on the record, and good cause appearing, this Court makes the following findings of fact
9 and conclusions of law.

10 FINDINGS OF FACT²

11 1. In 1991, Nevada adopted the Uniform Common Interest Ownership Act as NRS
12 116.

13 2. On July 15, 1998, the Association recorded its Declaration of Covenants,
14 Conditions & Restrictions and Reservation of Easements ("CC&Rs"). Pursuant to NRS
15 116.3116, the recordation of the CC&Rs constituted record notice and perfection of the
16 Association's lien.

17 3. On November 3, 2010, a Grant, Bargain and Sale Deed was recorded in the
18 Official Records of the Clark County Recorder as Instrument No. 201011030002713
19 transferring real property located at 3617 Diamond Spur Avenue, North Las Vegas, Nevada
20 89032; Parcel No. 139-08-410-014 (the "Property") to Armando A. Carias.

21 4. On November 3, 2010, a Deed of Trust in favor of W.J. Bradley Mortgage
22 Capital Corp. was recorded in the Official Records of the Clark County Recorder as Instrument
23 No. 201011030002714 ("First Deed of Trust").

24 5. On January 26, 2012, an Assignment was recorded in the Official Records of the
25 Clark County Recorder as Instrument No. 201201260003419 transferring the First Deed of
26 Trust to BANA.

27 ¹ SFR filed an Errata to its Reply on January 27, 2016.

28 ² Any finding of fact that should be a conclusion of law is deemed a conclusion of law.

6. On February 23, 2012, Alessi, on behalf of the Association, recorded a Notice of Delinquent Assessment (Lien) in the Official Records of the Clark County Recorder as Instrument No. 201202230001691.

7. On May 8, 2012, Alessi, on behalf of the Association, recorded a Notice of Default and Election to Sell Under Homeowners Association Lien in the Official Records of the Clark County Recorder as Instrument No. 201205080002884 ("NOD"). Pursuant to the NOD, the amount due as of April 4, 2012 was \$2,290.00.

8. Alessi, on behalf of the Association, mailed the NOD to BANA.

9. On June 5, 2012, BANA, through its counsel Miles Bauer Bergstrom & Winters ("Miles Bauer"), sent a letter Alessi, as the Association's agent, in response to the NOD, which contained the following language:

Based on Section 2(b), a portion of your HOA lien is arguably senior to BANA's first deed of trust, specifically the nine months of assessments for common expenses incurred before the date of your notice of delinquent assessment dated April 4, 2012. For purposes of calculating the nine-month period, the trigger date is the date the HOA sought to enforce its lien. It is unclear, based upon the information known to date, what amount the nine months' of common assessments pre-dating the NOD actually are. That amount, whatever it is, is the amount BANA should be required to rightfully pay to fully discharge its obligations to the HOA per NRS 116.3102 and my client hereby offers to pay that sum upon presentation of adequate proof of the same by the HOA.

10. On June 15, 2012, Alessi, as agent for the Association, sent a letter to Miles Bauer, BANA's counsel, stating that the foreclosure process would continue unless \$2,930.00 was paid. Alessi also sent Miles Bauer a ledger setting forth the unpaid assessments to date.

11. On June 28, 2012, Miles Bauer sent Alessi a check for \$720.00, representing 9 months' worth of delinquent assessments, and a letter containing the following language:

Our client has authorized us to make payment to you in the amount of \$720.00 to satisfy its obligations to the HOA as a holder of the first deed of trust against the property. Thus, enclosed you will find a cashier's check made out to Alessi & Koenig, LLC in the sum of \$720.00, which represents the maximum 9 months worth of delinquent assessments recoverable by an HOA. This is a non-negotiable amount and any endorsement of said cashier's check on your part, whether express or implied, will be strictly construed as an unconditional acceptance on your part of the facts stated herein

1 and express agreement that BANA's financial obligations towards the HOA in regards to
2 the real property located at 3617 Diamond Spur Avenue have now been "paid in full".

3 12. On or around July 16, 2012, Alessi rejected and returned the check for \$720.00 to
4 Miles Bauer.

5 13. After its check was rejected on or around July 16, 2012, BANA did nothing
6 further to protect its interest in the Property.

7 14. On January 22, 2013, Alessi, on behalf of the Association, recorded a Notice of
8 Trustee's Sale in the Official Records of the Clark County Recorder as Instrument No.
9 201301220003107 ("NOS"). Pursuant to the NOS, the Property was to be sold on February 20,
10 2013 at 2:00 p.m. at 9500 W. Flamingo Rd., Suite #205, Las Vegas, Nevada 89147 (Alessi &
11 Koenig, LLC Office Building, 2nd Floor).

12 15. Alessi, on behalf of the Association, mailed the NOS to BANA.

13 16. On February 20, 2013, SFR was the highest bidder at the Association's public
14 non-judicial foreclosure auction and purchased the Property for \$21,000.00 ("Association
15 Foreclosure Sale").

16 17. On February 26, 2013, a Trustee's Deed Upon Sale was recorded in the Official
17 Records of the Clark County Recorder as Instrument No. 201302260003889 ("Foreclosure
18 Deed"). The Foreclosure Deed contains the following recitals:

19 This conveyance is made pursuant to the powers conferred upon Trustee by NRS
20 116 et seq., and that certain Notice of Delinquent Assessment Lien, described
21 herein. Default occurred as set forth in a Notice of Default and Election to Sell
22 which was recorded in the office of the recorder of said county. All requirements
23 of law regarding the mailing of copies of notices and the posting and publication
24 of the Notice of Sale have been complied with. Said property was sold by said
25 Trustee at public auction on February 20, 2013 at the place indicated on the
26 Notice of Trustee's Sale.

27 18. No release of the super-priority lien or lis pendens was recorded by BANA
28 against the Property prior to the Association Foreclosure Sale.

19. As such, SFR was not aware of BANA's attempt to pay a portion of the
Association's lien prior to the Association Foreclosure Sale.

20. Neither SFR nor its manager, Christopher Hardin, has any relationship or interest in the Association other than owning property within the community.

21. Neither SFR nor its manager, Christopher Hardin, has any relationship or interest in Alessi outside its attendance at auctions, bidding, and occasionally purchasing properties at publicly-held auctions conducted by Alessi.

22. On September 18, 2014, the Nevada Supreme Court issued its opinion in SFR Investments Pool 1 v. U.S. Bank, concluding that NRS 116.3116(2) gives associations a true super-priority lien, the non-judicial foreclosure of which extinguishes a first deed of trust. SFR Investments Pool 1 v. U.S. Bank, 130 Nev. Adv. Op. 75, 334 P.3d 408, 419 (2014), reh'g denied (Oct. 16, 2014).

23. On January 28, 2016, the Nevada Supreme Court issued its opinion in Shadow Wood HOA v. N.Y. Cmty. Bancorp., 132 Nev. Adv. Op. 5 (2016) (herein after "Shadow Wood").

24. BANA argued that the noticing provisions of NRS 116.3116 et seq. for non-judicial foreclosure are facially unconstitutional as they do not require notice to the holder of a first deed of trust. Further, BANA also argued that the loan that underlies the first deed of trust is FHA insured and, therefore, HUD has an interest in the deed of trust. Therefore, BANA argued that federal law preempts state law and precludes extinguishment of the insured first deed of trust.

25. SFR argued that the statutes are constitutional both as applied and facially, requiring notice to recorded first security lienholders through the incorporation of NRS 107.090 through NRS 116.31168. SFR also argued that BANA lacks standing to assert the Supremacy Clause as it is not HUD or the FHA and that preemption does not apply because the federal and state policies are not in conflict.

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CONCLUSIONS OF LAW³

1. Summary judgment is appropriate where there is no remaining question of material fact such that the moving party is entitled to judgment as a matter of law. Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005).

2. NRS 116 is facially constitutional.

3. NRS 116 is not preempted by federal law.

4. The Association Foreclosure Sale was conducted pursuant to the Association's lien, which contained super-priority amounts.

5. Pursuant to Shadow Wood, the recitals set forth in the Foreclosure Deed that notices were properly provided is conclusive proof of the same. Alternatively, SFR has provided evidence that the Association Foreclosure Sale was properly noticed in this case.

6. In considering the price paid for the Property, one must also consider the market at the time, including but not limited to, the increased expenses purchasers at NRS 116 foreclosure sales faced after buying properties at these sales.

7. A sale pursuant to NRS 116 cannot be commercially unreasonable as a matter of law based on price alone.

8. NRS 116 has no requirement that sales be commercially reasonable. As such, purchasers at NRS 116 foreclosure sales have no burden to prove the commercial reasonableness of any such sale.

9. A commercial reasonableness analysis would only come into play if there was evidence that the sale was not properly noticed, that the bidding at the public auction was in some way chilled, or if there was evidence of fraud, collusion, or some other impropriety in the sale process. In those situations, commercial reasonableness may come into play under the Shadow Wood balancing of the equities test.

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³ Any conclusion of law that should be a finding of fact is deemed a finding of fact.

10. As BANA's payment of \$720.00 was conditional, requiring the Association to waive its rights as to a currently undecided matter---namely, what amounts are included in a super-priority lien pursuant to NRS 116---this payment attempt did not constitute a sufficient tender to protect BANA's interest in the Property.

11. Pursuant to Shadow Wood, equity does not favor granting BANA relief in this case.

- a. BANA was in a better position than SFR, a mere purchaser at a public sale, and could have done more to protect its interest in the Property.
- b. After it submitted its payment to the Association, BANA should have done something to put potential purchasers, such as SFR, on notice of its attempted payment and corresponding belief that the super-priority lien was extinguished prior to the Association Foreclosure Sale.
- c. SFR is a bona fide purchaser ("BFP").
- d. The fact that SFR had record notice of the First Deed of Trust does not defeat its BFP status, particularly when there is no evidence to suggest SFR had actual knowledge of BANA's attempt to pay a portion of the Association's lien prior to Association Foreclosure Sale.
- e. Additionally, as SFR purchased the Property for value, low price alone is not enough to deprive it of its status as a BFP.

12. As BANA has provided no admissible evidence of fraud, collusion, or other impropriety with the Association's non-judicial foreclosure process, it cannot show that there is a question of material fact remaining for trial.

Good cause appearing therefore,

ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the BANA MSJ is DENIED.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the SFR MSJ is GRANTED.


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

1 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Alessi and the
2 Association's Joinder to the SFR MSJ is GRANTED.

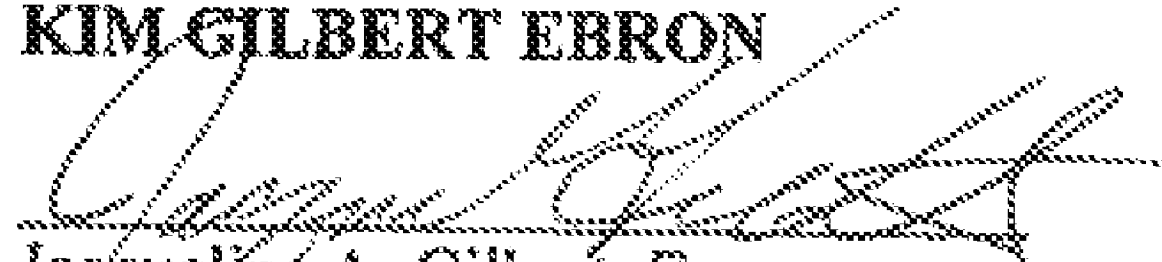
3 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that title to real property
4 located at 3617 Diamond Spur Avenue, North Las Vegas, Nevada 89032; Parcel No. 139-08-410-
5 014 is quieted in favor of SFR Investments Pool 1, LLC.

6 IT IS SO ORDERED.

7 Dated this 31st day of March, 2016.

8 
9 DISTRICT COURT JUDGE *afw*

12 Respectfully Submitted By:
13 **KIM GILBERT EBRON**

14 
15 Jacqueline A. Gilbert, Esq.
16 Nevada Bar No. 10593
17 7625 Dean Martin Drive, Suite 110
18 Las Vegas, Nevada 89139
19 Attorney for SFR Investments Pool 1, LLC

Approved as to Form and Content:
AKERMAN LLP

Ariel E. Stern, Esq.
Nevada Bar No. 8276
1160 Town Center Drive, Suite 330
Las Vegas, Nevada 89144
Attorney for Bank of America, N.A.,
Successor by Merger to BAC Home Loans
Servicing, LP FKA Countrywide Home
Loans Servicing, LP

Approved as to Form and Content:
ALESSI & KOENIG, LLC

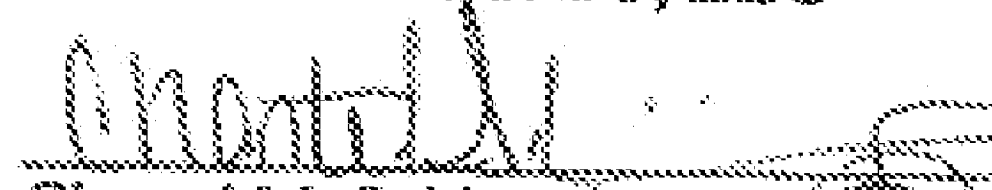
20 
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22 Nevada Bar No. 8886
23 9500 W. Flamingo Road, Suite 205
24 Las Vegas, Nevada 89147
25 Attorney for Alessi & Koenig, LLC and Sutter
26 Creek Homeowners Association

EXHIBIT 3

Order Denying Bank of America, N.A.'s Motion for Summary Judgment and Granting SFR Investments Pool 1, LLC's Motion for Summary Judgment

EXHIBIT 3

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CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

ARMANDO A. CARIAS, an individual; BANK OF AMERICA, N.A., SUCCESSOR BY MERGER TO BAC HOME LOANS SERVICING, LP FKA COUNTRYWIDE HOME LOANS SERVICING, LP, unknown entity, DOES INDIVIDUALS I-X, inclusive, and ROE CORPORATIONS XI-XXX, inclusive,

Defendants.

AND RELATED CLAIMS.

Case No. A-13-684501-C

Dept. No. XXI

ORDER DENYING BANK OF AMERICA, N.A.'S MOTION FOR SUMMARY JUDGMENT AND GRANTING SFR INVESTMENTS POOL 1, LLC'S MOTION FOR SUMMARY JUDGMENT

This matter came before the Court on Bank of America, N.A., Successor by Merger to BAC Home Loans Servicing, LP fka Countrywide Home Loans Servicing, LP's ("BANA") Motion for Summary Judgment ("BANA MSJ"), filed on October 30, 2015, and SFR Investments Pool 1, LLC's ("SFR") Motion for Summary Judgment ("SFR MSJ"), filed on November 2, 2015. Alessi & Koenig, LLC ("Alessi") and Sutter Creek Homeowners Association ("Association") filed a Joinder to the SFR MSJ on November 20, 2015. SFR filed an Opposition to the BANA MSJ on November 20, 2015, to which Alessi and the Association filed a Joinder on November 21, 2015.

1 BANA filed its Opposition to the SFR MSJ on December 17, 2015, to which SFR filed its Reply
2 on January 27, 2016.¹ BANA filed its Reply to the SFR Opposition and Alessi and the
3 Association's Joinder on January 28, 2016. This Court heard arguments on the BANA MSJ, the
4 SFR MSJ, and Alessi and Association's Joinder on February 3, 2016 at 9:30 a.m. Ariel E. Stern,
5 Esq. appeared on behalf of BANA. Jacqueline A. Gilbert, Esq. appeared on behalf of SFR.
6 Chantel M. Schimming, Esq. appeared on behalf of Alessi and the Association.

7 Having reviewed and considered the full briefing and arguments of counsel, for the reasons
8 stated on the record, and good cause appearing, this Court makes the following findings of fact
9 and conclusions of law.

10 FINDINGS OF FACT²

11 1. In 1991, Nevada adopted the Uniform Common Interest Ownership Act as NRS
12 116.

13 2. On July 15, 1998, the Association recorded its Declaration of Covenants,
14 Conditions & Restrictions and Reservation of Easements ("CC&Rs"). Pursuant to NRS
15 116.3116, the recordation of the CC&Rs constituted record notice and perfection of the
16 Association's lien.

17 3. On November 3, 2010, a Grant, Bargain and Sale Deed was recorded in the
18 Official Records of the Clark County Recorder as Instrument No. 201011030002713
19 transferring real property located at 3617 Diamond Spur Avenue, North Las Vegas, Nevada
20 89032; Parcel No. 139-08-410-014 (the "Property") to Armando A. Carias.

21 4. On November 3, 2010, a Deed of Trust in favor of W.J. Bradley Mortgage
22 Capital Corp. was recorded in the Official Records of the Clark County Recorder as Instrument
23 No. 201011030002714 ("First Deed of Trust").

24 5. On January 26, 2012, an Assignment was recorded in the Official Records of the
25 Clark County Recorder as Instrument No. 201201260003419 transferring the First Deed of
26 Trust to BANA.

27 ¹ SFR filed an Errata to its Reply on January 27, 2016.

28 ² Any finding of fact that should be a conclusion of law is deemed a conclusion of law.

6. On February 23, 2012, Alessi, on behalf of the Association, recorded a Notice of Delinquent Assessment (Lien) in the Official Records of the Clark County Recorder as Instrument No. 201202230001691.

7. On May 8, 2012, Alessi, on behalf of the Association, recorded a Notice of Default and Election to Sell Under Homeowners Association Lien in the Official Records of the Clark County Recorder as Instrument No. 201205080002884 ("NOD"). Pursuant to the NOD, the amount due as of April 4, 2012 was \$2,290.00.

8. Alessi, on behalf of the Association, mailed the NOD to BANA.

9. On June 5, 2012, BANA, through its counsel Miles Bauer Bergstrom & Winters ("Miles Bauer"), sent a letter Alessi, as the Association's agent, in response to the NOD, which contained the following language:

Based on Section 2(b), a portion of your HOA lien is arguably senior to BANA's first deed of trust, specifically the nine months of assessments for common expenses incurred before the date of your notice of delinquent assessment dated April 4, 2012. For purposes of calculating the nine-month period, the trigger date is the date the HOA sought to enforce its lien. It is unclear, based upon the information known to date, what amount the nine months' of common assessments pre-dating the NOD actually are. That amount, whatever it is, is the amount BANA should be required to rightfully pay to fully discharge its obligations to the HOA per NRS 116.3102 and my client hereby offers to pay that sum upon presentation of adequate proof of the same by the HOA.

10. On June 15, 2012, Alessi, as agent for the Association, sent a letter to Miles Bauer, BANA's counsel, stating that the foreclosure process would continue unless \$2,930.00 was paid. Alessi also sent Miles Bauer a ledger setting forth the unpaid assessments to date.

11. On June 28, 2012, Miles Bauer sent Alessi a check for \$720.00, representing 9 months' worth of delinquent assessments, and a letter containing the following language:

Our client has authorized us to make payment to you in the amount of \$720.00 to satisfy its obligations to the HOA as a holder of the first deed of trust against the property. Thus, enclosed you will find a cashier's check made out to Alessi & Koenig, LLC in the sum of \$720.00, which represents the maximum 9 months worth of delinquent assessments recoverable by an HOA. This is a non-negotiable amount and any endorsement of said cashier's check on your part, whether express or implied, will be strictly construed as an unconditional acceptance on your part of the facts stated herein

1 and express agreement that BANA's financial obligations towards the HOA in regards to
2 the real property located at 3617 Diamond Spur Avenue have now been "paid in full".

3 12. On or around July 16, 2012, Alessi rejected and returned the check for \$720.00 to
4 Miles Bauer.

5 13. After its check was rejected on or around July 16, 2012, BANA did nothing
6 further to protect its interest in the Property.

7 14. On January 22, 2013, Alessi, on behalf of the Association, recorded a Notice of
8 Trustee's Sale in the Official Records of the Clark County Recorder as Instrument No.
9 201301220003107 ("NOS"). Pursuant to the NOS, the Property was to be sold on February 20,
10 2013 at 2:00 p.m. at 9500 W. Flamingo Rd., Suite #205, Las Vegas, Nevada 89147 (Alessi &
11 Koenig, LLC Office Building, 2nd Floor).

12 15. Alessi, on behalf of the Association, mailed the NOS to BANA.

13 16. On February 20, 2013, SFR was the highest bidder at the Association's public
14 non-judicial foreclosure auction and purchased the Property for \$21,000.00 ("Association
15 Foreclosure Sale").

16 17. On February 26, 2013, a Trustee's Deed Upon Sale was recorded in the Official
17 Records of the Clark County Recorder as Instrument No. 201302260003889 ("Foreclosure
18 Deed"). The Foreclosure Deed contains the following recitals:

19 This conveyance is made pursuant to the powers conferred upon Trustee by NRS
20 116 et seq., and that certain Notice of Delinquent Assessment Lien, described
21 herein. Default occurred as set forth in a Notice of Default and Election to Sell
22 which was recorded in the office of the recorder of said county. All requirements
23 of law regarding the mailing of copies of notices and the posting and publication
24 of the Notice of Sale have been complied with. Said property was sold by said
25 Trustee at public auction on February 20, 2013 at the place indicated on the
26 Notice of Trustee's Sale.

27 18. No release of the super-priority lien or lis pendens was recorded by BANA
28 against the Property prior to the Association Foreclosure Sale.

19. As such, SFR was not aware of BANA's attempt to pay a portion of the
Association's lien prior to the Association Foreclosure Sale.

1 20. Neither SFR nor its manager, Christopher Hardin, has any relationship or interest
2 in the Association other than owning property within the community.

3 21. Neither SFR nor its manager, Christopher Hardin, has any relationship or interest
4 in Alessi outside its attendance at auctions, bidding, and occasionally purchasing properties at
5 publicly-held auctions conducted by Alessi.

6 22. On September 18, 2014, the Nevada Supreme Court issued its opinion in SFR
7 Investments Pool 1 v. U.S. Bank, concluding that NRS 116.3116(2) gives associations a true
8 super-priority lien, the non-judicial foreclosure of which extinguishes a first deed of trust. SFR
9 Investments Pool 1 v. U.S. Bank, 130 Nev. Adv. Op. 75, 334 P.3d 408, 419 (2014), reh'g denied
10 (Oct. 16, 2014).

11 23. On January 28, 2016, the Nevada Supreme Court issued its opinion in Shadow
12 Wood HOA v. N.Y. Cmty. Bancorp., 132 Nev. Adv. Op. 5 (2016) (herein after "Shadow
13 Wood").

14 24. BANA argued that the noticing provisions of NRS 116.3116 et seq. for non-
15 judicial foreclosure are facially unconstitutional as they do not require notice to the holder of a
16 first deed of trust. Further, BANA also argued that the loan that underlies the first deed of trust
17 is FHA insured and, therefore, HUD has an interest in the deed of trust. Therefore, BANA
18 argued that federal law preempts state law and precludes extinguishment of the insured first
19 deed of trust.

20 25. SFR argued that the statutes are constitutional both as applied and facially,
21 requiring notice to recorded first security lienholders through the incorporation of NRS 107.090
22 through NRS 116.31168. SFR also argued that BANA lacks standing to assert the Supremacy
23 Clause as it is not HUD or the FHA and that preemption does not apply because the federal and
24 state policies are not in conflict.

25 ///

26 ///

27 ///

28 ///

CONCLUSIONS OF LAW³

1. Summary judgment is appropriate where there is no remaining question of material fact such that the moving party is entitled to judgment as a matter of law. Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005).

2. NRS 116 is facially constitutional.

3. NRS 116 is not preempted by federal law.

4. The Association Foreclosure Sale was conducted pursuant to the Association's lien, which contained super-priority amounts.

5. Pursuant to Shadow Wood, the recitals set forth in the Foreclosure Deed that notices were properly provided is conclusive proof of the same. Alternatively, SFR has provided evidence that the Association Foreclosure Sale was properly noticed in this case.

6. In considering the price paid for the Property, one must also consider the market at the time, including but not limited to, the increased expenses purchasers at NRS 116 foreclosure sales faced after buying properties at these sales.

7. A sale pursuant to NRS 116 cannot be commercially unreasonable as a matter of law based on price alone.

8. NRS 116 has no requirement that sales be commercially reasonable. As such, purchasers at NRS 116 foreclosure sales have no burden to prove the commercial reasonableness of any such sale.

9. A commercial reasonableness analysis would only come into play if there was evidence that the sale was not properly noticed, that the bidding at the public auction was in some way chilled, or if there was evidence of fraud, collusion, or some other impropriety in the sale process. In those situations, commercial reasonableness may come into play under the Shadow Wood balancing of the equities test.

///

///

³ Any conclusion of law that should be a finding of fact is deemed a finding of fact.

10. As BANA's payment of \$720.00 was conditional, requiring the Association to waive its rights as to a currently undecided matter---namely, what amounts are included in a super-priority lien pursuant to NRS 116---this payment attempt did not constitute a sufficient tender to protect BANA's interest in the Property.

11. Pursuant to Shadow Wood, equity does not favor granting BANA relief in this case.

- a. BANA was in a better position than SFR, a mere purchaser at a public sale, and could have done more to protect its interest in the Property.
- b. After it submitted its payment to the Association, BANA should have done something to put potential purchasers, such as SFR, on notice of its attempted payment and corresponding belief that the super-priority lien was extinguished prior to the Association Foreclosure Sale.
- c. SFR is a bona fide purchaser ("BFP").
- d. The fact that SFR had record notice of the First Deed of Trust does not defeat its BFP status, particularly when there is no evidence to suggest SFR had actual knowledge of BANA's attempt to pay a portion of the Association's lien prior to Association Foreclosure Sale.
- e. Additionally, as SFR purchased the Property for value, low price alone is not enough to deprive it of its status as a BFP.

12. As BANA has provided no admissible evidence of fraud, collusion, or other impropriety with the Association's non-judicial foreclosure process, it cannot show that there is a question of material fact remaining for trial.

Good cause appearing therefore,

ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the BANA MSJ is DENIED.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the SFR MSJ is GRANTED.

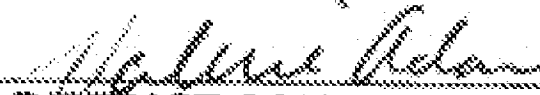
KIM GILBERT EBRON
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LAS VEGAS, NEVADA 89139
(702) 482-3300 FAX (702) 482-3301

1 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Alessi and the
2 Association's Joinder to the SFR MSJ is GRANTED.

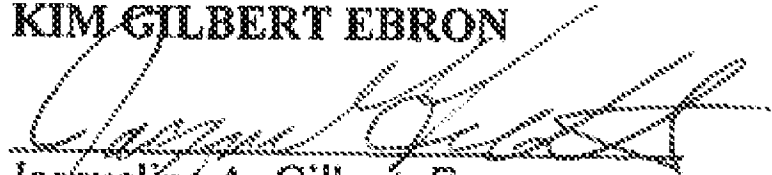
3 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that title to real property
4 located at 3617 Diamond Spur Avenue, North Las Vegas, Nevada 89032; Parcel No. 139-08-410-
5 014 is quieted in favor of SFR Investments Pool 1, LLC.

6 IT IS SO ORDERED.

7 Dated this 31st day of March, 2016.

8 
9 DISTRICT COURT JUDGE *afw*

12 Respectfully Submitted By:
13 KIM GILBERT EBRON

14 
15 Jacqueline A. Gilbert, Esq.
16 Nevada Bar No. 10593
17 7625 Dean Martin Drive, Suite 110
18 Las Vegas, Nevada 89139
19 Attorney for SFR Investments Pool 1, LLC

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Successor by Merger to BAC Home Loans
Servicing, LP FKA Countrywide Home
Loans Servicing, LP

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24 Las Vegas, Nevada 89147
Attorney for Alessi & Koenig, LLC and Sutter
Creek Homeowners Association

EXHIBIT 2

**Answer, Counterclaim and
Cross-Claim filed by
Defendant/Counter-Claimant
SFR Investments Pool 1, LLC**

EXHIBIT 2

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16 *Attorneys for Defendant/Counter-claimant*
17 *SFR Investments Pool 1, LLC*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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

14 Plaintiff,

15 vs.

16 ARMANDO A. CARIAS, an individual;
17 BANK OF AMERICA, N.A., SUCCESSOR
18 BY MERGER TO BAC HOME LOANS
19 SERVICING, LP FKA COUNTRYWIDE
20 HOME LOANS SERVICING, LP, an
21 unknown entity; DOES INDIVIDUALS I-X,
22 inclusive; and ROE CORPORATIONS XI-
23 XXX,

21 Defendants.

22 BANK OF AMERICA, N.A., SUCCESSOR
23 BY MERGER TO BAC HOME LOANS
24 SERVICING, LP FKA COUNTRYWIDE
25 HOME LOANS SERVICING, LP, a National
26 Association,

25 Cross-Claimant,

26 vs.

27 ARMANDO A. CARIAS, an individual;
28 DOES 1 10 and ROE BUSINESS ENTITIES

Case No. A-13-684501-C

Dept. No. XXI

**ANSWER, COUNTERCLAIM AND
CROSS-CLAIM**

1 through 10 inclusive.

Cross-Defendants.

BANK OF AMERICA, N.A., SUCCESSOR
BY MERGER TO BAC HOME LOANS
SERVICING, LP FKA COUNTRYWIDE
HOME LOANS SERVICING, LP, a National
Association,

Third-Party Plaintiff,

vs.

SFR INVESTMENTS POOL 1, LLC, a
domestic limited liability company, and DOES
1 through 10 and ROE BUSINESS ENTITIES
1 through 10,

Third Party Defendant.

SFR INVESTMENTS POOL 1, LLC, a
Nevada limited liability company,

Counter-Claimant,

vs.

BANK OF AMERICA, N.A., SUCCESSOR
BY MERGER TO BAC HOME LOANS
SERVICING, LP FKA COUNTRYWIDE
HOME LOANS SERVICING, LP, a national
association; ARMANDO A. CARIAS, an
individual; DOES 1 10 and ROE BUSINESS
ENTITIES 1 through 10 inclusive,

Counter-Defendant/Cross-Defendants.

Plaintiff SFR INVESTMENTS POOL 1, LLC ("SFR" or "Third-Party Defendant"),
hereby answers BANK OF AMERICA, N.A., SUCCESSOR BY MERGER TO BAC HOME
LOANS SERVICING, LP FKA COUNTRYWIDE HOME LOANS SERVICING, LP's
("BANA") Third Party Complaint as follows:

1 complaint as though fully set forth herein.

2 ~~10. SFR admits the factual allegations contained in paragraphs 11 and 12 of the third party~~
3 ~~complaint.~~

4 11. The allegations contained in paragraphs 13 and 14 of the third party complaint call for a
5 legal conclusion, therefore, no answer is required. To the extent an answer is required, SFR
6 denies the factual allegations contained in paragraphs 13 and 14 of the third party complaint.

7 12. SFR denies the factual allegations contained in paragraph 15 of the third party
8 complaint.

9 **SECOND CAUSE OF ACTION**

10 **(Quiet Title)**

11 13. SFR repeats and realleges its answers to paragraphs 1 through 15 of the third party
12 complaint as though fully set forth herein.

13 14. The allegations contained in paragraphs 17, 18, 19 and 20 of the third party complaint
14 call for a legal conclusion, therefore, no answer is required. To the extent an answer is required,
15 SFR denies the factual allegations contained in paragraphs 17, 18, 19 and 20 of the third party
16 complaint.

17 15. SFR denies the factual allegations contained in paragraph 21 of the third party
18 complaint.

19 **AFFIRMATIVE DEFENSES**

20 1. BANA fails to state a claim upon which relief may be granted.

21 2. BANA is not entitled to relief from or against SFR, as BANA has not sustained any loss,
22 injury, or damage that resulted from any act, omission, or breach by SFR.

23 3. The occurrence referred to in the Third Party Complaint, and all injuries and damages, if
24 any, resulting therefrom, were caused by the acts or omissions of BANA.

25 4. The occurrence referred to in the Third Party Complaint, and all injuries and damages, if
26 any, resulting therefrom, were caused by the acts or omissions of a third party or parties over
27 whom SFR had no control.

28 5. SFR did not breach any statutory or common law duties allegedly owed to BANA.

1 6. BANA's claims are barred because SFR complied with applicable statutes and with the
2 requirements and regulations of the State of Nevada.

3 7. BANA's causes of action are barred in whole or in part by the applicable statutes of
4 limitations or repose, or by the equitable doctrines of laches, waiver, estoppel, and ratification.

5 8. BANA is not entitled to equitable relief because it has an adequate remedy at law.

6 9. BANA has no standing to enforce the first deed of trust and the underlying promissory
7 note.

8 10. The first deed of trust and other subordinate interests in the Property were extinguished
9 by the Association foreclosure sale held in accordance with NRS Chapter 116.

10 11. Pursuant to Nevada Rule of Civil Procedure 11, as amended, all possible affirmative
11 defenses may not have been alleged herein insofar as sufficient facts were not available after
12 reasonable inquiry at the time of filing this Answer. Therefore, SFR reserves the right to amend
13 this Answer to assert any affirmative defenses if subsequent investigation warrants.

14 **COUNTERCLAIM AND CROSS-CLAIM**

15 **FOR QUIET TITLE AND INJUNCTIVE RELIEF**

16 SFR INVESTMENTS POOL 1, LLC ("SFR"), hereby demands quiet title, requests
17 injunctive relief and claims unjust enrichment against Counter-Defendant, BANK OF
18 AMERICA, N.A., SUCCESSOR BY MERGER TO BAC HOME LOANS SERVICING, LP
19 FKA COUNTRYWIDE HOME LOANS SERVICING, LP's ("BANA"), Counter Defendant
20 and ARMANDO A. CARIAS, an individual; DOES 1 10 and ROE BUSINESS ENTITIES 1
21 through 10 inclusive, Cross-Defendants as follows:

22 **I. PARTIES**

23 1. SFR is a Nevada limited liability company with its principal place of business in Clark
24 County, Nevada and the current title owner of the property commonly known as 3617 Diamond
25 Spur Avenue, North Las Vegas, NV 89032; Parcel No. 139-08-410-014 (the "Property").

26 2. Upon information and belief, Counter-Defendant BANK OF AMERICA, N.A.,
27 SUCCESSOR BY MERGER TO BAC HOME LOANS SERVICING, LP FKA
28 COUNTRYWIDE HOME LOANS SERVICING, LP ("BANA"), is a national association that

1 may claim an interest in the Property via a 2010 deed of trust originated by W.J. Bradley Capital
2 Corporation.

3 3. Upon information and belief, Cross-Defendant, ARMANDO A. CARIAS ("Carias") is
4 an individual who is the former homeowner that may claim an interest in the Property.

5 4. Upon information and belief, each of the Cross-Defendants sued herein as DOES I
6 through X, inclusive claim an interest in the Property or are responsible in some manner for the
7 events and action that SFR seeks to enjoin; that when the true names capacities of such
8 defendants become known, SFR will ask leave of this Court to amend this counterclaim to insert
9 the true names, identities and capacities together with proper charges and allegations.

10 5. Upon information and belief, each of the Cross-Defendants sued herein as ROES
11 CORPORATIONS I through X, inclusive claim an interest in the Property or are responsible in
12 some manner for the events an happenings herein that SFR seeks to enjoin; that when the true
13 names capacities of such defendants become known, SFR will ask leave of this Court to amend
14 this counterclaim to insert the true names, identities and capacities together with proper charges
15 and allegations.

16 II. GENERAL ALLEGATIONS

17 *SFR Acquired Title to the Property through Foreclosure of an Association Lien with Super* 18 *Priority Amounts*

19 6. SFR acquired the Property on February 20, 2013 by successfully bidding on the Property
20 at a publicly-held foreclosure auction in accordance with NRS 116.3116, *et. seq.* ("Association
21 foreclosure sale"). Since the Association foreclosure sale, SFR has expended additional funds
22 and resources in relation to the Property.

23 7. On or about February 26, 2013, the resulting foreclosure deed was recorded in the
24 Official Records of the Clark County Recorder as Instrument Number 201302260003889
25 ("Association Foreclosure Deed").

26 8. Sutter Creek Homeowners Association (the "Association") had a lien pursuant to NRS
27 116.3116(1) ("Association Lien") that was perfected when the Association recorded its
28 declaration of CC&Rs

9. The foreclosure sale was conducted by Alessi & Koenig, LLC ("Alessi"), agent for the Association, pursuant to the powers conferred by the Nevada Revised Statutes 116.3116, 116.31162-116.31168, the Association's governing documents (CC&R's) and a Notice of Delinquent Assessment Lien, recorded on February 23, 2012 in the Official Records of the Clark County Recorder as Instrument Number 201202230001691.

10. As recited in the Association Foreclosure Deed, the Association foreclosure sale complied with all requirements of law, including but not limited to, recording and mailing of copies of Notice of Delinquent Assessment and Notice of Default, and the recording, posting and publication of the Notice of Sale.

11. Pursuant to NRS 116.3116(2), the entire Association Lien

is prior to all other liens and encumbrances of unit except:

- (a) Liens and encumbrances recorded before the recordation of the declaration and, in a cooperative, liens and encumbrances which the association creates, assumes or takes subject to;
- (b) A first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent or, in a cooperative, the first security interest encumbering only the unit's owner's interest and perfected before the date on which the assessment sought to be enforced became delinquent; and
- (c) Liens for real estate taxes and other governmental assessments or charges against the unit or cooperative.

12. NRS 116.3116(2) further provides that a portion of the Association Lien has priority over even a first security interest in the Property:

[the Association Lien] is also prior to all security interests described in paragraph (b) to the extent of any charges incurred by the association on a unit pursuant to NRS 116.310312 and to the extent of the assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien[.]

13. NRS 116.41095 requires that anytime a property is sold within a common-interest community, purchasers receive a document explaining that an association can foreclose on its lien non-judicially and the way to be heard if they dispute the obligation or its amount:

4. IF YOU FAIL TO PAY OWNERS' ASSESSMENTS, YOU COULD LOSE YOUR HOME?

If you do not pay these assessments when due, the association usually has the power to collect them by selling your property in a nonjudicial foreclosure sale. If fees become delinquent, you may also be required to pay penalties and the

1 association's costs and attorney's fees to become current. If you dispute the
2 obligation or its amount, your only remedy to avoid the loss of your home
3 may be to file a lawsuit and ask a court to intervene in the dispute.

4 NRS 116.41095 (emphasis added)

5 14. Upon information and belief, when Counter-Defendant and Cross-Defendants acquired
6 their interests in the Property, they received the disclosure required by NRS 116.41095.

7 15. Upon information and belief, Counter-Defendant and Cross-Defendants had actual or
8 constructive notice of the requirement to pay assessments to the Association and of the
9 Association Lien.

10 16. Upon information and belief, Counter-Defendant and Cross-Defendants did not pay
11 Association assessments as required by the CC&Rs.

12 17. Upon information and belief, Counter-Defendant and Cross-Defendants were aware of
13 their delinquency and that the result of their delinquency could include foreclosure.

14 18. Upon information and belief, the Association took the necessary action to trigger the
15 super-priority portion of the Association Lien.

16 19. Upon information and belief, Counter-Defendant and Cross-Defendants had actual notice
17 of the Association's foreclosure proceedings.

18 20. Upon information and belief, prior to the Association foreclosure sale, no individual or
19 entity paid the full amount of delinquent assessments described in the Notice of Default.

20 21. The Association foreclosure sale was publicly advertised in advance of the sale.

21 22. Multiple bidders attended the auction.

22 23. When it purchased the Property, SFR had no knowledge of any alleged dispute over
23 amounts owed to the Association, any purported noticing issues, or any alleged proper tender of
24 the full lien amount by Counter-Defendant and Cross-Defendants.

25 24. SFR is a bona fide purchaser for value.

26 25. Upon information and belief, no party still claiming an interest in the Property recorded a
27 lien or encumbrance prior to the declaration creating the Association.

28 26. Upon information and belief, SFR's bid on the Property was in excess of the amount

1 necessary to satisfy the costs of sale and the super-priority portion of the Association Lien.

2 27. Upon information and belief, the Association or its agent Alessi distributed or should
3 have distributed the excess funds to lien holders in order of priority pursuant to NRS
4 116.3114(c).

5 28. Upon information and belief, Counter-Defendant and Cross-Defendants had actual or
6 constructive notice of the requirement to pay assessments to the Association and of the
7 Association Lien.

8 29. Upon information and belief, Counter-Defendant and Cross-Defendants had actual or
9 constructive notice of the Association's foreclosure proceedings.

10 30. Upon information and belief, prior to the Association foreclosure sale, no individual or
11 entity paid the full amount of delinquent assessments described in the Notice of Default.

12 31. Upon information and belief, Counter-Defendant BANA had actual or constructive notice
13 of the super-priority portion of the Association Lien.

14 32. Upon information and belief, Counter-Defendant BANA knew or should have known that
15 its interest in the Property could be extinguished through foreclosure if he failed to cure the
16 super-priority portion of the Association Lien representing 9 months of assessments for common
17 expenses based on the periodic budget adopted by the association which would have become due
18 in the absence of acceleration for the relevant time period.

19 33. Upon information and belief, prior to the Association foreclosure sale, no individual or
20 entity paid the super-priority portion of the Association Lien representing 9 months of
21 assessments for common expenses based on the periodic budget adopted by the association
22 which would have become due in the absence of acceleration for the relevant time period.

23 34. Pursuant to NRS 116.31166, the foreclosure sale vested title in SFR "without equity or
24 right of redemption," and the Foreclosure Deed is conclusive against the Property's "former
25 owner, his or her heirs and assigns, and all other persons."

26 *Interests, Liens and Encumbrances Extinguished by the Super-Priority Association Lien*

27 35. Upon information and belief, Carias, first obtained title to the Property in November of
28 2010 through a Grant, Bargain Sale Deed from The Secretary of Housing and Urban

1 Development of Washington, D.C recorded in the Official Records of the Clark County Recorder
2 as Instrument No. 201011030002713.

3 36. On or about November 3, 2010, W.J. Bradley Mortgage Capital Corp., ("W.J. Bradley")
4 recorded a deed of trust against the Property in the Official Records of the Clark County
5 Recorder as Instrument No. 201011030002714 ("First Deed of Trust").

6 37. Upon information and belief, the Association was formed and its declaration of CC&Rs
7 was recorded in the Official Records of the Clark County Recorder before the First Deed of Trust
8 was recorded.

9 38. Upon information and belief, W.J. Bradley had actual or constructive notice of the
10 Association Lien and NRS 116.3116 before it funded the loan secured by the First Deed of Trust.

11 39. Upon information and belief, on or about January 25, 2012, Talisha T. Wallace, Assistant
12 Secretary for Mortgage Electronic Systems, Inc. ("MERS"), as Nominee for W.J. Bradley
13 executed an assignment that transferred the beneficial interest in the First Deed of Trust, together
14 with the underlying promissory note, to BANA. The assignment was recorded on January 26,
15 2012 against the Property in Official Records of the Clark County Recorder as Instrument No.
16 201201260003419.

17 40. Upon information and belief, BANA had actual or constructive notice of the Association
18 Lien and NRS 116.3116 before it obtained an interest in the First Deed of Trust.

19 41. On or about, January 9, 2014, BANA filed a Third Party Complaint for declaratory relief
20 and quiet title.

21 42. Counter-Defendant BANA's interest in the Property was extinguished by the foreclosure
22 of the Association Lien.

23 43. Cross-Defendant Caria's interest in the Property was extinguished by the foreclosure of
24 the super priority portion of the Association Lien.

25 **III. FIRST CLAIM FOR RELIEF**

26 **(Declaratory Relief/Quiet Title Pursuant to NRS 30.010, *et. seq.*, NRS 40.10 & NRS
116.3116)**

27 44. SFR repeats and realleges the allegations of paragraphs 1-43 as though fully set forth
28 herein and incorporates the same by reference.

1 45. Pursuant to NRS 30.010, *et. seq.* and NRS 40.10, this Court has the power and authority
2 to declare the SFR's rights and interests in the Property and to resolve the Counter-Defendant
3 and Cross-Defendant's adverse claims in the Property.

4 46. SFR acquired the Property on February 20, 2013 by successfully bidding on the Property
5 at a publicly-held foreclosure auction in accordance with NRS 116.3116, *et. seq.* and the
6 resulting Association Foreclosure Deed vesting title in SFR was recorded on February 26, 2013.

7 47. Upon information and belief, Counter Defendant, BANA may claim an interest in the
8 Property via the First Deed of Trust against the Property even after the Association foreclosure
9 sale.

10 48. Upon information and belief, Cross-Defendant Carias may claim an ownership interest in
11 the Property.

12 49. A foreclosure sale conducted pursuant to NRS 116.31162-116.31168, like all foreclosure
13 sales, extinguishes the title owner's interest in the Property and all junior liens and
14 encumbrances, including deeds of trust.

15 50. Pursuant to NRS 116.3116(2), the super-priority portion of the Association Lien has
16 priority over the First Deed of Trust.

17 51. Counter-Defendant and Cross-Defendants were duly notified of the Association
18 foreclosure sale and failed to act to protect their interests in the Property, if any legitimately
19 existed.

20 52. SFR is entitled to a declaratory judgment from this Court finding that: (1) SFR is the title
21 owner of the Property; (2) the Association Foreclosure Deed is valid and enforceable; (3) the
22 Association foreclosure sale extinguished Counter-Defendant and Cross-Defendants' ownership
23 and security interests in the Property; and (4) SFR's rights and interest in the Property are
24 superior to any adverse interest claimed by Counter-Defendant and Cross-Defendants.

25 53. SFR seeks an order from the Court quieting title to the Property in favor of SFR.

26 **IV. THIRD CLAIM FOR RELIEF**
27 **(Preliminary and Permanent Injunction)**

28 54. SFR repeats and realleges the allegations of paragraphs 1- 53 as though fully set forth

herein and incorporates the same by reference.

55. SFR properly acquired title to the Property at the Association foreclosure sale on February 20, 2013.

56. Counter-Defendant BANA may claim that it maintained an interest in the Property through the First Deed of Trust which was extinguished by the Association foreclosure sale.

57. Cross-Defendant Carias may claim an ownership interest in the Property.

58. A foreclosure sale based on the First Deed of Trust is invalid as Counter-Defendant BANA lost its interest in the Property, if any, at the Association foreclosure sale.

59. Any sale or transfer of title to the Property by Counter-Defendant and Cross-Defendants would be invalid because their interest in the Property, if any, was extinguished by the Association foreclosure sale.

60. Any attempt to take or maintain possession of the Property by Counter-Defendant and Cross-Defendants would be invalid because their interest in the Property, if any, was extinguished by the Association foreclosure sale.

61. Any attempt to sell, transfer, encumber or otherwise convey the Property by the Counter-Defendant and Cross-Defendants would be invalid because their interest in the Property, if any, was extinguished by the Association foreclosure sale.

62. On the basis of the facts described herein, SFR has a reasonable probability of success on the merits of its claims and has no other adequate remedies at law.

63. SFR is entitled to a preliminary injunction and permanent injunction prohibiting Counter-Defendant and Cross-Defendants from beginning or continuing any eviction proceedings that would affect SFR's possession of the Property.

64. SFR is entitled to a preliminary injunction and permanent injunction prohibiting Counter-Defendant and Cross-Defendants from any sale or transfer that would affect the title to the Property.

V. PRAYER FOR RELIEF

SFR requests judgment against Counter-Defendant and Cross-Defendants as follows:

1. For a declaration and determination that SFR Investments Pool 1, LLC is

1 the rightful owner of title to the Property, and that Counter Defendant and Cross-
2 Defendants be declared to have no right, title or interest in the Property.

3 2. For a preliminary and permanent injunction that Counter-Defendant and
4 Cross-Defendants are prohibited from initiating or continuing foreclosure proceedings,
5 and from selling or transferring the Property;

6 3. For general and special damages in excess of \$10,000.00

7 4. For an award of attorney's fees and costs of suit; and

8 5. For any further relief that the Court may deem just and proper.

9 DATED February 14th, 2014.

10 **HOWARD KIM & ASSOCIATES**

11 /s/Diana S. Cline

12 HOWARD C. KIM, ESQ.

13 Nevada Bar No. 10386

14 DIANA S. CLINE, ESQ.

15 Nevada Bar No. 10580

16 JACQUELINE A. GILBERT, ESQ.

17 Nevada Bar No. 10593

18 1055 Whitney Ranch Drive, Suite 110

19 Henderson, Nevada 89014

20 Phone: (702) 485-3300

21 Fax: (702) 485-3301

22 *Attorneys for SFR Investments Pool 1, LLC*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of February, 2014, pursuant to NRCP 5(b), I served via first class U.S. Mail, postage prepaid, the foregoing Answer, Counterclaim and Cross-Claim for Quiet Title and Injunctive Relief to the following parties:

Gregory L. Wilde, Esq.
Kevin S. Soderstrom, Esq.
TIFFANY & BOSCO, P.A.
212 S. Jones Blvd.
Las Vegas, Nevada 89107
Attorneys for Bank of America, N.A.

Huong Lam, Esq.
Bradley Bace, Esq.
ALESSI & KOENIG, LLC
9500 W. Flamingo, Suite 205
Las Vegas, Nevada 89147
Attorneys for Alessi & Koenig, LLC

/s/ Tommie Dooley
An Employee of Howard Kim & Associates

EXHIBIT 1

Summons & Complaint in Interpleader Filed by Plaintiff Alessi & Koenig, LLC

EXHIBIT 1

Devan Thery
336 7080
NMI: 119-01-01
10/7/13 3:01
in person

SUMM

Ryan Kerbow, Esq.
Nevada Bar No. 11403
Bradley D. Bace, Esq.
Nevada Bar No. 12684
ALESSI & KOENIG, LLC
9500 W. Flamingo, Suite 205
Las Vegas, Nevada 89147
Phone: (702) 222-4033
Fax: (702) 222-4043
ryan@alesikoenig.com
brad@alesikoenig.com
Attorneys for Plaintiff

OCT 16 2013

DISTRICT COURT

CLARK COUNTY, NEVADA

ALESSI & KOENIG, LLC, a Nevada
limited liability company

Plaintiff,

vs.

ARMANDO A. CARIAS, an individual,
BANK OF AMERICA, N.A., SUCCESSOR
BY MERGER TO BAC HOME LOANS
SERVICING, LP FKA COUNTRYWIDE
HOME LOANS SERVICING, LP, unknown
entity, DOES INDIVIDUALS I-X, inclusive,
and ROE CORPORATIONS XI-XX inclusive

Defendants.

Case No. A-13-684501-C
Dept. No. I

SUMMONS - CIVIL

**NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU
WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS.
READ THE INFORMATION BELOW.**

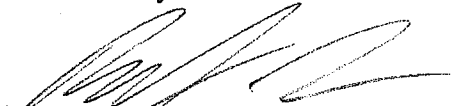
TO THE DEFENDANT(S): A civil Complaint has been filed by the Plaintiff(s) against you for
the relief set forth in the Complaint.

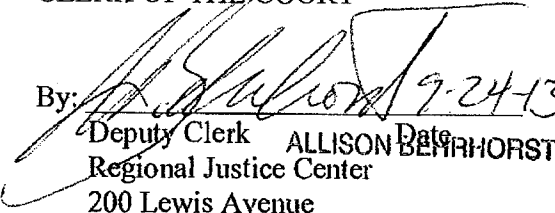
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1. If you intend to defend this lawsuit, within 20 days after this Summons is served on you, exclusive of the day of service, you must do the following:
 - (a) File with the Clerk of this Court, whose address is shown below, a formal written response to the Complaint in accordance with the rules of the Court, with the appropriate filing fee.
 - (b) Serve a copy of your response upon the attorney whose name and address is shown below.
2. Unless you respond, your default will be entered upon application of the Plaintiff(s) and failure to so respond will result in a judgment of default against you for the relief demanded in the Complaint, which could result in the taking of money or property or other relief requested in the Complaint.
3. If you intend to seek the advice of an attorney in this matter, you should do so promptly so that your response may be filed on time.
4. The State of Nevada, its political subdivisions, agencies, officers, employees, board members, commission members and legislators each have 45 days after service of this Summons within which to file an Answer or other responsive pleading to the Complaint.

STEVEN D. GRIERSON
CLERK OF THE COURT

Submitted By:


Ryan Kerbow, Esq.
Bradley D. Bace, Esq

By:  9-24-13
Deputy Clerk ALLISON BEHRHORST
Regional Justice Center
200 Lewis Avenue
Las Vegas, NV 89155

CIVIL COVER SHEET

A- 13- 684501- C

- Clark County, Nevada

Case No.

(Assigned by Clerk's Office)

I. Party Information

Plaintiff(s) (name/address/phone): Alessi & Koenig

Attorney (name/address/phone): Huong Lam, Esq. & Brad Bace,
Esq., ALESSI & KOENIG, 9500 W. Flamingo Rd., Ste. 205, Las
Vegas, NV 89147 Phone: (702) 222-4033Defendant(s) (name/address/phone): ARMANDO A. CARIAS,
BANK OF AMERICA, N.A., SUCCESSOR BY MERGER TO
BAC HOME LOANS SERVICING, LP FKA COUNTRYWIDE
HOME LOANS SERVICING, LP

Attorney (name/address/phone):

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

Real Property	Torts	
<input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Title to Property <input type="checkbox"/> Foreclosure <input type="checkbox"/> Liens <input type="checkbox"/> Quiet Title <input type="checkbox"/> Specific Performance <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property <input type="checkbox"/> Partition <input type="checkbox"/> Planning/Zoning	<input type="checkbox"/> Negligence <input type="checkbox"/> Negligence - Auto <input type="checkbox"/> Negligence - Medical/Dental <input type="checkbox"/> Negligence - Premises Liability (Slip/Fall) <input type="checkbox"/> Negligence - Other	<input type="checkbox"/> Product Liability <input type="checkbox"/> Product Liability/Motor Vehicle <input type="checkbox"/> Other Torts/Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Torts/Defamation (Libel/Slander) <input type="checkbox"/> Interfere with Contract Rights <input type="checkbox"/> Employment Torts (Wrongful termination) <input type="checkbox"/> Other Torts <input type="checkbox"/> Anti-trust <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Insurance <input type="checkbox"/> Legal Tort <input type="checkbox"/> Unfair Competition

Probate	Other Civil Filing Types	
Estimated Estate Value: _____ <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside Estates <input type="checkbox"/> Trust/Conservatorships <input type="checkbox"/> Individual Trustee <input type="checkbox"/> Corporate Trustee <input type="checkbox"/> Other Probate	<input type="checkbox"/> Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> General <input type="checkbox"/> Breach of Contract <input type="checkbox"/> Building & Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Other Contracts/Acct/Judgment <input type="checkbox"/> Collection of Actions <input type="checkbox"/> Employment Contract <input type="checkbox"/> Guarantee <input type="checkbox"/> Sale Contract <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Civil Petition for Judicial Review <input type="checkbox"/> Foreclosure Mediation <input type="checkbox"/> Other Administrative Law <input type="checkbox"/> Department of Motor Vehicles <input type="checkbox"/> Worker's Compensation Appeal	<input type="checkbox"/> Appeal from Lower Court (also check applicable civil case box) <input type="checkbox"/> Transfer from Justice Court <input type="checkbox"/> Justice Court Civil Appeal <input type="checkbox"/> Civil Writ <input type="checkbox"/> Other Special Proceeding <input checked="" type="checkbox"/> Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Conversion of Property <input type="checkbox"/> Damage to Property <input type="checkbox"/> Employment Security <input type="checkbox"/> Enforcement of Judgment <input type="checkbox"/> Foreign Judgment - Civil <input type="checkbox"/> Other Personal Property <input type="checkbox"/> Recovery of Property <input type="checkbox"/> Stockholder Suit <input checked="" type="checkbox"/> Other Civil Matters

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

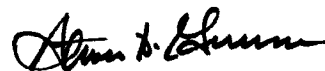
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|-----------------------------------------------|--------------------------------------------------------------|-------------------------------------------------------|
| <input type="checkbox"/> NRS Chapters 78-88 | <input type="checkbox"/> Investments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

7/1/13

Date

Signature of initiating party or representative

See other side for family-related case filings.



CLERK OF THE COURT

1 **COMP**

2 Huong Lam, Esq.
3 Nevada Bar No. 10916
4 Bradley Bace, Esq.
5 Nevada Bar No. 12684
6 ALESSI & KOENIG, LLC
7 9500 W. Flamingo, Suite 205
8 Las Vegas, Nevada 89147
9 Phone: (702) 222-4033
10 Fax: (702) 222-4043
11 huong@aussikoenig.com
12 brad@aussikoenig.com
13 Attorney for Plaintiff

8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

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

12 Plaintiff,

13 vs.
14

15 ARMANDO A. CARIAS, an individual,
16 BANK OF AMERICA, N.A., SUCCESSOR
17 BY MERGER TO BAC HOME LOANS
18 SERVICING, LP FKA COUNTRYWIDE
19 HOME LOANS SERVICING, LP, unknown
20 entity, DOES INDIVIDUALS I-X, inclusive,
21 and ROE CORPORATIONS XI-XXX
22 inclusive,

23 Defendants.
24

A- 13- 684501- C

Case No.
Dept. No.

Hearing date: |
Hearing time:

COMPLAINT IN INTERPLEADER

Arbitration Exemption Claimed:
1) Declaratory Relief

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COMPLAINT IN INTERPLEADER

COMES NOW, ALESSI & KOENIG, LLC, by and through their attorneys of record,
Huong Lam, Esq. and Bradley Bace, Esq. of ALESSI & KOENIG, LLC,, and alleges the
following Causes of Action against Defendant ARMANDO A. CARIAS, an individual, BANK
OF AMERICA, N.A., SUCCESSOR BY MERGER TO BAC HOME LOANS SERVICING, LP
FKA COUNTRYWIDE HOME LOANS SERVICING, LP., an unknown entity, as follows:

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THE PARTIES AND JURISDICTION

1. At all times relevant herein, Plaintiff ALESSI & KOENIG, LLC (hereinafter "A&K")
was a domestic limited liability company authorized to conduct business in the State
of Nevada.
2. At all times relevant herein, ARMANDO A. CARIAS (hereinafter "CARIAS") an
individual, was a resident of the County of Clark, State of Nevada.
3. At all times relevant herein, BANK OF AMERICA, N.A., SUCCESSOR BY
MERGER TO BAC HOME LOANS SERVICING, LP FKA COUNTRYWIDE
HOME LOANS SERVICING, LP (hereinafter "BAC") an entity unknown doing
business in the State of Nevada.
4. The names given to the Defendants sued herein as Doe Individuals I though X and
Roe Corporations XI through XX, inclusive, are fictitious names. Other parties
unknown to Plaintiff may have caused Plaintiff to incur damages as pled herein or
may have an interest in the Property. Plaintiff prays that if and when the true names
of any said defendants, or any of them, and the nature of their alleged actions and/or
interests are ascertained, that they may be inserted herein by proper amendment.

1 Plaintiff has no knowledge of the addresses or places of residence of any fictitious
2 defendants.

- 3 5. Jurisdiction and venue are proper in this Court because this action concerns real
4 property located in the County of Clark, State of Nevada, and the facts, acts, events
5 and circumstances herein mentioned, alleged and described occurred in the County of
6 Clark, State of Nevada.
7

8 **THE UNDERLYING FORECLOSURE SALE**

- 9 6. Plaintiff hereby repeats, realleges, and incorporates by reference each and every
10 preceding paragraph and allegation as if fully stated herein.
11
12 7. On or about July 15, 1998, a Declaration of Covenants, Conditions, and Restrictions
13 ("CC&Rs") for SUTTER CREEK HOMEOWNERS ASSOCIATION ("Sutter Creek
14 HOA") was recorded in the public records with the Clark County Recorder at Book
15 No. 980615 and Instrument No. 01172.
16
17 8. Section 5.1 of the CC&Rs provides, in pertinent part:

18 Each Owner of any Lot, by acceptance of a deed or other conveyance
19 therefor, whether or not it shall be so expressed in such deed or such other
20 instrument; is deemed to covenant and agree to pay to the Association (1)
21 annual Common Assessments for common expenses and (2) Special
22 Assessments; such assessments to be established and collected as
23 hereinafter provided. All assessments, together with interest, costs, and
24 reasonable attorney's fees for the collection thereof, shall be charge on the
25 land and shall be a continuing lien upon the Lot against which such
26 assessment is made. The personal obligation of assessments shall not pass
27 to the successors-in-title of any Owner, unless expressly assumed by them.
28

See attached Exhibit "1."

1 9. On or about November 3, 2010 CARIAS became the title owner of certain real
2 property commonly known as 3617 Diamond Spur Avenue, No Las Vegas, NV
3 89032, APN 139-08-410-014, and legally described as:

4 PARCEL ONE (1)

5 LOT SIXTY (60) IN BLOCK ONE (1) OF SUTTER CREEK – PHASE 1, AS
6 SHOWN BY MAP THEREOF ON FILE IN BOOK 85, OF PLATS, PAGE 30, IN
7 THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

8 PARCEL TWO (2)

9 A NON EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS ON AND
10 OVER COMMON ELEMENTS, ASSOCIATION PROPERTY AND PRIVATE
11 STREETS, WHICH EASEMENTS IS APPURTENANT TO PARCEL ONE (1)

12 (the “Property”). See attached Exhibit “2.”

13 10. Pursuant to NRS Chapter 116, CARIAS is governed by the requirements and
14 obligations set forth in the CC&Rs and related governing documents.

15 11. The CC&Rs require homeowners within the community to pay regular assessments
16 and comply with the requirements and obligations set forth in the CC&Rs and related
17 governing documents.

18 12. Defendant CARIAS failed to pay his regular assessments and further failed to comply
19 with other requirements set forth in the CC&Rs and other related governing
20 documents.

21 13. Nevada Revised Statute (“NRS”) 116.3116 *et. seq.* specifically authorizes a
22 homeowner’s association to conduct a foreclosure sale of any lot that has become
23 delinquent on its assessment payments.
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- 1 14. As a result of CARIA's failure to comply with NRS 116 and Sutter Creek HOA's
2 governing documents, Plaintiff A&K was retained to begin the foreclosure process
3 pursuant to NRS 116.3116 *et. seq.*
- 4 15. Pursuant to the aforementioned statutory and CC&Rs provisions, Plaintiff A&K, on
5 behalf of Sutter Creek HOA, foreclosed on the Property via auction on February 20,
6 2013. The final bid price was for \$21,000.00 See attached Exhibit "3"
- 7 16. The total amount due and owing to Sutter Creek HOA at the time of the foreclosure
8 sale was \$5,260.00 including foreclosure fees and costs.
- 9 17. The total amount due and owing to A&K for its fees and costs to bring this
10 interpleader action is \$6,000.00.
- 11 18. That the excess proceeds is \$9,740.00.
- 12 19. Upon information and belief, Defendant CARIAS, an individual has a claim to the
13 excess proceeds.
- 14 20. Upon information and belief, Defendant BAC, an entity unknown, has a claim to the
15 excess proceeds.
- 16 21. N.R.S. 116.31164 (c) provides a distribution priority for the proceeds (not just the
17 excess proceeds) from any HOA foreclosure sale. This statute states that the proceeds
18 of an HOA foreclosure sale shall be distributed pursuant to the following order:
19
20 (1) The reasonable expenses of sale;
21
22 (2) The reasonable expenses of securing possession before sale, holding,
23 maintaining, and preparing the unit for sale, including payment of taxes
24 and other governmental charges, premiums on hazard and liability
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1 insurance, and, to the extent provided for by the declaration, reasonable
2 attorney's fees and other legal expenses incurred by the association;

3 (3) Satisfaction of the association's lien;

4 (4) Satisfaction in the order of priority of any subordinate claim of record; and

5 (5) Remittance of any excess to the unit's owner.
6

7 22. That Plaintiff A&K will deposit excess proceeds with this court in the sum of
8 \$9,740.00 representing total proceeds at sale (\$21,000.00) minus amount due to
9 Sutter Creek HOA (\$5,260.00) and fees and costs of this interpleader action
10 (\$6,000.00).
11

12 23. Given the Defendants' competing claims for the proceeds, Plaintiff cannot determine
13 which of the Defendants in Interpleader are entitled to the proceeds.

14 24. As set forth above, Plaintiff has distributed funds from the HOA foreclosure sale
15 under subsections (1), (2), and (3).
16

17 25. In order to distribute any funds pursuant to N.R.S. subsections (4) and (5), it must be
18 determined which parties have a "subordinate claim of record" and what the
19 respective priority of these subordinate claims is as to the subject property.

20 26. Plaintiff has been unable to make this determination and has thus brought the instant
21 interpleader action.
22

23 PRAYER FOR RELIEF

24 Wherefore, Plaintiff prays for judgment against Defendants in Interpleader and each
25 of them as follows:

26 1. That Defendants in Interpleader and each of them be required to interplead and
27 litigate among themselves their claims to the proceeds described;
28

- 1 2. That the Court determine and enter an order setting forth the proper recipients of
2 the proceeds;
3 3. That Plaintiff be dismissed from this action with prejudice following payment of
4 the excess proceeds into the registry of the Court; and
5 4. For such other and further relief as the Court deems just and equitable under the
6 circumstances.
7

8 DATED this 1st day of July, 2013.

9
10 ALESSI & KOENIG, LLC

11 /s/ Bradley Bace

12 Huong Lam, Esq.
13 Nevada Bar No. 10916
14 Bradley Bace, Esq.
15 Nevada Bar No. 12684
16 ALESSI & KOENIG, LLC
17 9500 W. Flamingo, Suite #205
18 Las Vegas, Nevada 89147
19 Phone: (702) 222-4033
20 Fax: (702) 222-4043
21 Attorney for Plaintiff
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Exhibit 1

DECLARATION OF
COVENANTS, CONDITIONS & RESTRICTIONS
AND RESERVATION OF EASEMENTS
FOR
SUTTER CREEK

This Declaration of Covenants, Conditions and Restrictions is made this 10th day of July, 1998, by SAXTON INCORPORATED, a Nevada corporation

WHEREAS Declarant is the owner of certain real property in Clark County, Nevada, more particularly described in Exhibit "A," attached hereto and incorporated herein by this reference (the "Property"); and

WHEREAS Declarant intends that the Property, together with certain adjacent real property, shall be a Planned Community and a Common-Interest Community as defined in Nevada's Uniform Common-Interest Ownership Act, Chapter 116 of Nevada Revised Statutes, upon recordation of this Declaration; and

WHEREAS the name of the Common-Interest Community shall be SUTTER CREEK, and the name of the homeowners association created pursuant to this Declaration shall be SUTTER CREEK HOMEOWNERS ASSOCIATION; and

WHEREAS Declarant desires that the Property be subject to certain covenants, conditions, restrictions and easements, under a general plan of improvement for the benefit of all Lots in the Property and the owners thereof, and that a property owners association be established for the purpose of assessing, managing and administering the Property; and

WHEREAS Declarant further reserves the right to add the "Annexable Area" (as defined herein) to the Property, up to a maximum of one hundred seventy five (175) aggregate Lots;

NOW, THEREFORE, Declarant hereby declares that all of the Property shall at all times be owned, held, used and occupied subject to the provisions of this Declaration and to the covenants, conditions and restrictions and reservation of easements contained herein, all of which are established and declared for the purpose of increasing the economic value, desirability and attractiveness of the Property and for the mutual benefit of the owners of Lots therein. The covenants, conditions, restrictions and easements set forth in this Declaration shall run with such real property and shall be binding upon Declarant, each owner, and all other persons acquiring any right, title or interest in and to said real property or any part thereof, and shall inure to the benefit of the property owners association, Declarant, and each person who becomes an owner of any part of the Property, as well as their respective successors-in-interest.

the Plat is the same as the recording data for the Plat.

ARTICLE V FUNDS AND ASSESSMENTS

Section 5.01. Personal Obligation for Assessments. Each Owner of any Lot, by acceptance of a deed or other conveyance therefor, whether or not it shall be so expressed in such deed or such other instrument, is deemed to covenant and agree to pay to the Association (1) annual Common Assessments for common expenses and (2) Special Assessments; such assessments to be established and collected as hereinafter provided. All assessments, together with interest, costs, and reasonable attorneys' fees for the collection thereof, shall be a charge on the land and shall be a continuing lien upon the Lot against which such assessment is made. The personal obligation of assessments shall not pass to the successors-in-title of any Owner, unless expressly assumed by them.

Section 5.02. Maintenance Funds. The Board shall establish and maintain at least the following separate accounts (the "Maintenance Funds") into which shall be deposited all monies paid to the Association, and from which disbursements shall be made, as provided herein, in the performance of functions by the Association: (1) an Operating Fund for current expenses of the Association, (2) a Reserve Fund for maintenance, replacement and improvements not required to be performed annually, and (3) any other funds which the Board of Directors may establish, to the extent necessary under the provisions of this Declaration. To qualify for higher returns on accounts held at banking or savings institutions, the Board may commingle any amounts deposited into any of the Maintenance Funds with amounts deposited into any other Maintenance Funds, provided that the integrity of each individual Maintenance Fund shall be preserved on the books of the Association by accounting for disbursements from, and deposits to, each Maintenance Fund separately. Each of the Maintenance Funds shall be established as separate trust savings or trust checking accounts. The Maintenance Funds may be established as trust accounts at federally insured banking or lending institutions.

Section 5.03. Purpose of Assessments. All amounts deposited into the Operating Funds and the Reserve Fund must be used solely for the common benefit of all of the Owners for purposes authorized by the Articles, Bylaws and this Declaration, as they may be amended from time to time.

Section 5.04. Common Assessments. Each annual Common Assessment shall constitute an aggregate of separate assessments for each of the Maintenance Funds, reflecting an itemization of the amounts assessed and attributable to prospective deposits into the Reserve Fund, the Operating Fund and any other Maintenance Fund established by the Association.

Section 5.05. Date of Commencement of Common Assessments. Common Assessments shall commence as to all Lots in Phase I of the Property on the earlier of (a) the first close of escrow for the sale of any Lot in Phase I, or (b) conveyance of any Common Areas in Phase I to the Association. Common Assessments shall commence as to subsequent Phases upon the first close of escrow for the sale of any Lot in such Phase. Each such Lot shall thereafter be subject to its share of the then

PARCEL 1:

ALL OF SUTTER CREEK - PHASE I AS SHOWN BY MAP THEREOF IN BOOK 85 OF PLATS, PAGE 30, OFFICIAL RECORDS, CLARK COUNTY, NEVADA;

EXCEPTING THEREFROM LOTS ONE (1) THROUGH FIVE (5), INCLUSIVE, AND LOTS SIXTY THREE (63) THROUGH SIXTY EIGHT (68), INCLUSIVE, IN BLOCK ONE (1); AND LOTS SIXTY NINE (69) THROUGH SEVENTY FOUR (74), INCLUSIVE, IN BLOCK TWO (2); AS SHOWN ON SAID MAP; AND FURTHER EXCEPTING THEREFROM ALL PRIVATE DRIVES AND OTHER COMMON ELEMENTS AS SHOWN ON SAID MAP.

PARCEL 2:

SITUATED IN THE SOUTHWEST QUARTER (SW 1/4) OF THE SOUTHWEST QUARTER (SW 1/4) OF SECTION 8, TOWNSHIP 20 SOUTH, RANGE 81 EAST, M.D.M., CITY OF NORTH LAS VEGAS, CLARK COUNTY, NEVADA;

BEING A PORTION OF LOT 1-1-1 AS SHOWN ON PARCEL MAP FILE . PAGE . CLARK COUNTY NEVADA OFFICIAL RECORDS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 8, SAID POINT ALSO BEING THE CENTERLINE INTERSECTION OF CHEYENNE AVENUE (100 FEET WIDE) AND ALLEN LANE (80 FEET WIDE); THENCE ALONG THE WEST SECTION LINE OF SAID SECTION 8 AND CENTERLINE OF SAID ALLEN LANE, NORTH 00°23'30" WEST, 1118.69 FEET; THENCE LEAVING SAID WEST SECTION LINE AND CENTERLINE, NORTH 89°36'30" EAST, 40.00 FEET TO A POINT ON THE EAST RIGHT-OF-WAY LINE OF ALLEN LANE, SAID POINT ALSO BEING THE TRUE POINT OF BEGINNING;

THENCE ALONG SAID EASTERLY RIGHT-OF-WAY LINE, NORTH 00°23'30" WEST, 157.63 FEET TO A POINT OF CURVATURE; THENCE ALONG THE ARC OF A CURVE CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 20.00 FEET, THROUGH A CENTRAL ANGLE OF 92°10'59", AN ARC DISTANCE OF 32.18 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF COLTON AVENUE (60 FEET WIDE); THENCE ALONG SAID SOUTH RIGHT-OF-WAY LINE, SOUTH 88°12'31" EAST, 859.85 FEET; THENCE LEAVING SAID RIGHT-OF-WAY LINE, SOUTH 00°23'30" EAST, 588.22 FEET; THENCE SOUTH 89°36'30" WEST, 92.19 FEET; THENCE NORTH 86°16'48" WEST, 40.00 FEET TO A POINT OF CURVATURE; THENCE FROM A TANGENT BEARING SOUTH 03°43'12" WEST, ALONG THE ARC OF A CURVE CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 1522.00 FEET, THROUGH A CENTRAL ANGLE OF 00°32'28", AN ARC DISTANCE OF 14.37 FEET; THENCE SOUTH 89°36'30" WEST, 176.93 FEET; THENCE NORTH 87°02'28" WEST, 40.00 FEET TO A POINT OF CURVATURE; THENCE FROM A TANGENT BEARING SOUTH 02°57'32" WEST, ALONG THE ARC OF A CURVE CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 1518.00 FEET, THROUGH A CENTRAL ANGLE OF 00°03'33", AN ARC DISTANCE OF 1.57 FEET; THENCE SOUTH 89°36'30" WEST, 173.39 FEET TO A POINT OF CURVATURE; THENCE FROM A RADIAL WHICH BEARS SOUTH 87°19'35" EAST, ALONG THE ARC OF A CURVE CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 1478.00 FEET, THROUGH A CENTRAL ANGLE OF 00°23'36", AN ARC DISTANCE OF 10.15 FEET; THENCE NORTH 86°55'58" WEST, 40.00 FEET; THENCE SOUTH 89°36'30" WEST, 77.57 FEET; NORTH 00°23'30" WEST, 5.10 FEET; THENCE NORTH 02°51'42" EAST, 38.06 FEET; THENCE NORTH 00°23'30" WEST, 38.00 FEET; THENCE NORTH 07°53'15" WEST, 38.33 FEET; THENCE NORTH 00°23'30" WEST, 38.00 FEET; THENCE NORTH 25°26'14" EAST, 36.55 FEET; THENCE NORTH 00°23'30" WEST, 8.80 FEET; THENCE NORTH 16°15'27" WEST, 39.50 FEET; THENCE SOUTH 89°36'30" WEST, 84.12 FEET TO A POINT OF CURVATURE; THENCE FROM A RADIAL WHICH BEARS SOUTH 87°41'46" WEST, ALONG THE ARC OF A CURVE CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 1022.00 FEET, THROUGH A CENTRAL ANGLE OF 04°39'39", AN ARC DISTANCE OF 83.14 FEET TO A POINT OF REVERSE CURVATURE; THENCE FROM A RADIAL WHICH BEARS SOUTH 83°02'07" WEST, ALONG THE ARC OF A CURVE CONCAVE NORTHEASTERLY, HAVING A RADIUS OF 1478.00 FEET, THROUGH A CENTRAL ANGLE OF 04°44'11", AN ARC DISTANCE OF 122.18 FEET; THENCE SOUTH 89°36'30" WEST, 142.75 FEET TO THE POINT OF BEGINNING.

When recorded return to:

Saxton, Inc.
5440 W. Sahara Avenue
Third Floor
Las Vegas, Nevada 89146
Attention: General Counsel

CLARK COUNTY, NEVADA
JUDITH A. VANDEVER, RECORDER
RECORDED AT REQUEST OF:

SAXTON INC
07-15-98 13:10 NEL 40
OFFICIAL RECORDS
BOOK: 980715 WST: 01172
FEE: 46.00 RPT: .00

Exhibit 2

Inst #: 201011030002713

Fees: \$18.00 N/C Fee: \$25.00

RPTT: \$367.20 Ex: #

11/03/2010 02:38:27 PM

Receipt #: 565489

Requestor:

NEVADA TITLE LAS VEGAS

Recorded By: MSH Pgs: 6

DEBBIE CONWAY

CLARK COUNTY RECORDER

APN#: 139-08-410-014

RPTT: \$367.20

09-11-029880
Recording Requested By:

Escrow No.: 034887-HUD

HUD Case Num: 332-450637

When Recorded Mail To:

Armando A. Carias

3617 Diamond Spur Ave.

North Las Vegas NV

89032

Mail Tax Statements to: (deeds only)

Armando A. Carias

3617 Diamond Spur Ave.

North Las Vegas NV

89032

(space above for Recorder's use only)

I the undersigned hereby affirm that the attached document, including any exhibits, hereby submitted for recording does not contain the social security number of any person or persons.
(Per NRS 239B.030)

Signature

Karen Carter *EO*
Karen Carter Escrow Officer

Title

Grant, Bargain, and Sale Deed

This page added to provide additional information required by NRS 111.312
(additional recording fee applies)

GRANT, BARGAIN AND SALE DEED

THIS INDENTURE WITNESSETH: That

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

The Secretary of Housing and Urban Development of Washington D.C.

do(es) hereby GRANT(s) BARGAIN SELL and CONVEY to

Armando A. Carias, a single man

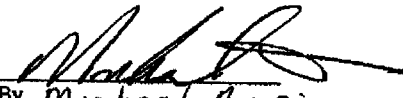
and to the heirs and assigns of such Grantee forever, all the following real property situated in the City of N. Las Vegas, County of Clark State of Nevada bounded and described as follows:

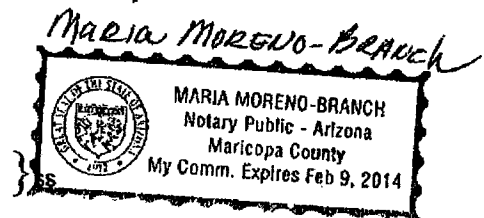
See attached Exhibit A

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

Dated: 10/26/2010

The Secretary of Housing and Urban Development of Washington D.C.


By Michael Bao
Authorized Signer



STATE OF ARIZONA
COUNTY OF

Maricopa

This instrument was acknowledged before me on

10-27-2010

by Michael Bao



Notary Public

Grant, Bargain and Sale Deed – Page 2

CLARIFICATION COPY

The Secretary of Housing and Urban Development of Washington D.C.

By MICHAEL BAO, AUTHORIZED SIGNOR

STATE OF ARIZONA
COUNTY OF MARICOPA

} ss

This instrument was acknowledged before me on

by _____

Notary Public

EXHIBIT "A"

LEGAL DESCRIPTION

PARCEL ONE (1)

LOT SIXTY (60) IN BLOCK ONE (1) OF SUTTER CREEK - PHASE 1, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 85, OF PLATS, PAGE 30, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

PARCEL TWO (2)

A NON EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS ON AND OVER COMMON ELEMENTS, ASSOCIATION PROPERTY AND PRIVATE STREETS, WHICH EASEMENT IS APPURTENANT TO PARCEL ONE (1).

State of Nevada**Declaration of Value Form****1. Assessor Parcel Number(s)**

- a) 139-08-410-014
b) _____
c) _____
d) _____

2. Type of Property:

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

FOR RECORDER'S OPTIONAL USE ONLY

Book: _____ Page: _____
Date of Recording: _____
Notes: _____

- 3 a. Total Value/Sales Price of Property \$72,000.00
b. Deed in Lieu of Foreclosure Only (value of property) _____
c. Transfer Tax Value: \$72,000.00
d. Real Property Transfer Tax Due \$367.20

4. If Exemption Claimed:

- a. Transfer Tax Exemption, per NRS 375.090, Section: _____
b. Explain Reason for Exemption: _____

5. Partial Interest: Percentage being transferred: 100 %

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

Signature: _____

Capacity: AGENT**SELLER (GRANTOR) INFORMATION**
(REQUIRED)**BUYER (GRANTEE) INFORMATION**
(REQUIRED)

Print Name: The Secretary of Housing and
Urban Development of
Washington D.C.
Address: 451 7th Street SW
City: Washington
State: DC Zip: 20410

Print Name: Armando A. Carias
Address: 3617 Diamond Spur Ave.
City: North Las Vegas
State: NV Zip: 89032

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

Print Name: Nevada Title Company Esc. #: 09-11-0298-SD
Address: 2500 N. Buffalo Drive, Suite 150
City: Las Vegas State: NV Zip: 89128

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

Exhibit 3

Inet #: 201302260003889

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

RPTT: \$107.10 Ex: #

02/26/2013 03:47:58 PM

Receipt #: 1512190

Requestor:

ALESSI & KOENIG LLC

Recorded By: JACKSON Pgs: 2

DEBBIE CONWAY

CLARK COUNTY RECORDER

When recorded mail to and
Mail Tax Statements to:
SFR Investments Pool 1, LLC
5030 Paradise Road, St. B-214
Las Vegas, NV 89119

A.P.N. No.139-08-410-014

TS No. 30455-3617

TRUSTEE'S DEED UPON SALE

The Grantee (Buyer) herein was: SFR Investments Pool 1, LLC
The Foreclosing Beneficiary herein was: Sutter Creek Homeowners Association
The amount of unpaid debt together with costs: \$5,260.00
The amount paid by the Grantee (Buyer) at the Trustee's Sale: \$21,000.00
The Documentary Transfer Tax: \$107.10
Property address: 3617 DIAMOND SPUR AVE, NO LAS VEGAS, NV 89032
Said property is in [] unincorporated area: City of NO LAS VEGAS
Trustor (Former Owner that was foreclosed on): ARMANDO A. CARIAS

Alessi & Koenig, LLC (herein called Trustee), as the duly appointed Trustee under that certain Notice of Delinquent Assessment Lien, recorded February 23, 2012 as instrument number 0001691, in Clark County, does hereby grant, without warranty expressed or implied to SFR Investments Pool 1, LLC (Grantee), all its right, title and interest in the property legally described as: SUTTER CREEK-PHASE 1 LOT 60 BLOCK 1, as per map recorded in Book 85, Pages 30 as shown in the Office of the County Recorder of Clark County Nevada.

TRUSTEE STATES THAT:

This conveyance is made pursuant to the powers conferred upon Trustee by NRS 116 et seq., and that certain Notice of Delinquent Assessment Lien, described herein. Default occurred as set forth in a Notice of Default and Election to Sell which was recorded in the office of the recorder of said county. All requirements of law regarding the mailing of copies of notices and the posting and publication of the copies of the Notice of Sale have been complied with. Said property was sold by said Trustee at public auction on February 20, 2013 at the place indicated on the Notice of Trustee's Sale.

Ryan Kerbow, Esq.

Signature of AUTHORIZED AGENT for Alessi & Koenig, LLC

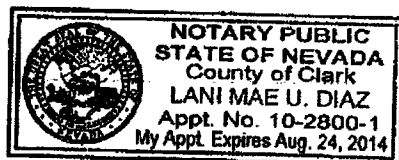
State of Nevada)
County of Clark)

SUBSCRIBED and SWORN to before me

2/26/13

WITNESS my hand and official seal.

(Seal)



(Signature)

**STATE OF NEVADA
DECLARATION OF VALUE**

1. Assessor Parcel Number(s)

- a. 139-08-410-014
b. _____
c. _____
d. _____

2. Type of Property:

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

FOR RECORDERS OPTIONAL USE ONLY

Book _____ Page: _____
Date of Recording: _____
Notes: _____

3. a. Total Value/Sales Price of Property

\$ 21,000.00

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

c. Transfer Tax Value:

\$ 21,000.00

d. Real Property Transfer Tax Due

\$ 107.10

4. If Exemption Claimed:

- a. Transfer Tax Exemption per NRS 375.090, Section _____
b. Explain Reason for Exemption: _____

5. Partial Interest: Percentage being transferred: 100 %

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

Signature [Signature] Capacity: Grantor

Signature _____ Capacity: _____

**SELLER (GRANTOR) INFORMATION
(REQUIRED)**

Print Name: Alessi & Keonig LLC
Address: 9500 W Flamingo Rd., Suite 205
City: Las Vegas
State: NV Zip: 89147

**BUYER (GRANTEE) INFORMATION
(REQUIRED)**

Print Name: SFR Investments Pool 1, LLC
Address: 5030 Paradise Road, St. B-214
City: Las Vegas
State: NV Zip: 89119

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

Print Name: Alessi & Keonig LLC
Address: 9500 W Flamingo Rd., Suite 205
City: Las Vegas

Escrow # N/A Foreclosure
State: NV Zip: 89147

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

1 **IAFD**

2 Ryan Kerbow, Esq.
3 Nevada Bar No. 11403
4 Bradley D. Bace, Esq.
5 Nevada Bar No. 12684
6 ALESSI & KOENIG, LLC
7 9500 W. Flamingo, Suite 205
8 Las Vegas, Nevada 89147
9 Phone: (702) 222-4033
10 Fax: (702) 222-4043
11 ryan@alessikoenig.com
12 brad@alessikoenig.com
13 Attorneys for Plaintiff

8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

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

12
13 Plaintiff,

14 vs.

15 ARMANDO A. CARIAS, an individual,
16 BANK OF AMERICA, N.A., SUCCESSOR
17 BY MERGER TO BAC HOME LOANS
18 SERVICING, LP FKA COUNTRYWIDE
19 HOME LOANS SERVICING, LP, unknown
20 entity; DOES INDIVIDUALS I-X, inclusive;
21 and ROE CORPORATIONS XI-XXX
22 inclusive,

23 Defendants.

Case No.
Dept. No.

24 **INITIAL APPEARANCE FEE DISCLOSURE (NRS CHAPTER 19)**

25 Pursuant to NRS Chapter 19, as amended by Senate Bill 106, filing fees are submitted for
26 parties appearing in the above entitled action as indicated below:

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

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\$270.00

TOTAL REMITTED: (Required)

\$270.00

DATED this 1st day of July, 2013.

ALESSI & KOENIG, LLC

/s/ Bradley D. Bace
Ryan Kerbow, Esq.
Nevada Bar No. 11403
Bradley D. Bace, Esq.
Nevada Bar No. 12684
ALESSI & KOENIG, LLC
9500 W. Flamingo, Suite 205
Las Vegas, Nevada 89147
Phone: (702) 222-4033
Fax: (702) 222-4043
Attorney for Plaintiff

NH. 119.01.c1

Sumner

CH. 205.05.19

IN THE SUPREME COURT OF THE STATE OF NEVADA

BANK OF AMERICA, N.A., successor by
merger to BAC HOME LOANS SERVICING,
LP, a national association,
Petitioner,
v.

SFR INVESTMENTS POOL 1, LLC, a Nevada
Limited Liability Company,
Respondent.

No. 70501

Electronically Filed
Jun 30 2016 08:59 a.m.
T. Andrew Lindeman
Clerk of Supreme Court
DOCKETING STATEMENT
CIVIL APPEALS

GENERAL INFORMATION

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

WARNING

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

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

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

Revised December 2015

1. Judicial District Eighth

Department XXI

County Clark

Judge Hon. Valarie Adair

District Ct. Case No. A-13-684501-C

2. Attorney filing this docketing statement:

Attorney Thera Cooper Telephone 702-634-5000

Firm Akerman LLP

Address 1160 Town Center Dr., Ste. 330
Las Vegas, NV 89144

Client(s) Bank of America, N.A.

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

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

Attorney Diana Cline Ebron Telephone 702-485-3300

Firm Kim Gilbert Ebron

Address 7625 Dean Martin Dr., Ste. 110
Las Vegas, NV 89139

Client(s) SFR Investments Pool 1, LLC

Attorney _____ Telephone _____

Firm _____

Address _____

Client(s) _____

(List additional counsel on separate sheet if necessary)

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

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

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

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

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

Although this case involves familiar issues regarding the interpretation and application of NRS 116.3116, there are no other cases or proceedings presently or previously pending before this court directly related to this appeal.

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

Other than the underlying trial court action, there are no other cases or proceedings presently or previously pending directly related to this appeal.

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

Respondent alleges that it owns the property located at 3617 Diamond Spur Avenue, Las Vegas, Nevada (Property) free and clear of all liens as a result of an HOA foreclosure sale. Respondent filed an Answer, Counterclaim and Cross-Claim for quiet title and injunctive relief to have the court declare that Respondent bought the Property free and clear of Bank of America's interests, including the deed of trust held by Bank of America (Deed of Trust). Bank of America alleges that the Deed of Trust was not extinguished by the HOA foreclosure sale because its attempted tender satisfied the tender rule, the foreclosure sale was not commercially reasonable, and NRS 116.3116 is unconstitutional. The district court granted Respondent's motion for summary judgment over Appellants' opposition and denied Appellant's counter-motion for summary judgment. Bank of America now appeals that order.

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

- 1) Whether Bank of America's offer to pay the super-priority amount satisfied the tender doctrine and thus extinguished that portion of the HOA's lien prior to the foreclosure sale?
- 2) Whether NRS 116 is facially unconstitutional?
- 3) Whether NRS 116 is unconstitutional as applied because the HOA Trustee refused to identify the super-priority amount?
- 4) Whether NRS 116 is unconstitutional as applied to FHA-insured deeds of trust?
- 5) Whether the HOA sale is void as commercially unreasonable based on inadequacy of price? and
- 6) Whether recitals of compliance with the notice requirements of NRS 116 in a trustee's deed are sufficient to establish compliance as a matter of law?

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

This case is similar to many others currently pending before the Nevada Supreme Court in that it raises several issues regarding the application and enforceability of NRS 116.3116 (as it existed before amended by the Nevada Legislature in 2015).

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

☐ N/A

☒ Yes

☐ No

If not, explain:

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

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

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

☒ A substantial issue of first impression

☐ An issue of public policy

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

☐ A ballot question

If so, explain:

This appeal involves several significant issues related to NRS 116.3116. The appellant does not seek reversal of any part of this Court's recent decision construing NRS 116.3116 in *SFR Investments Pool 1, LLC v. U.S. Bank, N.A.*, 334 P.3d 408 (Nev. 2014); however, a decision regarding the issues in this appeal could be binding on many other pending cases.

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

This matter should be retained by the Supreme Court pursuant to NRAP 17(a)(13), as it presents as a principal issue the questions of first impression whether NRS 116.3116 is facially unconstitutional and whether a tender offer of nine months of assessments and collection costs extinguished the HOA's superpriority lien.

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

Was it a bench or jury trial? N/A

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

No

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from April 27, 2016

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

17. Date written notice of entry of judgment or order was served April 27, 2016

Was service by:

☐ Delivery

☒ Mail/electronic/fax

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

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

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☐ NRCP 59 Date of filing _____

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

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

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

Was service by:

☐ Delivery

☐ Mail

19. Date notice of appeal filed May 24, 2016

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

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

- NRAP 4(a)

SUBSTANTIVE APPEALABILITY

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

(a)

☒ NRAP 3A(b)(1)

☐ NRS 38.205

☐ NRAP 3A(b)(2)

☐ NRS 233B.150

☐ NRAP 3A(b)(3)

☐ NRS 703.376

☐ Other (specify) _____

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

The Court's April 28, 2016 order granted summary judgment for Respondent and against appellant. Accordingly, it is a final judgment that is appealable under NRAP 3A(b)(1).

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

(a) Parties:

Bank of America

SFR Investments Pool 1, LLC

Alessi & Koenig, LLC

Sutter Creek Homeowner's Association

Armando Carias

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

Armando Carias was voluntarily dismissed from this action on June 10, 2014.

Alessi & Koenig, LLC and Sutter Creek Homeowner's Association joined Respondent's Motion for Summary Judgment; the district court granted the motion.

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

Judgment was granted in favor of Respondent on its claims for quiet title and declaratory relief on April 18, 2016.

No other parties alleged any claims.

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

☒ Yes

☐ No

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

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

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

☐ Yes

☐ No

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

☐ Yes

☐ No

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

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

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

VERIFICATION

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

Bank of America, N.A.
Name of appellant

Thera Cooper
Name of counsel of record

June 29, 2016
Date

/s/ Thera Cooper
Signature of counsel of record

Clark County, NV
State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 29th day of June, 2016, I served a copy of this completed docketing statement upon all counsel of record:

☐ By personally serving it upon him/her; or

☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Diana Cline Ebron
KIM GILBERT EBRON
7625 Dean Martin Dr., Ste. 110
Las Vegas, NV 89139

Dated this 29th day of June, 2016.

/s/ Carla Llarena
Signature