

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

WEST SUNSET 2050 TRUST, a  
Nevada Trust,

Appellant,

vs.

NATIONSTAR MORTGAGE, LLC, a  
Foreign Limited Liability Company,

Respondent.

Supreme Court Case No. 70754

Electronically Filed  
Nov 10 2016 04:00 p.m.  
District Court Case No. A791323  
Elizabeth A. Brown  
Clerk of Supreme Court

**APPELLANT'S MOTION FOR LEAVE TO SUPPLEMENT  
RESPONSE TO AUGUST 29, 2016 ORDER TO SHOW CAUSE**

Appellant West Sunset 2050 Trust ("West Sunset") hereby respectfully moves for leave to supplement its response filed on September 29, 2016 to the Court's August 29, 2016 order to show cause. This motion is based upon the following memorandum of points and authorities and the declaration of counsel filed and served concurrently herewith.

**MEMORANDUM OF POINTS AND AUTHORITIES**

By way of background, this appeal concerns the district court's order entered on February 8, 2016 (the "Order"), which rendered judgment in favor of respondent Nationstar Mortgage, LLC ("Nationstar") on its counterclaims and cross-claims and against West Sunset on its claims against Nationstar. West Sunset timely noticed its appeal of the Order on July 1, 2016; however, defendants New Freedom Mortgage Corporation ("New Freedom"), Bank of America, N.A. ("BANA"), and Stephanie

Tablante (“Tablante”) are not parties to the appeal.

On August 29, 2016, this Court ordered West Sunset to show cause within thirty days as to why the appeal should not be dismissed for lack of jurisdiction. West Sunset was further ordered to support its response with “documentation that establishes this court’s jurisdiction including, but not necessarily limited to, an order properly certifying the order as final pursuant to NRCP 54(b).”

Accordingly, West Sunset submitted to the district court a motion on an order shortening time, requesting that a final judgment be entered pursuant to NRCP 54(b) and that any remaining claims be stayed pending conclusion of appeal. *See* Declaration of Margaret E. Schmidt (“Schmidt Decl.”) at ¶ 5. The order shortening time was executed by the district court on October 7, 2016 and the hearing set for October 26, 2016 at 9:30 a.m. *Id.* at ¶ 6.

Because the motion would not be heard until twenty-seven days after the deadline to file a response to the order to show cause, West Sunset timely filed its response to the order to show cause on September 29, 2016 and referenced the pending hearing. *See* Response to Order to Show Cause at pp. 2, 7, 15-16. Nationstar received a copy of West Sunset’s motion on October 12, 2016; however, no opposition was filed. *See* Schmidt Decl. at ¶ 8.

At the October 26, 2016 hearing on West Sunset’s motion, the district court noted the lack of opposition from Nationstar and found that the matter was proper

for NRCP 54(b) certification. *Id.* at ¶ 9. Additionally, no appearance was made on Nationstar's behalf at the time of the hearing. *Id.* at ¶ 10.

The order granting West Sunset's motion was entered in the district court on November 9, 2016 and noticed on November 10, 2016. *Id.* at ¶ 11. Pursuant to this order, the district court found that its prior Order completely removed Nationstar from the litigation and effectively resolved West Sunset's remaining claim for declaratory relief/quiet title against BANA, New Freedom and Tablante. *Id.* Thus, for good cause: (1) the Order was amended to include a certification of final judgment pursuant to NRCP 54(b); (2) the district court expressly determined that there was no just reason to delay appellate review and directed that the Order constitute a final judgment pursuant to NRCP 54(b) with respect to fewer than all of the parties in this case; and (3) stayed West Sunset's remaining claim for declaratory relief/quiet title against BANA, New Freedom and Tablante pending the conclusion of West Sunset's appeal. *Id.*

In the interim, on October 27, 2016, counsel for BANA contacted West Sunset's counsel, and requested BANA's dismissal from the underlying litigation based on its representations that it no longer claims an interest in the subject property. *Id.* at ¶ 12. The parties are currently in discussions as to the terms of BANA's dismissal, and expect a stipulation and order to be filed with the district court shortly. *Id.* at ¶ 13.

NRAP 26(a)(1)(A) provides that “[f]or good cause, the court may extend the time prescribed by these Rules or by its order to perform any act, or may permit an act to be done after that time expires.” In this matter, West Sunset was ordered to justify this Court’s jurisdiction with supporting documentation. A stipulated order dismissing BANA from the litigation and the district court’s subsequent NRCP 54(b) certification provides a basis upon which to exercise jurisdiction over this appeal and is an important factor for this Court to consider.<sup>1</sup> Thus, granting West Sunset leave to supplement its prior response to the order to show cause with such information will serve only to assist the Court in its evaluation.

Moreover, no significant delay will result from granting such relief, nor will any prejudice result. The briefing schedule has been suspended pending further order of the Court and Nationstar has not voiced any opposition to the Court’s jurisdiction over this appeal. Thus, West Sunset’s supplemental response will not prejudice Nationstar’s ability to brief and defend this appeal. As the requested relief

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<sup>1</sup> An order containing NRCP 54(b) certification is sufficient to validate a prematurely filed notice of appeal. See NRAP 4(a)(6) (providing that, generally, a premature notice of appeal will be deemed filed after an appealable written order is entered). Pursuant to this Court, “the prematurity of the notice of appeal should be treated as a technical defect not affecting substantial rights.” *Knox v. Dick*, 99 Nev. 514, 516-17, 665 P.2d 267, 269 (1983) (citing *Firchau v. Diamond National Corporation*, 345 F.2d 269 (9th Cir. 1965)). Thus, when a trial court “enters an order which corrects the defect in appealability, a notice of appeal from the first order will be regarded as directed to the subsequently-entered final judgment.” *Id.* at 517; see also *Anderson v. Allstate Ins. Co.*, 630 F.2d 677, 681 (9th Cir. 1980) (“[S]ubsequent events can validate a prematurely filed appeal.”).

was brought in good faith to assist the Court, but will not prejudice any party to the appeal, good cause exists to grant West Sunset's motion.

### **CONCLUSION**

Based on the foregoing, West Sunset respectfully requests leave to supplement its prior response to the order to show cause with a copy of the district court's NRCP 54(b) certification and any order dismissing BANA from the underlying litigation.

DATED this 10<sup>th</sup> day of November, 2016.

Respectfully submitted,  
**MAIER GUTIERREZ AYON**

/s/ Margaret E. Schmidt  
LUIS A. AYON, ESQ.  
Nevada Bar No. 9752  
MARGARET E. SCHMIDT, ESQ.  
Nevada Bar No. 12489  
8816 Spanish Ridge Avenue  
Las Vegas, Nevada 89148  
*Attorneys for Appellant West Sunset  
2050 Trust*

**DECLARATION OF MARGARET E. SCHMIDT, ESQ. IN SUPPORT OF  
APPELLANT'S MOTION FOR LEAVE TO SUPPLEMENT  
RESPONSE TO AUGUST 29, 2016 ORDER TO SHOW CAUSE**

I, MARGARET E. SCHMIDT, ESQ., hereby declare as follows:

1. I am an associate at the law firm of MAIER GUTIERREZ AYON, and counsel of record for appellant West Sunset 2050 Trust ("West Sunset"). I am knowledgeable of the facts contained herein and am competent to testify thereto.

2. I make this declaration in support of West Sunset's motion to supplement its response filed on September 29, 2016 to the Court's August 29, 2016 order to show cause.

3. This appeal concerns the district court's order entered on February 8, 2016 (the "Order"), which rendered judgment in favor of respondent Nationstar Mortgage, LLC ("Nationstar") on its counterclaims and cross-claims and against West Sunset on its claims against Nationstar.

4. West Sunset timely noticed its appeal of the Order on July 1, 2016; however, defendants New Freedom Mortgage Corporation ("New Freedom"), Bank of America, N.A. ("BANA"), and Stephanie Tablante ("Tablante") are not parties to the appeal.

5. On September 28, 2016, West Sunset submitted a motion for final judgment on an order shortening time to the district court, requesting that a final judgment be entered pursuant to NRCP 54(b) and that any remaining claims be

stayed pending conclusion of appeal.

6. The order shortening time was executed by the district court on October 7, 2016 and the hearing set for October 26, 2016 at 9:30 a.m. A true and correct copy of the Motion and Order Shortening Time, without exhibits, is attached hereto as **Exhibit 1**.

7. Because the motion would not be heard until twenty-seven days after the deadline to file a response to the order to show cause, a response to the order to show cause was timely filed in this Court on September 29, which referenced the pending hearing in the district court.

8. Nationstar received a copy of West Sunset's motion on October 12, 2016; however, no opposition was filed. A true and correct copy of the Receipt of Copy is attached hereto as **Exhibit 2**.

9. At the October 26, 2016 hearing on West Sunset's motion, the district court noted the lack of opposition from Nationstar and found that the matter was proper for NRCP 54(b) certification.

10. No appearance was made on Nationstar's behalf at the hearing.

11. The order granting West Sunset's motion was entered in the district court on November 9, 2016 and noticed on November 10, 2016. A true and correct copy of the Notice of Entry of Order is attached hereto as **Exhibit 3**.

///

12. On October 27, 2016, counsel for BANA contacted me, and requested BANA's dismissal from the underlying litigation based on her representations that BANA no longer claims an interest in the subject property.

13. The parties are currently in discussions as to the terms of BANA's dismissal, and expect a stipulation and order to be filed with the district court shortly.

14. The instant motion for leave to supplement is brought in good faith and not for purposes of delay.

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct to the best of my knowledge, information and belief.

EXECUTED this 10<sup>th</sup> day of November, 2016.

  
MARGARET E. SCHMIDT, ESQ.

**CERTIFICATE OF SERVICE**

I certify that on the 10<sup>th</sup> day of November, 2016, this document was electronically filed with the Nevada Supreme Court, thus electronic service of the foregoing **APPELLANT'S MOTION FOR LEAVE TO SUPPLEMENT RESPONSE TO AUGUST 29, 2016 ORDER TO SHOW CAUSE** shall be made in accordance with the Master Service List as follows:

Ariel E. Stern, Esq.  
Allison R. Schmidt, Esq.  
AKERMAN LLP  
1160 Town Center Drive, Suite 330  
Las Vegas, Nevada 89144  
*Attorneys for Respondent Nationstar Mortgage LLC*

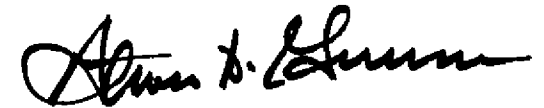
DATED this 10<sup>th</sup> day of November, 2016.

*/s/ Charity Johnson*

\_\_\_\_\_  
An employee of MAIER GUTIERREZ AYON

# **EXHIBIT 1**

# **EXHIBIT 1**



CLERK OF THE COURT

**MOT**  
LUIS A. AYON, ESQ.  
Nevada Bar No. 9752  
MARGARET E. SCHMIDT, ESQ.  
Nevada Bar No. 12489  
**MAIER GUTIERREZ AYON**  
8816 Spanish Ridge Avenue  
Las Vegas, Nevada 89148  
Telephone: 702.629.7900  
Facsimile: 702.629.7925  
E-mail: [laa@mgalaw.com](mailto:laa@mgalaw.com)  
[mes@mgalaw.com](mailto:mes@mgalaw.com)

*Attorneys for Plaintiff/Counter-Defendant  
West Sunset 2050 Trust*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

WEST SUNSET 2050 TRUST, a Nevada Trust

Plaintiff,

vs.

NEW FREEDOM MORTGAGE  
CORPORATION, a Foreign Corporation;  
BANK OF AMERICA, N.A., a National  
Association; NATIONSTAR MORTGAGE  
LLC, a Foreign Limited Liability Company,  
COOPER CASTLE LAW FIRM, LLP, a  
Nevada Limited Liability Partnership  
STEPHANIE TABLANTE, an individual,  
DOES I through X; and ROE  
CORPORATIONS I through X, inclusive,

Defendants.

AND ALL RELATED CLAIMS.

Case No.: A-13-691323-C

Dept. No.: XXI

**MOTION FOR FINAL JUDGMENT  
PURSUANT TO RULE 54(B) AND TO  
STAY REMAINING CLAIMS PENDING  
CONCLUSION OF APPEAL ON AND  
ORDER SHORTENING TIME**

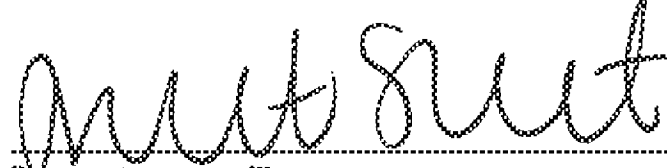
Plaintiff/counter-defendant West Sunset 2050 Trust ("West Sunset"), by and through its counsel of record, the law firm MAIER GUTIERREZ AYON, hereby files this motion for final judgment pursuant to Rule 54(b) and to stay remaining claims pending conclusion of appeal on an order shortening time. This motion is made and based upon the following memorandum of points and

1 authorities, the declaration and exhibits attached hereto, the papers and pleadings on file herewith  
2 and any oral argument of counsel at the time of the hearing.

3 DATED this 28<sup>th</sup> day of September, 2016.

4 Respectfully submitted,

5 MAIER GUTIERREZ AYON

6 

7 LUIS AYON, ESQ.

8 Nevada Bar No. 9752

9 MARGARET E. SCHMIDT, ESQ.

10 Nevada Bar No. 12489

11 8816 Spanish Ridge Avenue

12 Las Vegas, Nevada 89148

13 *Attorneys for Plaintiff/Counter-Defendant*

14 *West Sunset 2050 Trust*

1                    **DECLARATION OF COUNSEL IN SUPPORT OF ORDER SHORTENING TIME**

2                    I, MARGARET E. SCHMIDT, ESQ., hereby declare as follows:

3                    1.        I am an attorney with the law firm of MAIER GUTIERREZ AYON, counsel for West  
4                    Sunset. I am knowledgeable of the facts contained herein and am competent to testify thereto.

5                    2.        I make this declaration pursuant to EDCR 2.26 and Nev. R. Civ. P. 6(d) and in  
6                    support of West Sunset's motion for a final judgment pursuant to Rule 54(b) and to stay remaining  
7                    claims pending conclusion of appeal (the "Motion") on an order shortening time ("OST").

8                    3.        The instant Motion is brought so that the Court may expressly certify the February 8,  
9                    2016 order granting Nationstar Mortgage, LLC's ("Nationstar") countermotion for summary  
10                   judgment and denying West Sunset's motion for summary judgment (the "Order") as final, and to  
11                   stay any remaining claims so that West Sunset may be able to proceed with its appeal.

12                   4.        On November 6, 2013, West Sunset initiated this litigation, alleging claims for: (1)  
13                   declaratory relief/quiet title against New Freedom Mortgage Corporation ("New Freedom"),  
14                   Nationstar, Bank of America, N.A. ("BANA"), The Cooper Castle Law Firm, LLP ("Cooper  
15                   Castle"), and Stephanie Tablante ("Tablante"); and (2) preliminary and permanent injunction  
16                   against Nationstar and Cooper Castle. *See* Complaint, attached hereto as Exhibit 1.

17                   5.        On May 20, 2014, Nationstar answered West Sunset's complaint and alleged  
18                   counterclaims and cross-claims for: (1) quiet title against West Sunset and Tablante; (2) declaratory  
19                   relief against West Sunset and Tablante; (3) slander of title against Tablante; (4) breach of contract  
20                   against Tablante; (5) breach of implied covenant of good faith and fair dealing against Tablante;  
21                   and (6) unjust enrichment against West Sunset. *See* Answer, Counterclaim and Cross-Claim,  
22                   attached hereto as Exhibit 2.

23                   6.        Following Tablante and New Freedom's failure to make an appearance in this  
24                   litigation, defaults were entered against them on July 29, 2015 on West Sunset's claims for relief;  
25                   however, default judgments have not been entered. *See* Defaults, attached hereto as Exhibit 3.

26                   7.        Cooper Castle was dismissed from the case via an order entered by the Court on  
27                   February 3, 2014. *See* Notice of Entry of Order, attached hereto as Exhibit 4.

28                   ///

1           8.       On May 22, 2015, West Sunset filed its motion for summary judgment, arguing that  
2 West Sunset holds superior title to all defendants in this action because the Deed in Lieu and the  
3 HOA foreclosure sale extinguished all other interests the defendants may have previously held.  
4 Therefore, West Sunset requested that summary judgment be entered in its favor on all its claims as  
5 well as all of Nationstar's counterclaims. *See* Motion for Summary Judgment, on file.

6           9.       Nationstar and BANA filed their opposition to West Sunset's motion on June 10,  
7 2015 and counter-moved for entry of summary judgment on Nationstar counterclaims/cross-claims,  
8 arguing in part that the HOA foreclosure sale did not extinguish the Deed of Trust and was void for  
9 being unconstitutional and commercially unreasonable. *See* Opposition and Countermotion for  
10 Summary Judgment, on file.

11          10.      On February 8, 2016, the Court entered its Order denying West Sunset's motion for  
12 summary judgment and granting Nationstar's countermotion for summary judgment, which was  
13 noticed on February 16, 2016. *See* Notice of Entry of Order, attached hereto as **Exhibit 5**.

14          11.      Following a denial of West Sunset's motion for reconsideration, on July 1, 2016,  
15 West Sunset noticed its appeal of the Order.

16          12.      West Sunset's appeal was assigned to the NRAP 16 settlement program; however,  
17 the settlement judge recommended that the appeal be removed from the settlement program and  
18 briefing was reinstated. *See* Order Removing from Settlement Program and Reinstating Briefing,  
19 attached hereto as **Exhibit 6**.

20          13.      On August 29, 2016, the Nevada Supreme Court issued an order to show cause as to  
21 why the appeal should not be dismissed for lack of jurisdiction, as it appears that the Court has not  
22 entered a final written judgment adjudicating all the rights and liabilities of all the parties, and the  
23 Order has not been certified as final pursuant to NRCP 54(b). *See* Order to Show Cause, p. 1,  
24 attached hereto as **Exhibit 7**.

25          14.      The deadline to respond to the order to show cause is September 28, 2016. *Id.* at p.  
26 2.

27          15.      In light of the Nevada Supreme Court's order to show cause, a final judgment is  
28 necessary for West Sunset to proceed with its appeal.

16. Accordingly, I have contacted counsel of record for Nationstar and BANA on numerous occasions requesting a stipulation to certify the Order as a final judgment, and prepared a proposed stipulation for Nationstar and BANA's approval. See Emails, attached hereto as Exhibit 8; *see also* Proposed Stipulation and Order, attached hereto as Exhibit 9.

17. I also informed opposing counsel that I would file the instant Motion if I did not receive her client's approval of the proposed stipulation and order by September 27, 2016; however, to date, opposing counsel has not responded. See Ex. 8.

18. Nationstar and BANA are therefore on notice of the relief being sought herein and their counsel will be emailed a copy of this motion once filed.

19. Moreover, if the requested order shortening time is granted, it will be promptly served along with the instant Motion by an acceptable method on all parties pursuant to the requirements of EDCR 2.26, EDCR 7.26 and Nev. R. Civ. P. 5(b).

20. Based on the foregoing, the requirements of Nev. R. Civ. P. 65(b), NRS 33.010 and EDCR 2.26 have been met and the circumstances described above constitute good cause for the shortening of time to hear West Sunset's Motion.

21. This declaration and Motion is made in good faith and not for purposes of delay.

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct to the best of my knowledge, information and belief.

EXECUTED this 28<sup>th</sup> day of September, 2016.

MARGARET E. SCHMIDT, ESO.

ORDER SHORTENING TIME

IT IS HEREBY ORDERED, that the MOTION FOR FINAL JUDGMENT PURSUANT TO RULE 54(B) AND TO STAY REMAINING CLAIMS PENDING CONCLUSION OF APPEAL shall be heard on the 26<sup>th</sup> day of October, 2016, at the hour of 9:30 a.m./p.m., or as soon as the matter may be heard by the Court.

IT IS FURTHER ORDERED that an opposition, if the opposing parties desire to file one, shall be filed and served on or before October 18<sup>th</sup>. A reply shall be filed and served on or before October 21<sup>st</sup>.

DATED this 7<sup>th</sup> day of October, 2016.

Valerie Adams  
DISTRICT COURT JUDGE

EW

Respectfully submitted by:

MAIER GUTIERREZ AYON

M. Gutierrez Ayon  
LUIS A. AYON, ESQ.

Nevada Bar No. 9752

MARGARET E. SCHMIDT, ESQ.

Nevada Bar No. 12489

8816 Spanish Ridge Avenue

Las Vegas, Nevada 89148

Attorneys for Plaintiff/Counter-Defendant

West Sunset 2050 Trust

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1 via an order entered on February 3, 2014. *See* Ex. 4.

2 On May 22, 2015, West Sunset filed its motion for summary judgment, arguing that West  
3 Sunset holds superior title to all defendants in this action because the Deed in Lieu and the HOA  
4 foreclosure sale extinguished all other interests the defendants may have previously held. Therefore,  
5 West Sunset requested that summary judgment be entered in its favor on all its claims as well as all  
6 of Nationstar's counterclaims. Nationstar and BANA filed their opposition to West Sunset's motion  
7 on June 10, 2015 and counter-moved for entry of summary judgment on Nationstar  
8 counterclaims/cross-claims, arguing in part that the HOA foreclosure sale did not extinguish the  
9 Deed of Trust and was void for being unconstitutional and commercially unreasonable.

10 Following a hearing on the matter, on July 24, 2015, the Court issued a minute order denying  
11 West Sunset's motion for summary judgment, and granting only Nationstar's countermotion for  
12 summary judgment (despite BANA's inclusion as a party in the opposition and countermotion for  
13 summary judgment). The Order memorializing the Court's minute order was filed on February 8,  
14 2016 and noticed on February 16, 2016. *See* Ex. 5.

15 Pursuant to the Order, the Court concluded as follows: (1) Nationstar and BANA were  
16 entitled to receive the HOA foreclosure notices as the Deed of Trust could be effected by the HOA's  
17 sale; (2) Tablante's Deed in Lieu was a false recording and did not strip the beneficiary of the Deed  
18 of Trust of its property rights; (3) the HOA's agent failed to provide any foreclosure notices to the  
19 beneficiary of the Deed of Trust, thereby depriving the beneficiary of the right to cure the  
20 delinquency; and (4) absent the requisite notices, the foreclosure sale did not extinguish the Deed of  
21 Trust. *See* Ex. 5.

22 On March 4, 2016, West Sunset filed a motion for reconsideration pursuant to NRCP 59(e),  
23 which was denied by an order entered on May 31, 2016 and noticed on June 3, 2016. Thereafter, on  
24 July 1, 2016, West Sunset noticed its appeal of the Order. Following assignment of the appeal to the  
25 NRAP 16 settlement program, the settlement judge recommended that the appeal be removed from  
26 the settlement program and briefing was reinstated. *See* Ex. 6.

27 On August 29, 2016, the Nevada Supreme Court issued an order to show cause as to why the  
28 appeal should not be dismissed for lack of jurisdiction, as it appears that the Court has not entered a

1 final written judgment adjudicating all the rights and liabilities of all the parties, and the Order has  
2 not been certified as final pursuant to NRCP 54(b). See Ex. 7, p. 1. In light of the Nevada Supreme  
3 Court's order to show cause, and because multiple parties are involved, a final judgment is  
4 necessary for West Sunset to proceed with its appeal.

## 5 II. LEGAL ARGUMENT

6 The Nevada Supreme Court has jurisdiction to review "a final judgment entered in an action  
7 or proceeding commenced in the court in which the judgment is rendered." NRAP 3A(b)(1).  
8 "[W]hen multiple parties are involved in an action, a judgment is not final unless the rights and  
9 liabilities of all parties are adjudicated." *Rae v. All Am. Life & Cas. Co.*, 95 Nev. 920, 922, 605 P.2d  
10 196, 197 (1979).

11 There is, however, a vehicle under which a plaintiff may obtain a judgment that is  
12 immediately appealable. Rule 54(b) of the Nevada Rules of Civil Procedure provides that "[w]hen  
13 multiple parties are involved, the court may direct the entry of a final judgment as to one or more  
14 but fewer than all of the parties only upon an express determination that there is no just reason for  
15 delay and upon an express direction for the entry of judgment." NRCP 54(b); see also  
16 *Hallicrafters Co. v. Moore*, 102 Nev. 526, 528, 728 P.2d 441, 442 (1986) ("[A] judgment or order  
17 of the district court which completely removes a party or a claim from a pending action may be  
18 certified as final 'only upon an express determination that there is no just reason for delay.'").

19 Upon considering a request to certify a judgment based on the elimination of a party, the  
20 district court should: (1) "consider the prejudice to that party in being forced to wait to bring its  
21 appeal"; and (2) "consider the prejudice to the parties remaining below if the judgment is certified  
22 as final." *Mallin v. Farmers Ins. Exch.*, 106 Nev. 606, 611, 797 P.2d 978, 981 (1990).

23 "Because the district court is in the best position to consider the above factors, a  
24 certification of finality pursuant to NRCP 54(b) based on the elimination of a party will be  
25 presumed valid and will be upheld by this court absent a gross abuse of discretion." *Id.* at 981-82.  
26 In order to prevent piecemeal appeals, "the standard against which a district court's exercise of  
27 discretion is to be judged is the 'interest of sound judicial administration.'" *Curtiss-Wright Corp.*  
28 *v. Gen. Elec. Co.*, 446 U.S. 1, 10, 100 S. Ct. 1460 (1980) (quoting *Sears, Roebuck & Co. v.*

1 *Mackey*, 351 U.S. 427, 437, 76 S. Ct. 895 (1956)).<sup>1</sup> Thus, “the proper role of the court of appeals  
2 is not to reweigh the equities or reassess the facts but to make sure that the conclusions derived  
3 from those weighings and assessments are juridically sound and supported by the record.” *Id.*

4 Here, the Court’s Order entered judgment on all of Nationstar’s counterclaims/cross-claims  
5 as well as West Sunset’s claims against Nationstar, thereby removing Nationstar from the litigation.  
6 Moreover, the conclusions arrived at by the Court in denying West Sunset’s motion for summary  
7 judgment effectively resolved its remaining claim for declaratory relief/quiet title against BANA,  
8 New Freedom and Tablante. Therefore, no important issues remain below that must be resolved  
9 prior to the Nevada Supreme Court’s consideration of the issues on appeal, nor would piecemeal  
10 litigation result by certifying the Order as final.

11 On the other hand, requiring the Parties to continue litigation on such claims whose  
12 resolution has already been determined by reasonable inference of the Court’s Order would be an  
13 inefficient use of judicial resources. Additionally, New Freedom and Tablante have not participated  
14 in this matter and West Sunset has already obtained defaults against them on its claims.  
15 Accordingly, no prejudice will result to the remaining claims pending below and there is no just  
16 reason to delay West Sunset’s appeal. The Court may enter a final appealable judgment pursuant to  
17 Rule 54(b) and stay the remaining claim against BANA, New Freedom and Tablante for declaratory  
18 relief/quiet title pending the outcome of West Sunset’s appeal.

### 19 III. CONCLUSION

20 Based on the foregoing, West Sunset respectfully requests that the Court amend the February  
21 8, 2016 Order to: (1) include a certification of final judgment pursuant to NRCP 54(b); (2) expressly  
22 determine that there is no just reason to delay appellate review and direct that the Order constitute a  
23 final judgment pursuant to Rule 54(b) with respect to fewer than all of the parties in this case; and  
24 (3) stay West Sunset’s remaining claim for declaratory relief/quiet title against BANA, New  
25

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26 <sup>1</sup> The Nevada Supreme Court has held that “[f]ederal cases interpreting the Federal Rules of Civil  
27 Procedure ‘are strong persuasive authority, because the Nevada Rules of Civil Procedure are based  
28 in large part upon their federal counterparts.’” *Executive Mgmt., Ltd. v. Ticor Title Ins. Co.*, 118  
Nev. 46, 53, 38 P.3d 872, 876 (2002) (quoting *Las Vegas Novelty v. Fernandez*, 106 Nev. 113, 119,  
787 P.2d 772, 776 (1990)).

1 Freedom and Tablante pending the conclusion of West Sunset's appeal.

2 DATED this 28<sup>th</sup> day of September, 2016.

3 Respectfully submitted,

4 MAIER GUTIERREZ AYON

5 

6 LUIS AYON, ESQ.

7 Nevada Bar No. 9752

8 MARGARET E. SCHMIDT, ESQ.

9 Nevada Bar No. 12489

10 8816 Spanish Ridge Avenue

11 Las Vegas, Nevada 89148

12 *Attorneys for Plaintiff/Counter-Defendant*

13 *West Sunset 2050 Trust*

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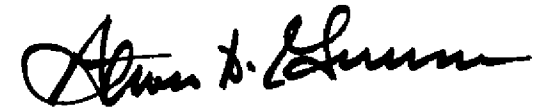
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# **EXHIBIT 2**

# **EXHIBIT 2**



CLERK OF THE COURT

1 **ROC**  
LUIS A. AYON, ESQ.  
2 Nevada Bar No. 9752  
MARGARET E. SCHMIDT, ESQ.  
3 Nevada Bar No. 12489  
**MAIER GUTIERREZ AYON**  
4 8816 Spanish Ridge Avenue  
Las Vegas, Nevada 89148  
5 Telephone: (702) 629-7900  
Facsimile: (702) 629-7925  
6 E-mail: [laa@mgalaw.com](mailto:laa@mgalaw.com)  
[mes@mgalaw.com](mailto:mes@mgalaw.com)

7  
8 *Attorneys for Plaintiff/Counter-Defendant*  
9 *West Sunset 2050 Trust*

10 **DISTRICT COURT**  
11 **CLARK COUNTY, NEVADA**

12 WEST SUNSET 2050 TRUST, a Nevada Trust

13 Plaintiff,

14 vs.

15 NEW FREEDOM MORTGAGE  
CORPORATION, a Foreign Corporation;  
16 BANK OF AMERICA, N.A., a National  
Association; NATIONSTAR MORTGAGE  
17 LLC, a Foreign Limited Liability Company,  
COOPER CASTLE LAW FIRM, LLP, a  
18 Nevada Limited Liability Partnership  
STEPHANIE TABLANTE, an individual,  
19 DOES I through X; and ROE  
20 CORPORATIONS I through X, inclusive,

21 Defendants.

22 AND ALL RELATED CLAIMS.  
23

24 ///

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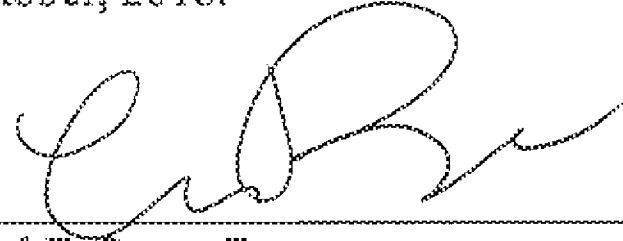
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Case No.: A-13-691323-C  
Dept. No.: XXI

**RECEIPT OF COPY**

1 RECEIPT OF COPY of the MOTION FOR FINAL JUDGMENT PURSUANT TO RULE  
2 54(b) AND TO STAY REMAINING CLAIMS PENDING CONCLUSION OF APPEAL was  
3 hereby acknowledged and received this 12 day of October, 2016.

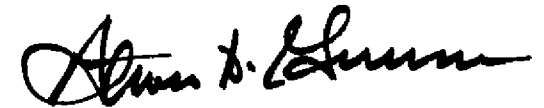


Ariel E. Stern, Esq.  
Allison R. Schmidt, Esq.  
AKERMAN LLP  
1160 Town Center Drive, Suite 330  
Las Vegas, Nevada 89144  
*Attorneys for Defendant Bank of America, N.A.,  
and Defendant/Counterclaimant/Cross-Claimant  
Nationstar Mortgage LLC*

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# **EXHIBIT 3**

# **EXHIBIT 3**



CLERK OF THE COURT

**NEOJ**  
LUIS A. AYON, ESQ.  
Nevada Bar No. 9752  
MARGARET E. SCHMIDT, ESQ.  
Nevada Bar No. 12489  
**MAIER GUTIERREZ AYON**  
8816 Spanish Ridge Avenue  
Las Vegas, Nevada 89148  
Telephone: 702.629.7900  
Facsimile: 702.629.7925  
E-mail: [laa@mgalaw.com](mailto:laa@mgalaw.com)  
[mes@mgalaw.com](mailto:mes@mgalaw.com)

*Attorneys for Plaintiff/Counter-Defendant  
West Sunset 2050 Trust*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

WEST SUNSET 2050 TRUST, a Nevada Trust  
Plaintiff,

vs.

NEW FREEDOM MORTGAGE  
CORPORATION, a Foreign Corporation;  
BANK OF AMERICA, N.A., a National  
Association; NATIONSTAR MORTGAGE  
LLC, a Foreign Limited Liability Company,  
COOPER CASTLE LAW FIRM, LLP, a  
Nevada Limited Liability Partnership  
STEPHANIE TABLANTE, an individual,  
DOES I through X; and ROE  
CORPORATIONS I through X, inclusive,

Defendants.

AND ALL RELATED CLAIMS.

Case No.: A-13-691323-C  
Dept. No.: XXI

**NOTICE OF ENTRY OF ORDER  
GRANTING MOTION FOR FINAL  
JUDGMENT PURSUANT TO RULE 54(B)  
AND TO STAY REMAINING CLAIMS  
PENDING CONCLUSION OF APPEAL**

TO: ALL PARTIES AND THEIR COUNSEL OF RECORD.

YOU AND EACH OF YOU will please take notice that an ORDER GRANTING  
MOTION FOR FINAL JUDGMENT PURSUANT TO RULE 54(B) AND TO STAY  
REMAINING CLAIMS PENDING CONCLUSION OF APPEAL was hereby entered on the 9<sup>th</sup>

1 day of November, 2016. A copy of which is attached hereto.

2 DATED this 10<sup>th</sup> day of November, 2016.

3 Respectfully submitted,

4 **MAIER GUTIERREZ AYON**

5 \_\_\_\_\_  
6 /s/ Margaret E. Schmidt

7 LUIS AYON, ESQ.

8 Nevada Bar No. 9752

9 MARGARET E. SCHMIDT, ESQ.

10 Nevada Bar No. 12489

11 8816 Spanish Ridge Avenue

12 Las Vegas, Nevada 89148

13 *Attorneys for Plaintiff/Counter-Defendant*

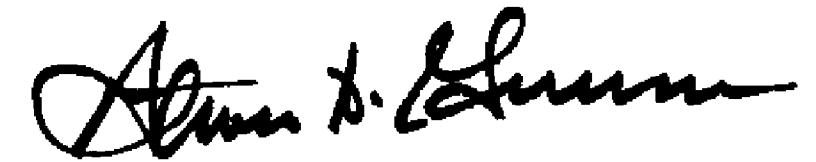
14 *West Sunset 2050 Trust*

1 **CERTIFICATE OF SERVICE**

2 Pursuant to Administrative Order 14-2, a copy of the **NOTICE OF ENTRY OF**  
3 **ORDER GRANTING MOTION FOR FINAL JUDGMENT PURSUANT TO RULE 54(B)**  
4 **AND TO STAY REMAINING CLAIMS PENDING CONCLUSION OF APPEAL** was  
5 electronically filed on the 10<sup>th</sup> day of November, 2016 and served through the Notice of Electronic  
6 Filing automatically generated by the Court's facilities to those parties listed on the Court's  
7 Master Service List and by depositing a true and correct copy of the same, enclosed in a sealed  
8 envelope upon which first class postage was fully prepaid, in the U.S. Mail at Las Vegas, Nevada,  
9 addressed as follows (*Note: All Parties Not Registered Pursuant to Administrative Order 14-2*  
10 *Have Been Served By Mail.*):

11  
12 Ariel E. Stern, Esq.  
13 Allison R. Schmidt, Esq.  
14 AKERMAN LLP  
15 1160 Town Center Drive, Suite 330  
16 Las Vegas, Nevada 89144  
17 *Attorneys for Defendant Bank of America, N.A., and*  
18 *Defendant/Counterclaimant/Cross-Claimant Nationstar Mortgage LLC*

19 /s/ Charity Johnson  
20 An Employee of MAIER GUTIERREZ AYON  
21  
22  
23  
24  
25  
26  
27  
28



CLERK OF THE COURT

1 **ORDER**

2 LUIS A. AYON, ESQ.

3 Nevada Bar No. 9752

4 MARGARET E. SCHMIDT, ESQ.

5 Nevada Bar No. 12489

6 MAIER GUTIERREZ AYON

7 8816 Spanish Ridge Avenue

8 Las Vegas, Nevada 89148

9 Telephone: 702.629.7900

10 Facsimile: 702.629.7925

11 E-mail: [laa@mgalaw.com](mailto:laa@mgalaw.com)

[mes@mgalaw.com](mailto:mes@mgalaw.com)

12 *Attorneys for Plaintiff/Counter-Defendant*

13 *West Sunset 2050 Trust*

14 **DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

16 WEST SUNSET 2050 TRUST, a Nevada Trust,

17 Plaintiff,

18 vs.

19 NEW FREEDOM MORTGAGE  
20 CORPORATION, a Foreign Corporation;  
21 BANK OF AMERICA, N.A., a National  
22 Association; NATIONSTAR MORTGAGE  
23 LLC, a Foreign Limited Liability Company,  
24 COOPER CASTLE LAW FIRM, LLP, a  
25 Nevada Limited Liability Partnership  
26 STEPHANIE TABLANTE, an individual,  
27 DOES I through X; and ROE  
28 CORPORATIONS I through X, inclusive,

Defendants.

Case No.: A-13-691323-C

Dept. No.: XXI

**ORDER GRANTING MOTION FOR  
FINAL JUDGMENT PURSUANT TO RULE  
54(B) AND TO STAY REMAINING  
CLAIMS PENDING CONCLUSION OF  
APPEAL**

Hearing Date: October 26, 2016

Hearing Time: 9:30 a.m.

23 NATIONSTAR MORTGAGE, LLC,

24 Counterclaimant,

25 vs.

26 WEST SUNSET 2050 TRUST,

27 Counter-Defendant.



1 NATIONSTAR MORTGAGE, LLC,

2 Cross-Claimant,

3 vs.

4 STEPHANIE TABLANTE,

5 Cross-Defendant.  
6

7 This matter came on for hearing before the Court on October, 2016 at 9:30 a.m., on  
8 plaintiff/counter-defendant West Sunset 2050 Trust's ("West Sunset") motion for final judgment  
9 pursuant to Rule 54(b) and to stay remaining claims pending conclusion of appeal on an order  
10 shortening time. West Sunset was represented at the hearing by Margaret E. Schmidt, Esq., of the  
11 law firm MAIER GUTIERREZ AYON. The Court, having reviewed the papers and pleadings on file  
12 herein, and there being no opposition filed pursuant to EDCR 2.20 and 2.23, makes the following  
13 findings of facts and conclusions of law:

14 1. This lawsuit involves disputed title to real property, which was purchased at the non-  
15 judicial foreclosure of an HOA's lien for delinquent assessments pursuant to NRS 116.3116 *et seq.*

16 2. On November 6, 2013, West Sunset initiated this litigation, naming New Freedom  
17 Mortgage Corporation ("New Freedom"), Nationstar Mortgage, LLC ("Nationstar"), Bank of  
18 America, N.A., The Cooper Castle Law Firm, LLP ("Cooper Castle"), and Stephanie Tablante  
19 ("Tablante") as defendants. The specific causes of action alleged therein were for: (1) declaratory  
20 relief/quiet title against all the defendants; and (2) preliminary and permanent injunction against  
21 Nationstar and Cooper Castle only.

22 3. On May 20, 2014, Nationstar answered West Sunset's complaint and alleged  
23 counterclaims and cross-claims for: (1) quiet title against West Sunset and Tablante; (2) declaratory  
24 relief against West Sunset and Tablante; (3) slander of title against Tablante; (4) breach of contract  
25 against Tablante; (5) breach of implied covenant of good faith and fair dealing against Tablante; and  
26 (6) unjust enrichment against West Sunset.

27 4. On July 29, 2015, defaults were entered against Tablante and New Freedom on West  
28 Sunset's claims for relief; however, default judgments have not been entered.

1           5.       Cooper Castle was dismissed from the case via an order entered on February 3, 2014.

2           6.       On May 22, 2015, West Sunset filed its motion for summary judgment, arguing that  
3 West Sunset holds superior title to the defendants and requested that summary judgment be entered  
4 in its favor on all causes of action as well as all of Nationstar's counterclaims.

5           7.       On June 10, 2015, Nationstar and BANA filed their opposition to West Sunset's  
6 motion and counter-moved for entry of summary judgment in favor of Nationstar, arguing in part  
7 that the HOA foreclosure sale was void for being unconstitutional and commercially unreasonable.

8           8.       Following a hearing on the matter, on February 8, 2016, the Court entered its order  
9 denying West Sunset's motion for summary judgment and granting Nationstar's countermotion for  
10 summary judgment (the "Order"), which was noticed on February 16, 2016.

11          9.       The Court's Order was based in part on its finding that the HOA's agent failed to  
12 provide the requisite notices of foreclosure; therefore, BANA and Nationstar's security interest was  
13 not extinguished by the HOA foreclosure sale.

14          10.      On March 4, 2016, West Sunset filed a motion for reconsideration pursuant to NRCP  
15 59(e), which was denied by an order entered on May 31, 2016 and noticed on June 3, 2016.

16          11.      On July 1, 2016, West Sunset noticed its appeal of the Order.

17          12.      On August 29, 2016, the Nevada Supreme Court issued an order to show cause as to  
18 why the appeal should not be dismissed for lack of jurisdiction, stating that "it appears that the  
19 district court has not entered a final written judgment adjudicating all the rights and liabilities of all  
20 the parties, and the district court did not certify its order as final pursuant to NRCP 54(b)."

21          13.      In light of the Nevada Supreme Court's order to show cause, West Sunset filed the  
22 instant motion, seeking a final judgment as to all of its claims and a stay of any remaining claims.

23          14.      Rule 54(b) of the Nevada Rules of Civil Procedure provides that "[w]hen multiple  
24 parties are involved, the court may direct the entry of a final judgment as to one or more but fewer  
25 than all of the parties only upon an express determination that there is no just reason for delay and  
26 upon an express direction for the entry of judgment." NRCP 54(b).

27          15.      Upon considering a request to certify a judgment based on the elimination of a party,  
28 the district court should weigh: (1) the prejudice to that party in being forced to wait to bring its

1 appeal; and (2) any prejudice to the parties remaining if the judgment is certified as final. *Mallin v.*  
2 *Farmers Ins. Exch.*, 106 Nev. 606, 611, 797 P.2d 978, 981 (1990). If the prejudice to the eliminated  
3 party would be greater than the prejudice to the parties remaining below, the court should certify the  
4 judgment as final. *Id.*

5 16. In this matter, the Court entered judgment on all of Nationstar's counterclaims/cross-  
6 claims as well as West Sunset's claims against Nationstar, thereby completely removing Nationstar  
7 from the litigation.

8 17. Moreover, the conclusions arrived at by the Court in denying West Sunset's motion  
9 for summary judgment effectively resolved the remaining claim for declaratory relief/quiet title  
10 against BANA, New Freedom and Tablante.

11 18. No important issues remain below that must be resolved prior to the Nevada Supreme  
12 Court's consideration of the issues on appeal, nor would piecemeal litigation result by certifying the  
13 Order as final.

14 19. On the other hand, requiring the parties to continue litigation on such claims whose  
15 resolution has already been determined by reasonable inference of the Court's Order would be an  
16 inefficient use of judicial resources.

17 20. Thus, taking into account the equities involved, no prejudice will result to the  
18 remaining parties if the Order is certified as final, and there exists no reason to make West Sunset  
19 wait until the conclusion of the entire case to file an appeal.

20 Accordingly, for good cause appearing, the Court hereby rules as follows:

21 IT IS HEREBY ORDERED that West Sunset's Motion is GRANTED.

22 IT IS FURTHER ORDERED that the Order is amended to include a certification of final  
23 judgment pursuant to NRCP 54(b).

24 IT IS FURTHER ORDERED that the Court expressly determines that there is no just reason  
25 to delay appellate review and directs that the Order constitute a final judgment pursuant to NRCP  
26 54(b) with respect to fewer than all of the parties in this case.

27 ///

28 ///


1 IT IS FINALLY ORDERED that West Sunset's remaining claim for declaratory relief/quiet  
2 title against BANA, New Freedom and Tablante be stayed pending the conclusion of West Sunset's  
3 appeal.

4 DATED this 1st day of November, 2016.

5   
6 DISTRICT COURT JUDGE AW

7  
8 Respectfully submitted,

9 MAIER GUTIERREZ AYON

10   
11 LUIS AYON, ESQ.  
12 Nevada Bar No. 9752  
13 MARGARET E. SCHMIDT, ESQ.  
14 Nevada Bar No. 12489  
15 8816 Spanish Ridge Avenue  
16 Las Vegas, Nevada 89148  
17 Attorneys for Plaintiff/Counter-Defendant  
18 West Sunset 2050 Trust  
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