

CASE NO. 70786
IN THE SUPREME COURT OF THE STATE OF NEVADA

AMY FACKLAM, an individual,

Appellant,

v.

Electronically Filed
Nov 15 2016 04:20 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF CLARK, AND THE **HONORABLE ELISSA
CADISH**,

Appellees,

**HSBC BANK USA, National Association, as TRUSTEE for DEUTCHE ALT-
A SECURITIES MORTGAGE LOAN TRUST, MORTGAGE PASS-
THROUGH CERTIFICATES SERIES 2007-AR2,**

Real Parties In Interest.

JOINT APPENDIX VOLUME 2

On appeal from the Eight Judicial District Court,
Clark County, Nevada
District Court Case No. A-16-733762-C
The Honorable Elissa Cadish

HAFTERLAW

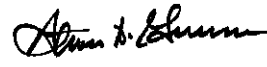
JACOB L. HAFTER, Esq.
Nevada Bar Number 9303
6851 West Charleston Blvd.
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November 15, 2016

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CLERK OF THE COURT

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EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

AMY FACKLAM,
Plaintiff,

vs.

Case No.: A-16-733762-C
Dept. No. VI

HSBC BANK USA, National Association,
as TRUSTEE for DEUTCHE ALT-A
SECURITIES MORTGAGE LOAN
TRUST, MORTGAGE PASS-THROUGH
CERTIFICATES SERIES 2007-AR2;
DOES I through X; and ROE
CORPORATIONS I through X,
inclusive,

Defendant.

REPLY IN FURTHERANCE
OF MOTION FOR
SUMMARY JUDGMENT

and

OPPOSITION TO
DEFENDANT'S MOTION TO
DISMISS

HEARING DATE: June 7, 2016

HEARING TIME: 8:30 am

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COMES NOW, Plaintiff, **AMY FACKLAM**, by and through its counsel of record, Jacob L. Hafter, Esq., of the law firm **HAFTERLAW**, to move this Court to find that, as a matter of law, as presented in this **MOTION FOR SUMMARY JUDGMENT**, that Defendant, **HSBC BANK USA, National Association, as TRUSTEE for DEUTCHE ALT-A SECURITIES MORTGAGE LOAN TRUST, MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2007-AR2.**, and any of their collective agents, employees, attorneys, successors and/or

REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT /
OPPOSITION TO MOTION TO DISMISS - 1

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1 anyone acting on their behalf, may not pursue any foreclosure sales related to that certain first
2 deed of trust entered into on or about December 21, 2006, Plaintiff executed a deed of trust naming
3 GreenPoint Mortgage Funding, In., as the "Lender", and Marin Conveying Corp., as the
4 "Trustee", and encumbering the Property with an indebtedness in the amount of \$326,000.00
5 (referred to herein as Plaintiff's "Mortgage"), as the time for them to have done so has passed.
6 The Motion also seeks an order removing the deed of trust from title records.

7 This Motion is made and based upon the papers and pleadings on file herein, the attached
8 memorandum of points and authorities, and any oral argument that this Honorable Court may
9 entertain at the hearing on this matter.

10 Dated this 20th day of April, 2016.

11 **HAFTERLAW**

12
13 By: _____

Jacob L. Hafter, Esq.
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Counsel for Plaintiff

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Defendant opposes Plaintiff's dispositive motion on three basic premises – that it is premature, that Defendant never accelerated the mortgage, and that NRS §11.190 does not apply to foreclosure actions. In doing so, they say that there is no legal basis to bring this action, so the case should be dismissed in their favor, and, yet, without following any of the requirements of NRCP 56(f), namely, they failed to state with specificity as to what additional discovery is needed and why it raises a genuine issue of material fact, and failed to support this information with an affidavit in support of the request, they ask for more discovery.

Defendants are wrong on all accounts. This case involves questions of law, not fact. Under NRCP 56(a), a plaintiff only need wait 20 days after service of the complaint to file a summary judgment motion. That is what Plaintiff did in this case, as there are no genuine issues of material fact, so Plaintiff, recognizing the heavy burden that all parties undergo in litigation, decided to be efficient with the prosecution of this case.

And the motion has merit. Defendant is simply wrong in claiming that the mortgage was not accelerated in this case. Defendant accelerated the mortgage when it (or its predecessors, on its behalf) filed the September 25, 2009, Notice of Default.

While there is not much recent case law on this issue, perhaps it is because the application of the contractual statute of limitations to foreclosure actions was made by the Nevada Supreme Court within the second term of its existence. See Mackie v. Lansing, 2 Nev. 302 (1866). It is clear under Nevada law that a mortgagor's right to foreclose is extinguished when all other contractual claims are extinguished under NRS §11.190.

Defendant errs when saying that the rescission that was filed in 2011, rescinded the acceleration. While it is true that a creditor or mortgagor has the right to control the process, the plain language of the rescission states that it did not affect the default or the acceleration thereunder. Accordingly, relying on the plain language of the document, such should not prevent the six years from running in this case. Similarly, the language of the new notice of default continues the acceleration of the mortgage.

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OPPOSITION TO MOTION TO DISMISS - 3

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1 Finally, as this case is not a wrongful foreclosure case, Plaintiff need not cure in order to
2 bring the instant case.

3 Accordingly, Plaintiff asks that this Court GRANT her motion for summary judgment and
4 DENY Defendant's competing motion to dismiss.

5
6 **II. ARGUMENT**

7 **A. THE MOTION FOR SUMMARY JUDGMENT IS NOT "PREMATURE"**

8 Defendant argues that "when an early case conference report per Rule 16.1 has not been
9 filed and as a result discovery has not commenced, a plaintiff's MSJ is premature." Opposition at
10 8:12-13 (*citing Aviation Ventures v. Joan Morris, Inc.*, 110 P.3d 59, 121 Nev. 113 (Nev., 2005)).
11 This is not an accurate reflection of the law, or of *Aviation Ventures*.

12 In *Aviation Ventures*:

13
14 ... before the parties had held the early case conference required
15 under NRCP 16.1, LVTB moved for summary judgment, basing the
16 motion on the terms of the promissory note and Acor's admission of
17 nonpayment. Discovery had not yet begun at this time. In
18 opposition, Vision requested a continuance under NRCP 56(f) to
19 allow it to engage in discovery in order to marshal facts to oppose
20 the motion.

21 To support its opposition, Vision presented affidavits from Acor,
22 and Gary Acquavella, Vision's chief financial officer, both of whom
23 attested to the business association plan, the creation of the
24 promissory note, and the terms under which the note would be
25 repaid. Vision maintained that it demonstrated a genuine issue of
26 material fact as to Vision's right to set off amounts owed by Ms.
27 Morris and LVTB. Vision argued that further discovery was
28 necessary on these issues.

29 The district court denied Vision's request for an NRCP 56(f)
30 continuance and granted LVTB's motion for summary judgment,
31 with judgment entered in favor of LVTB in the amount of
32 \$202,959.41, including interest and costs.

33 Id. The Court overturned the granting of the motion for summary judgment based upon the
34 NRCP 56(f) standard, which the Court found applied in this case. Id.

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1 NRCP 56(f) permits a district court to grant a continuance when a party opposing a motion
2 for summary judgment is unable to marshal facts in support of its opposition. See Ameritrade,
3 Inc. v. First Interstate Bank, 105 Nev. 696, 699, 782 P.2d 1318, 1320 (1989). "Rule 56(f), NRCP,
4 provides that a court may, in its discretion, refuse an application for summary judgment or order
5 a continuance, '[s]hould it appear from the affidavits of a party opposing the motion that he cannot
6 for reasons stated present by affidavit facts essential to justify his opposition....'" Bakerink v.
7 Orthopaedic Associates, Ltd., 94 Nev. 428, 431, 581 P.2d 9, 11 (1978). To that end, a motion for
8 a continuance under NRCP 56(f) is appropriate only when the movant expresses through an
9 affidavit how further discovery will lead to the creation of a genuine issue of material fact. Id.
10 However, when there is nothing in the record "to identify what facts might be obtained, in addition
11 to the records, depositions, and affidavits already on file, that were essential to justify an
12 opposition," a decision not to continue will not be overturned. Id.

13 In this case, Defendant failed to meet its 56(f) burden, as NO affidavit was filed with the
14 request. This is because there are no genuine issues of material fact. The facts are, essentially,
15 agreed upon by the parties.

16 The only real issue is whether Defendant accelerated the mortgage with the September,
17 2009 filing of a Notice of Default,¹ and what affect the December 2011 rescission had on that
18 acceleration.² Accordingly, without any genuine issue of material facts, yet alone an affidavit
19 supporting such, the motion for summary judgment is not untimely.

20
21
22
23
24 ¹ The date on which a statute of limitations accrues is normally a
25 question of fact, and the district court may determine that date as a matter
26 of law only when the uncontroverted evidence irrefutably demonstrates the
accrual date. Winn v. Sunrise Hosp. & Med. Ctr., 128 Nev. at ___, ___, 277
P.3d at 458, 462-63 (2012).

27 ² Even Defendant concedes that there is a dispute as to the "legal
28 conclusion" regarding how the Rescission effected the statute of limitations
in the Opposition, but that it does not dispute that it was filed. See
Opposition at 5-6.

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1 **B. DEFENDANT DID ACCELERATE THE MORTGAGE BY FILING THE**
2 **NOTICE OF DEFAULT IN SEPTEMBER, 2009.**

3 Plaintiff seeks quiet title in this action to stop Defendant from trying to exercise a security
4 interest which she alleges that the Defendant no longer has a legal right to pursue. Hence,
5 Plaintiff has alleged and is seeking to establish that Defendant is unlawfully asserting an adverse
6 claim to title of real property.

7 Defendant seems fixated on the belief that there was no acceleration in this case. In fact,
8 Defendant, without any citation to the record or legal support, adamantly argues that
9 "[a]cceleration occurs when the notice of sale is recorded at least 90 days later if the default is not
10 addressed through mediation or otherwise cured." Opposition at 10:19-20.

11 This is not correct. There is no one action that is required to accelerate a mortgage. What
12 is clear, pursuant to both state and federal courts rulings, is that the holder must take affirmative
13 action to notify the debtor that it intends to accelerate, even when the terms of a note do not
14 require notice or demand as a prerequisite to accelerating a note. See Green v. Carlstrom, 212
15 Cal. App. 2d 240, 243 (Cal. Dist. Ct. App. 1963) (holding that "[t]he option to accelerate a
16 promissory note does not operate automatically but some act is required to effect
17 such acceleration.") (citation omitted); Trigg v. Arnott, 71 P.2d 330, 332 (Cal. Dist. Ct. App.
18 1937) (holding that the holder of the note must act in a manner that effectively provides notice
19 that the holder has exercised his option); What Is Essential to Exercise of Option
20 to Accelerate Maturity of Bill or Note, 5 A.L.R. 2d 968, 971 (1949) ("[A] party having an option
21 to declare a note due and payable cannot simply by his own secret intention, never disclosed by
22 act or word, claim that he declared the note due and payable. The addition of the words 'without
23 demand or notice' does not alter the requirement of an affirmative act of the holder of the note for
24 the valid exercise of the option."); see also United States v. Rollinson, 866 F.2d 1463, 1467 (D.C.
25 Cir. 1989) (following precedent holding that, "because acceleration was optional on the part of
26 the holder, affirmative action . . . must be taken to make it known to the debtor that he has
27 exercised his option to accelerate") (internal quotations and citation omitted) (alterations in
28 original); United States v. Feterl, 849 F.2d 354, 357 (8th Cir. 1988) (holding that, "[a]s a general

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1 rule, . . . affirmative action by the creditor must be taken to make it known to the debtor that [the
2 creditor] has exercised his option to accelerate.") (citation omitted); United States v. Hosko, 1989
3 WL 265041, *2 (M.D. Pa. 1989) (citing Rollinson in holding that "where the acceleration of the
4 installment payments in cases of default is optional, on the part of the holder, then the entire debt
5 does not become due on the mere default of payment but affirmative action by the creditor must
6 be taken to make it known to the debtor that he has exercised his option to accelerate"), *aff'd*, 884
7 F.2d 1386 (3d. Cir. 1989) (unpublished disposition); Curry v. United States, 679 F. Supp. 966,
8 969-70 (N.D. Cal. 1987) (concluding that "[t]he general rule is that where the acceleration of the
9 installment payments in cases of default is optional . . . , then the entire debt does not become due
10 on the mere default of payment but affirmative action by the creditor must be taken to make it
11 known to the debtor that he has exercised his option to accelerate.") (citation and internal
12 quotations omitted) (alterations in original) (emphasis omitted); United States v. Cardinal, 452 F.
13 Supp. 542, 547 (D. Vt. 1978) ("The law is well settled that where the acceleration of the
14 installment payments in cases of default is optional on the part of the holder, then the entire debt
15 does not become due on the mere default of payment but affirmative action by the creditor must
16 be taken to make it known to the debtor that he has exercised his option to accelerate, even though
17 the note itself, as is the case here, waives notice of demand."); Moresi v. Far W. Serv., Inc., 291
18 F. Supp. 586, 588 (D. Haw. 1968) (same); In re Holiday Mart, Inc., 9 B.R. 99, 105 (Bankr. D.
19 Haw. 1981) ("It is well established that to exercise an option to accelerate the maturity of a note
20 the holder must take some affirmative action that evidences its intention to accelerate. . . . This
21 requirement applies even where the note provides for acceleration 'without notice.' ").

22 This is also true in Nevada. As stated in the Motion, "[W]here contract obligations are
23 payable by installments, the limitations statute begins to run only with respect to each installment,
24 when due, unless the lender exercises his or her option to declare the entire note due." Clayton
25 v. Gardner, 107 Nev. 468, 470, 813 P.2d 997, 999 (1991) (citations omitted) (*emphasis added*).
26 Courts will seldom allow lenders to accelerate a contract obligation unless the "acceleration [is]
27 exercised in a manner so clear and unequivocal that it leaves no doubt as to the lender's intention."
28 Id. (quoting United States v. Feterl, 849 F.2d 354, 357 (8th Cir.1988)). Some "affirmative action

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1 by the creditor must be taken to make it known to the debtor that [the creditor] has exercised his
2 option to accelerate.” Feterl, 849 F.2d at 357.

3 Nevada law gives a lender the option to accelerate through the notice of default. While
4 not required to fulfil the requirements of such notice under law, the legislature has stated that that
5 “a notice of default and election to sell must: (a) [d]escribe the deficiency in
6 performance or payment and may contain a notice of intent to declare the entire unpaid balance
7 due if acceleration is permitted by the obligation secured by the deed of trust, but
8 acceleration must not occur if the deficiency in performance or payment is made good and any
9 costs, fees and expenses incident to the preparation or recordation of the notice and incident to
10 the making good of the deficiency in performance or payment are paid within the time specified
11 in subsection 2.” NRS § 107.080(3) (*emphasis added*).

12 In order to look at what options the lender has, the courts should look at the authority
13 which allows the lender to foreclose – the note and the deed of trust. This is how the Ninth Circuit
14 determined acceleration and whether it occurred in In Re: Crystal Prop., 268 F.3d 743 (9th Cir.,
15 2001). There, the Court noted that “[b]ecause ‘[a] note and a deed of trust . . . must be read and
16 construed together,’ Kerivan v. Title Ins. & Trust Co., 147 Cal. App. 3d 226, 230 (1983)), the
17 language in the deed of trust supports the conclusion that Beal was required to take some
18 affirmative action ‘declaring’ that it had exercised its option to accelerate and thus triggered the
19 default interest clause.” Id. Similarly, the Nevada Supreme Court has required that that Nevada
20 law requires unity of deed of trust and promissory note prior to foreclosure. See Edelstein v. Bank
21 of N. Y. Mellon, 128 Nev. _____, 286 P.3d 255 (2012).

22 In this case, the Deed of Trust states that “lender shall give notice to Borrower prior to
23 acceleration following Borrower’s breach of any covenant or agreement in this Security
24 Instrument... The notice shall specify: (a) the default; (b) the action required to cure the default;
25 (c) a date, not less than 30 days from the date that the notice is given to Borrower, by which the
26 default must be cured; and (d) that failure to cure the default on or before the date specified in the
27 notice may result in acceleration of the sums secured by this Security Instrument and sale of the
28 Property.” Motion at Exhibit “A” at ¶22. The Deed of Trust further states “If the default is not

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1 cured on or before the date specified in the notice, Lender at its option, and without further
2 demand, may involve the power of sale, including the right to accelerate full payment of the Note,
3 and any other remedies permitted by Applicable Law.” Id.

4 While the Deed of Trust does not specifically put the right to accelerate into the Notice of
5 Default, the Note does. See Note at ¶7, a true and correct copy of which is attached hereto as
6 Exhibit “A”. Specifically, Section 7 of the Note is entitled “BORROWER'S FAILURE TO
7 PAY AS REQUIRED”, and includes subsection (C), entitled “Notice of Default.” This subsection
8 states:

9 If I am in default, the Note Holder may send me a written notice telling me
10 that if I do not pay the overdue amount by a certain date, the Note Holder
11 may require me to pay immediately the full amount of Principal that has
12 not been paid and all the interest that I owe on that amount. That date must
be at least 30 days after the date on which the notice is mailed to me or
delivered by other means.

13 Id. Hence, when reading the Note in this case with the Deed of Trust, the Lender was required
14 to send Plaintiff a letter notifying her of the intent to accelerate, and, then, if at least 30 days
15 thereafter, the default had not been cured, the Lender had the right to file a Notice of Default, and,
16 there within, accelerate the full amount due.

17 That is exactly what happened in this case. Plaintiff began missing her mortgage
18 payments around June, 2009. See Affidavit of Amy Facklam, at Motion at Exhibit “E”. On
19 June 19, 2009, Bank of America Home Loans sent Plaintiff a letter entitled Notice of Intent to
20 Accelerate. See Notice of Intent to Accelerate, a true and correct copy of which is attached hereto
21 as Exhibit “B.”³ This Notice said:

22 If the default is not cured on or before July 16, 2009, the mortgage
23 payments **will be accelerated** with the full amount remaining
24 accelerated and becoming due and payable in full, and foreclosure
25 proceedings will be initiated at that time. As such, the failure to cure
the default may result in the foreclosure and sale of your property.
26 If your property is foreclosed upon, the Noteholder may pursue a

27
28 ³ The documents in this exhibit were produced by BAC Home Loans as part
of their discovery productions in the prior federal litigation related to the
loan modification.

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deficiency judgment against you to collect the balance of your loan,
if permitted by law.

Id. (**emphasis in original**). The same notice was sent the following month. Id. This July 22, 2009 Notice of Intent to Accelerate was almost identical, however, the date in the paragraph quoted above was changed to August 21, 2009. Id. Then, on September 25, 2009, the First Notice of Default was recorded on the title records for the Property. See Motion at Exhibit "B". The First Notice of Default stated that because there was a failure to pay the "installment of principal and interest plus impounds and/or advances which became due on 04/01/2009 ... the beneficiary under such deed of Trust has deposited with RECONTRUST COMPANY, N.A. such deed of trust and all documents evidencing obligations secured thereby and has declared and does hereby declare all sums secured thereby immediately due and payable and has elected and does hereby elect to cause the trust property to be sold to satisfy the obligations secured thereby." Id. (**emphasis added**). This was not boilerplate language, as suggested by Defendant in the Opposition; this was purposeful language setting the world on notice that the lender had accelerated Plaintiff's mortgage. Hence, there is no issue of material fact as to whether Defendant, or its predecessors, accelerated the Plaintiff's mortgage with the filing of the Notice of Default on the official title records for the Plaintiff's Property.

C. **A FORECLOSURE IS A REMEDY ESTABLISHED UNDER CONTRACT LAW**

Defendant then tries to argue that a non-judicial proceeding is not a type of proceeding to which a statute of limitations need apply. Yet, the very first sentence of their Opposition addressing this issue, recognizes that a deed of trust, under statute, that "a non-judicial trustee's sale is authorized pursuant to a deed of trust securing the underlying loan obligation by the borrower." Opposition at 10:9-10 (referring to NRS §107.080(1)).

In fact, NRS §107.080 says a bit more about the role of contract in a foreclosure. Specifically, it states "[e]xcept as otherwise provided in NRS 106.210, 107.085 and 107.086, if any transfer in trust of any estate in real property is made after March 29, 1927, to secure the

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1 performance of an obligation or the payment of any debt, a power of sale is hereby conferred
2 upon the trustee to be exercised after a breach of the obligation for which the transfer is
3 security.” (emphasis added). Clearly, the power to engage in a non-judicial foreclosure under
4 NRS §107.080 is a contractual remedy.

5 This can be further proven in this case by looking at the Deed of Trust. Section 22 of the
6 Deed of Trust in this case states that a foreclosure sale is a remedy which the Lender can elect
7 after a default. See Motion at Exhibit “A”. Further, the Note confers the same rights. See
8 Exhibit “A”.

9 This is consistent with Nevada law. NRS §11.190(1)(b) places a six year statute of
10 limitations on “[a]n action upon a contract, obligation or liability founded upon an instrument in
11 writing, except those mentioned in the preceding sections of this chapter.” In 1972, the Nevada
12 Supreme Court discussed this statute in relates to mortgage law. El Ranco, Inc. v. New York Meat
13 & Provision Co., 493 P.2d 1318, 88 Nev. 111 (1972).

14 In that opinion, the Court provided a history of NRS 11.190(1)(b), stating:

15
16 The peculiar language of NRS 11.190(1)(b) is derived from a California
17 statute adopted in 1850, allowing four years for: “An action upon any
18 contract, obligation, or liability, founded upon an instrument of writing.”
19 1850 Calif.Stats., Ch. 127 (ch. III § 17). It should be noted that the statute
20 is not limited to actions upon “contracts in writing,” but relates to any
21 “obligation or liability founded upon an instrument of writing.” In 1855,
22 before the statute was adopted in Nevada, the California Supreme Court
23 placed a broad interpretation on the words ‘founded upon an instrument in
24 writing.’ In Sannickson v. Brown, 5 Cal. 57 (1855), the California court
25 held accounts the defendant had marked ‘audited and approved’ and
26 ‘certified to be correct’ were sufficient to constitute ‘instruments in writing’
27 within the meaning of the statute, so that an action ‘founded’ or based upon
28 them was entitled to a longer statute of limitations than an action brought
upon a mere account not evidenced in such a way.

25 In 1861, Nevada adopted the California statute with its judicial gloss. Laws
26 of the Territory of Nevada, First Regular Session, ch. XII, § 16 (1861). In
27 adopting the practice act of California, it must be presumed to have been
28 adopted as interpreted by the highest court of judicature of that state.
Williams v. Glasgow, 1 Nev. 533, 538 (1865); Harris v. Harris, 65 Nev.
342, 346, 196 P.2d 402 (1948); Astorga v. Ishimatsu, 77 Nev. 30, 32, 359
P.2d 83 (1961). The statute has been carried forward with the only

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substantial change being that the limitation period was extended to six years. (1867 Nev.Stats., ch. XLIX § 5; 1869 Nev.Stats., ch. 196, tit. I; 1911 Civil Practice Act § 25; Revised Laws of Nevada § 4967 (1912); NCL § 8524 (1929).)

Id. The Court then held, citing a number of jurisdictions, that "[i]n order to be founded upon an instrument in writing, the instrument must itself contain a contract (obligation or liability) to do the thing for the nonperformance of which the action is brought." Id.

The Court in El Rancho then provided the following gathering of cases:

This court has long recognized that separate sections of the statute of limitations can be applicable to a given business transaction. See: Henry v. Confidence Mining Co., 1 Nev. 619 (1866), holding that although a debt secured by a mortgage was extinguished by the statute of limitations, the mortgage was not extinguished; Mackie v. Lansing, 2 Nev. 302 (1866), *holding that although the principal debt was barred by the statute of limitations a right to foreclose the mortgage securing the debt was not barred until lapse of the longer statute of limitations; cf. Cookes v. Culbertson, 9 Nev. 199 (1874); Shoecraft v. Beard, 20 Nev. 182, 19 P. 246 (1888); State v. Murphy, 23 Nev. 390, 48 P. 628 (1897), holding that although the two-year statute for forfeitures and penalties had expired, an action upon the bail bond itself was an action upon an obligation founded upon an instrument in writing, so that the six-year statute applied.*

Id., 88 Nev. at 115-116 (*emphasis added*). These cases are very instructive to this case.

In Mackie, a suit was brought on a note executed in the state of Nevada (a territory at the time) in the year 1862, and secured by mortgage on real estate. The note, after it became due and was barred by the statute of limitations of the then territory of Nevada, was renewed by a special promise in writing. Id. But before this renewal, another and intervening mortgage had been executed by the defendant to a third party. The district court held that the plaintiff's note having been barred at one time by the statute of limitations, the security was gone, and the second mortgage took precedence. The Supreme Court reversed. Citing Henry v. Confidence Co., 1 Nev. 619 (1866), held that although the plaintiff's right to sue on the note itself may have been barred at one time, his right to foreclose the mortgage is not barred until the lapse of four years.⁴ Mackie, 2 Nev. 302-303.

⁴ This is a reference to NRS §11.190, which, when adopted from California was four years for contracts, but has been expanded to six. See El Rancho, *supra*.

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1 In Henry v. Confidence, the Nevada Supreme Court weighed two propositions: when "the
2 debt [is] barred by the statute of limitation, the mortgage is in effect extinguished," as noted by
3 the California supreme court in the case of Lord v. Morris, 18 Cal. 482 (1861), compared to "a
4 decision of the circuit court of the United States for the northern district of California (Sparks &
5 Kelsey v. Pico, 1 McAll. 497, 22 F. Cas. 881 (U.S.C.C.,1851), as establishing a contrary
6 doctrine." Henry, 1 Nev at 620. The Nevada Supreme Court held that "the supreme court of
7 California was right." Id., at 621.⁵

8 As such, it is clear that the right to foreclose is not indefinite. Rather, as the foreclosure
9 is a "obligation or liability founded upon an instrument of writing," the written contract statute of
10 limitations within NRS §11.190 would apply. Once six years has elapsed from the date of
11 acceleration (as discussed above), a creditor may no longer foreclose on a mortgage.

12 In this case, approximately four months after Plaintiff stopped paying her mortgage,
13 Defendant (or their predecessor) took the affirmative action necessary to notify Plaintiff of
14 accelerating the Plaintiff's mortgage. On or about September 25, 2009, Defendant filed the First
15 Notice of Default. See Motion at Exhibit "B". Within that First Notice of Default, Defendant

16
17 ⁵ The Supreme Court in Henry, addressed a situation where a mortgage may
18 be created upon an oral agreement to repay money (as mortgages, as we
19 currently know them, did not exist back then). In that case, there would be
20 two different statute of limitations - one for an oral promise and a written
21 mortgage which was then created as a result of the promise. In that
22 situation, the Court noted:

23 We think whilst an action on the note would be barred
24 by the 34th section, a bill to foreclose the mortgage
25 would not be barred until four years had elapsed since
26 the cause of action arose thereon.

27 Id. It should be noted that the "34th section" was referring to the law of the
28 Territory, that law which was in place before Nevada became a state. Section
34 of the same act, as amended in December, 1862, reads as follows:

"An action upon any judgment; contract, obligation or
liability, for the payment of money or damages,
obtained, executed or made out of this territory, can
only be commenced within six months from the time the
cause of action shall accrue."

Id., 1 Nev at 620-21. This furthers the argument that a deed of trust is
extinguished when the, now, 6 year statute of limitations would run on the
note.

REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT /
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6

(or their predecessor) stated that because there was a failure to pay the "installment of principal and interest plus impounds and/or advances which became due on 04/01/2009 ... the "beneficiary under such deed of Trust has deposited with RECONTRUST COMPANY, N.A. such deed of trust and all documents evidencing obligations secured thereby and has declared and does hereby declare all sums secured thereby immediately due and payable and has elected and does hereby elect to cause the trust property to be sold to satisfy the obligations secured thereby." Id. (emphasis added). As a result of this quoted section from the First Notice of Default, Defendant accelerated the Note and Deed of Trust on September 25, 2009. Accordingly, the six year statute of limitations began to run on September 25, 2009.

To date, it has been approximately six (6) years and six (6) months since Defendant accelerated the mortgage, and yet they have not foreclosed on the Property. As such, Defendant had six (6) years to seek the contractual remedy of foreclosure of the Property or to otherwise initiate a cause of action for Plaintiff's alleged default under the Deed of Trust and related promissory note. Defendants did not successfully seek the contractual remedy of foreclosure of the Property or to otherwise initiate a cause of action for Plaintiff's alleged default under the Deed of Trust and related promissory note within this six year period.

D. The Rescission did not Alter the Acceleration or Default in this case.

Defendant errs when saying that the rescission that was filed in 2011, rescinded the acceleration.

Defendant cites Trident Center v. Connecticut Gen. Life Ins., 847 F.2d 564, 567 (9th Cir. 1988) to support the proposition that "a lender or servicer pursuing non-judicial foreclosure options in Nevada ordinarily has the option under the loan documents whether to declare a default, whether and when to accelerate, and to rescind the process before completion." Opposition at 13:3-6. Plaintiff does not dispute this; however, such is not at issue in this case. If Defendant wanted to use the Rescission to terminate the acceleration (the triggering event for purposes of the statute of limitations), it should have said so in that document.

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h

1 Defendant then cites Holt v. Regional Trustee Sale Services Corp., 266 P.3d 602, 606
2 (2011) to support the position that “[a] notice of rescission renders moot disputes concerning the
3 notice of default or its timing.” Opposition at 13: 6-8. Plaintiff does not dispute this legal
4 conclusion, either. However, at issue in this case is the acceleration which was caused by the
5 notice of default, not a dispute, itself, about the notice of default or its timing.

6 Defendants also cite foreign case law which has no application to this case. Opposition at
7 13:8-13.

8 For the same reason that a creditor or mortgagor has the right to control the process, this
9 Court must rely on the language of the Rescission which was filed by Defendant (or its
10 predecessor) in this case.

11 Again, the Rescission specifically said:

12
13 **RESCISSION OF ELECTION TO DECLARE DEFAULT**
NEVADA

14 NOTICE IS HEREBY GIVEN that RECONTRUST COMPANY, N.A., Trustee for the Beneficiary does
15 hereby rescind, amend and withdraw the Notice of Default and Election to Sell hereinafter described,
16 provided, however, that this rescission shall not be construed as waiving, curing, extending to, or affecting
17 any default, either past, present or future, under such Deed of Trust, or as impairing any right or remedy
18 thereunder, and it is and shall be deemed to be, only an election without prejudice not to cause a sale to be
19 made pursuant to such Notice of Default and Election to Sell, and it shall not in any way alter or change any
20 of the rights remedies or privileges secured to Beneficiary and/or Trustee under such Deed of Trust, nor
21 modify, amend in any respect any of the terms, covenants, conditions or obligations therein contained.
22 Said NOTICE OF DEFAULT AND ELECTION TO SELL under Deed of Trust specifically described
23 therein was:

24 Recorded on 05/25/2009, as Instrument No. 200909250003730, in Book _____, Page _____
25 of Official Records of Clark County, Nevada.

26 The DEED OF TRUST referred by this notice recorded on 01/04/2007 as Instrument No. 0001436 in Book
27 0007008 Page _____, executed by AMY E. FACKLAM, A SINGLE WOMAN, as Trustor in Clark County,
28 Nevada.

21 Motion at Exhibit “C”. Specifically, the Rescission did not “waiv[e], cur[e], extend[] to, or
22 affect[] any default, either past, present or future, under such Deed of Trust, or as impair[] any
23 right or remedy thereunder.” Id. As such, since the First Deed of Trust specifically accelerated
24 all amounts due and owing as a result of the underlying breach which occurred in June, 2009, that
25 acceleration was not “waiv[ed], cur[ed], extend[ed] to, or affect[ed]” by the Rescission.

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1 **E. The New Notice of Default Re-Affirms the Acceleration**

2 Similarly, the language of the Second Notice of Default continues the acceleration of the
3 mortgage. In that document, Defendant (or its agent) stated that "installment of Principal and
4 Interest plus impounds and/or advances which became due on 01/01/2010⁶ plus late charges, and
5 all subsequent installments of principal, interest, balloon payments, plus impounds and/or
6 advances and late charges that become payable." Exhibit "D" of the Motion at 2 (emphasis
7 added). This language says that all payments due under the note are due, including balloon
8 payments. This is an acceleration of the mortgage.

9
10 **F. Plaintiff Need Not Cure to Bring this Case**

11 Finally, this case is not a wrongful foreclosure case, nor does it brought under the theory
12 of the tort of wrongful foreclosure. As such, Plaintiff need not cure in order to bring the instant
13 case.

14
15 **III. CONCLUSION**

16 For the foregoing reasons, Plaintiff respectfully requests that this Court enter an Order in
17 her favor, declaring that the six year statute of limitations will prevent Defendant, **HSBC BANK**
18 **USA, National Association, as TRUSTEE for DEUTCHE ALT-A SECURITIES**
19 **MORTGAGE LOAN TRUST, MORTGAGE PASS-THROUGH CERTIFICATES**
20 **SERIES 2007-AR2**, and any of its collective agents, employees, attorneys, successors and/or
21 anyone acting on their behalf, from pursuing any foreclosure sales related to that certain first deed
22 of trust entered into on or about December 21, 2006, Plaintiff executed a deed of trust naming
23 GreenPoint Mortgage Funding, In., as the "Lender", and Marin Conveying Corp., as the
24 "Trustee", and encumbering the Property with an indebtedness in the amount of \$326,000.00 and
25 ordering that the Deed of Trust be rescinded from the Clark County Recorder's records related to
26 the Property.

27 ⁶ This date is after the date used in the first notice of default (June
28 1, 2009); however, the later date still will not save Defendant from the
statute of limitations. The Second Notice of Default was filed after January
1, 2016, or six years from this date.

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Dated this 20th day of April, 2016.

HAFTERLAW

By: _____

Jacob L. Hafter, Esq.
Nevada State Bar No. 9303
6851 W. Charleston Boulevard
Las Vegas, Nevada 89117
Tel: (702) 405-6700
Fax: (702) 685-4184
Counsel for Plaintiff

REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT /
OPPOSITION TO MOTION TO DISMISS - 17

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of **HAFTERLAW**, and that on this 20th day of April, 2016, I served a copy of the foregoing **REPLY IN FURTHERANCE OF MOTION FOR SUMMARY JUDGMENT** and **OPPOSITION TO MOTION TO DISMISS** as follows:

☒ Electronic Service —By filing a true copy thereof with the district court's electronic filing system; and/or

☐ U.S. Mail—By depositing a true copy thereof in the U.S. mail, first class postage prepaid and addressed as listed below; and/or

☐ Facsimile—By facsimile transmission pursuant to EDCR 7.26 to the facsimile number(s) shown below and in the confirmation sheet filed herewith. Consent to service under NRCP 5(b)(2)(D) shall be assumed unless an objection to service by facsimile transmission is made in writing and sent to the sender via facsimile within 24 hours of receipt of this Certificate of Service; and/or

☐ Hand Delivery—By hand-delivery to the addresses listed below.

Jeffrey S. Allison, Esq.
Lindsey E. Pena, Esq.
HOUSER & ALLISON, APC
2900 Paradise Road, Suite 101
Las Vegas, Nevada 89169
Telephone: 702-410-7593
jallison@houser-law.com
lpna@houser-law.com

Attorneys for HSBC Bank USA National Association.

/s/ Kelli Wightman
An employee of HAFTERLAW

EXHIBIT “A”

EXHIBIT “A”

Interest-Only Period Adjustable Rate Note

Six Month LIBOR Index - Rate Caps

THIS NOTE CONTAINS PROVISIONS ALLOWING FOR A CHANGE IN MY FIXED INTEREST RATE TO AN ADJUSTABLE INTEREST RATE AND FOR CHANGES IN MY MONTHLY PAYMENT. THIS NOTE LIMITS THE AMOUNT MY ADJUSTABLE INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE I MUST PAY.

December 21, 2006
[Date]

Las Vegas
[City]

Nevada
[State]

1513 Shotgun Lane, Henderson, NV 89014

[Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ 326,000.00 (this amount is called "Principal"), plus interest, to the order of Lender. Lender is GreenPoint Mortgage Funding, Inc.

I will make all payments under this Note in the form of cash, check or money order.

I understand that Lender may transfer this Note. Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 6.875%. The interest rate I will pay may change in accordance with Section 4 of this Note.

The interest rate required by this Section 2 and Section 4 of this Note is the rate I will pay both before and after any default described in Section 7(B) of this Note.

3. PAYMENTS

(A) Time and Place of Payments

I will make a payment on the first day of every month, beginning on February 1, 2007. Before the First Principal and Interest Payment Due Date as described in Section 4 of this Note, my payment will consist only of the interest due on the unpaid principal balance of this Note. Thereafter, I will pay principal and interest by making a payment every month as provided below.

I will make my monthly payments of principal and interest beginning on the First Principal and Interest Payment Due Date as described in Section 4 of this Note. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date, and if the payment includes both principal and interest, it will be applied to interest before Principal. If, on January 1, 2037, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at P.O. Box 79363, City of Industry, CA 91716-9363

or at a different place if required by the Note Holder.

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(B) Amount of My Initial Monthly Payments

Each of my initial monthly payments will be in the amount of U.S. \$1,867.71 until the first Change Date. After the first Change Date, my monthly payment will be in an amount sufficient to pay accrued interest, at the rate determined as described in Section 4 of this Note until the First Principal and Interest Payment Due Date. On that date and thereafter, my monthly payment will be in an amount sufficient to repay the principal and interest at the rate determined as described in Section 4 of this Note in substantially equal installments by the Maturity Date. The Note Holder will notify me prior to the date of changes in monthly payment.

(C) Monthly Payment Changes

Changes in my monthly payment will reflect changes in the unpaid principal of my loan and in the interest rate that I must pay. The Note Holder will determine my new interest rate and the changed amount of my monthly payment in accordance with Section 4 or 5 of this Note.

4. ADJUSTABLE INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The initial fixed interest rate I will pay will change to an adjustable interest rate on the first day of January, 2012, and the adjustable interest rate I will pay may change on that day every 6th month thereafter. The date on which my initial fixed interest rate changes to an adjustable interest rate, and each date on which my adjustable interest rate could change, is called a "Change Date."

(B) The Index

Beginning with the first Change Date, my interest rate will be based on an Index. The "Index" is the average of interbank offered rates for six-month U.S. dollar-denominated deposits in the London market based on quotations of major banks, as published by the Wall Street Journal. The most recent Index figure available as of the date 45 days before each Change Date is called the "Current Index."

If the Index is no longer available, or is no longer published, the Note Holder will choose a new index that is based upon comparable information. The Note Holder will give me notice of this choice.

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding two and three-quarters percentage points (2.750%) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

The Note Holder will then determine the amount of my monthly payment. For payment adjustments occurring before the First Principal and Interest Payment Due Date, the amount of my monthly payment will be sufficient to repay all accrued interest each month on the unpaid principal balance at the new interest rate. If I make a voluntary payment of principal before the First Principal and Interest Payment Due Date, my payment amount for subsequent payments will be reduced to the amount necessary to repay all accrued interest on the reduced principal balance at the current interest rate. For payment adjustments occurring on or after the First Principal and Interest Payment Due Date, the amount of my monthly payment will be sufficient to repay unpaid principal and interest that I am expected to owe in full on the Maturity Date at the current interest rate in substantially equal payments.

(D) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than 11.875% or less than 2.750%. Thereafter, my adjustable interest rate will never be increased or decreased on any single Change Date by more than one percentage points from the rate of interest I have been paying for the preceding 6 months. My interest rate will never be greater than 11.875%.

(E) Effective Date of Changes

My new interest rate will become effective on each Change Date. I will pay the amount of my new monthly payment beginning on the first monthly payment date after the Change Date until the amount of my monthly payment changes again.

(F) Notice of Changes

Before the effective date of any change in my interest rate and/or monthly payment, the Note Holder will deliver or mail to me a notice of such change. The notice will include information required by law to be given to me and also the title and telephone number of a person who will answer any question I may have regarding the notice.

(G) Date of First Principal and Interest Payment

The date of my first payment consisting of both principal and interest on this Note (the "First Principal and Interest Payment Due Date") shall be that date which is 10 year(s) from the first payment due date, as reflected in Section 3(A) of the Note.

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5. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under the Note.

I may make a full Prepayment or partial Prepayments without paying a Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount, before applying my Prepayment to reduce the Principal amount of the Note. If I make a partial Prepayment, there will be no changes in the due date of my monthly payment unless the Note Holder agrees in writing to those changes. If the partial Prepayment is made during the period when my monthly payments consist only of interest, the amount of the monthly payment will decrease for the remainder of the term when my payments consist only of interest. If the partial Prepayment is made during the period when my payments consist of principal and interest, my partial Prepayment may reduce the amount of my monthly payments after the first Change Date following my partial Prepayment. However, any reduction due to my partial Prepayment may be offset by an interest rate increase.

6. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from me that exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

7. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charges for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of 15 calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.000 % of my overdue payment of interest, during the period when my payment is interest only, and of principal and interest thereafter. I will pay this late charge promptly but only once on each late payment.

(B) Default

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

(C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Principal that has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is mailed to me or delivered by other means.

(D) No Waiver By Note Holder

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

(E) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

8. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Unless the Note Holder requires a different method, any notice that must be given to the Note Holder under this Note will be given by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

9. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

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10. WAIVERS

I and any other person who has obligations under this Note waive the rights of Presentment and Notice of Dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

11. UNIFORM SECURED NOTE

This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust, or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses that might result if I do not keep the promises that I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions read as follows:

(A) Until my initial fixed interest rate changes to an adjustable interest rate under the terms stated in Section 4 above, Uniform Covenant 18 of the Security Instrument shall read as follows:

Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

(B) When my initial fixed interest rate changes to an adjustable interest rate under the terms stated in Section 4 above, Uniform Covenant 18 of the Security Instrument described in Section 11(A) above shall then cease to be in effect, and Uniform Covenant 18 of the Security Instrument shall instead read as follows:

Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

To the extent permitted by Applicable Law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption. Lender also may require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.

If Lender exercises the option to require immediate payment in full, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

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GreenPoint Mortgage Funding, Inc.

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WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.

Amy B. Facklam (Seal)
Amy B. Facklam -Borrower

____ (Seal)
____ -Borrower

____ (Seal)
____ -Borrower

____ (Seal)
____ -Borrower

____ (Seal)
____ -Borrower

____ (Seal)
____ -Borrower

____ (Seal)
____ -Borrower

____ (Seal)
____ -Borrower

[Sign Original Only]

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BANA-000310

WITHOUT RECOURSE
PAY TO THE ORDER OF:

GreenPoint Mortgage Funding, Inc.

Thomas K. Mitchell
Thomas K. Mitchell
Vice President

BANA-000311

PREPAYMENT FEE ALLONGE

Loan Number: XXXXXX 6501

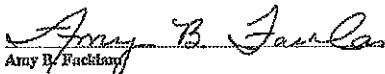
This Prepayment Fee Allonge ("Allonge") is made this 21st day of December, 2006, and is incorporated into and intended to form a part of the note dated the same date as this Allonge (Note) and also amends and supplements the mortgage, deed of trust, security deed, or security instrument (the "Security Instrument") dated the same date as this Allonge and the Note. To the extent that the provisions of this Allonge are inconsistent with the provisions of the Note and/or the Security Instrument, the provisions of this Allonge shall prevail over and will supercede any inconsistent provisions of the Note and/or the Security Instrument.

The section of the Note entitled Borrower's Right to Prepay is amended by adding the following paragraph as the last paragraph of such section:

If I make a Prepayment within 3 years of the date of this Note, I will pay a Prepayment fee on the aggregate Prepayments made within any consecutive twelve month period which exceed 20% of the original Principal amount stated in the Note. The Prepayment fee I will pay shall be an amount equal to six (6) months advance interest on the amount of the Prepayment that, when added to all other amounts prepaid during the twelve (12) month period immediately preceding the date of the Prepayment, exceeds twenty percent (20%) of the original principal amount of this Note. The interest rate used to calculate the Prepayment fee will be the interest rate in effect at the time of the Prepayment. I will not be obligated to pay a Prepayment fee if I make a full Prepayment at any time after the 3rd Year anniversary after I execute this Note, and in no event will such a charge be made if it violates state or federal law.

No Prepayment penalty will be assessed if prepayment is concurrent with the sale of the property securing the Note.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.

 (Borrower)
Amy B. Facklam

(Borrower)

(Borrower)

(Borrower)

(Borrower)

(Borrower)

(Borrower)

(Borrower)

[Sign Original Only]

EXHIBIT “B”

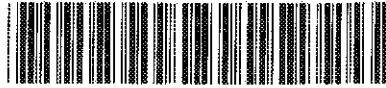
EXHIBIT “B”

Bank of America 

Home Loans
PO Box 9048
Tombala, CA 92569-9048

Send Payments To:
PO Box 10219
Van Nuys, CA 91410-0219

Send Correspondence to:
PO Box 5170, MS SV314B
Simi Valley, CA 93065



2219484032

PRESORT
First-Class Mail
U.S. Postage and
Fees Paid
WSO



Amy B Facklam
1513 SHOTGUN LN
HENDERSON, NV 89014-0312

20000519-7
BLONSENH

1128-v25



BANA-000072

BANA-000073



Home Loans
P.O. Box 10221
Van Nuys, CA 91410-0221

Business Address:
450 American Street
Sunnyvale, CA 95085-6285

Send Payments to:
P.O. Box 10219
Van Nuys, CA 91410-0219

May 18, 2009

Amy B Facklam
1513 SHOTGUN LN
HENDERSON, NV 89014-0312

Account No. [REDACTED] 2292
Property Address:
1513 Shotgun Ln
Henderson, NV 89014-0312

NOTICE OF INTENT TO ACCELERATE

Dear Amy B Facklam:

BAC Home Loans Servicing, LP (hereinafter "BAC Home Loans Servicing, LP") services the home loan described above on behalf of the holder of the promissory note (the "Noteholder"). The loan is in serious default because the required payments have not been made. The total amount now required to reinstate the loan as of the date of this letter is as follows:

| | | |
|-------------------------|--------------------------|-------------------|
| <u>Monthly Charges:</u> | 04/01/2009 | \$4,376.82 |
| <u>Late Charges:</u> | 04/01/2009 | \$186.60 |
| <u>Other Charges:</u> | Total Late Charges: | \$0.00 |
| | Uncollected Costs: | \$0.00 |
| | Partial Payment Balance: | (\$0.00) |
| TOTAL DUE: | | \$4,563.42 |

You have the right to cure the default. To cure the default, on or before June 17, 2009, BAC Home Loans Servicing, LP must receive the amount of \$4,563.42 plus any additional regular monthly payment or payments, late charges, fees and charges, which become due on or before June 17, 2009.

The default will not be considered cured unless BAC Home Loans Servicing, LP receives "good funds" in the amount \$4,563.42 on or before June 17, 2009. If any check (or other payment) is returned to us for insufficient funds or for any other reason, "good funds" will not have been received and the default will not have been cured. No extension of time to cure will be granted due to a returned payment. BAC Home Loans Servicing, LP reserves the right to accept or reject a partial payment of the total amount due without waiving any of its rights herein or otherwise. For example, if less than the full amount that is due is sent to us, we can keep the payment and apply it to the debt but still proceed to foreclosure since the default would not have been cured.

If the default is not cured on or before June 17, 2009, the mortgage payments **will be accelerated** with the full amount remaining accelerated and becoming due and payable in full, and foreclosure proceedings will be initiated at that time. As such, the failure to cure the default may result in the foreclosure and sale of your property. If your property is foreclosed upon, the Noteholder may pursue a deficiency judgment against you to collect the balance of your loan, if permitted by law.

You may, if required by law or your loan documents, have the right to cure the default after the acceleration of the mortgage payments and prior to the foreclosure sale of your property if all amounts past due are paid within the time permitted by law. However, BAC Home Loans Servicing, LP and the Noteholder shall be entitled to collect all fees and costs incurred by BAC Home Loans Servicing, LP and the Noteholder in pursuing any of their remedies, including but not limited to reasonable attorney's fees, to the full extent permitted by law. Further, you may have the right to bring a court action to assert the non-existence of a default or any other defense you may have to acceleration and foreclosure.

Your loan is in default. Pursuant to your loan documents, BAC Home Loans Servicing, LP may enter upon and conduct an inspection of your property. The purposes of such an inspection are to (i) observe the physical condition of your property, (ii) verify that the property is occupied and/or (iii) determine the identity of the occupant. If you do not cure the default prior to the inspection, other actions to protect the mortgagee's interest in the property (including, but not limited to, winterization, securing the property, and valuation services) may be taken. **The costs of the above-described inspections and property preservation efforts will be charged to your account as provided in your security instrument and as permitted by law.**

If you are unable to cure the default on or before June 17, 2009, BAC Home Loans Servicing, LP wants you to be aware of various options that may be available to you through BAC Home Loans Servicing, LP to prevent a foreclosure sale of your

BAC Home Loans Servicing, LP is a subsidiary of Bank of America, N.A.

Please write your account number on all checks and correspondence.
We may charge you a fee for any payment returned or rejected by your financial institution, subject to applicable law.

BLGNSENV 8795 12/11/2008

Payment Instructions:

- Make your check payable to BAC Home Loans Servicing, LP
- Don't send cash
- Please include coupon with your payment

For all full month payment periods, interest is calculated on a monthly basis. Accordingly, interest for all full months, including February, is calculated as 30/360 of annual interest, irrespective of the actual number of days in the month. For partial months, interest is calculated daily on the basis of a 365 day year.

Account Number: [REDACTED] 292-2
Amy B Facklam
1513 Shotgun Ln
Henderson, NV 89014-0312

Balance Due for charges listed above: \$4,563.42 as of May 10, 2009.

Please update e-mail information on the reverse side of this coupon.

BLGNSENV

Additional
Address

Additional
Address

Check
Total

BAC Home Loans Servicing, LP
PO BOX 10219
Van Nuys, CA 91410-0219
[REDACTED]



[REDACTED] 6342

[REDACTED] 2 2 9 2 1 9

BANA-000074

property. For example:

- **Repayment Plan:** It is possible that you may be eligible for some form of payment assistance through BAC Home Loans Servicing, LP. Our basic plan requires that BAC Home Loans Servicing, LP receive, up front, at least 1/2 of the amount necessary to bring the account current, and that the balance of the overdue amount be paid, along with the regular monthly payment, over a defined period of time. Other repayment plans also are available.
- **Loan Modification:** Or, it is possible that the regular monthly payments can be lowered through a modification of the loan by reducing the interest rate and then adding the delinquent payments to the current loan balance. This foreclosure alternative, however, is limited to certain loan types.
- **Sale of Your Property:** Or, if you are willing to sell your home in order to avoid foreclosure, it is possible that the sale of your home can be approved through BAC Home Loans Servicing, LP even if your home is worth less than what is owed on it.
- **Deed-in-Lieu:** Or, if your property is free from other liens or encumbrances, and if the default is due to a serious financial hardship which is beyond your control, you may be eligible to deed your property directly to the Noteholder and avoid the foreclosure sale.

If you are interested in discussing any of these foreclosure alternatives with BAC Home Loans Servicing, LP, you must contact us immediately. If you request assistance, BAC Home Loans Servicing, LP will need to evaluate whether that assistance will be extended to you. In the meantime, BAC Home Loans Servicing, LP will pursue all of its rights and remedies under the loan documents and as permitted by law, unless it agrees otherwise in writing. Failure to bring your loan current or to enter into a written agreement by June 17, 2009 as outlined above will result in the acceleration of your debt.

Additionally, the U.S. Department of Housing and Urban Development (HUD) funds free or very low cost housing counseling across the nation. Housing counselors can help you understand the law and your options. They can also help you to organize your finances and represent you in negotiations with your lender if you need this assistance. You may find a HUD-approved housing counselor near you by calling 1-800-569-4287. For the hearing impaired, HUD Counseling Agency (TDD) numbers are available at 1-800-877-8339.

Time is of the essence. Should you have any questions concerning this notice, please contact Loan Counseling Center immediately at 1-800-669-6654. Our office hours are between 8am to 9pm Eastern Time.

Sincerely,

Loan Counseling Center

BAC Home Loans Servicing, LP is a subsidiary of Bank of America, N.A.

Account Number: 2292

E-mail use: Providing your e-mail address below will allow us to send you information on your account.
Any B Facklam E-mail address:

How we post your payments: All accepted payments of principal and interest will be applied to the longest outstanding installment due, unless otherwise expressly prohibited or limited by law. If you submit an amount in addition to your scheduled monthly amount, we will apply your payments as follows: (i) to outstanding monthly payments of principal and interest, (ii) to escrow deficiencies, (iii) late charges and other amounts you owe in connection with your loan and (iv) to reduce the outstanding principal balance of your loan. Please specify if you want an additional amount applied to future payments, rather than principal reduction.

Postdated checks: Postdated checks will be processed on the date received unless a loan counselor agrees to honor the date written on the check as a condition of payment plan.

Bank of America

Home Loans
PO Box 9046
Tombala, CA 92569-9046

Send Payments To:
PO Box 10218
Van Nuys, CA 91413-0218

Send Correspondence to:
PO Box 5170, MS 5V3148
Simi Valley, CA 93065



2220775205

PRESORT
First-Class Mail
U.S. Postage and
Fees Paid
WSO



Amy B Facklam
1513 SHOTGUN LN
HENDERSON, NV 89014-0312

55000016-7
BLQNSERV

1128-v25



BANA-000076

BANA-000077

- **Repayment Plan:** It is possible that you may be eligible for some form of payment assistance through BAC Home Loans Servicing, LP. Our basic plan requires that BAC Home Loans Servicing, LP receive, up front, at least 1/2 of the amount necessary to bring the account current, and that the balance of the overdue amount be paid, along with the regular monthly payment, over a defined period of time. Other repayment plans also are available.
- **Loan Modification:** Or, it is possible that the regular monthly payments can be lowered through a modification of the loan by reducing the interest rate and then adding the delinquent payments to the current loan balance. This foreclosure alternative, however, is limited to certain loan types.
- **Sale of Your Property:** Or, if you are willing to sell your home in order to avoid foreclosure, it is possible that the sale of your home can be approved through BAC Home Loans Servicing, LP even if your home is worth less than what is owed on it.
- **Deed-in-Lieu:** Or, if your property is free from other liens or encumbrances, and if the default is due to a serious financial hardship which is beyond your control, you may be eligible to deed your property directly to the Noteholder and avoid the foreclosure sale.

If you are interested in discussing any of these foreclosure alternatives with BAC Home Loans Servicing, LP, you must contact us immediately. If you request assistance, BAC Home Loans Servicing, LP will need to evaluate whether that assistance will be extended to you. In the meantime, BAC Home Loans Servicing, LP will pursue all of its rights and remedies under the loan documents and as permitted by law, unless it agrees otherwise in writing. Failure to bring your loan current or to enter into a written agreement by July 16, 2009 as outlined above will result in the acceleration of your debt.

Additionally, the U.S. Department of Housing and Urban Development (HUD) funds free or very low cost housing counseling across the nation. Housing counselors can help you understand the law and your options. They can also help you to organize your finances and represent you in negotiations with your lender if you need this assistance. You may find a HUD-approved housing counselor near you by calling 1-800-569-4287. For the hearing impaired, HUD Counseling Agency (TDD) numbers are available at 1-800-877-8339.

Time is of the essence. Should you have any questions concerning this notice, please contact Loan Counseling Center immediately at 1-800-869-6654. Our office hours are between 8am to 9pm Eastern Time.

Sincerely,

Loan Counseling Center

BAC Home Loans Servicing, LP is a subsidiary of Bank of America, N.A.

Account Number [REDACTED] 2292

E-mail use: Providing your e-mail address below will allow us to send you information on your account.
Amy B Facklam E-mail address:

How we post your payments: All accepted payments of principal and interest will be applied to the longest outstanding installment due, unless otherwise expressly prohibited or limited by law. If you submit an amount in addition to your scheduled monthly amount, we will apply your payments as follows: (i) to outstanding monthly payments of principal and interest, (ii) escrow deficiencies, (iii) late charges and other amounts you owe in connection with your loan and (iv) to reduce the outstanding principal balance of your loan. Please specify if you want an additional amount applied to future payments, rather than principal reduction.

Postdated checks: Postdated checks will be processed on the date received unless a loan counselor agrees to honor the date written on the check as a condition of a repayment plan.

Bank of America

Home Loans
PO Box 8048
Torrance, CA 90509-8048

Send Payments To:
PO Box 10219
Van Nuys, CA 91410-0219

Send Correspondence to:
PO Box 5170, MS 5V314B
Simi Valley, CA 93065



2222467511

PRESORT
First-Class Mail
U.S. Postage and
Fees Paid
WSO



Amy B Facklam
1513 SHOTGUN LN
HENDERSON, NV 89014-0312

00000772-7
BLQNSERIV



1128-v20

BANA-000080

BANA-000081



Home Loans
P.O. Box 10221
Van Nuys, CA 91410-0221

Business Address:
450 American Street
Simi Valley, CA 93065-8285

Send Payments to:
P.O. Box 10219
Van Nuys, CA 91410-0219

July 22, 2009

Amy B Facklam
1513 SHOTGUN LN
HENDERSON, NV 89014-0312

Account No.: [REDACTED] 2282
Property Address:
1513 Shotgun Ln
Henderson, NV 89014-0312

NOTICE OF INTENT TO ACCELERATE

Dear Amy B Facklam:

BAC Home Loans Servicing, LP (hereinafter "BAC Home Loans Servicing, LP") services the home loan described above on behalf of the holder of the promissory note (the "Noteholder"). The loan is in serious default because the required payments have not been made. The total amount now required to reinstate the loan as of the date of this letter is as follows:

| | | |
|-------------------------|--------------------------|-------------------|
| Monthly Charges: | 06/01/2009 | \$4,376.84 |
| Late Charges: | 06/01/2009 | \$186.60 |
| Other Charges: | Total Late Charges: | \$93.30 |
| | Uncollected Costs: | \$15.00 |
| | Partial Payment Balance: | (\$329.97) |
| TOTAL DUE: | | \$4,341.57 |

You have the right to cure the default. To cure the default, on or before August 21, 2009, BAC Home Loans Servicing, LP must receive the amount of \$4,341.57 plus any additional regular monthly payment or payments, late charges, fees and charges, which become due on or before August 21, 2009.

The default will not be considered cured unless BAC Home Loans Servicing, LP receives "good funds" in the amount \$4,341.57 on or before August 21, 2009. If any check (or other payment) is returned to us for insufficient funds or for any other reason, "good funds" will not have been received and the default will not have been cured. No extension of time to cure will be granted due to a returned payment. BAC Home Loans Servicing, LP reserves the right to accept or reject a partial payment of the total amount due without waiving any of its rights herein or otherwise. For example, if less than the full amount that is due is sent to us, we can keep the payment and apply it to the debt but still proceed to foreclosure since the default would not have been cured.

If the default is not cured on or before August 21, 2009, the mortgage payments will be accelerated with the full amount remaining accelerated and becoming due and payable in full, and foreclosure proceedings will be initiated at that time. As such, the failure to cure the default may result in the foreclosure and sale of your property. If your property is foreclosed upon, the Noteholder may pursue a deficiency judgment against you to collect the balance of your loan, if permitted by law.

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BAC Home Loans Servicing, LP is a subsidiary of Bank of America, N.A.

Please write your account number on all checks and correspondence.
We may charge you a fee for any payment returned or rejected by your financial institution, subject to applicable law.

BLQ48ENV 8785 12/11/2009

Payment Instructions:

- Make your check payable to BAC Home Loans Servicing, LP
- Don't send cash
- Please include coupon with your payment

For all full monthly payment periods, interest is calculated on a monthly basis. Accordingly, interest for all full months, including February, is calculated as 30/360 of annual interest, irrespective of the actual number of days in the month. For partial months, interest is calculated daily on the basis of a 365 day year.



Account Number: [REDACTED] 292-2
Amy B Facklam
1513 Shotgun Ln
Henderson, NV 89014-0312

Balance Due for charges listed above: \$4,341.57 as of July 22, 2009.

Please update email information on the reverse side of this coupon.

BLQ48ENV

Additional
Payments
Additional
Interest
Check
Total

BAC Home Loans Servicing, LP
PO BOX 10219
Van Nuys, CA 91410-0219
[Barcode]

[REDACTED] 157

[REDACTED] 2 2 9 211

BANA-000082

property. For example:

- **Repayment Plan:** It is possible that you may be eligible for some form of payment assistance through BAC Home Loans Servicing, LP. Our basic plan requires that BAC Home Loans Servicing, LP receive, up front, at least 1/2 of the amount necessary to bring the account current, and that the balance of the overdue amount be paid, along with the regular monthly payment, over a defined period of time. Other repayment plans also are available.
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Additionally, the U.S. Department of Housing and Urban Development (HUD) funds free or very low cost housing counseling across the nation. Housing counselors can help you understand the law and your options. They can also help you to organize your finances and represent you in negotiations with your lender if you need this assistance. You may find a HUD-approved housing counselor near you by calling 1-800-569-4287. For the hearing impaired, HUD Counseling Agency (TDD) numbers are available at 1-800-877-8339.

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Sincerely,

Loan Counseling Center

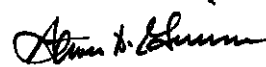
BAC Home Loans Servicing, LP is a subsidiary of Bank of America, N.A.

Account Number: 2292

E-mail use: Providing your e-mail address below will allow us to send you information on your account.
Amy B Facklam E-mail address.

How we post your payments: All accepted payments of principal and interest will be applied to the longest outstanding installment due, unless otherwise expressly prohibited or limited by law. If you submit an amount in addition to your scheduled monthly amount, we will apply your payments as follows: (i) to outstanding monthly payments of principal and interest, (ii) to cure deficiencies, (iii) late charges and other amounts you owe in connection with your loan and (iv) to reduce the outstanding principal balance of your loan. Please specify if you want an additional amount applied to future payments, rather than principal reduction.

Postdated checks: Postdated checks will be processed on the date received unless a loan counselor agrees to honor the date written on the check as a condition of a repayment plan.


CLERK OF THE COURT

1 RTRAN

2
3
4
5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7
8 AMY FACKLAM,
9 Plaintiff,

CASE#: A733762
DEPT. VI

10 vs.

11 HSBC BANK USA NATIONAL
12 ASSOCIATION,
13 Defendant.

14 BEFORE THE HONORABLE ELISSA F. CADISH, DISTRICT COURT JUDGE
15 TUESDAY, JUNE 7, 2016

16 **RECORDER'S TRANSCRIPT OF HEARING**
17 **PLAINTIFF, AMY FACKLAM'S MOTION FOR SUMMARY JUDGMENT AND**
18 **DEFENDANT'S OPPOSITION TO MOTION FOR SUMMARY JUDGMENT AND**
COUNTER-MOTION TO DISMISS THE COMPLAINT

19 APPEARANCES:

20 For the Plaintiff:

JACOB L. HAFTER, ESQ.

21
22 For the Defendant:

JEFFREY S. ALLISON, ESQ.
Via CourtCall

23
24
25 RECORDED BY: JESSICA KIRKPATRICK, COURT RECORDER

1 Las Vegas, Nevada, Tuesday, June 7, 2016

2
3 [Case called at 8:43 a.m.]

4 THE COURT: So it's Amy Facklam versus HSBC Bank. First let me get
5 appearance here in court.

6 MR. HAFTER: Hello, Your Honor, Jacob Hafter, 9303, for plaintiff.

7 THE COURT: And who do we have on the phone?

8 MR. ALLISON: Good morning, Your Honor, Jeff Allison on behalf of the
9 defendant.

10 THE COURT: Okay. So we've got the plaintiff's motion for summary
11 judgment and then the defendant in opposing that also filed a countermotion to
12 dismiss the complaint. And so that speaker that my Marshal was just moving is the
13 one to make sure that Mr. Allison, on the phone, can hear you.

14 So I did review the briefing regarding this. So there was actually the
15 motion, the opposition, and countermotion, the reply, and opposition to the
16 countermotion, and then the final reply on the motion to dismiss. So I have read all
17 of those. So, Mr. Hafter, go ahead.

18 MR. HAFTER: Your Honor, I'm not sure if you want me to argue or if there's
19 points in the briefs that you would like me to clarify? Different Judges do different
20 things. And I hate to just sit here and regurgitate the briefs.

21 THE COURT: Well why don't we start with the last reply, which cites to NRS
22 106.240 with regard to a 10 year period of time.

23 MR. HAFTER: So by way of introduction, Your Honor, this is a type of case
24 that I have been filing for clients that I started to represent 2008 and 2009. And
25 unfortunately despite 6, 7, 8 years of trying to work with banks we just can't get

1 anything resolved on certain client files. And so we started to say okay foreclosure
2 is a jud -- is a remedy based on contract. And in the statutes that the NR -- that the
3 Legislature set forth it very clearly sets that it's a remedy based on a breach of a
4 deed of trust. Then the courts not only talk about -- the Legislature not only talks
5 about a legislative -- excuse me, a judicial foreclosure opportunity. But it also, to
6 help streamline and help accommodate the courts and avoid being burdened with a
7 tremendous number of foreclosure cases, created this process for non-judicial
8 foreclosure.

9 And so in all of these cases the banks have been relying on this statute
10 in 106 to say that's the statute of limitations. But that's not what it says. And we
11 know that when we're interpreting statutes we want to give the plain meaning of the
12 law and the plain meaning of the statute. And the statute very -- that they're
13 referring to very clearly says if a deed of trust has not been addressed on the title
14 records 10 years after it's due date then it's to be deemed extinguished. That's not
15 a statute of limitations. That's to ensure that we have clear property records
16 because we remember from -- or at least I remember from property class that, you
17 know, we want to encourage the free exchange of property. We don't want fiefdoms
18 in our country. We want to make sure that everything that is done with respect to
19 property is public notice and that we have clear and proper title records. So
20 occasionally, you know, you may find a deed of trust that has already come due and
21 has not ever been released from a property.

22 And so this statute basically says that after 10 years from that date,
23 which we know because the deed of trust is recorded on the property. So that's
24 public record. So if 10 day -- 10 years after that comes and goes and nothing has
25 been filed to release that lien, it's deemed extinguished. That's not what a statute of

1 limitations is.

2 The statute of limitations says that if -- and I don't need to tell you this,
3 but for the record, I mean, --

4 THE COURT: Go ahead.

5 MR. HAFTER: -- if after a certain amount of time from when a legal cause of
6 action occurs you have not pursued that action you're barred from pursuing it.

7 In this case Ms. Facklam breached her mortgage for whatever reason.
8 We say it's at the behest of the Bank, in 2009 I believe it was. Six years later we
9 come to the point where they never -- they didn't foreclose. And then they tried this
10 current attempt to foreclose after that 6 year period. And so what we're saying, Your
11 Honor, is that because foreclosure is a contractual remedy for a breach and
12 because the contractual statute of limitations is 6 years we need to apply the 6 year
13 statute of limitations.

14 And if we go back all the way to 1800s the Supreme Court addressed
15 this and in the first Nevada Reports, which I rarely have the opportunity to quote
16 from that. In *Henry versus Confidence Gold and Silver Mining* the Supreme Court
17 looked at this issue and they tried to determine how we in Nevada are going to
18 address this, because there were two different competing theories.

19 One was from California where they basically said that because it's, as
20 what we're arguing here, that when a statute of limitations bars collection of a debt
21 the mortgage is in effect extinguished. The other position was from a US District
22 Court that basically said no. They said it established contrary doctrine. And they
23 said that basically the deed of trust is still there. The lien on the property is still
24 there, you just don't have a contractual remedy. And then the Court, the Nevada
25 Supreme Court said we are of the opinion then so far as this branch of the case

1 goes the Supreme Court of California was right and the Circuit Court was in error.
2 And so therefore the Nevada Supreme Court chose by that sentence to say the 6
3 year -- the contractual statute of limitations bars foreclosure of a property when it
4 runs.

5 The problem is this case was written in the 1800s and the way they
6 made their analysis is you can't just take a key note or a add note, you know, and
7 plop it in because they talk about the US District Court position as well. So that's
8 what's happening. The banks have been quoting this case to say no, you know, it
9 doesn't -- the statute of limitations from a contract doesn't extinguish a foreclosure
10 or prevent a foreclosure. But a close read of this case does. And for the most part
11 for the last 150 years it really hasn't been an issue because what bank won't
12 foreclose on their property within 6 years of a breach?

13 The latest housing prices --

14 THE COURT: I would dare say there are more than one.

15 MR. HAFTER: And that's what we're finding as a result of the latest housing
16 crisis is that we see HOA foreclosures which never occurred, which has spurred a
17 lot of litigation for this Court. And now we see these types of cases. And Judge Bell
18 has a very similar case before her. We had another case that was before this
19 District Court that has been removed to Federal Court that's being decided by Judge
20 Boulware there and decisions are pending. But this is a really in some respect
21 because it's so old it's -- and there's not really very clear caselaw. It -- this has
22 become a new case of first impression. This is the next issue in foreclosure law,
23 you know, and so --

24 THE COURT: Well if you can't pursue it and you can't foreclose after 6 years,
25 then what's the point of the statute that says after 10 years it's satisfied?

1 MR. HAFTER: Because that statute doesn't anticipate a breach of the debt
2 instrument. That statute is pretty much saying after 10 years after the debt -- the
3 date the debts become mature.

4 THE COURT: Uh-huh.

5 MR. HAFTER: So that's assuming that you have a 30 year mortgage, 30
6 years come and goes and then 10 years on top of that, and nobody's filed a
7 rescission on the title records, because you always have to do a rescission or a
8 notice of satisfaction.

9 THE COURT: Right.

10 MR. HAFTER: If you haven't done that then the -- you could deem it struck.
11 That's what that statute's dealing with. It has nothing to do with bringing a claim for
12 a breach of that debt obligation or trying to enforce the security interest that that
13 deed of trust has created with its filing.

14 And so, you know, we'd like to just direct the Court's attention to the
15 fact that this is a -- that foreclosure is a remedy because somebody breached a
16 contract. And we know contract statute of limitations are 6 years, and therefore the
17 remedies for that breach are barred by a statute of limitations and that includes
18 foreclosure. Even though the Legislature created a very specific mechanism for
19 non-judicial foreclosures it's still a remedy for a breach of contract and so we're
20 going to say it's barred. And we would ask that you rule that it's barred and allow
21 this matter to proceed. I'm sure it will get appealed.

22 THE COURT: Yes. So there were monthly payments under this loan that
23 were to be made until 2036.

24 MR. HAFTER: Correct.

25 THE COURT: Right. And so your argument only works if in fact the entire

1 loan was accelerated and remained accelerated, if you will, from 2009.

2 MR. HAFTER: Absolutely.

3 THE COURT: Because otherwise there's a monthly payment each month not
4 being made which is its own separate breach.

5 MR. HAFTER: Absolutely, and the Supreme Court is very clear that you
6 cannot -- that if basically they have to accelerate in order to trigger a statute of
7 limitations claim.

8 THE COURT: Right, so if the Bank sat back and never did anything and each
9 month for 30 years she never made one payment they could wait until 6 years after
10 the 30 years expires and then say okay now we're going to proceed on it.

11 MR. HAFTER: And I'm nodding for the record to agree with you with that.

12 THE COURT: Okay.

13 MR. HAFTER: But that's not the case here because in 2009 we had an
14 acceleration. We had a very clear acceleration with the notice --

15 THE COURT: In a notice of default which was later rescinded.

16 MR. HAFTER: It was rescinded in part, because the rescission very clearly
17 says that this rescission does not affect -- I want to get the language correct here. It
18 says that the rescission did not waive, cure, extend to, or affect any default either
19 past, present, or future under such deed of trust or as impair any rights or remedy
20 thereunder.

21 THE COURT: Right, because -- so they're rescinding the notice of default but
22 they can still claim that she's previously breached by not making her payments.

23 MR. HAFTER: Right, and what's interesting is in some of these cases what
24 we're finding in some of -- is some of these rescissions of the notice of breach are
25 far different than what this rescission says. We're seeing -- we've seen rescission

1 that have been filed that very clearly say we're rescinding that notice of breach,
2 period, end of story. And it's deemed to not have been filed. That's not what this
3 rescission says. This rescission says that this rescission doesn't affect any of those
4 rights, remedies, or cures. And the acceleration was a remedy as a result of that
5 prior breach. So we don't believe that the acceleration has been rescinded. And so
6 therefore it stays for the 6 years beginning in 2009.

7 THE COURT: Now the notice of default gets served and even though it's set
8 and recorded, and even though it says that there's acceleration there's the right to
9 cure for the 35 days or whatever it is, right? Which is just the amounts that are
10 overdue, if you will. And if they pay that then they can -- then the borrower can
11 proceed.

12 MR. HAFTER: Well maybe. I think that's a question of fact, Your Honor,
13 because --

14 THE COURT: There's a right to cure under the statute after the notice of
15 default.

16 MR. HAFTER: But what is that right to cure? Because many banks say
17 unless you pay everything including the full principal amount you can't cure. They
18 want -- once they accelerate they want everything.

19 THE COURT: Okay, that's not what this notice of default said.

20 MR. HAFTER: Well like I said, we have 7-8 years of history with this bank.
21 And, you know, they never said after the -- they filed the notice of default. Just pay
22 us the 6 months that you're late and you'll be cured. They wanted --

23 THE COURT: I'm sure they wanted fees and costs.

24 MR. HAFTER: Fees, costs, interest, default, and then they wanted the full
25 principal amount. They would not work with us. So cure was not a possibility. And

1 a matter of fact we even went into -- Ms. Facklam went into loan modification trying
2 to do -- trying to work with her. She not only made the three payments, I think she
3 made 7, 8, or 9 payments.

4 THE COURT: Uh-huh.

5 MR. HAFTER: And ultimately what happened was for no reason that we
6 could understand they said on no you don't get a permanent loan mod. And all
7 those payments that you made are not going to be credited towards your mortgage.
8 They're going to go towards, fees, costs, and other things that they wanted to apply
9 it to. They were arbitrary and tacked on.

10 THE COURT: Okay. So the claims that Ms. Facklam is asserting in this case
11 there's the first claim for dec relief and for quiet title, so seeking basically a
12 declaration that the deed of trust no longer affects title or is in place.

13 MR. HAFTER: Well, I always like to craft my remedies very narrowing.

14 THE COURT: Uh-huh.

15 MR. HAFTER: And so I think that the only thing that we're asking this Court
16 to say is that the statute of limitations would bar any foreclosure of the property at
17 this point. How that gets addressed with title will be an issue that we'll have to deal
18 with. But I -- all we're asking is that this Court say that a statute of limitations
19 prevents foreclosure.

20 THE COURT: Okay and then the second claim is just for injunctive relief
21 against foreclosure?

22 MR. HAFTER: Yes, Your Honor.

23 THE COURT: Okay. Mr. Allison.

24 MR. ALLISON: Yes, Your Honor, well a lot of discussion and I think
25 respectively plaintiff's counsel kind of makes our case for us. First of all we believe

1 the 10 year statute does apply to the deed of trust as expressly stated. Secondly,
2 counsel talks about a remedy being the same as action. The 6 year statute of
3 limitations applies to breach of contract actions. This is a non-judicial foreclosure. It
4 is not an action filed in court. It is not an action for breach of contract. The notice of
5 default, as Your Honor correctly points out, did not accelerate the loan, expressly or
6 legally under the statutes. It talks about the amount in default as of June 1, 2009
7 and it expressly says the entire principal amount will become due on January 1st,
8 2037.

9 Counsel goes on and talks about well they've made all kinds of efforts
10 with the Bank. Well I don't know what the Bank is. There's several banks involved
11 here. Our client didn't even service or have this loan at the time of the notice of
12 default. Notwithstanding, yes there were several attempts. And counsel kind of
13 makes a simplistic argument saying well let's assume the notice of default
14 accelerated the loan in September of 2009. Therefore, here we are more than 6
15 years later so the deed of trust is barred and foreclosure can't proceed.

16 Well as counsel pointed out they made efforts. After that notice of
17 default one month later they entered into a trial mod with a prior servicer, Bank of
18 America. And that lasted from October 2009 to approximately May 2010. So it
19 seems to me that the Bank worked with them, entered into a trial mod, and at the
20 very least let's assume whichever statute of limitations you may want to apply that
21 would toll that. You can't enter into a modification and then foreclose during the
22 modification. That would violate a host of statutes.

23 The next thing was that the -- once the trial mod did not result into a
24 permanent loan modification agreement the notice of sale was then issued and
25 recorded in July 2011, two years later after that modification did not result in a

1 permanent agreement. And as the notice of sale expressly states, which we've
2 attached to our reply brief and requested judicial notice, since plaintiff in all of its
3 papers filed the date that's conveniently omitted the notice of sale. The notice of
4 sale is what affects the acceleration.

5 The notice of sale recorded on July 11th expressly stated the
6 accelerated amount due on the loan as \$365,000 approximately. That amount was
7 nowhere stated in the notice of default, which makes sense because under the
8 statutes 107.80 and so forth you can't just accelerate and set -- accelerate, put the
9 full loan amount in the notice of default and set a sale in the notice of default.
10 Otherwise there would be no separate section or requirement or reason to issue a
11 notice of sale. And as Your Honor correctly pointed out, the reason is because the
12 borrower then has at least a 3 month period after the notice of default to reinstate
13 the loan by paying the arrearages in default.

14 After the notice of sale the plaintiff -- and this is in plaintiff's own papers
15 filed a breach of contract action against the former servicer, Bank of America and
16 the trustee at the time. That was filed in August 2011 and it wasn't resolved until
17 2014. That seems to me to be another period of tolling of any statute of limitations
18 that may apply. And as we know then later, a few months after -- four months after
19 that in December 2011 the rescission was recorded. The rescission rescinded the
20 notice of default. The rescission rescinded the non-judicial foreclosure proceeding
21 under that notice of default. It was wiped clear. The loan was reinstated. There
22 was not acceleration at that point. You can't accelerate the loan and then rescind
23 the foreclosure process under which that loan was accelerated and then not
24 reinstate or just -- and just carry forward and not accept any payments. It just
25 doesn't make sense. It's illogical.

1 So even if there was an acceleration, which there was with the notice of
2 sale, that foreclosure, that acceleration was rescinded. After the rescission then the
3 loan was assigned and service transferred to my client. My client made further
4 efforts to try to resolve with the borrower. They weren't successful. The new notice
5 of default was recorded this year in January of 2016. And again it's for the amount
6 in default. There has been no notice of sale. There has been no acceleration under
7 the current foreclosure which is again non-judicial. And there has not been any
8 reason to do that because this Court previously denied plaintiff's motion or
9 preliminary injunction and the parties agreed that no notice of sale to set a sale or
10 acceleration would issue until further advance notice, which make sense.

11 It seems to me what plaintiff is trying to do here is saying well if a notice
12 of default is ever recorded on a loan and after 6 years there's just no -- you can't
13 foreclose and the loan is just wiped out. Well as I said that's overly simplistic and it
14 doesn't make sense. And what the effect of that would be to ignore and circumvent
15 Nevada's express foreclosure statutes under 107.80, etc. It would cause servicers
16 and lenders to in effect not really want to work at -- or not have an incentive to work
17 with the borrower to resolve a default, to reinstate the default, or to modify a loan. If
18 this is going to be the law once a notice of default is filed if all these borrowers are
19 going to come back and say: Hey, no, no, you guys waited too long to foreclose.
20 You should have foreclosed on us immediately. Well then that's, I guess, what the
21 lenders and servicers should do. It just doesn't make sense.

22 So just to summarize, we believe a 10 year statute does apply as well
23 as the Nevada Supreme Court, which also ruled on this issue in April of this year in
24 the *Penrose Decision*, which we cited in our reply papers. We had dismissed the
25 complaint in that case making the same allegations. The 6 year statute applies to

1 breach of contract actions filed in a court. It doesn't say a remedy. Non-judicial
2 foreclosure is not a breach of contract action filed in the court.

3 THE COURT: Doesn't SFR say a non-judicial foreclosure is an action?

4 MR. ALLISON: Well we're talking -- SFR talks about -- are you talking about
5 the homeowners association case?

6 THE COURT: I am.

7 MR. ALLISON: Okay, that's a whole different case that's very distinguishable.

8 THE COURT: I understand it's different legal issues that were involved in that
9 case, but one of the things that had to be addressed in that case was whether a
10 non-judicial foreclosure constituted an action. And the Nevada Supreme Court in
11 that context said it was.

12 MR. ALLISON: Well, I don't think in that case they were addressing the issue
13 in this case or section 11.190 under a 6 year statute of limitation.

14 THE COURT: No, clearly this wasn't --

15 MR. ALLISON: A 6 year statute of --

16 THE COURT: -- at issue.

17 MR. ALLISON: Yes. The fact is the 6 year statute would apply to a breach of
18 contract action that would be filed by my client on the note. And those are
19 sometimes filed, as Your Honor well knows, is if the deed of trust has been wiped
20 out by say a senior foreclosure or if the servicer or lender decides to pursue a
21 judicial foreclosure by filing an action in the court, which usually is a breach of
22 contract and a cause of action for judicial foreclosure. So that 6 year statute would
23 apply to that if an action were filed in court for on the note -- or a judicial foreclosure.
24 Or if a deficiency action were filed after a foreclosure. It does not apply where a
25 non-judicial foreclosure is proceeding completely outside of court. And then we get

1 again to the just to summarize the issue of the notice of default versus the notice of
2 sale. And as Your Honor correctly pointed out, the notice of default in January of
3 2009 did not say the loan was accelerated.

4 THE COURT: Well, it says that the present beneficiary has declared and
5 does hereby declare all sums secured thereby immediate due and payable. So
6 what is -- what does that mean?

7 MR. ALLISON: Well and it also -- well if you read it in full it starts out: Failure
8 to pay the installment -- installment is a payment, installment of principal interest and
9 impounds which became due on June 1, 2009. And all subsequent installments of
10 principal interests and impounds together with all the charges plus advances,
11 etcetera, etcetera. Again that is the default. And it's preserving the right to declare
12 a default on any payments that have not been made after that notice of default is
13 issued. There is --

14 THE COURT: Well it's the --

15 MR. ALLISON: -- under the statute then the borrower has the right to elect
16 foreclosure mediation. And then if there's no election or at the conclusion of a
17 foreclosure mediation if there's no loan modification, then the borrower has 90 more
18 days to reinstate the loan by bringing it current by paying those default amounts
19 before the notice of sale is issued which declares the full amount of the loan and
20 sets the sale date. And if you look back at the notice of default the very next
21 sentence is consistent. In addition the entire principal amount will become due on
22 January 1, 2037. It does not say the entire principal amount is now due. It says will
23 become due on January 1, 2037. Entirely consistent with section 106.240 and the
24 caselaw we've cited.

25 And I'm pretty familiar with this issue and the law in California, having

1 been licensed and practiced here in California for 20 years and having had this
2 issue in California as well. And the California courts in every issue we've had in
3 these cases has made the same ruling as the Nevada Supreme Court in *Penrose*
4 last month. The statute of limitations would apply to a contract action filed in the
5 court. It may apply to installments that became due that were not collected during
6 that period. California it's four years. But it does not extinguish the deed of trust
7 and it does not -- it does not prevent a servicer or lender from foreclosing on the lien
8 secured by that deed of trust which does not expire until the maturity date or during
9 the period of time after the maturity date.

10 So based upon that, the arguments, and I believe the Court's position
11 we would respectfully request that the plaintiff's motion for summary judgment be
12 denied and that the Defendant's motion to dismiss be granted.

13 THE COURT: Go ahead, Mr. Hafter.

14 MR. HAFTER: Well on my list of points I wanted to raise I think you raised the
15 first point for me. He says that the notice of default did not accelerate the loan, but
16 Exhibit B to our motion it's very clear that the language from Exhibit B says that, as
17 you said, that the beneficiary declared and does hereby declare all sums secured
18 thereby immediately due and payable. I mean, that's an acceleration, plain and
19 simple. There's absolutely no requirement that you put the exact amount at that
20 time for it to be an acceleration. You just have to make a clear statement that all
21 amounts due and owing are now due to transfer from that position where we're
22 looking at individual installment payments that were missed compared to the entire
23 mortgage amount.

24 And I think we included in our motion for summary judgment a fair
25 synopsis of what the law says from the Supreme Court as to what's required for an

1 acceleration. And it says where in *Clayton versus Gardner* the Supreme Court said
2 where contract obligations are payable by installments the limitations statute begins
3 to run on with respect to each installment when due unless the lender exercises his
4 or her option to declare the entire note due. And that's exactly what they did. They
5 said: We declare -- that's their word from the notice, the default, -- and hereby
6 declare all sums secured thereby immediately due and payable. I mean, that's what
7 the Court said was sufficient to be an acceleration.

8 Counsel then argued that you can't foreclose during a modification and
9 he said it would violate a whole bunch of statutes but didn't cite any. I'm not aware
10 of any statute that says when two parties are trying to resolve a disagreement or a
11 breach of contract that one party can't continue to pursue their remedies because of
12 that breach that's occurred. I'm not familiar with that at all.

13 With respect to the tolling, there was no judicial action that tolled this.
14 There was no -- there is no order in any of these cases that said you can't foreclose.
15 And a matter of fact counsel I think quoted what this Court said incorrectly. This
16 Court didn't say you can't foreclose or proceed with the notice of sale. You just said
17 that we had to get 21 days' notice before they were to file that notice of sale. So
18 that would give me the remedy or the ability to come to this Court.

19 THE COURT: Right. At that time there wasn't a likelihood of immediate
20 irreparable injury.

21 MR. HAFTER: Correct, so I think that even counsel's statement.

22 THE COURT: Right. I certainly didn't rule on the merits at the injunction
23 hearing.

24 MR. HAFTER: Right. Okay. You know, it's -- and then he says that our
25 position of saying that, you know, waiting six years and then claiming a statute of

1 limitations defense would be overly simplistic and doesn't make sense. Well that's
2 the entire concept of statute of limitations is the Defendant gets the benefit of the
3 time that's running. And, you know, if banks can't work out their differences with
4 borrowers or foreclose within 6 years, given what this State's laws are with respect
5 to judicial and non-judicial foreclosures -- and let me say it's not even that they have
6 to foreclose within 6 years. They just have to start the process.

7 I mean, if they would have filed this notice of default on May 29th I think
8 that would be 6 year -- or May 31st whatever it would be which would have been 6
9 years from -- actually it would have even been later because the notice of default
10 that triggers this was filed in September. So if they would have just filed this last
11 September instead of last January then that would have -- they would have -- just
12 like filing a complaint on the last day of a statute of limitations that's all they needed
13 to do. And --

14 THE COURT: Then why doesn't that first notice of default -- so they satisfied
15 the statute of limitations in 2009.

16 MR. HAFTER: But then they rescinded part of it. And why did they rescind
17 it? That's a great question. Well one, the timing of the rescission is inherently
18 suspect with what was going on in the federal case. And so they relied on that
19 rescission for an argument that didn't ultimately prevail, but I don't want to get into
20 the merits of that case --

21 THE COURT: Right, okay.

22 MR. HAFTER: -- because that's not before you.

23 THE COURT: Right.

24 MR. HAFTER: But the other reason why we saw these rescissions was
25 because they wouldn't have been able to trigger a new non-judicial foreclosure and

1 initiate the foreclosure mediation program and get the certificate to default unless
2 they filed a new notice of default. And they can't file a new notice of default if there's
3 -- if there was one already present. So that law's kind of changed. In 2008, 2009
4 we were right at the beginning of this foreclosure mediation program.

5 THE COURT: Right.

6 MR. HAFTER: And so we went through that. We didn't even go through that
7 process because it was too new back in the day. What we wound up doing was
8 simply working with the lender to -- the servicer at the time to enter into a loan
9 modification program that never worked. They decided not to convert it to a
10 permanent loan mod.

11 And then when they wanted to proceed with foreclosing again they
12 realized that in order to get a certificate to foreclose which they had to or they could
13 have filed a judicial foreclosure but nobody was really doing that at the time; they
14 were all doing the non-judicial; they had to file the new notice of default. So they
15 rescinded the first notice of default only for the purposes of filing a second notice of
16 default so that way they could get their certificate to foreclose under the new rules
17 for the program. But they did not rescind the underlying default or the acceleration
18 from the first one because the default was still ongoing. They still believed that Ms.
19 Facklam was deficient from back in 2009. And so, you know, there's a very good
20 reason that not only supports why they were doing these rescission without affecting
21 the accelerations but also why it should be consistent with our case that you don't
22 get tolling or anything else because they were still trying to foreclose on the same
23 breach that occurred back in 2009.

24 THE COURT: Okay. Anything else?

25 MR. HAFTER: No, Your Honor.

1 MR. ALLISON: Your Honor, just -- if I could just reply real quickly.

2 THE COURT: Briefly.

3 MR. ALLISON: Well the new notice of default was not based upon the same
4 date as the notice of default in 2009. The new notice of default talks about the
5 default in 2010 after the trial modification. So again it -- counsel even talks about
6 the foreclosure mediation program. There can't be a foreclosure while the
7 foreclosure mediation program is in process. And there's a whole host of events
8 here that regardless of whether or not you wanted to apply the statute of limitations,
9 whether it be the 6 year or the 10 year it would toll the statute. And the 10 years
10 wouldn't even apply until the end of the loan anyway.

11 I don't believe and it seems clear from the arguments and counsel that
12 the September 2009 was a clear and unequivocal acceleration, which is what would
13 be required under *Clayton*. Counsel has made all kinds of extraneous arguments
14 that are nowhere in the complaint or in any of his papers that he's filed to date
15 regarding efforts and what purportedly the Bank did or why the Bank rescinded. The
16 fact is it's undisputed there was a rescission in December 2011 --

17 THE COURT: Right.

18 MR. ALLISON: -- of the prior notice of default. So it's not applicable. And
19 with that I would rest, Your Honor.

20 THE COURT: Okay. So I see both sides of the argument about whether the
21 2009 notice of default did or did not accelerate the entire amount due. I see the
22 language that talks about declaration of all sums secured thereby immediately due
23 and payable. And I also see the part of it that talks about having, you know, the
24 right to cure and until the notice of sale comes later. However even if the 2009
25 notice of default did accelerate the amounts, the entire amount due under the note

1 and secured by the deed of trust the rescission of the election which was recorded
2 on December 5th of 2011 rescinded that notice of default. Now the qualifications
3 that are in that rescission documents are to make clear that the holder, the
4 beneficiary is not waiving rights based on underlying defaults but it's rescinding what
5 happened with the notice of default. It's going back to as if the notice of default
6 didn't occur, which would still leave the beneficiary with the remedies available for
7 any breaches on the part of the borrower. And that's pretty much what the
8 rescission says.

9 And so to say that the notice of default is rescinded but somehow it's
10 still accelerated, but then the later notice of default still has to be within 6 years of
11 the first notice of default for the part that is in effect, that doesn't seem meritorious to
12 me. I read this rescission as rescinding the notice of default including to the extent
13 that that notice of default accelerated the debt. Absent that -- and that assertion by
14 plaintiff of the acceleration -- that the 2009 acceleration triggered the 6 year statute
15 of limitations is the entire basis for plaintiff's claims seeking a declaration that the
16 statute of limitations would bar foreclosure and that therefore the Defendant should
17 be enjoined from proceeding with foreclosure.

18 So based on my reading of the rescission I am denying plaintiff's motion
19 for summary judgment and granting the defendant's countermotion to dismiss.
20 There were other arguments made which I'm not addressing and I don't believe I
21 need to address given the ruling that I've made. The rescission rescinded any
22 acceleration that was effected by the 2009 notice of default, and therefore even
23 under plaintiff's statute of limitation argument it would not have expired before the
24 second notice of default was recorded by the defendant herein.

25 So, Mr. Allison, I'm going to need you to prepare a proposed order and

1 run it past Mr. Hafter before you submit it to the Court for signature. Okay?

2 MR. ALLISON: I will, Your Honor. Thank you.

3 MR. HAFTER: Your Honor, can we get a 54(b) certification in that order?

4 THE COURT: Well there's no other -- doesn't this resolve the entire case?

5 So this should be a final judgment.

6 MR. HAFTER: Well I had a document that was prepared in another case that

7 was called final judgment in favor of plaintiff and the Court in this case said because

8 it didn't specifically say 54(b) they reopened it and I got into a world of trouble on

9 that one so --

10 THE COURT: So there's no -- the only parties to this case are Ms. Facklam

11 and HSBC.

12 MR. HAFTER: I just want to be very clear that this is a final order that's

13 appealable.

14 THE COURT: It's a final, appealable order which resolves all claims asserted

15 in this case.

16 MR. HAFTER: Okay. And I will not be in town within the next 10 days to sign

17 off physically on it. But can we have like an E-sig type, like if I agree to it --

18 THE COURT: On the --

19 MR. HAFTER: On the order because it --

20 THE COURT: Okay.

21 MR. HAFTER: I'm not going to be able to sign off in the next 10 days.

22 THE COURT: Okay.

23 MR. HAFTER: Is that --

24 THE COURT: That's fine with me. So, Mr. Allison, if you can get the

25 proposed order to Mr. Hafter electronically that's fine. And then I'm going to -- and

1 then -- but I'm going to want as the party drafting the proposed order I'm going to
2 want your original signature or someone from your office original signature on the
3 submitted by line of the order, okay?

4 MR. ALLISON: Very well, Your Honor.

5 THE COURT: Okay. Thank you.

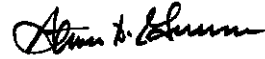
6 MR. HAFTER: Thank you.

7 [Hearing concluded at 9:25 a.m.]

8 * * * * *

9 ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video
10 proceedings in the above-entitled case to the best of my ability.

11 
12 _____
13 Jessica Kirkpatrick
14 Court Recorder/Transcriber
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CLERK OF THE COURT

ORDER

Jeffrey S. Allison (NV Bar No. 8949)
Mark H. Hutchings (NV Bar No. 12783)
HOUSER & ALLISON, APC
3900 Paradise Road, Suite 101
Las Vegas, Nevada 89169
Phone: (702) 410-7593/(949) 679-1111
Fax: (702) 410-7594/(949) 679-1112
jallison@houser-law.com
mhutchings@houser-law.com

Attorneys for Defendant HSBC BANK USA, NATIONAL ASSOCIATION, AS TRUSTEE
FOR DEUTSCHE ALT-A SECURITIES MORTGAGE LOAN TRUST, MORTGAGE PASS-
THROUGH CERTIFICATES SERIES 2007-AR2, by and through its servicer and attorney-in-
fact OCWEN LOAN SERVICING, LLC

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

AMY FACKLAM,

Plaintiff,

vs.

HSBC BANK USA, National Association, as
TRUSTEE for DEUTSCHE ALT-A
SECURITIES MORTGAGE LOAN TRUST,
MORTGAGE PASS-THROUGH
CERTIFICATES SERIES 2007-AR2; DOES
1 through X; and ROE CORPORATIONS 1
through X, inclusive,

) Case No. A-16-733762-C

) Dept. No. VI

) **[PROPOSED] ORDER DENYING**
) **PLAINTIFF'S MOTION FOR SUMMARY**
) **JUDGMENT AND GRANTING**
) **DEFENDANT'S COUNTER-MOTION TO**
) **DISMISS THE COMPLAINT**

This matter having come before the Court for hearing on June 7, 2016 AT 8:30 a.m. in

Department VI on the Motion for Summary Judgment brought by Plaintiff AMY FACKLAM

("Plaintiff") and the Counter-Motion to Dismiss Complaint by Defendant HSBC BANK USA,

NATIONAL ASSOCIATION, AS TRUSTEE FOR DEUTSCHE ALT-A SECURITIES

MORTGAGE LOAN TRUST, MORTGAGE PASS-THROUGH CERTIFICATES SERIES

2007-AR2, by and through its servicer and attorney-in-fact OCWEN LOAN SERVICING, LLC

| |
|---|
| <input type="checkbox"/> Summary Judgment |
| <input type="checkbox"/> Stipulated Judgment |
| <input type="checkbox"/> Default Judgment |
| <input type="checkbox"/> Judgment of Arbitration |
| <input type="checkbox"/> Voluntary Dismissal |
| <input type="checkbox"/> Involuntary Dismissal |
| <input type="checkbox"/> Dismissal of Complaint |
| <input type="checkbox"/> Motion to Dismiss by Defendant |

1 ("Defendant"), with appearances by Jacob L. Hafter, Esq. of HafterLaw as counsel for Plaintiff
2 and Jeffrey S. Allison, Esq. of Houser & Allison, APC as counsel for Defendant, having
3 reviewed the parties' Motions, Oppositions and Replies thereto, and pleadings on file with the
4 Court, oral arguments, and with good cause therefore, the Court made findings and ruled as
5 follows:

6 **Plaintiff's Motion for Summary Judgment**

7 **I. Findings of Fact**

- 8 1. The loan that is the subject of this matter evidenced by a note and recorded deed of
9 trust was obtained by Plaintiff on or about December 21, 2006;
- 10 2. An exhibited notice of default for the subject loan was recorded September 25, 2009;
- 11 3. Plaintiff entered into a trial loan modification with the prior servicer on or about
12 October 30, 2009;
- 13 4. An exhibited notice of sale was recorded July 20, 2011;
- 14 5. An exhibited rescission of the notice of default was recorded December 5, 2011;
- 15 6. An exhibited notice of default was recorded January 29, 2016 on behalf of Defendant;
- 16 7. Plaintiff filed the instant action against Defendant on or about March 21, 2016.

17 **II. Conclusions of law**

- 18 1. The December 5, 2011 rescission rescinded any acceleration by the 2009 notice of
19 default.
- 20 2. Even under Plaintiff's statute of limitations arguments, any time which may have begun
21 to run with that notice no longer applied.

22 For these and additional reasons set forth in the record, Plaintiff's Motion for Summary
23 Judgment is DENIED.

1
2 **Defendant's Motion to Dismiss**

3 Defendant's Counter-Motion to Dismiss the Complaint is GRANTED. For the reasons
4 set forth above and in the record, Plaintiff's Complaint fails to state the claims.

5 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that Plaintiff's Motion
6 for Summary Judgment is DENIED and Defendant's Counter-Motion to Dismiss the Complaint
7 is GRANTED. Accordingly, this action is dismissed and this shall constitute the final order and
8 judgment.


9 **IT IS SO ORDERED.**

10 Dated this 23 day of June, 2016.

11
12 
13 **DISTRICT COURT JUDGE** *W*

14 Respectfully submitted by:

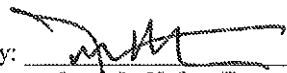
15 HOUSER & ALLISON, APC

16 By: 
17 Jeffrey S. Allison, Esq.

18 Attorneys for HSBC BANK USA, NATIONAL ASSOCIATION, AS TRUSTEE FOR
19 DEUTSCHE ALT-A SECURITIES MORTGAGE LOAN TRUST, MORTGAGE PASS-
20 THROUGH CERTIFICATES SERIES 2007-AR2, by and through its servicer and attorney-in-
21 fact OCWEN LOAN SERVICING, LLC
22
23
24

1 APPROVED AS TO FORM AND CONTENT:

2
3 HAFTERLAW

4 By: 
5 Jacob L. Hafter, Esq.

6 Attorneys for Plaintiff AMY FACKLAM

7
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1
2
3
4 **CERTIFICATE OF SERVICE**

I hereby certify that I am over the age of eighteen (18), that I am not a party to this action, and that on this date I caused to be served a true and correct copy of the following documents:

5 **ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND**
6 **GRANTING DEFENDANT'S COUNTER-MOTION TO DISMISS THE COMPLAINT**

7 By: ☒ U.S. Mail

8 ☒ Electronic Service
9 ☐ Facsimile transmission
10 ☐ Overnight Mail
11 ☐ Hand and/or Personal Delivery

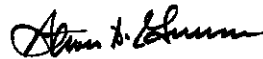
12 and addressed to the following:

13 Jacob L. Hafter, Esq.
14 HafterLaw
15 6851 W. Charleston Blvd.
16 Las Vegas, Nevada 89117
17 Tel: (702) 405-6700
18 Fax: (702) 685-4184
19 jhafter@hafterlaw.com

20 Attorney for Plaintiff AMY FACKLAM

21 Dated: June 27, 2016

22
23 
24 An employee of HOUSER & ALLISON, APC


CLERK OF THE COURT

1 **NEOJ**
Jeffrey S. Allison (NV Bar No. 8949)
2 Mark H. Hutchings (NV Bar No. 12783)
HOUSER & ALLISON, APC
3 3900 Paradise Road, Suite 101
Las Vegas, Nevada 89169
4 Phone: (702) 410-7593/(949) 679-1111
Fax: (702) 410-7594/(949) 679-1112
5 jallison@houser-law.com
mhutchings@houser-law.com
6

7 Attorneys for Defendant HSBC BANK USA, NATIONAL ASSOCIATION, AS TRUSTEE
FOR DEUTSCHE ALT-A SECURITIES MORTGAGE LOAN TRUST, MORTGAGE PASS-
THROUGH CERTIFICATES SERIES 2007-AR2, by and through its servicer and attorney-in-
8 fact OCWEN LOAN SERVICING, LLC

9
10 **EIGHTH JUDICIAL DISTRICT COURT**
11 **CLARK COUNTY, NEVADA**

| | | | |
|----|---|---|---------------------------------------|
| 12 | AMY FACKLAM, |) | Case No. A-16-733762-C |
| | |) | |
| 13 | Plaintiff, |) | Dept. No. VI |
| | |) | |
| 14 | vs. |) | NOTICE OF ENTRY OF ORDER |
| | |) | DENYING PLAINTIFF'S MOTION FOR |
| 15 | HSBC BANK USA, National Association, as |) | SUMMARY JUDGMENT AND |
| 16 | TRUSTEE for DEUTSCHE ALT-A |) | GRANTING DEFENDANT'S COUNTER- |
| 17 | SECURITIES MORTGAGE LOAN TRUST, |) | MOTION TO DISMISS THE |
| 18 | MORTGAGE PASS-THROUGH |) | COMPLAINT |
| 19 | CERTIFICATES SERIES 2007-AR2; DOES |) | |
| | 1 through X; and ROE CORPORATIONS 1 |) | |
| 20 | through X, inclusive, |) | |
| | |) | |
| 21 | Defendants. |) | |
| | |) | |
| 22 | |) | |

22 **PLEASE TAKE NOTICE** that on June 27, 2016, the court entered an Order Denying
23 Plaintiff's Motion for Summary Judgment and Granting Defendant's Counter-Motion to
24 Dismiss the Complaint.

1 A true and correct copy of which is attached hereto as Exhibit "A".

2 Dated: July 6, 2016

HOUSER & ALLISON, APC

3
4 s/ Jeffrey S. Allison

Jeffrey S. Allison, Esq.

Attorneys for HSBC BANK USA,

NATIONAL ASSOCIATION, AS

TRUSTEE FOR DEUTSCHE ALT-A

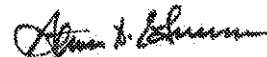
SECURITIES MORTGAGE LOAN

TRUST, MORTGAGE PASS-THROUGH

CERTIFICATES SERIES 2007-AR2, by

and through its servicer and attorney-in-fact

OCWEN LOAN SERVICING, LLC


CLERK OF THE COURT

1 **ORDER**
Jeffrey S. Allison (NV Bar No. 8949)
2 Mark H. Hutchings (NV Bar No. 12783)
HOUSER & ALLISON, APC
3 3900 Paradise Road, Suite 101
Las Vegas, Nevada 89169
4 Phone: (702) 410-7593/(949) 679-1111
Fax: (702) 410-7594/(949) 679-1112
5 jallison@houser-law.com
mhutchings@houser-law.com

6 Attorneys for Defendant HSBC BANK USA, NATIONAL ASSOCIATION, AS TRUSTEE
7 FOR DEUTSCHE ALT-A SECURITIES MORTGAGE LOAN TRUST, MORTGAGE PASS-
THROUGH CERTIFICATES SERIES 2007-AR2, by and through its servicer and attorney-in-
8 fact OCWEN LOAN SERVICING, LLC

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

11 **AMY FACKLAM,**

12 Plaintiff,

13 vs.

14 HSBC BANK USA, National Association, as
15 TRUSTEE for DEUTSCHE ALT-A
16 SECURITIES MORTGAGE LOAN TRUST,
MORTGAGE PASS-THROUGH
17 CERTIFICATES SERIES 2007-AR2; DOES
1 through X; and ROE CORPORATIONS I
18 through X, inclusive;

) Case No. A-16-733762-C

) Dept. No. VI

) **PROPOSED ORDER DENYING**
PLAINTIFF'S MOTION FOR SUMMARY
JUDGMENT AND GRANTING
DEFENDANT'S COUNTER-MOTION TO
DISMISS THE COMPLAINT

19 This matter having come before the Court for hearing on June 7, 2016 AT 8:30 a.m. in
20 Department VI on the Motion for Summary Judgment brought by Plaintiff AMY FACKLAM
21 ("Plaintiff") and the Counter-Motion to Dismiss Complaint by Defendant HSBC BANK USA,
22 NATIONAL ASSOCIATION, AS TRUSTEE FOR DEUTSCHE ALT-A SECURITIES
23 MORTGAGE LOAN TRUST, MORTGAGE PASS-THROUGH CERTIFICATES SERIES
24 2007-AR2, by and through its servicer and attorney-in-fact OCWEN LOAN SERVICING, LLC

EXHIBIT A
PAGE 1 OF 5

| |
|--|
| <input type="checkbox"/> Entered Judgment |
| <input type="checkbox"/> Signed Judgment |
| <input type="checkbox"/> Entered Judgment |
| <input type="checkbox"/> Signed Judgment |
| <input type="checkbox"/> Motion to Dismiss |
| <input type="checkbox"/> Motion to Dismiss |
| <input type="checkbox"/> Motion to Dismiss |
| <input type="checkbox"/> Motion to Dismiss |

1 ("Defendant"), with appearances by Jacob L. Hafter, Esq. of Hafter Law as counsel for Plaintiff
2 and Jeffrey S. Allison, Esq. of Houser & Allison, APC as counsel for Defendant, having
3 reviewed the parties' Motions, Oppositions and Replies thereto, and pleadings on file with the
4 Court, oral arguments, and with good cause therefore, the Court made findings and ruled as
5 follows:

6 **Plaintiff's Motion for Summary Judgment**

7 **I. Findings of Fact**

- 8 1. The loan that is the subject of this matter evidenced by a note and recorded deed of
9 trust was obtained by Plaintiff on or about December 21, 2006;
- 10 2. An exhibited notice of default for the subject loan was recorded September 25, 2009;
- 11 3. Plaintiff entered into a trial loan modification with the prior servicer on or about
12 October 30, 2009;
- 13 4. An exhibited notice of sale was recorded July 20, 2011;
- 14 5. An exhibited rescission of the notice of default was recorded December 5, 2011;
- 15 6. An exhibited notice of default was recorded January 29, 2016 on behalf of Defendant;
- 16 7. Plaintiff filed the instant action against Defendant on or about March 21, 2016.

17 **II. Conclusions of law**

- 18 1. The December 5, 2011 rescission rescinded any acceleration by the 2009 notice of
19 default.
- 20 2. Even under Plaintiff's statute of limitations arguments, any time which may have begun
21 to run with that notice no longer applied.

22 For these and additional reasons set forth in the record, Plaintiff's Motion for Summary
23 Judgment is DENIED.

24
EXHIBIT A
PAGE 2 OF 5

1
2 Defendant's Motion to Dismiss

3 Defendant's Counter-Motion to Dismiss the Complaint is GRANTED. For the reasons
4 set forth above and in the record, Plaintiff's Complaint fails to state the claims.

5 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that Plaintiff's Motion
6 for Summary Judgment is DENIED and Defendant's Counter-Motion to Dismiss the Complaint
7 is GRANTED. Accordingly, this action is dismissed and this shall constitute the final order and
8 judgment.

9 **IT IS SO ORDERED.**

10 Dated this 23 day of June, 2016.

11
12 
13 DISTRICT COURT JUDGE *W*

14 Respectfully submitted by:

15 HOUSER & ALLISON, APC

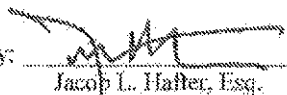
16 By: 
17 Jeffrey S. Allison, Esq.

18 Attorneys for HSBC BANK USA, NATIONAL ASSOCIATION, AS TRUSTEE FOR
19 DEUTSCHE ALT-A SECURITIES MORTGAGE LOAN TRUST, MORTGAGE PASS-
20 THROUGH CERTIFICATES SERIES 2007-AR2, by and through its servicer and attorney-in-
21 fact OCWEN LOAN SERVICING, LLC
22
23
24

EXHIBIT A
PAGE 3 OF 5

1 APPROVED AS TO FORM AND CONTENT:

2 HAFTERLAW

3
4 By: 
5 Jacob L. Hafter, Esq.

6 Attorneys for Plaintiff AMY FACKLAM

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EXHIBIT A
PAGE 4 OF 5

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CERTIFICATE OF SERVICE

I hereby certify that I am over the age of eighteen (18), that I am not a party to this action, and that on this date I caused to be served a true and correct copy of the following documents:

ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND GRANTING DEFENDANT'S COUNTER-MOTION TO DISMISS THE COMPLAINT

By: ☒ U.S. Mail
☒ Electronic Service
☐ Facsimile transmission
☐ Overnight Mail
☐ Hand and/or Personal Delivery

and addressed to the following:

Jacob L. Hafter, Esq.
HafterLaw
6851 W. Charleston Blvd.
Las Vegas, Nevada 89117
Tel: (702) 405-6700
Fax: (702) 685-4184
jhafter@hafterlaw.com

Attorney for Plaintiff AMY FACKLAM

Dated: June 27, 2016


An employee of HOUSER & ALLISON, APC

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am over the age of eighteen (18), that I am not a party to this action,
3 and that on this date I caused to be served a true and correct copy of the following documents:

4 **NOTICE OF ENTRY OF ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY
JUDGMENT AND GRANTING DEFENDANT'S COUNTER-MOTION TO DISMISS
THE COMPLAINT**

5 By: ☒ U.S. Mail
6 ☒ Electronic Service
7 ☐ Facsimile transmission
8 ☐ Overnight Mail
9 ☐ Hand and/or Personal Delivery

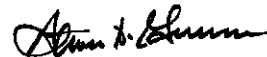
10 and addressed to the following:

11 Jacob L. Hafter, Esq.
12 HafterLaw
13 6851 W. Charleston Blvd.
14 Las Vegas, Nevada 89117
15 Tel: (702) 405-6700
16 Fax: (702) 685-4184
17 jhafter@hafterlaw.com

18 Attorney for Plaintiff AMY FACKLAM

19 Dated: July 6, 2016

20 
21 An employee of HOUSER & ALLISON, APC
22
23
24


CLERK OF THE COURT

1 **NOAS**
2 **JACOB L. HAFTER, ESQ.**
3 Nevada State Bar No. 9303
4 **HAFTERLAW**
5 6851 W. Charleston Blvd.
6 Las Vegas, Nevada 89117
7 Tel: (702) 405-6700
8 Fax: (702) 685-4184
9 jhafter@hafterlaw.com
10 *Counsel for Plaintiff*

11 **EIGHTH JUDICIAL DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

13 **AMY FACKLAM,**
14 Plaintiff,
15
16 vs.

Case No.: A-16-733762-C
Dept. No. VI

17 **HSBC BANK USA, National Association,**
18 **as TRUSTEE for DEUTCHE ALT-A**
19 **SECURITIES MORTGAGE LOAN**
20 **TRUST, MORTGAGE PASS-THROUGH**
21 **CERTIFICATES SERIES 2007-AR2;**
22 **DOES I through X; and ROE**
23 **CORPORATIONS I through X,**
24 inclusive,
25 Defendant.

NOTICE OF APPEAL

26 Notice is hereby given that Plaintiff AMY FACKLAM, by and through Jacob L. Hafter,
27 Esq., of **HAFTERLAW**, hereby appeals to the Supreme Court of Nevada, the following:

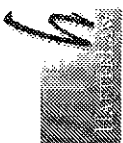
- 28 1) Order, in the above referenced matter issued by the Eighth Judicial District Court of
the State of Nevada on June 27, 2016;

Pursuant to Rule (3)(8)(1), the Case Appeal Statement is being filed concomitantly with
this Notice of Appeal.

///

///

6851 W. Charleston Blvd.
Las Vegas, Nevada 89117
(702) 405-6700 Telephone
(702) 685-4184 Facsimile



1 Dated this 11th day of July, 2016.
2
3

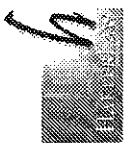
4 **HAFTERLAW**

5 By: 
6

Jacob L. Hafter, Esq.
Nevada Bar Number 9303
6851 West Charleston Blvd.
Las Vegas, Nevada 89117
7
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NOTICE OF APPEAL - 2

6851 W. Charleston Blvd.
Las Vegas, Nevada 89117
(702) 495-6700 Telephone
(702) 685-4184 Facsimile



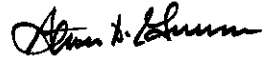
CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of **HAFTERLAW**, and that on this 11th day of July, 2016, I served a copy of the foregoing **NOTICE OF APPEAL** as follows:

☒ Electronic Service —By filing a true copy thereof with the district court's electronic filing system; and/or

| Houser & Allison, APC | | |
|-----------------------|--|-------------------------------------|
| Name | Email | Select |
| Courtney Hershey | chershey@houser-law.com | <input checked="" type="checkbox"/> |
| Jeffrey Allison | jallison@houser-law.com | <input checked="" type="checkbox"/> |

/s/ Kelli Wightman
An employee of HAFTERLAW


CLERK OF THE COURT

MOT
JACOB L. HAFTER, ESQ.
Nevada State Bar No. 9303
HAFTERLAW
6851 W. Charleston Blvd.
Las Vegas, Nevada 89117
Tel: (702) 405-6700
Fax: (702) 685-4184
jhafter@hafterlaw.com
Counsel for Plaintiffs

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

AMY FACKLAM,
Plaintiff,

vs.

Case No.: A-16-733762-C
Dept. No. VI

HSBC BANK USA, National Association,
as **TRUSTEE** for **DEUTCHE ALT-A**
SECURITIES MORTGAGE LOAN
TRUST, MORTGAGE PASS-THROUGH
CERTIFICATES SERIES 2007-AR2;
DOES I through X; and ROE
CORPORATIONS I through X,
inclusive,

Defendant.


MOTION FOR
INJUNCTIVE RELIEF
PURSUANT TO NRAP 8(a)

ON
ORDER SHORTENING TIME

HEARING DATE: AUGUST 16, 2016

HEARING TIME: 8:30 AM

COMES NOW, Plaintiff, **AMY FACKLAM**, by and through its counsel of record, Jacob L. Hafter, Esq., of the law firm **HAFTERLAW**, to move this Court, pursuant to NRAP 8(a)(1) for an order prohibiting Defendant, **HSBC BANK USA, National Association**, as **TRUSTEE** for **DEUTCHE ALT-A SECURITIES MORTGAGE LOAN TRUST, MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2007-AR2**, and any of their collective agents, employees, attorneys, successors and/or anyone acting on their behalf, from pursuing any

APPROVED BY 
DATE 8/16/16 TIME 8:30 AM
NOTICE OF HEARING
DEPARTMENT VI

6851 W. Charleston Blvd.
Las Vegas, Nevada 89117
(702) 405-6700 Telephone
(702) 685-4184 Facsimile

6851 W. Charleston Blvd.
Las Vegas, Nevada 89117
(702) 405-6700 Telephone
(702) 685-4184 Facsimile

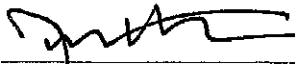


1 foreclosure sales related to that certain first deed of trust entered into on or about December 21,
2 2006, Plaintiff executed a deed of trust naming GreenPoint Mortgage Funding, Inc., as the
3 "Lender", and Marin Conveying Corp., as the "Trustee", and encumbering the Property with an
4 indebtedness in the amount of \$326,000.00 (referred to herein as Plaintiff's "Mortgage") while
5 this matter is on appeal.

6 This Motion is made and based upon the papers and pleadings on file herein, the attached
7 memorandum of points and authorities, and any oral argument that this Honorable Court may
8 entertain at the hearing on this matter.

9 Dated this 9th August, 2016.

10 HAFTERLAW

11
12 By:  Aug 10, 2016
13 Jacob L. Hafter, Esq.
14 Nevada Bar Number 9303
15 6851 W. Charleston Blvd
16 Las Vegas, Nevada 89117
17 Counsel for Plaintiffs

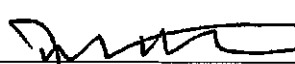
18 **NOTICE OF MOTION**

19 TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

20 PLEASE TAKE NOTICE that the undersigned will bring the foregoing **MOTION FOR**
21 **INJUNCTIVE RELIEF PURSUANT TO NRAP 8(a) ON ORDER SHORTENING TIME**
22 for a hearing in Department VI on the 16th day of August, 2016, at the hour of 8:30 AM , or,
23 alternatively, as soon thereafter as counsel may be heard.

24 Dated this 9th August, 2016.

25 HAFTERLAW

26 By:  Aug 10, 2016
27 Jacob L. Hafter, Esq.
28 Nevada Bar Number 9303
6851 W. Charleston Blvd
Las Vegas, Nevada 89117
Counsel for Plaintiffs

ORDER SHORTENING TIME

TO: ALL PARTIES AND THEIR ATTORNEY OF RECORD:

UPON APPLICATION OF PLAINTIFFS and good cause appearing therefor:

IT IS HEREBY ORDERED that the time for hearing **PLAINTIFFS' MOTION FOR INJUNCTIVE RELIEF PURSUANT TO NRAP 8(a)** is hereby shortened and shall be heard before Dept. VI on the 16th day of August, 2016, at the hour of 8:30 AM, or, alternatively, as soon thereafter as counsel may be heard.

Service of this Order and the accompanying Motion must be made on counsel of the Defendant no later than by 5 pm on 11th day of August, 2016.

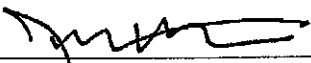
Dated this 10 day of August, 2016.

By:


District Court Judge

Submitted By:

By:


Jacob L. Hafter, Esq.
Nevada Bar Number 9303

6851 W. Charleston Blvd.
Las Vegas, Nevada 89117
(702) 405-6700 Telephone
(702) 685-4184 Facsimile



6851 W. Charleston Blvd.
Las Vegas, Nevada 89117
(702) 405-6700 Telephone
(702) 685-4184 Facsimile



**DECLARATION OF JACOB L. HAFTER, ESQ. IN SUPPORT OF
EX PARTE MOTION FOR ORDER SHORTENING TIME**

I, Jacob L. Hafter, Esq., hereby depose and say as follows:

1. I am admitted to practice law in the State of Nevada and the courts of Clark County.
2. I am counsel for Plaintiff in the matter presently before the Court and I am familiar with the facts of this case.
3. Plaintiff has filed a complaint, which I incorporate to this Declaration by reference.
4. The parties have a long history related to that certain Deed of Trust dated December 21, 2006, Plaintiff executed a deed of trust naming GreenPoint Mortgage Funding, In., as the "Lender", and Marin Conveying Corp., as the "Trustee", and encumbering the Property with an indebtedness in the amount of \$326,000.00 (referred to herein as Plaintiff's "Mortgage").
5. Defendant, or its predecessor, has not tried to exercise its rights under the Deed of Trust through taking any formal steps to initiate a foreclosure until January 25, 2016, when Defendant filed another Notice of Default and Election to Sale on the Property.
6. This Notice of Default was filed on the Property over six and a half years after Plaintiff stopped making payments on her Mortgage (at the request of a representative of the servicer at the time), and almost six and a half years since Defendant, through its predecessor, filed noticed a breach of the Mortgage on September 25, 2009, accelerating all amounts due and owing thereunder.
7. The statute of limitations for enforcing a mortgage is six (6) years in Nevada.
8. Accordingly, the current effort to foreclose on Plaintiff's Property is unlawful.
9. This Court heard this matter, and ruled that the 2011 limited rescission, one which by its own language was not meant to alter the underlying breach, reset the statute of limitations for the breach, making the current foreclosure attempt lawful.
10. Plaintiff appealed this issue, filing a Notice of Appeal with this Court on July 11, 2016.
11. On July 13, 2016, Appellant received a copy of a Notice of Trustee Sale wherein it stated that the Property would be sold at public auction on August 17, 2016, at 9 am.

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12. This Motion seeks an Order to prohibit Defendant, and any of its collective agents, employees, attorneys, successors and/or anyone acting on their behalf, from pursuing any foreclosure sales related to Appellant's Mortgage, including, without limitation, the sale set for August 17, 2016, until the appellate court has had a chance to consider the appeal.

13. Without intervention by this Court, Appellant may lose her home, despite the fact that the statute of frauds prevents Respondent from foreclosing on the Property.

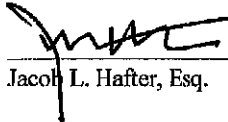
14. This Motion is not being made for purposes of harassment.

Further, I sayeth naught.

I, Jacob L. Hafter, Esq., hereby declare under penalty of perjury under the laws of the State of Nevada, that the foregoing facts are true of my own knowledge except for those matters herein stated on information and belief, and as for those matters I believe them to be true.

Dated this 9th August, 2016.

By:

 Aug 10, 2016
Jacob L. Hafter, Esq.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Despite our appellate courts' work in the field of residential foreclosures, it appears that there are two issues of first impression still outstanding. The first is whether there is a limitation on the time that a lender has to exercise its remedy of foreclosure as a result of a breach of one's mortgage. The second is whether a rescission of a notice of default, which is limited in nature by the language of the rescission, resets that statute of limitations on pursuing a remedy for one's breach of that mortgage contract. In this case, this Court found that the rescission, regardless of its language, reset the statute of limitations for when a lender can pursue a non-judicial foreclosure.

Plaintiff believes that this Court erred in that decision. Namely, how can a document which states in its own language that it is not mean to alter the underlying breach, alter the underlying breach – namely, reset the time to pursue a remedy allowed as a result of the breach? Accordingly, Plaintiff appealed this Court's decision.

Two days after filing a Notice of Appeal, Defendants filed a Notice of Trustee's Sale. The proposed sale date for Plaintiff's home is August 17, 2016. The day after receipt of the notice, Plaintiff filed a motion with the Supreme Court under NRAP 8(a)(2). On August 9, 2016, the Supreme Court denied the motion, directing Plaintiff to this Court. While Plaintiff thought that any requests to this Court would be a waste of judicial resources, as she could not demonstrate likelihood to succeed on the merits, Plaintiff has no other choice but to ask this Court to help and save her home. This Motion seeks to prevent that sale, and any other future sales, until the underlying issues of the appeal of this case can be resolved by the appellate courts.

II. STATEMENT OF FACTS

1. This lawsuit involves real property located at 1513 Shotgun Lane, Henderson, Nevada 89104, and bearing Assessor's Parcel Number 178-04-514-044 (the "Property").

2. On or about December 21, 2006, Plaintiff executed a deed of trust naming GreenPoint Mortgage Funding, In., as the "Lender", and Marin Conveying Corp., as the "Trustee", and

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1 encumbering the Property with an indebtedness in the amount of \$326,000.00 ("Deed of Trust"),
2 a true and correct copy of which is attached hereto as Exhibit "A".

3 3. In or around June 2009, Plaintiff missed a payment (based upon the recommendation of
4 the servicer of the Mortgage, at the time).

5 4. On September 25, 2009, the First Notice of Default was recorded on the title records for
6 the Property a true and correct copy of which is attached hereto as Exhibit "B".

7 5. By filing the First Notice of Default, the Defendant, through its predecessor, initiated a
8 six year statute of limitations for bringing action against Plaintiff as a result of her alleged breach
9 of the Mortgage.

10 6. On or about July 18, 2011, Recon Trust executed a Notice of Trustee's Sale in the official
11 records of Clark County Recorder as Instrument No. 20110720-0001856.

12 7. The Notice of Trustee's Sale set the date of sale for August 8, 2011.

13 8. On or about December 5, 2011, a rescission of the First Deed of Trust ("Rescission") was
14 filed in the official records of the Clark County Recorder as document 20111205-0000543 a true
15 and correct copy of which is attached hereto as Exhibit "C".

16 9. The Rescission stated:

17
18 NOTICE IS HEREBY GIVEN that RECONTRUST COMPANY, N/A/
19 Trustee for the Beneficiary does hereby rescind, cancel and withdraw the
20 Notice of Default and Election to Sell herein described, provided, however,
21 that this rescission shall not be construed as waiving, curing, extending to,
22 or affecting any default, either past, present or future, under such Deed of
23 Trust, or as impairing any right or remedy thereunder, and it is as shall be
24 deemed to be, only an election without prejudice not to cause a sale to be
25 made pursuant to such Notice of Default and Election to Sell, and it shall
26 not in any way alter or change any of the rights remedies or privileges
27 secured to the Beneficiary and/or Trustee under such Deed of Trust, nor
28 modify, nor alter in any respect any of the terms, covenants, conditions or
obligations therein contained. Said NOTICE OF DEFAULT AND
ELECTION TO SELL under Deed of Trust specifically described therein
was

Recorded on 09/25/2009, as Instrument 200909250003750, in Book
_____, Page _____, of the Official Records of Clark County, Nevada.

1 The DEED OF TRUST affected by this notice recorded on 01//08/2007 as
2 Instrument No. 0001436 in Book 20070108 Page ., executed by AMY B.
3 FACKLAM, A SINGLE WOMAN, in Trustor in Clark County, Nevada.

4 Id.

5 10. Because the Rescission specifically stated that it did not affect the underlying alleged
6 breach of the Mortgage, it did not affect the statute of limitations.

7 11. On September 24, 2015, six years after the filing of the First Notice of Default, the statute
8 of limitations ran.

9 12. On December 11, 2015, a substitution of trustee was filed as Instrument No. 20151211-
10 0002092 of the official Clark County Recorder's records naming Western Progressive-Nevada,
11 Inc., as Trustee under the Mortgage ("Substitution").

12 13. On January 25, 2016, Defendants, through their agents, predecessors, or predecessors'
13 agents, specifically, Western Progressive-Nevada, Inc., filed another Notice of Default and
14 Election to Sell the Property, in the official records of Clark County, Nevada, which was assigned
15 document number 20160129-0000551 ("Second Notice of Default") a true and correct copy of
16 which is attached hereto as Exhibit "D".

17 14. Both the Substitution and the Second Notice of Default were filed after the statute of
18 limitations had run.

19 15. This suit was filed shortly thereafter.

20 16. This Court ruled that as a matter of law, the 2011 rescission reset the statute of limitations.

21 17. On July 11, 2016, Plaintiff filed a Notice of Appeal with this Court.

22 18. A Notice of Trustee's sale was published at the Property on July 13, 2016, a true and
23 correct copy of which is attached hereto as Exhibit "E".

24 19. Plaintiff filed for injunctive relief from the Supreme Court under NRAP 8(a)(2).

25 20. On August 9, 2016, the Nevada Supreme Court denied the relief, directing Plaintiff to first
26 seek relief from this Court under NRAP 8(a)(1).

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1 IL LEGAL DISCUSSION

2 A. An Injunction Should Be Issued to Protect Plaintiff's Property Rights.

3 Injunctive relief may be issued "to preserve the status quo" if the party seeking the
4 preliminary injunction enjoys a reasonable likelihood of success on the merits, and that the party
5 will be subjected to irreparable harm if the injunction is not issued. See NRS § 33.010; Univ. &
6 Cnty. Coll. Sys. v. Nevadans for Sound Gov't, 120 Nev. 712, 721, 100 P.3d 179, 187 (2004)
7 Pickett v. Comanche Construction, Inc., 108 Nev. 422, 426, 836 P.2d 42, 44 (1992) (citing Dixon
8 v. Thatcher, 103 Nev. 414, 415-16, 742 P.2d 1029, 1029-30 (1987)).

9 Injunctions have been granted in various situations where a party is at risk of its property
10 being disposed of by the other party before the case can be resolved by the court. For example,
11 in a dispute over the sale of a business, the purchaser of the business "sought a temporary
12 restraining order prohibiting [the seller] from selling the repossessed business to a third party."
13 Herup v. First Boston Financial, LLC, 123 Nev. Adv. Op. 27, 2 n.1, 162 P.3d 870, 871, n.1 (2007).

14 In this case, an injunction is proper to prevent Defendant from taking action that would
15 further damage Plaintiff. Plaintiff is seeking an order prohibiting Defendants, and any of their
16 collective agents, employees, attorneys, and anyone acting on their behalf, from pursuing any
17 Trustee's Sales prior to the resolution of this case, while on appeal. Because Plaintiffs are
18 claiming that Defendants are legally estopped from engaging any such sales under the Statute of
19 Limitations, such injunction would preserve Plaintiffs' rights in the Property.

21 B. Plaintiff Will Likely Prevail on Its Claims

22 Under Nevada law, the Mortgage is a contract between Plaintiff and the beneficiary of
23 the Mortgage. The remedies of any breach of the obligations contained in the Mortgage, including
24 foreclosure, whether it be judicial or non-judicial, stem from that initial mortgage contract. Under
25 Nevada law, a foreclosure of real property pursuant to NRS Chapter 107 is a remedy available as
26 a result of the failure to pay a mortgage obligation, inherently a breach of that mortgage contract.
27 In fact, NRS §107.080 says a bit more about the role of contract in a foreclosure. Specifically, it
28 states, in part, "if any transfer in trust of any estate in real property is made after March 29, 1927,

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1 to secure the performance of an obligation or the payment of any debt, a power of sale is hereby
2 conferred upon the trustee to be exercised after a breach of the obligation for which the transfer
3 is security.” (*emphasis added*). Clearly, the power to engage in a non-judicial foreclosure under
4 NRS §107.080 is a contractual remedy. Under Nevada law, no breach of contract action shall be
5 brought after six years from when the breach is alleged to have occurred. NRS §11.190.

6 “[W]here contract obligations are payable by installments, the limitations statute begins
7 to run only with respect to each installment, when due, unless the lender exercises his or her
8 option to declare the entire note due.” *Clayton v. Gardner*, 107 Nev. 468, 470, 813 P.2d 997, 999
9 (1991) (citations omitted) (*emphasis added*). Courts will seldom allow lenders to accelerate a
10 contract obligation unless the “acceleration [is] exercised in a manner so clear and unequivocal
11 that it leaves no doubt as to the lender’s intention.” *Id.* (quoting *United States v. Feterl*, 849 F.2d
12 354, 357 (8th Cir.1988)). Some “affirmative action by the creditor must be taken to make it
13 known to the debtor that [the creditor] has exercised his option to accelerate,” *Feterl*, 849 F.2d at
14 357; usually, the filing of a document with the county recorder which states that the loan has been
15 accelerated is a sufficient.

16 Nevada law gives a lender the option to accelerate through the notice of default. While
17 not required to fulfil the requirements of such notice under law, the legislature has stated that that
18 “a notice of default and election to sell must: (a) [d]escribe the deficiency in performance or
19 payment and may contain a notice of intent to declare the entire unpaid balance due if acceleration
20 is permitted by the obligation secured by the deed of trust, but acceleration must not occur if the
21 deficiency in performance or payment is made good and any costs, fees and expenses incident to
22 the preparation or recordation of the notice and incident to the making good of the deficiency in
23 performance or payment are paid within the time specified in subsection 2.” NRS § 107.080(3)
24 (*emphasis added*).

25 In this case, due to illness and a downturn in the economy, Plaintiff ran into economic
26 trouble in the height of the economic crisis. Plaintiff reached out to Defendant’s predecessor for
27 help in 2009. Plaintiff was told that if she was not late on his mortgage, then it could not help
28

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1 her. Plaintiff, in adhering to the advice of the representatives of Defendant's predecessor, went
2 late on her mortgage in June, 2009.

3 Four months later, Defendant's predecessor took the affirmative action necessary to
4 notify Plaintiff (and the general public) of its intent to accelerate the Plaintiff's mortgage, when,
5 on or about September 25, 2009, it filed the First Notice of Default. See Exhibit "B". In part,
6 First Notice of Default stated that because there was a failure to pay the "installment of principal
7 and interest plus impounds and/or advances which became due on 06/01/2009 ... the "beneficiary
8 under such deed of Trust has deposited with RECONTRUST COMPANY, N.A. such deed of
9 trust and all documents evidencing obligations secured thereby and has declared and does hereby
10 declare all sums secured thereby immediately due and payable and has elected and does hereby
11 elect to cause the trust property to be sold to satisfy the obligations secured thereby." Id.
12 (emphasis added). As a result of this quoted section from the First Notice of Default, Respondent
13 accelerated the Note and Deed of Trust on September 25, 2009, or the day that the First Notice of
14 Default was recorded. Accordingly, the six year statute of limitations began to run on September
15 25, 2009.

16 To date, it is has been approximately six (6) years and six (6) months since the
17 Respondents accelerated the mortgage, and yet they have not foreclosed on the Property. While
18 they have taken numerous steps in the foreclosure process, and there has been some litigation
19 between the parties prior to this case, any injunctive relief that may have been temporarily
20 provided fails to have toiled the statute of limitations more than a month. As such,
21 Respondents had six (6) years to seek the contractual remedy of foreclosure of the Property or to
22 otherwise initiate a cause of action for Appellant's alleged default under the Deed of Trust and
23 related promissory note. Respondents did not successfully seek the contractual remedy of
24 foreclosure of the Property or to otherwise initiate a cause of action for Appellant's alleged default
25 under the Deed of Trust and related promissory note within this six year period.

26 This was argued in the district court. The district court did not disagree with this
27 position; rather, the district court had concerns that a rescission which was filed in December,
28

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1 2011, reset the statute of limitations. See Order, Exhibit "F". Plaintiff is challenging that legal
2 conclusion in this case.

3 First, as the Rescission was limited in scope, it did not stop the clock on the collection
4 activities related to the breach that occurred in 2009. Specifically, by its own language, the
5 Rescission did not "waiv[e], cur[e], extend[] to, or affect[] any default, either past, present or
6 future, under such Deed of Trust, or as impair[] any right or remedy thereunder." Exhibit "C".

7 Second, the language of the Second Notice of Default continues the acceleration of the mortgage
8 from a default that occurred prior to the Rescission. In that document, Respondent (or its agent)
9 stated that "installment of Principal and Interest plus impounds and/or advances which became
10 due on 01/01/2010 plus late charges, and all subsequent installments of principal, interest,
11 balloon payments, plus impounds and/or advances and late charges that become payable."
12 Exhibit "D". Clearly, the default was not resolved or otherwise waived as of the date of the
13 Rescission, a requirement to reset the statute of limitations.

14 This makes sense. First, it is unfathomable how a document that says that is does not
15 alter or change the underlying default, would have the power to change a key aspect of the
16 underlying default – how long a creditor has pursue a remedy for that default.

17 Second, it would be the antithesis of the benefit of a statute of limitations if, at any time
18 prior to it running, a lender can rescind the notice of default and related acceleration, resetting its
19 own clock for bringing a claim. A statute of limitations prohibits a suit after a period of time that
20 follows the accrual of the cause of action. Allstate Ins. Co. v. Furgerson, 104 Nev. 772, 775 n. 2,
21 766 P.2d 904, 906 n. 2 (1988). A statute of limitations conditions a party's ability to pursue a
22 remedy within the statutory time period and "defines the right involved in terms of the time
23 allowed to bring suit." P. Stolz Family P'ship L.P. v. Daum, 355 F.3d 92, 102 (2d Cir.2004). Such
24 a statute seeks to give a defendant peace of mind by barring delayed litigation, so as to prevent
25 unfair surprises that result from the revival of claims that have remained dormant for a period
26 during which the evidence vanished and memories faded. See Underwood Cotton Co. v. Hyundai
27 Merch. Marine (Am.), Inc., 288 F.3d 405, 408–09 (9th Cir.2002) (providing that statutes of
28 limitations are concerned with a Respondent's peace of mind); Joslyn v. Chang, 445 Mass. 344,

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1 837 N.E.2d 1107, 1112 (2005) (noting that statutes of limitations prevent stale claims from
2 springing up and surprising parties when the evidence has been lost). While statutes of limitations
3 are intended to protect a defendant against the evidentiary problems associated with defending a
4 stale claim, these statutes are also enacted to "promote repose by giving security and stability to
5 human affairs.... They stimulate to activity and punish negligence." Wood v. Carpenter, 101 U.S.
6 135, 139, 25 L.Ed. 807 (1879). For these reasons, a statute of limitations cannot be a sword and
7 shield that can be delayed, stopped or reset at the plaintiff's whim.

8 As such, Plaintiff believes that she will prevail on the merits in this case.
9

10 **D. The Injunction Should Issue to Preserve the Status Quo.**

11 It is appropriate for a injunction is issue to preserve the status quo pending an adjudication
12 of a claim. Number One Rent-ACar v. Ramada Inns, Inc., 94 Nev. 779, 780-81, 587 P.2d 1329,
13 1330 (1978). As has long been held in Nevada, where "the sole object for which an injunction is
14 sought is the preservation of a fund in controversy, or the maintenance of the status quo, until the
15 question of right between the parties can be decided on final hearing, the injunction properly may
16 be allowed, although there may be serious doubt of the ultimate success of the complainant."
17 Rhodes Mining Co. v. Belleville Placer Mining Co., 32 Nev. 230, 106 P. 561, 562 (1910).

18 In this case, an injunction pending the resolution of the appeal is consistent with the
19 principles of the Nevada case law. Here, because the subject matter of the case involves title to
20 property, and property is deemed unique, the status quo can be maintained only by issuing a
21 preliminary injunction enjoining Defendants, and any of their collective agents, employees,
22 attorneys, and anyone acting on their behalf, from pursuing any Trustee's Sales prior to the
23 resolution of this case.
24

25 **III. CONCLUSION**

26 For the foregoing reasons, Plaintiff respectfully requests that this Court enter an Order
27 prohibiting Defendant, **HSBC BANK USA, National Association, as TRUSTEE** for
28

1 **DEUTCHE ALT-A SECURITIES MORTGAGE LOAN TRUST, MORTGAGE PASS-**
2 **THROUGH CERTIFICATES SERIES 2007-AR2**, and any of its collective agents, employees,
3 attorneys, successors and/or anyone acting on their behalf, from pursuing any foreclosure sales
4 related to that certain first deed of trust entered into on or about December 21, 2006, Plaintiff
5 executed a deed of trust naming GreenPoint Mortgage Funding, In., as the "Lender", and Marin
6 Conveying Corp., as the "Trustee", and encumbering the Property with an indebtedness in the
7 amount of \$326,000.00 (referred to herein as Plaintiff's "Mortgage") until the appeal in this case
8 has been resolved.


9 Dated this 9th day of August, 2016.

10 **HAFTERLAW**

11
12 By:  *Aug 19, 2016*

Jacob L. Hafter, Esq.
Nevada State Bar No. 9303
6851 W. Charleston Boulevard
Las Vegas, Nevada 89117
Tel: (702) 405-6700
Fax: (702) 685-4184
Counsel for Plaintiff

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(702) 685-4184 Facsimile

 **HAFTERLAW**

CERTIFICATE OF SERVICE


Pursuant to NRCP 5(b), I certify that I am an employee of **HAFTERLAW**, and that on this 11th day of August, 2016, I served a copy of the foregoing **MOTION FOR INJUNCTION PURSUANT TO NRAP 8(a)(1)** as follows:

☐ U.S. Mail—By depositing a true copy thereof in the U.S. mail, first class postage prepaid and addressed as listed below; and/or

☐ Facsimile—By facsimile transmission pursuant to EDCR 7.26 to the facsimile number(s) shown below and in the confirmation sheet filed herewith. Consent to service under NRCP 5(b)(2)(D) shall be assumed unless an objection to service by facsimile transmission is made in writing and sent to the sender via facsimile within 24 hours of receipt of this Certificate of Service; and/or

☒ Hand Delivery—By hand-delivery to the addresses listed below.

Jeffrey S. Allison, Esq.
Mark H. Hutchings, Esq.
HOUSER & ALLISON, APC
3900 Paradise Road, Suite 101
Las Vegas, NV 89169
Attorneys for Defendant


An employee of **HAFTERLAW**

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EXHIBIT “A”

EXHIBIT “A”

22

20070108-0001436

Fee: \$39.00
N/C Fee: \$0.00

01/08/2007 09:39:16
T20070003253

Requestor:
FIRST AMERICAN TITLE COMPANY OF NEW

Debbie Conway STN
Clark County Recorder Pas: 26

Assessor's Parcel Number:
178-04-514-044
Return To: GreenPoint Mortgage Funding,
Inc.
981 Airway Court, Suite E
Santa Rosa, CA 95403-2049

Prepared By: GreenPoint Mortgage
Funding, Inc.
100 Wood Hollow Drive, Novato, CA
94945

Recording Requested By: GreenPoint Mortgage
Funding, Inc.
981 Airway Court, Suite E
Santa Rosa, CA, 95403-2049

[Space Above This Line For Recording Data]

DEED OF TRUST MIN 100013800914365016

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated December 21, 2006 together with all Riders to this document.

(B) "Borrower" is Amy B. Facklam, A Single Woman

Borrower is the trustor under this Security Instrument.

(C) "Lender" is GreenPoint Mortgage Funding, Inc.

Lender is a Corporation
organized and existing under the laws of the State of New York

NEVADA-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT
WITH MERS

6A(NV) (0507)

Page 1 of 15
VMP Mortgage Solutions, Inc.
(800)521-7291

6501
Form 3029 1/01

Lender's address is 100 Wood Hollow Drive, Novato, CA 94945

(D) "Trustee" is Marin Conveyancing Corp.

(E) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the beneficiary under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

(F) "Note" means the promissory note signed by Borrower and dated December 21, 2006

The Note states that Borrower owes Lender three hundred twenty-six thousand and 00/100 Dollars

(U.S. \$326,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than January 1, 2037

(G) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(H) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(I) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

- | | | |
|---|--|---|
| <input checked="" type="checkbox"/> Adjustable Rate Rider | <input type="checkbox"/> Condominium Rider | <input type="checkbox"/> Second Home Rider |
| <input type="checkbox"/> Balloon Rider | <input checked="" type="checkbox"/> Planned Unit Development Rider | <input type="checkbox"/> 1-4 Family Rider |
| <input type="checkbox"/> VA Rider | <input type="checkbox"/> Biweekly Payment Rider | <input type="checkbox"/> Other(s) [specify] |
| <input checked="" type="checkbox"/> Occupancy Rider | <input type="checkbox"/> Interim Interest Rider | |

(J) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(K) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(L) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(M) "Escrow Items" means those items that are described in Section 3.

(N) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(O) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(P) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(Q) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time.

6501

time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(R) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

The beneficiary of this Security Instrument is MERS (solely as nominee for Lender and Lender's successors and assigns) and the successors and assigns of MERS. This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the County [Type of Recording Jurisdiction] of Clark [Name of Recording Jurisdiction]:

As more particularly described in exhibit "A" attached hereto and made a part hereof.

Parcel ID Number: 178-04-514-044
1513 Shotgun Lane
Henderson
("Property Address");

which currently has the address of
[Street]
[City], Nevada 89014 [Zip Code]

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument.

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances

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of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. **Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges.** Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

2. **Application of Payments or Proceeds.** Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

3. **Funds for Escrow Items.** Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives

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Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

4. **Charges; Liens.** Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the

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lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

5. **Property Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with

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the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

6. **Occupancy.** Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

7. **Preservation, Maintenance and Protection of the Property; Inspections.** Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

8. **Borrower's Loan Application.** Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

9. **Protection of Lender's Interest in the Property and Rights Under this Security Instrument.** If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable

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attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

10. **Mortgage Insurance.** If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.

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(b) Any such agreements will not affect the rights Borrower has - if any - with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

11. Assignment of Miscellaneous Proceeds; Forfeiture. All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

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12. **Borrower Not Released; Forbearance By Lender Not a Waiver.** Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

13. **Joint and Several Liability; Co-signers; Successors and Assigns Bound.** Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

14. **Loan Charges.** Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

15. **Notices.** All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

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16. Governing Law; Severability; Rules of Construction. This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

17. Borrower's Copy. Borrower shall be given one copy of the Note and of this Security Instrument.

18. Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

19. Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

20. Sale of Note; Change of Loan Servicer; Notice of Grievance. The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be

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one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

21. Hazardous Substances. As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

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NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option, and without further demand, may invoke the power of sale, including the right to accelerate full payment of the Note, and any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

If Lender invokes the power of sale, Lender shall execute or cause Trustee to execute written notice of the occurrence of an event of default and of Lender's election to cause the Property to be sold, and shall cause such notice to be recorded in each county in which any part of the Property is located. Lender shall mail copies of the notice as prescribed by Applicable Law to Borrower and to the persons prescribed by Applicable Law. Trustee shall give public notice of sale to the persons and in the manner prescribed by Applicable Law. After the time required by Applicable Law, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale. Lender or its designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it.

23. Reconveyance. Upon payment of all sums secured by this Security Instrument, Lender shall request Trustee to reconvey the Property and shall surrender this Security Instrument and all notes evidencing debt secured by this Security Instrument to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled to it. Such person or persons shall pay any recordation costs. Lender may charge such person or persons a fee for reconveying the Property, but only if the fee is paid to a third party (such as the Trustee) for services rendered and the charging of the fee is permitted under Applicable Law.

24. Substitute Trustee. Lender at its option, may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon Trustee herein and by Applicable Law.

25. Assumption Fee. If there is an assumption of this loan, Lender may charge an assumption fee of U.S. \$900.00

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BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Witnesses:

Amy B. Facklam (Seal)
-Borrower

-Borrower (Seal)
-Borrower

-Borrower (Seal)
-Borrower

-Borrower (Seal)
-Borrower

-Borrower (Seal)
-Borrower

STATE OF NEVADA
COUNTY OF *Clark*

This instrument was acknowledged before me on *December 24th* 2006 by
Amy B. Facklam

Anita Kauffman

Mail Tax Statements To:
Amy B. Facklam
1513 Shotgun Lane, Henderson, NV 89014



EXHIBIT 'A'

LOT ONE (1) IN BLOCK ONE (1) OF CANDLE CREEK UNIT NO. 1, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 39 OF PLATS, PAGE 83, AND AMENDED BY THAT CERTAIN CERTIFICATE OF AMENDMENT RECORDED FEBRUARY 13, 1989 IN BOOK 890213 AS DOCUMENT NO. 00542 OF OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

ADJUSTABLE RATE RIDER

THIS ADJUSTABLE RATE RIDER is made this 21st day of December, 2006, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned (the "Borrower") to secure Borrower's Adjustable Rate Note (the "Note") to GreenPoint Mortgage Funding, Inc.

(the "Lender") of the same date and covering the Property described in the Security Instrument and located at: 1513 Shotgun Lane, Henderson, NV 89014

[Property Address]

THIS NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN MY INTEREST RATE AND MY MONTHLY PAYMENT. INCREASES IN THE INTEREST RATE WILL RESULT IN HIGHER PAYMENTS. DECREASES IN THE INTEREST RATE WILL RESULT IN LOWER PAYMENTS.

ADDITIONAL COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

A. INTEREST RATE AND MONTHLY PAYMENT CHANGES

The Note provides for an initial interest rate of 6.875%. The Note provides for changes in the interest rate and the monthly payments, as follows:

4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The interest rate I will pay may change on the ~~first~~ day of January, 2012, and on that day every 6th month thereafter. Each date on which my interest rate could change is called a "Change Date."

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(B) The Index

Beginning with the first Change Date, my interest rate will be based on an Index. The "Index" is: the average of interbank offered rates for six-month U.S. dollar-denominated deposits in the London market ("LIBOR").

The most recent Index figure available as of the date: ☒ 45 days ☐ _____ before each Change Date is called the "Current Index."

If the Index is no longer available, the Note Holder will choose a new Index that is based upon comparable information. The Note Holder will give me notice of this choice.

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding _____ percentage points (2.750 _____ %) to the Current Index. The Note Holder will then round the result of this addition to the ☒ Nearest ☐ Next Highest ☐ Next Lowest one-eighth of one percentage point (0.125 _____ %). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

☐ The Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid principal I am expected to owe at the Change Date in full on the maturity date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

☒ Interest-Only Period

The "Interest-only Period" is the period from the date of this Note through 01/01/2017. For the interest-only period, after calculating my new interest rate as provided above, the Note Holder will then determine the amount of the monthly payment that would be sufficient to pay the interest which accrues on the unpaid principal of my loan. The result of this calculation will be the new amount of my monthly payment.

The "Amortization Period" is the period after the interest-only period. For the amortization period, after calculating my new interest rate as provided above, the Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

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(D) Limits on Interest Rate Changes

(Please check appropriate boxes; if no box is checked, there will be no maximum limit on changes.)

- ☐ (1) There will be no maximum limit on interest rate changes.
- ☐ (2) The interest rate I am required to pay at the first Change Date will not be greater than % or less than %.
- ☐ (3) My interest rate will never be increased or decreased on any single Change Date by more than percentage points (%) from the rate of interest I have been paying for the preceding period.
- ☒ (4) My interest rate will never be greater than 11.875 %, which is called the "Maximum Rate."
- ☐ (5) My interest rate will never be less than %, which is called the "Minimum Rate."
- ☐ (6) My interest rate will never be less than the initial interest rate.
- ☒ (7) The interest rate I am required to pay at the first Change Date will not be greater than 11.875 % or less than 2.750 %. Thereafter, my interest rate will never be increased or decreased on any single Change Date by more than 1.000 percentage points (1.000 %) from the rate of interest I have been paying for the preceding period.

(E) Effective Date of Changes

My new interest rate will become effective on each Change Date. I will pay the amount of my new monthly payment beginning on the first monthly payment date after the Change Date until the amount of my monthly payment changes again.

(F) Notice of Changes

The Note Holder will deliver or mail to me a notice of any changes in my interest rate and the amount of my monthly payment before the effective date of any change. The notice will include information required by law to be given to me and also the title and telephone number of a person who will answer any question I may have regarding the notice.

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B. TRANSFER OF THE PROPERTY OR A BENEFICIAL INTEREST IN BORROWER
Uniform Covenant 18 of the Security Instrument is amended to read as follows:

Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

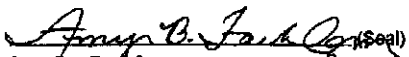
If all or any part of the Property or any interest in the Property is sold or transferred (or if a Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

To the extent permitted by Applicable Law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption. Lender also may require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.

If Lender exercises the option to require immediate payment in full, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

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BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Adjustable Rate Rider.


Amy B. Facklam (Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

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ARMR-01-018 Rev 6/06

Page 5 of 5

PLANNED UNIT DEVELOPMENT RIDER

THIS PLANNED UNIT DEVELOPMENT RIDER is made this 21st day of December, 2006, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date, given by the undersigned (the "Borrower") to secure Borrower's Note to GreenPoint Mortgage Funding, Inc.

(the "Lender") of the same date and covering the Property described in the Security Instrument and located at: 1513 Shotgun Lane, Henderson, NV 89014

[Property Address]

The Property includes, but is not limited to, a parcel of land improved with a dwelling, together with other such parcels and certain common areas and facilities, as described in Declaration of Covenants, Conditions, and Restrictions

(the "Declaration"). The Property is a part of a planned unit development known as Candle Creek

[Name of Planned Unit Development]

(the "PUD"). The Property also includes Borrower's interest in the homeowners association or equivalent entity owning or managing the common areas and facilities of the PUD (the "Owners Association") and the uses, benefits and proceeds of Borrower's interest.

PUD COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

A. PUD Obligations. Borrower shall perform all of Borrower's obligations under the PUD's Constituent Documents. The "Constituent Documents" are the (i) Declaration; (ii) articles of incorporation, trust instrument or any equivalent document which creates the Owners Association; and (iii) any by-laws or other rules or regulations of the Owners Association. Borrower shall promptly pay, when due, all dues and assessments imposed pursuant to the Constituent Documents.

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MULTISTATE PUD RIDER - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT
Form 3150 1/01
Wolters Kluwer Financial Services Page 1 of 3
VMP®-7R (0411).01

B. Property Insurance. So long as the Owners Association maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy insuring the Property which is satisfactory to Lender and which provides insurance coverage in the amounts (including deductible levels), for the periods, and against loss by fire, hazards included within the term "extended coverage," and any other hazards, including, but not limited to, earthquakes and floods, for which Lender requires insurance, then: (i) Lender waives the provision in Section 3 for the Periodic Payment to Lender of the yearly premium installments for property insurance on the Property; and (ii) Borrower's obligation under Section 5 to maintain property insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the Owners Association policy.

What Lender requires as a condition of this waiver can change during the term of the loan.

Borrower shall give Lender prompt notice of any lapse in required property insurance coverage provided by the master or blanket policy.

In the event of a distribution of property insurance proceeds in lieu of restoration or repair following a loss to the Property, or to common areas and facilities of the PUD, any proceeds payable to Borrower are hereby assigned and shall be paid to Lender. Lender shall apply the proceeds to the sums secured by the Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

C. Public Liability Insurance. Borrower shall take such actions as may be reasonable to insure that the Owners Association maintains a public liability insurance policy acceptable in form, amount, and extent of coverage to Lender.

D. Condemnation. The proceeds of any award or claim for damages, direct or consequential, payable to Borrower in connection with any condemnation or other taking of all or any part of the Property or the common areas and facilities of the PUD, or for any conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender. Such proceeds shall be applied by Lender to the sums secured by the Security Instrument as provided in Section 11.

E. Lender's Prior Consent. Borrower shall not, except after notice to Lender and with Lender's prior written consent, either partition or subdivide the Property or consent to: (i) the abandonment or termination of the PUD, except for abandonment or termination required by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain; (ii) any amendment to any provision of the "Constituent Documents" if the provision is for the express benefit of Lender; (iii) termination of professional management and assumption of self-management of the Owners Association; or (iv) any action which would have the effect of rendering the public liability insurance coverage maintained by the Owners Association unacceptable to Lender.

F. Remedies. If Borrower does not pay PUD dues and assessments when due, then Lender may pay them. Any amounts disbursed by Lender under this paragraph F shall become additional debt of Borrower secured by the Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

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BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this PUD Rider.

Amy B. Facklam (Seal) _____ (Seal)
Amy B. Facklam -Borrower -Borrower

_____ (Seal) _____ (Seal)
-Borrower -Borrower

_____ (Seal) _____ (Seal)
-Borrower -Borrower

_____ (Seal) _____ (Seal)
-Borrower -Borrower

OCCUPANCY RIDER TO MORTGAGE/ DEED OF TRUST/SECURITY DEED

THE OCCUPANCY RIDER is made this 21st day of December, 2006, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust or Security Deed (the "Security Instrument") of the same date given by the undersigned (the "Borrower") to secure Borrower's Note (the "Note") to GreenPoint Mortgage Funding, Inc. (the "Lender") of the same date and covering the property described in the Security Instrument and located at:

1513 Shotgun Lane, Henderson, NV 89014

("Property Address")

ADDITIONAL COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

1. That the above-described property will be personally occupied by the Borrower as their principal residence within 60 days after the execution of the Security Instrument and Borrower shall continue to occupy the property as their principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld.
2. That if residency is not established as promised above as well as in the Security Instrument, the Lender may, without further notice, take any or all of the following actions:
 - a. increase the interest rate on the Note by one-half of one percent (0.500%) per annum on a fixed-rate loan or increase the Margin on an Adjustable Rate Note by one-half of one percent (0.500%) per annum and to adjust the principal and interest payments to the amount required to pay the loan in full within the remaining term; and/or
 - b. charge a non-owner occupancy rate adjustment fee of two percent (2.00%) of the original principal balance and/or
 - c. require payment to reduce the unpaid principal balance of the loan to the lesser of (1) 70% of the purchase price of the property or (2) 70% of the appraised value at the time the loan was made. The reduction of the unpaid principal balance shall be due and payable within thirty (30) days following receipt of a written demand for payment, and if not paid within thirty (30) days will constitute a default under the terms and provisions of the Note and Security Instrument, and/or
 - d. declare a default under the terms of the Note and Security Instrument and begin foreclosure proceedings, which may result in the sale of the above-described property; and/or
 - e. refer what is believed to be fraudulent acts to the proper authorities for prosecution. It is a federal crime punishable by fine or imprisonment, or both, to knowingly make any false statements or reports for the purpose of influencing in any way the action of the Lender in granting a loan on the above property under the provisions of TITLE 18, UNITED STATES CODE, SECTIONS 1010 AND 1014.

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It is further understood and agreed that any forbearance by the Lender in exercising any right or remedy given here, or by applicable law, shall not be a waiver of such right or remedy.

Should any clause, section or part of this Occupancy Rider be held or declared to be void or illegal for any reason, all other clauses, sections or parts of this Occupancy Rider which can be effected without such illegal clause, section or part shall nevertheless continue in full force and effect.

It is further specifically agreed that the Lender shall be entitled to collect all reasonable costs and expenses incurred in pursuing the remedies set forth above, including but not limited to, reasonable attorney's fees.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Occupancy Rider.

Amy B. Facklam (Borrower) _____ (Borrower)
Amy B. Facklam

____ (Borrower) _____ (Borrower)

____ (Borrower) _____ (Borrower)

____ (Borrower) _____ (Borrower)

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EXHIBIT “B”

EXHIBIT “B”

Inst#:200909250003750 Fees:\$65.00 N/C Fee:\$0.00 09/25/2009 02:56:26 PM
Receipt#:71700 Requestor:FIRST AMERICAN NATIONAL DEFAULT TITLE INSURANCE
CONCORD Recorded By:RNS Pgs:2 DEBBIE CONWAY CLARK COUNTY RECORDER

RECORDING REQUESTED BY:
WHEN RECORDED MAIL TO:
RECONTRUST COMPANY
2380 Performance Dr, TX2-985-07-03
Richardson, TX 75082

TS No. 09-0144623
Title Order No. 4267567
APN No. 178-04-514-044
Property Address:
1513 SHOTGUN LN
HENDERSON, NV 89014

NEVADA IMPORTANT NOTICE

NOTICE OF DEFAULT/ELECTION TO SELL UNDER DEED OF TRUST

NOTICE IS HEREBY GIVEN THAT: RECONTRUST COMPANY, N.A., is the duly appointed Trustee under a Deed of Trust dated 02/21/2006, executed by AMY B. FACKLAM, A SINGLE WOMAN as Trustor, to secure certain obligations in favor of MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. as beneficiary recorded 01/08/2007, as Instrument No. 0001436 (or Book 20070108, Page) of Official Records in the Office of the County Recorder of Clark County, Nevada. Said obligation including ONE NOTE FOR THE ORIGINAL sum of \$326,000.00. That a breach of, and default in, the obligations for which such Deed of Trust is security has occurred in that payment has not been made of:

FAILURE TO PAY THE INSTALLMENT OF PRINCIPAL, INTEREST AND IMPOUNDS WHICH BECAME DUE ON 06/01/2009 AND ALL SUBSEQUENT INSTALLMENTS OF PRINCIPAL, INTEREST AND IMPOUNDS, TOGETHER WITH ALL LATE CHARGES, PLUS ADVANCES MADE AND COSTS INCURRED BY THE BENEFICIARY, INCLUDING FORECLOSURE FEES AND COSTS AND/OR ATTORNEYS' FEES. IN ADDITION, THE ENTIRE PRINCIPAL AMOUNT WILL BECOME DUE ON 01/01/2037 AS A RESULT OF THE MATURITY OF THE OBLIGATION ON THAT DATE.

That by reason thereof, the present beneficiary under such deed of trust has deposited with RECONTRUST COMPANY, N.A. such deed of trust and all documents evidencing obligations secured thereby, and has declared and does hereby declare all sums secured thereby immediately due and payable and has elected and does hereby elect to cause the trust property to be sold to satisfy the obligations secured thereby.

NOTICE

You may have the right to cure the default hereon and reinstate the one obligation secured by such Deed Of Trust above described. Section NRS 107.080 permits certain defaults to be cured upon the payment of the amounts required by that statutory section without requiring payment of that portion of principal and interest which would not be due had no default occurred. Where reinstatement is possible, if the default is not cured within 35 days following recording and mailing of this Notice to Trustor or Trustor's successor in interest, the right of reinstatement will terminate and the property may there after be sold. The Trustor may have the right to bring court action to assert the non existence of a default or any other defense of Trustor to acceleration and sale.

To determine if reinstatement is possible and the amount, if any, to cure the default, contact: BAC Home Loans Servicing, LP, c/o RECONTRUST COMPANY, 2380 Performance Dr, TX2-985-07-03, Richardson, TX 75082, PHONE: (800) 281-8219. Should you wish to discuss possible options for loan modification, you may contact the Home Retention Division at 1-800-669-6650. If you meet the requirements of Section NRS 107.085, you may request mediation in accordance with the enclosed Election/Waiver of Mediation Form and instructions. You may also contact the Nevada Fair Housing Center at 1-702-731-6095 or the Legal Aid Center at 1-702-386-1070 for assistance.

DATED: September 25, 2009

RECONTRUST COMPANY, N.A., as agent for
the Beneficiary

By: FIRST AMERICAN TITLE, as Agent

BY: Charlotte Olmos

Charlotte Olmos, ASSISTANT
SECRETARY

State of: California

County of: Contra Costa

On 9-25-09 before me LINDA S. DERNONCOURT, notary public,
personally appeared Charlotte Olmos, personally
known to me (or proved to me on the basis of satisfactory evidence) to be the person(s)
whose name(s) is/are subscribed to within instrument and acknowledged to me that
he/she/they executed the same in his/her/their authorized capacity(ies), and that by
his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of
which the person(s) acted, executed the instrument.

Witness my hand and official seal.

Linda S. Deroncourt



EXHIBIT “C”

EXHIBIT “C”

Inst #: 201112050000543

Fee: \$18.00

W/C Fee: \$0.00

12/08/2011 09:21:31 AM

Receipt #: 997107

Requestor:

DOCUMENT PROCESSING SOLUTIONS

Recorded By: SCA Pgs: 2

DEBBIE CONWAY

CLARK COUNTY RECORDER

**RECORDING REQUESTED BY:
WHEN RECORDED MAIL TO:**

Owner of Record
1513 SHOTGUN LN
HENDERSON, NV 89014

NVRESC 2011.11.0 11/2011

TS No. 09-0144623

Title Order No. 4267567

APN No. 178-04-514-044

**RESCISSION OF ELECTION TO DECLARE DEFAULT
NEVADA**

NOTICE IS HEREBY GIVEN that RECONTRUST COMPANY, N.A., Trustee for the Beneficiary does hereby rescind, cancel and withdraw the Notice of Default and Election to Sell hereinafter described, provided, however, that this rescission shall not be construed as waiving, curing, extending to, or affecting any default, either past, present or future, under such Deed of Trust, or as impairing any right or remedy thereunder, and it is and shall be deemed to be, only an election without prejudice not to cause a sale to be made pursuant to such Notice of Default and Election to Sell, and it shall not in any way alter or change any of the rights remedies or privileges secured to Beneficiary and/or Trustee under such Deed of Trust, nor modify, nor alter in any respect any of the terms, covenants, conditions or obligations therein contained. Said NOTICE OF DEFAULT AND ELECTION TO SELL under Deed of Trust specifically described therein was:

Recorded on 09/25/2009, as Instrument No. 200909250003750, in Book _____, Page _____ of Official Records of Clark County, Nevada.

The DEED OF TRUST affected by this notice recorded on 01/08/2007 as Instrument No. 0001436 in Book 20070108 Page __, executed by AMY B. FACKLAM, A SINGLE WOMAN, as Trustor in Clark County, Nevada.

DATED: December 01, 2011

RECONTRUST COMPANY, N.A.

State of: Texas) BY: Laura Dalley 12/1/11
County of: Tarrant) Laura Dalley AVP
On 12/1/2011 before me Elsie Kroussakis, personally appeared
Laura Dalley AVP, know to me (or proved to me on the oath of
or through Pers Kroussakis to be the person whose name is subscribed to the
foregoing instrument and acknowledged to me that he/she executed the same for the purposes and
consideration therein expressed.
Witness my hand and official seal.

Elsie Kroussakis
Notary Public's Signature

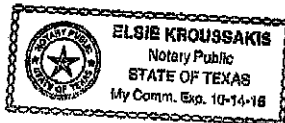


EXHIBIT “D”

EXHIBIT “D”

TS No.: 2015-01206-NV

APN: 178-04-514-044

WHEN RECORDED MAIL TO:
Western Progressive - Nevada, Inc.
Northpark Town Center
1000 Abernathy Rd NE, Bldg 400, Suite 200
Atlanta, GA 30328

TS No.: 2015-01206-NV
TSC Order No: 1509-NV-2737341

Inst #: 20160129-0000551

Fee: \$324.00

N/C Fee: \$25.00

DATE/TIME 03:06:00 AM

Receipt #: 2671054

Requestor:

PREMIUM TITLE TSC

Recorded By: RYND Pgs: 3

DEBBIE CONWAY

CLARK COUNTY RECORDER

The undersigned hereby affirms that there is no Social Security number contained in this document.

NOTICE OF DEFAULT AND ELECTION TO SELL REAL PROPERTY UNDER THE DEED OF TRUST

IF YOUR PROPERTY IS IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR PAYMENTS IT MAY BE SOLD WITHOUT ANY COURT ACTION, and you may have the legal right to bring your account into good standing by paying off of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account, which is normally five business days prior to the date set for the sale of your property, if the property is owner-occupied. No sale date may be set until three months from the date this notice of default may be recorded (which date of recordation appears on this notice). **YOU MAY HAVE A RIGHT TO PARTICIPATE IN THE STATE OF NEVADA FORECLOSURE MEDIATION PROGRAM IF THE TIME TO REQUEST MEDIATION HAS NOT EXPIRED.**

While your property is in foreclosure, you still must pay other obligations (such as insurance and taxes) required by your note and deed of trust or mortgage. If you fail to make future payments on the loan, pay taxes on the property, provide insurance on the property, or pay other obligations as required in the note and deed of trust or mortgage, the beneficiary or mortgagee may insist that you do so in order to reinstate your account in good standing. In addition, the beneficiary or mortgagee may require as a condition of reinstatement that you provide reliable written evidence that you paid all senior liens, property taxes, and hazard insurance premiums.

Upon your written request, the beneficiary or mortgagee will give you a written itemization of the entire amount you must pay. You may not have to pay the entire unpaid portion of your account, even though full payment was demanded, but you must pay all amounts in default at the time payment is made. However, you and your beneficiary or mortgagee may mutually agree in writing prior to the time the notice of sale is posted (which may not be earlier than the three month period stated above) to, among other things, (1) provide additional time in which to cure the default by transfer of the property or otherwise; or (2) establish a schedule of payments in order to cure your default; or both (1) and (2).

Following the expiration of the time period referred to in the first paragraph of this notice, unless the obligation being foreclosed upon or a separate written agreement between you and your creditor permits a longer period, you have only the legal right to stop the sale of your property by paying the entire amount demanded by your creditor. Included with this Notice of Default, please see "Exhibit A" - Nevada HUD Approved Housing Counseling Agency Contacts for a listing of local housing counseling agencies approved by the United States Department of Housing and Urban Development (HUD).

Version 1.1 NV NOD0515

Page 1 of 4

**NOTICE OF DEFAULT AND ELECTION TO SELL REAL PROPERTY
UNDER THE DEED OF TRUST**

NOTICE IS HEREBY GIVEN THAT: WESTERN PROGRESSIVE - NEVADA, INC. is the duly appointed Trustee under a Deed of Trust dated 12/21/2006, executed by AMY B. FACKLAM, A SINGLE WOMAN, as trustor in favor of GREENPOINT MORTGAGE FUNDING, INC., AS LENDER, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS BENEFICIARY, recorded 01/08/2007, under instrument no. 20070108-0001436, in book ---, page ---, of Official Records in the office of the County recorder of Clark County, Nevada describing land therein as:

COMPLETELY DESCRIBED IN SAID DEED OF TRUST

Securing, among other obligations, one Note for the Original sum of \$ 326,000/00, that the beneficial interest under such Deed of Trust and the obligations secured hereby are presently held by the undersigned; that a breach of and default in the obligations for which such Deed of Trust is security has occurred or that payment has not been made of:

Installment of Principal and Interest plus impounds and/or advances which became due on 01/01/2010 plus late charges, and all subsequent installments of principal, interest, balloon payments, plus impounds and/or advances and late charges that become payable.

You are responsible to pay all payments and charges due under the terms and conditions of the loan documents which come due subsequent to the date of this notice, including, but not limited to, foreclosure trustee fees and costs, advances and late charges.

Furthermore, as a condition to bring your account in good standing, you must provide the undersigned with written proof that you are not in default on any senior encumbrance and provide proof of insurance.

Nothing in this notice of default should be construed as a waiver of any fees owing to the beneficiary under the deed of trust, pursuant to the terms and provisions of the loan documents.

The street address and other common designation, if any, of the real property described above is purported to be: 1513 SHOTGUN LANE, HENDERSON, NV 89014

That by reason thereof the present Beneficiary under such Deed of Trust has executed and delivered to said duly appointed Trustee a written request to commence foreclosure and has deposited with said duly appointed Trustee a copy of such Deed of Trust and documents evidencing the obligations secured thereby and has declared and does hereby declare all sums secured thereby immediately due and payable and has elected and does hereby elect to cause the trust property to be sold to satisfy the obligations secured thereby.
"See Attached Declaration"

NOTICE

You may have the right to cure the default herein and reinstate the one obligation secured by such Deed of Trust above described. Section NRS 107.080 permits certain defaults to be cured upon the payment of the amounts required by that statutory section without requiring payment of that portion of principal and interest which would not be due had no default occurred. Where reinstatement is possible, if the default is not cured within the statutory period set forth in NRS Section 107.080, the right of reinstatement will terminate and the property may thereafter be sold.

**NOTICE OF DEFAULT AND ELECTION TO SELL REAL PROPERTY
UNDER THE DEED OF TRUST**

To determine if reinstatement is possible and the amount, if any, to cure the default, contact:

HSBC Bank USA, National Association, as trustee for Deutsche Alt-A Securities Mortgage Loan Trust, Mortgage
Pass-Through Certificates Series 2007-AR2
C/O Owen Loan Servicing, LLC
1661 Worthington Road
West Palm Beach, FL 33409
Phone: 877-596-8580

If you are the Trustor and wish to contact a representative of the Beneficiary to discuss foreclosure prevention
alternatives, please contact: 877-596-8580

For foreclosure status, please contact: Western Progressive - Nevada, Inc., Northpark Town Center 1000
Abernathy Rd NW, Bldg 400, Suite 200 Atlanta, GA 30328, (866)-960-8299

Additionally included with this Notice of Default, please see "Exhibit A" - Nevada HUD Approved Housing
Counseling Agency Contacts for a listing of local housing counseling agencies approved by the United States
Department of Housing and Urban Development (HUD).

**NOTICE OF DEFAULT AND ELECTION TO SELL REAL PROPERTY
UNDER THE DEED OF TRUST**

If you have any questions, you should contact a lawyer or the governmental agency that may have insured your loan. Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale, provided the sale is concluded prior to the conclusion of the foreclosure.

REMEMBER, YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION.

2. The mortgage servicer has exercised due diligence to contact the borrower pursuant to Nevada Senate Bill 331, Section 11(5), to "assess the borrower's financial situation and explore options for the borrower to avoid foreclosure". Thirty (30) days, or more have passed since these due diligence efforts were satisfied.

Dated: January 26, 2016

Western Progressive - Nevada, Inc., as Trustee for beneficiary

By:



Chelsea Jackson, Trustee Sale Assistant

**WESTERN PROGRESSIVE - NEVADA, INC. MAY BE ACTING AS A DEBT COLLECTOR
ATTEMPTING TO COLLECT A DEBT. ANY INFORMATION OBTAINED MAY BE USED FOR THAT
PURPOSE.**

State of Georgia }ss
County of Fulton }

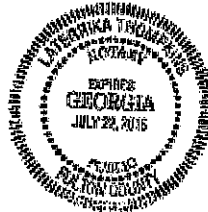
On January 26, 2016 before me, Laterrika Thompkins, Notary Public, personally appeared Chelsea Jackson, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature


Laterrika Thompkins

(Seal)



TX No.: 2015-01266-NV

AFFIDAVIT OF AUTHORITY TO EXERCISE THE POWER OF SALE

Record Title Holder:

Trustee Name and Address:
Western Progressive Nevada Inc
Northpark Town Center
1000 Abernathy Rd NE; Bldg 400,
Suite 300, Atlanta, GA 30328

OR

Borrower(s):

AMY B. FACKLAM

Property Address:

1913 Shotgun Lane, Henderson, NV 89014

Deed of Trust Document:

Instrument No.: 20070108-0001436

STATE OF

Florida

COUNTY OF

Polk Beach

The affiant, Carla Pribo, being first duly sworn upon oath and under penalty of perjury, attests as follows:

1. I am an Asset Management Coordinator of Ocwen Loan Servicing, LLC. I am duly authorized to make this Affidavit on behalf of Ocwen Loan Servicing, LLC as servicer for HSBC Bank USA, National Association, as trustee for Deutsche Alt-A Securities Mortgage Loan Trust, Mortgage Pass-Through Certificates Series 2007-AR2 in its capacity as the current beneficiary of the subject Deed of Trust ("Beneficiary") or the Servicer for the current beneficiary of the Deed of Trust.

2. I have the personal knowledge required to execute this Affidavit from my review of the business records of the beneficiary, the successor in interest of the beneficiary or the servicer of the obligation or debt secured by the deed of trust, my review of the records of the recorder of the county in which the property is located, and/or title guaranty or title insurance issued by a title insurer or title agent authorized to do business in this State. I can confirm the accuracy of the information set forth herein. If sworn as a witness, I could competently testify to the facts contained herein.

3. In the regular and ordinary course of business, it is Ocwen Loan Servicing, LLC's practice to make, collect, and maintain business records and documents related to any loan it originates, funds, purchases and/or services, including the Subject Loan (collectively, "Business Records"). I have continuing access to the Business Records for the Subject Loan, and I am familiar with the Business Records and I have personally reviewed the business records relied upon to compile this Affidavit.

Version 1.1 NV AOA 0515

TS No.: 2013-01206-NV

4. The full name and business address of the current trustee or the current trustee's representative or assignee is:

| | |
|--------------------------------|---|
| Western Progressive Nevada Inc | Northpark Town Center 1000 Abernathy Rd NE, Bldg 400, Suite 200 Atlanta, GA 30328 |
|--------------------------------|---|

5. The full name and business address of the current holder of the note secured by the Deed of Trust is:

| | |
|---|---|
| HSBC Bank USA, National Association, as trustee for Deutsche Alt-A Securities Mortgage Loan Trust, Mortgage Pass-Through Certificates Series 2007-AR2 | c/o Owen Loan Servicing, LLC 1661 Worthington Road, Suite 100 West Palm Beach, FL 33409 |
|---|---|

6. The full name and business address of the current beneficiary of record of the Deed of Trust is:

| | |
|---|---|
| HSBC Bank USA, National Association, as trustee for Deutsche Alt-A Securities Mortgage Loan Trust, Mortgage Pass-Through Certificates Series 2007-AR2 | c/o Owen Loan Servicing, LLC 1661 Worthington Road, Suite 100 West Palm Beach, FL 33409 |
|---|---|

7. The full name and business address of the current servicer of the obligation or debt secured by the Deed of Trust is:

| | |
|--------------------------|---|
| Owen Loan Servicing, LLC | 1661 Worthington Road, Suite 100 West Palm Beach, FL 33409 |
|--------------------------|---|

8. The beneficiary, its successor in interest, or the trustee of the Deed of Trust has actual or constructive possession of the note secured by the Deed of Trust and is entitled to enforce the obligation or debt secured by the Deed of Trust.

9. The beneficiary, its successor in interest, the trustee, the servicer of the obligation or debt secured by the Deed of Trust, or an attorney representing any of those persons, has sent to the obligor or borrower of the obligation or debt secured by the Deed of Trust a written statement containing the following information: (I) the amount of payment required to make good the deficiency in performance or payment, avoid the exercise of the power of sale and reinstate the underlying obligation or debt, as of the date of the statement; (II) the amount in default; (III) the principal amount of the obligation or debt secured by the Deed of Trust; (IV) the amount of accrued interest and late charges; (V) a good faith estimate of all fees imposed in connection with the exercise of the power of sale; and (VI) contact information for obtaining the most current amounts due and a local or toll free telephone number where the obligor or borrower of the obligation or debt may call to receive the most current amounts due and a recitation of the information contained in this Affidavit.

10. The borrower or obligor may utilize the following toll-free or local telephone number to inquire about the default, obtain the most current amounts due, and receive a recitation of the information contained in this Affidavit: 1-800-746-2936.

Version 1.1 NV AOA #515

TS No. 2015-01206-NV


11. Pursuant to my review of the business records of the beneficiary, the successor in interest of the beneficiary, and/or the business records of the servicer of the obligation or debt secured by the Deed of Trust; and/or the records of the county recorder where the subject real property is located; and/or the title guaranty or title insurance issued by a title insurer or title agent authorized to do business in the state of Nevada, the following is the (I) date, (II) recordation number (or other unique designation); and (III) assignee of each recorded assignment of the subject Deed of Trust:

October 8, 2009.

Instrument No. 200910080002975

From: Mortgage Electronic Registration Systems, Inc.

To: HSBC Bank USA, National Association, as trustee for The Holders of Deutsche Alt-A Securities Mortgage Loan Trust, Series 2007-AR2 Mortgage Pass-Through Certificates

Affiant Signature:  12/24/15


Print Name: Carla Prieto

Title: Control Management Contractor

Owen Loan Servicing, LLC, servicer for HSBC Bank USA, National Association, as trustee for Deutsche Alt-A Securities Mortgage Loan Trust, Mortgage Pass-Through Certificates Series 2007-AR2

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged and sworn before me this 24th day of DEC., year of 2015 by Carla Prieto as Control Management Contractor of Owen Loan Servicing, LLC, who is personally known to me or has produced _____ as identification.


Notary Public - State of Florida

My Commission Expires: 10/08/2017 Michelle Abraham



Version 1.1 NV AQA 0515

EXHIBIT “E”

EXHIBIT “E”

TS No.: 2015-01206-NV

APN: 178-04-514-044

Western Progressive - Nevada, Inc.
Northpark Town Center
1000 Abernathy Rd NE; Bldg 400, Suite 200
Atlanta, GA 30328

T.S. No.: 2015-01206-NV

The undersigned hereby affirms that there is no Social Security number contained in this document.

NOTICE OF TRUSTEE'S SALE

YOU ARE IN DEFAULT UNDER A DEED OF TRUST DATED 12/21/2006. UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDING AGAINST YOU, YOU SHOULD CONTACT A LAWYER.

Western Progressive - Nevada, Inc., as duly appointed trustee under and pursuant to the Deed of Trust recorded 01/08/2007, as Inst. No. 20070108-0001436, in book ---, page ---, of Official Records in the office of the County Recorder of Clark County, Nevada executed by: Amy B. Facklam, A Single Woman.

WILL SELL AT PUBLIC AUCTION TO HIGHEST BIDDER FOR CASH, CASHIER'S CHECK DRAWN ON A STATE OR NATIONAL BANK, A CHECK DRAWN BY A STATE OR FEDERAL CREDIT UNION, OR A CHECK DRAWN BY A STATE OR FEDERAL SAVINGS AND LOAN ASSOCIATION, A SAVINGS ASSOCIATION OR SAVINGS BANK:

Place of Sale: NLN, 930 S. 4th Street, Las Vegas, NV 89101

All right, title, and interest conveyed to and now held by the trustee in the hereinafter described property under and pursuant to a Deed of Trust described as:

Lot One (1) In Block One (1) Of Candle Creek Unit No. 1, As Shown By Map Thereof On File In Book 39 Of Plats, Page 83, And Amended By That Certain Certificate Of Amendment Recorded February 13, 1989 In Book 890213 As Document No. 00542 Of Official Records, In The Office Of The County Recorder Of Clark County, Nevada

NOTICE OF TRUSTEE'S SALE

The street address and other common designation, if any, of the real property described above is purported to be:

1513 Shotgun Lane, Henderson, NV 89014

The undersigned Trustee disclaims any liability for any incorrectness of the street address or other common designation, if any, shown above.

Date of Sale: 08/17/2016 at 10:00 AM

The sale will be made, but without covenant or warranty, expressed or implied, regarding title, possession, or encumbrances, to pay the remaining principal sum of the note(s) secured by the Deed of Trust, with interest and late charges thereon, as provided in the note(s), advances, under the terms of the Deed of Trust, interest thereon, fees, charges and expenses of the Trustee for the total amount (at the time of the initial publication of the Notice of Sale) reasonably estimated to be set forth below. The amount may be greater on the day of sale. This property is sold as-is, the beneficiary and undersigned Trustee are unable to validate the condition, defects or disclosure issues of said property and Buyer waives the disclosure requirements under NRS 113.130 by purchasing at this sale and signing a receipt in connection therewith. The total amount of the unpaid balance of the obligation secured by the property to be sold and reasonable estimated costs, expenses and advances at the time of the initial publication of the Notice of Sale is:
\$ 438,602.95.

NOTICE TO POTENTIAL BIDDERS: If you are considering bidding on this property lien, you should understand that there are risks involved in bidding at a trustee auction. You will be bidding on a lien, not on the property itself. Placing the highest bid at a trustee auction does not automatically entitle you to free and clear ownership of the property. You should also be aware that the lien being auctioned off may be a junior lien. If you are the highest bidder at the auction, you are or may be responsible for paying off all liens senior to the lien being auctioned off, before you can receive clear title to the property. You are encouraged to investigate the existence, priority, and size of outstanding liens that may exist on this property by contacting the county recorder's office or a title insurance company, either of which may charge you a fee for this information. If you consult either of these resources, you should be aware that the same lender may hold more than one mortgage or deed of trust on this property.

Note: Because the Beneficiary reserves the right to bid less than the total debt owed, it is possible that at the time of the sale the opening bid may be less than the total debt.

NOTICE OF TRUSTEE'S SALE

The beneficiary of the Deed of Trust has executed and delivered to the undersigned a written request to commence foreclosure and due to the continuing default on the loan obligation, the beneficiary under said Deed of Trust has authorized the undersigned Trustee to proceed with a trustee's sale.

Date: July 6, 2016

Western Progressive - Nevada, Inc., as Trustee for
beneficiary
Northpark Town Center
1000 Abernathy Rd NE; Bldg 400, Suite 200
Atlanta, GA 30328
Automated Sale Information Line: (866) 960-8299
<http://www.altisource.com/MortgageServices/DefaultManagement/TrusteeServices.aspx>
For Non-Automated Sale Information, call:
(866) 240-3530

Trustee Sale Assistant

State of GA } ss
County of Fulton }

On July 6, 2016 before me, _____, Notary Public,
personally appeared _____, personally
known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s)
is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____ (Seal)

NOTICE TO TENANTS OF THE PROPERTY

TS No.: 2015-01206-NV

Foreclosure proceedings against this property have started, and a notice of sale of the property to the highest bidder has been issued.

You may either: (1) terminate your lease or rental agreement and move out; or (2) remain and possibly be subject to eviction proceedings under chapter 40 of the Nevada Revised Statutes. Any subtenants may also be subject to eviction proceedings.

Between now and the date of the sale, you may be evicted if you fail to pay rent or live up to your other obligations to the landlord.

After the date of the sale, you may be evicted if you fail to pay rent or live up to your other obligations to the successful bidder, in accordance with chapter 118A of the Nevada Revised Statutes.

Under the Nevada Revised Statutes eviction proceedings may begin against you after you have been given a notice to surrender.

If the property is sold and you pay rent by the week or another period of time that is shorter than 1 month, you should generally receive notice after not less than the number of days in that period of time.

If the property is sold and you pay rent by the month or any other period of time that is 1 month or longer, you should generally receive notice at least 60 days in advance.

Under Nevada Revised Statutes 40.280, notice must generally be served on you pursuant to chapter 40 of the Nevada Revised Statutes and may be served by:

- (1) Delivering a copy to you personally in the presence of a witness, unless service is accomplished by a sheriff, constable or licensed process server, in which case the presence of a witness is not required;*
- (2) If you are absent from your place of residence or usual place of business, leaving a copy with a person of suitable age and discretion at either place and mailing a copy to you at your place of residence or business and to the place where the leased property is situated, if different; or*
- (3) If your place of residence or business cannot be ascertained, or a person of suitable age or discretion cannot be found there, posting a copy in a conspicuous place on the leased property and mailing a copy to you at the place where the leased property is situated.*

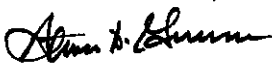
If the property is sold and a landlord, successful bidder or subsequent purchaser files an eviction action against you in court, you will be served with a summons and complaint and have the opportunity to respond. Eviction actions may result in temporary evictions, permanent evictions, the awarding of damages pursuant to Nevada Revised Statutes 40.360 or some combination of those results.

Under the Justice Court Rules of Civil Procedure:

- (1) You will be given at least 10 days to answer a summons and complaint;*
- (2) If you do not file an answer, an order evicting you by default may be obtained against you;*
- (3) A hearing regarding a temporary eviction may be called as soon as 11 days after you are served with the summons and complaint; and*
- (4) A hearing regarding a permanent eviction may be called as soon as 20 days after you are served with the summons and complaint.*

EXHIBIT “F”

EXHIBIT “F”



CLERK OF THE COURT

ORDER

Jeffrey S. Allison (NV Bar No. 8949)
Mark H. Hutchings (NV Bar No. 12783)
HOUSER & ALLISON, APC
3900 Paradise Road, Suite 101
Las Vegas, Nevada 89169
Phone: (702) 410-7593/(949) 679-1111
Fax: (702) 410-7594/(949) 679-1112
jallison@houser-law.com
mhutchings@houser-law.com

Attorneys for Defendant HSBC BANK USA, NATIONAL ASSOCIATION, AS TRUSTEE
FOR DEUTSCHE ALT-A SECURITIES MORTGAGE LOAN TRUST, MORTGAGE PASS-
THROUGH CERTIFICATES SERIES 2007-AR2, by and through its servicer and attorney-in-
fact OCWEN LOAN SERVICING, LLC

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

AMY FACKLAM,

Plaintiff,

vs.

HSBC BANK USA, National Association, as
TRUSTEE for DEUTSCHE ALT-A
SECURITIES MORTGAGE LOAN TRUST,
MORTGAGE PASS-THROUGH
CERTIFICATES SERIES 2007-AR2; DOES
1 through X; and ROE CORPORATIONS 1
through X, inclusive,

Case No. A-16-733762-C

Dept. No. VI

**PROPOSED ORDER DENYING
PLAINTIFF'S MOTION FOR SUMMARY
JUDGMENT AND GRANTING
DEFENDANT'S COUNTER-MOTION TO
DISMISS THE COMPLAINT**

This matter having come before the Court for hearing on June 7, 2016 AT 8:30 a.m. in

Department VI on the Motion for Summary Judgment brought by Plaintiff AMY FACKLAM

("Plaintiff") and the Counter-Motion to Dismiss Complaint by Defendant HSBC BANK USA,

NATIONAL ASSOCIATION, AS TRUSTEE FOR DEUTSCHE ALT-A SECURITIES

MORTGAGE LOAN TRUST, MORTGAGE PASS-THROUGH CERTIFICATES SERIES

2007-AR2, by and through its servicer and attorney-in-fact OCWEN LOAN SERVICING, LLC

1 ("Defendant"), with appearances by Jacob L. Hafter, Esq. of HafterLaw as counsel for Plaintiff
2 and Jeffrey S. Allison, Esq. of Houser & Allison, APC as counsel for Defendant, having
3 reviewed the parties' Motions, Oppositions and Replies thereto, and pleadings on file with the
4 Court, oral arguments, and with good cause therefore, the Court made findings and ruled as
5 follows:

6 **Plaintiff's Motion for Summary Judgment**

7 **I. Findings of Fact**

- 8 1. The loan that is the subject of this matter evidenced by a note and recorded deed of
9 trust was obtained by Plaintiff on or about December 21, 2006;
- 10 2. An exhibited notice of default for the subject loan was recorded September 25, 2009;
- 11 3. Plaintiff entered into a trial loan modification with the prior servicer on or about
12 October 30, 2009;
- 13 4. An exhibited notice of sale was recorded July 20, 2011;
- 14 5. An exhibited rescission of the notice of default was recorded December 5, 2011;
- 15 6. An exhibited notice of default was recorded January 29, 2016 on behalf of Defendant;
- 16 7. Plaintiff filed the instant action against Defendant on or about March 21, 2016.

17 **II. Conclusions of law**

- 18 1. The December 5, 2011 rescission rescinded any acceleration by the 2009 notice of
19 default.
- 20 2. Even under Plaintiff's statute of limitations arguments, any time which may have begun
21 to run with that notice no longer applied.

22 For these and additional reasons set forth in the record, Plaintiff's Motion for Summary
23 Judgment is DENIED.

1
2 **Defendant's Motion to Dismiss**

3 Defendant's Counter-Motion to Dismiss the Complaint is GRANTED. For the reasons
4 set forth above and in the record, Plaintiff's Complaint fails to state the claims.

5 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that Plaintiff's Motion
6 for Summary Judgment is DENIED and Defendant's Counter-Motion to Dismiss the Complaint
7 is GRANTED. Accordingly, this action is dismissed and this shall constitute the final order and
8 judgment.

9 **IT IS SO ORDERED.**

10 Dated this 23 day of June, 2016.

11
12 
13 DISTRICT COURT JUDGE *ea*

14 Respectfully submitted by:

15 HOUSER & ALLISON, APC

16 By: 
17 Jeffrey S. Allison, Esq.

18 Attorneys for HSBC BANK USA, NATIONAL ASSOCIATION, AS TRUSTEE FOR
19 DEUTSCHE ALT-A SECURITIES MORTGAGE LOAN TRUST, MORTGAGE PASS-
20 THROUGH CERTIFICATES SERIES 2007-AR2, by and through its servicer and attorney-in-
21 fact OCWEN LOAN SERVICING, LLC
22
23
24

1 APPROVED AS TO FORM AND CONTENT:

2
3 HAFTERLAW

4 By: 
5 Jacob L. Hafter, Esq.

6 Attorneys for Plaintiff AMY FACKLAM
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CERTIFICATE OF SERVICE

I hereby certify that I am over the age of eighteen (18), that I am not a party to this action, and that on this date I caused to be served a true and correct copy of the following documents:

ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND GRANTING DEFENDANT'S COUNTER-MOTION TO DISMISS THE COMPLAINT

By: ☒ U.S. Mail

☒ Electronic Service
☐ Facsimile transmission
☐ Overnight Mail
☐ Hand and/or Personal Delivery

and addressed to the following:

Jacob L. Hafter, Esq.
HafterLaw
6851 W. Charleston Blvd.
Las Vegas, Nevada 89117
Tel: (702) 405-6700
Fax: (702) 685-4184
jhafter@hafterlaw.com

Attorney for Plaintiff AMY FACKLAM

Dated: June 27, 2016


An employee of HOUSER & ALLISON, APC

EXHIBIT “G”

EXHIBIT “G”

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1 AFFT

2 JACOB L. HAFTER, ESQ.
Nevada State Bar No. 9303

3 HAFTERLAW

4 6851 W. Charleston Blvd.

5 Las Vegas, Nevada 89117

6 Tel: (702) 405-6700

7 Fax: (702) 685-4184

8 jhafter@hafterlaw.com

9 Counsel for Plaintiffs

10 EIGHTH JUDICIAL DISTRICT COURT

11 CLARK COUNTY, NEVADA

12 AMY FACKLAM,

13 Plaintiff,

14 vs.

15 HSBC BANK USA, National Association,
16 as TRUSTEE for DEUTCHE ALT-A
17 SECURITIES MORTGAGE LOAN
18 TRUST, MORTGAGE PASS-THROUGH
19 CERTIFICATES SERIES 2007-AR2;
20 DOES I through X; and ROE
21 CORPORATIONS I through X,
22 inclusive,

23 Defendant.

Case No.: A-16-733762-C

Dept. No. VI

AFFIDAVIT OF
AMY FACKLAM

24 I, Amy Facklam, hereby depose and state:

- 25 1. I am the Plaintiff in the above captioned case.
- 26 2. I am a resident of Clark County, Nevada.
- 27 3. I am familiar with the facts of this case.
- 28 4. Through my attorney, I filed a complaint with this Court which initiated this matter.

AFFIDAVIT OF AMY FACKLAM - 1

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1 5. I have read the Complaint and believe that its contents are true and correct to the best
2 of knowledge and belief.

3 6. In October 2002, I executed a Deed of Trust, which was recorded with the Clark County
4 Recorder, naming me as Borrower and AAMES FUNDING CORPORATION as the lender and
5 beneficiary on my home located at 1513 Shotgun Lane, Henderson, Nevada 89014 ("Property").

6 1. The Parcel Identification Number of the Property is 178-04-514-044.

7 2. Upon information and belief, the named Defendant not identified as a beneficiary on the
8 original deed of trust.

9 3. Based on public records, it is my understanding that on or about October, 21, 2004, the
10 Deed of Trust was assigned to ABN AMRO.

11 4. On or about December 21, 2006, I re-financed my Mortgage, executed a deed of trust
12 naming GreenPoint Mortgage Funding, In., as the "Lender", and Marin Conveying Corp., as the
13 "Trustee", and encumbering the Property with an indebtedness in the amount of \$326,000.00
14 ("Deed of Trust").

15 5. I was told that Bank of America was my servicer of this new mortgage.

16 6. In the beginning of 2009, I experienced a severe economic hardship as a result of the
17 downturn in the economy.

18 7. As a result, I turned to my servicer to help.

19 8. Based on their advice, I stopped paying my mortgage in June, 2009.

20 9. Recon Trust filed a Notice of Default and Election to Sell ("Notice of Default") on
21 September 24, 2009.

22 10. Because of the economic troubles I was having, I contacted my servicer, again to arrange
23 for assistance with the loan.

24 11. On or about October 30, 2009, my servicer offered me a three month trial modification.

25 12. My trial period mortgage payment was \$620.00.

26 13. I only agreed to the loan modification because the servicer, through their representatives,
27 promised that it would help me lower my payments and keep my home.
28

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1 14. I had questions about the terms of the loan modification. When I spoke with
2 representatives from my servicer, they answered my questions but told me that the loan
3 modification was a take it or leave it deal. I had no ability to negotiate the terms of the Plan.

4 15. I worked diligently to provide Defendant BAC all of the requested information which
5 they sought, each and every time that they asked for it. I believe that I provided all documents
6 required under the Plan.

7 16. The documents which I sent contained my sensitive financial information.

8 17. Based upon my information and belief, the representations in Section 1 of the Plan
9 documents continued to be true in all material aspects.

10 18. During this trial period, I made all of the trial period payments in a timely manner.

11 19. After my three trial payments were made, the servicer continued to demand new
12 information.

13 20. In response, I provided my servicer with all of the requested documentation in a timely
14 manner.

15 21. On or about May 7, 2010, my servicer denied the permanent loan modification, despite
16 my payment of approximately 10 trial loan modification payments.

17 22. On or about July 18, 2011, Recon Trust executed a Notice of Trustee's Sale in the
18 official records of Clark County Recorder as Instrument No. 20110720-0001856.

19 23. The Notice of Trustee's Sale set the date of sale for August 8, 2011.

20 24. I filed a lawsuit against BAC Home Loan Servicing and others on August 4, 2011, to
21 stop this sale.

22 25. Once the suit was filed, the sale was postponed.

23 26. Ultimately, I entered into a confidential settlement agreement in 2014.

24 27. It was my understanding that the settlement did not affect the underlying Mortgage, as
25 that had been sold to another party and the servicing rights had been transferred to another party,
26 long before the case was settled.

27 28. On January 25, 2016, Defendants, through their agents, predecessors, or predecessors'
28 agents, specifically, Western Progressive-Nevada, Inc., filed another Notice of Default and

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1 Election to Sell the Property, in the official records of Clark County, Nevada, which was assigned
2 document number 20160129-0000551 ("Second Notice of Default").

3 29. A few weeks later, in mid-February, I was served with the Second Notice of Default.

4 30. Upon receipt of the Second Notice of Default, I contacted Mr. Hafler for assistance.

5 31. We immediately tried to elect to participate in the Foreclosure Mediation Program,
6 however, because I was served late with the Second Notice of Default, I was told that my election
7 was a few days late.

8 32. I was denied entrance into the Foreclosure Mediation Program.

9 33. Because a timely election was not made, the Defendant will be eligible to obtain a
10 Certificate to Foreclose any day now, if they have not received such already.

11 34. Once the Defendant has a Certificate to Foreclose, they can proceed with a Foreclosure
12 Sale in due course.

13 35. Based on advice of counsel, I am now pursuing the instant action.

14 36. I fear that without assistance from this Court, I will lose my home.

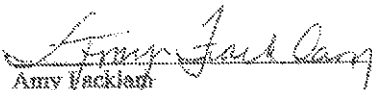
15 37. This action is not intended to harass the Defendant, nor is it based upon a frivolous
16 claim.

17
18 Further, Affiant Sayeth Naught.

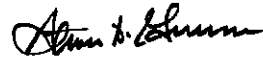
19 I, AMY FACKLAM, hereby declare under penalty of perjury under the laws of the State of
20 Nevada, that the foregoing facts are true of my own knowledge except for those matters herein
21 stated on information and belief, and as for those matters I believe them to be true.

22 Dated this 2 day of April, 2016.

23
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27
28
By:


Amy Facklam

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08/10/2016 03:26:51 PM


CLERK OF THE COURT

1 **OST**
2 JACOB L. HAFTER, ESQ.
3 Nevada State Bar No. 9303
4 **HAFTERLAW**
5 6851 W. Charleston Blvd.
6 Las Vegas, Nevada 89117
7 Tel: (702) 405-6700
8 Fax: (702) 685-4184
9 jhafter@hafterlaw.com
10 *Counsel for Plaintiffs*

11 **EIGHTH JUDICIAL DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

13 **AMY FACKLAM,**
14 Plaintiff,
15
16 vs.

Case No.: A-16-733762-C
Dept. No. VI

17 **HSBC BANK USA, National Association,**
18 **as TRUSTEE for DEUTCHE ALT-A**
19 **SECURITIES MORTGAGE LOAN**
20 **TRUST, MORTGAGE PASS-THROUGH**
21 **CERTIFICATES SERIES 2007-AR2;**
22 **DOES I through X; and ROE**
23 **CORPORATIONS I through X,**
24 inclusive,

25 Defendant.

ORDER SHORTENING TIME
TO HEAR

MOTION FOR
INJUNCTIVE RELIEF
PURSUANT TO NRAP 8(a)

HEARING DATE: AUGUST 16, 2016

HEARING TIME: 8:30 AM

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Las Vegas, Nevada 89117
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ORDER SHORTENING TIME

TO: ALL PARTIES AND THEIR ATTORNEY OF RECORD:

UPON APPLICATION OF PLAINTIFFS and good cause appearing therefor:

IT IS HEREBY ORDERED that the time for hearing **PLAINTIFFS' MOTION FOR INJUNCTIVE RELIEF PURSUANT TO NRAP 8(a)** is hereby shortened and shall be heard before Dept. VI on the 16th day of August, 2016, at the hour of 8:30 AM, or, alternatively, as soon thereafter as counsel may be heard.

Service of this Order and the accompanying Motion must be made on counsel of the Defendant no later than by 5 pm on 11th day of August, 2016.

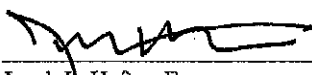
Dated this 10 day of August, 2016.

By:


District Court Judge

Submitted By:

By:


Jacob L. Hafter, Esq.
Nevada Bar Number 9303

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CLERK OF THE COURT

1 **NEO**
2 JACOB L. HAFTER, ESQ.
3 Nevada State Bar No. 9303
4 **HAFTERLAW**
5 6851 W. Charleston Blvd.
6 Las Vegas, Nevada 89117
7 Tel: (702) 405-6700
8 Fax: (702) 685-4184
9 jhafter@hafterlaw.com
10 *Counsel for Plaintiff*

11 **EIGHTH JUDICIAL DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

13 **AMY FACKLAM,**
14 Plaintiff,
15
16 vs.

Case No.: A-16-733762-C
Dept. No. VI

**NOTICE OF ENTRY OF
ORDER GRANTING
MOTION FOR
INJUNCTIVE RELIEF
PURSUANT TO NRAP 8(a)**

17 **HSBC BANK USA, National Association,**
18 **as TRUSTEE for DEUTCHE ALT-A**
19 **SECURITIES MORTGAGE LOAN**
20 **TRUST, MORTGAGE PASS-THROUGH**
21 **CERTIFICATES SERIES 2007-AR2;**
22 **DOES I through X; and ROE**
23 **CORPORATIONS I through X,**
24 **inclusive,**
25 Defendant.

26 PLEASE TAKE NOTICE of the attached ORDER GRANTING MOTION FOR INJUNCTIVE
27 RELIEF PURSUANT TO NRAP 8(a) entered by the Court in the above-captioned matter on the
28 16th day of August, 2016, attached hereto as Exhibit A.

Dated this 16th day of August, 2016.

HAFTERLAW

By: 

Jacob L. Hafter, Esq.
Nevada Bar Number 9303
6851 West Charleston Blvd.
Las Vegas, Nevada 89117

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of **HAFTERLAW**, and that on this 16th day of August, 2016, I served a copy of the foregoing **NOTICE OF ENTRY OF ORDER GRANTING MOTION FOR INJUNCTIVE RELIEF PURSUANT TO NRAP 8(a)** as follows:

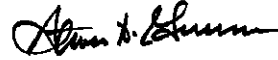
☒ Electronic Service —By filing a true copy thereof with the district court's electronic filing system; and/or

| Houser & Allison, APC | | |
|-----------------------|-------------------------|-------------------------------------|
| Name | Email | Select |
| Courtney Hershey | chershey@houser-law.com | <input checked="" type="checkbox"/> |
| Jeffrey Allison | jallison@houser-law.com | <input checked="" type="checkbox"/> |

/s/ Kelli Wightman
An employee of **HAFTERLAW**

EXHIBIT “A”

EXHIBIT “A”


CLERK OF THE COURT

OGM
JACOB L. HAFTER, ESQ.
Nevada State Bar No. 9303
HAFTERLAW
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Tel: (702) 405-6700
Fax: (702) 685-4184
jhalter@halterlaw.com
Counsel for Plaintiff

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

AMY FACKLAM,
Plaintiff,
vs.

Case No.: A-16-733762-C
Dept. No. VI

HSBC BANK USA, National Association,
as TRUSTEE for DEUTCHE ALT-A
SECURITIES MORTGAGE LOAN
TRUST, MORTGAGE PASS-THROUGH
CERTIFICATES SERIES 2007-AR2;
DOES I through X; and ROE
CORPORATIONS I through X,
inclusive,

ORDER GRANTING
MOTION FOR
INJUNCTIVE RELIEF
PURSUANT TO NRAP 8(a)

HEARING DATE: AUGUST 16, 2016

HEARING TIME: 8:30 AM

Defendant.

Before this Court is Plaintiff's Motion for Injunctive Relief Pursuant to NRAP 8(a) on Order Shortening Time.

The Court set a hearing on this Motion on Order Shortening Time, for August 16, 2016, at 8:30 a.m. Plaintiff has demonstrated adequate service of the Order Shortening Time and the underlying Motion for Injunctive Relief to Defendant's counsel. At the time set to hear this motion, Plaintiff appeared through counsel, Jacob L. Hafter, Esq., of HAFTERLAW, LLC, while no one appeared on behalf of Defendant, HSBC BANK USA, N.A.

The Court having considered the pleadings and papers on file herein and the argument of counsel, and good cause appearing, hereby finds and orders the following:

ORDER GRANTING MOTION FOR NRAP 8 INJUNCTION - 1

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HAFTERLAW

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HAFTERLAW

1 **THE COURT FINDS**, based on the Motion, the attached exhibits and the representations
2 of Jacob L. Hafter, Esq., counsel for Plaintiff, that a Trustee's Sale is currently set for 1513
3 Shotgun Lane, Henderson, Nevada 89104, and bearing Assessor's Parcel Number 178-04-514-
4 044 (the "Plaintiff's Home") for Tuesday, August 17, 2016.

5 **THE COURT FURTHER FINDS** that, as the Defendant's legal right to foreclose on
6 Plaintiff's Home is a key issue of this case.

7 **THE COURT FURTHER FINDS** that should a Trustee's Sale of Plaintiff's Home
8 occur, Plaintiff's appeal of the instant case would become moot.

9 **ACCORDINGLY, THE COURT FINDS** that sufficient grounds exist for the issuance
10 of an injunction preventing the foreclosure on Plaintiff's Home until the appeal of this case is
11 resolved.

12 **IT IS HEREBY ORDERED** that an injunction be, and hereby is, issued preventing
13 Defendant and any of its collective agents, employees, attorneys, successors and/or anyone acting
14 on its behalf, from pursuing any foreclosure sales related to Plaintiff's Home during the pendency
15 of the appeal in this case, including proceeding with that certain Trustee's Sale which is set for
16 August 17, 2016.

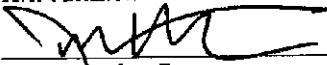
17 **IT IS FURTHER ORDERED** that this injunction is contingent upon Plaintiff's posting
18 of an injunction bond with this Court in the amount of \$3,000.00 by end of day on August 16,
19 2016.

20 Dated this 16th day of August, 2016.

21
22 
DISTRICT COURT JUDGE

23 Respectfully submitted by:

24 **HAFTERLAW**

25 
26 Jacob L. Hafter, Esq.
27 Nevada Bar Number 9303
28 Tel: (702) 405-6700
 Counsel for Plaintiff, AMY FACKLAM