

IN THE SUPREME COURT OF NEVADA

JPMORGAN CHASE BANK,
NATIONAL ASSOCIATION, a national
association,

Appellant,

v.

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

Respondent.

Supreme Court No. 71822

Electronically Filed
Apr 20 2017 08:49 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

APPEAL

from the Eighth Judicial District Court, Clark County
The Honorable JIM CROCKETT, District Judge
District Court Case No. A-13-692202-C

APPELLANT'S APPENDIX – VOLUME 1

Joel E. Tasca, Nevada Bar No. 14124
Matthew D. Lamb, Nevada Bar No. 12991
Holly Ann Priest, Nevada Bar No. 13226

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Attorneys for Appellant

CHRONOLOGICAL INDEX

Document	Filing Date	Volume and Bates Number(s)
Complaint	November 26, 2013	1 AA 001-007
Proof of Service of Summons and Complaint	December 31, 2013	1 AA 008-010
Answer, Counterclaim and Cross-Claim	January 27, 2014	1 AA 011-021
Answer to Counterclaim	May 7, 2015	1 AA 022-032
Amended Answer to Counterclaim	May 27, 2015	1 AA 033-043
Amended Complaint	March 18, 2016	1 AA 044-053
SFR Investments Pool 1, LLC's Answer to Amended Complaint	April 4, 2016	1 AA 054-063
SFR Investments Pool 1, LLC's Motion for Summary Judgment (Exhibits Excluded)	July 22, 2016	1 AA 064-088
Excerpts from JPMorgan Chase Bank, N.A.'s Appendix of Exhibits to Motion for Summary Judgment	July 29, 2016	2 AA 089-294
Plaintiff JPMorgan Chase Bank, N.A.'s Opposition to SFR Investments Pool 1, LLC's Motion for Summary Judgment	August 8, 2016	2 AA 295-333
SFR Investments Pool 1, LLC's Reply in Support of Motion for Summary Judgment	August 15, 2016	3 AA 334-350
Order Granting SFR Investments Pool 1, LLC's Motion for Summary Judgment	October 26, 2016	3 AA 351-360
Notice of Entry of Order Granting SFR Investments Pool 1, LLC's Motion for Summary Judgment	October 26, 2016	3 AA 361-372
Notice of Appeal	November 22, 2016	3 AA 373-375

ALPHABETICAL INDEX

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Amended Answer to Counterclaim	May 27, 2015	1 AA 033-043
Amended Complaint	March 18, 2016	1 AA 044-053
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Notice of Appeal	November 22, 2016	3 AA 373-375
Notice of Entry of Order Granting SFR Investments Pool 1, LLC's Motion for Summary Judgment	October 26, 2016	3 AA 361-372
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CERTIFICATE OF SERVICE

I certify that on April 19, 2017, I filed **Appellant's Appendix – Volume 1**.
Service will be made on the following through the Court's electronic filing
system:

Jacqueline A. Gilbert
KIM GILBERT EBRON
7625 Dean Martin Drive, Suite 110
Las Vegas, NV 89139

Counsel for Respondent

/s/ Matthew D. Lamb
An Employee of Ballard Spahr

I. Party Information

Plaintiff(s) (Name/Address/Phone): JPMorgan Chase Bank, National Association, a national association Attorney (name/address/phone): TIFFANY & BOSCO, P.A. Gregory L. Wilde, Esq. Kevin S. Soderstrom, Esq. 212 South Jones Boulevard Las Vegas, Nevada 89107 Telephone: (702) 258-8200	Defendant(s) (Name/Address/Phone): SFR Investments Pool 1, LLC, a Nevada limited liability company; DOES 1 through 10; and ROE BUSINESS ENTITIES 1 through 10, inclusive Attorney (name/address/phone):
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II. Nature of Controversy (Please check applicable bold category and applicable subcategory, if appropriate) ☐ **Arbitration Requested**

Civil Cases		
Real Property	Torts	
<input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input checked="" type="checkbox"/> Title to Property <input type="checkbox"/> Foreclosure <input type="checkbox"/> Liens <input checked="" type="checkbox"/> Quiet Title <input type="checkbox"/> Specific Performance <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property <input type="checkbox"/> Partition <input type="checkbox"/> Planning/Zoning	<input type="checkbox"/> Negligence <input type="checkbox"/> Negligence – Auto <input type="checkbox"/> Negligence – Medical/Dental <input type="checkbox"/> Negligence – Premises Liability (Slip/Fall) <input type="checkbox"/> Negligence – Other	<input type="checkbox"/> Product Liability <input type="checkbox"/> Product Liability/Motor Vehicle <input type="checkbox"/> Other Torts/Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Torts/Defamation (Libel/Slander) <input type="checkbox"/> Interfere with Contract Rights <input type="checkbox"/> Employment Torts (Wrongful termination) <input type="checkbox"/> Other Torts <input type="checkbox"/> Anti-trust <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Insurance <input type="checkbox"/> Legal Tort <input type="checkbox"/> Unfair Competition
Probate	Other Civil Filing Types	
Estimated Estate Value: <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside Estates <input type="checkbox"/> Trust/Conservatorships <input type="checkbox"/> Individual Trustee <input type="checkbox"/> Corporate Trustee <input type="checkbox"/> Other Probate	<input type="checkbox"/> Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> General <input type="checkbox"/> Breach of Contract <input type="checkbox"/> Building & Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Other Contracts/Acct/Judgment <input type="checkbox"/> Collection of Actions <input type="checkbox"/> Employment Contract <input type="checkbox"/> Guarantee <input type="checkbox"/> Sale Contract <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Civil Petition for Judicial Review <input type="checkbox"/> Foreclosure Mediation <input type="checkbox"/> Other Administrative Law <input type="checkbox"/> Department of Motor Vehicles <input type="checkbox"/> Worker’s Compensation Appeal	<input type="checkbox"/> Appeal from Lower Court (also check applicable civil case box) <input type="checkbox"/> Transfer from Justice Court <input type="checkbox"/> Justice Court Civil Appeal <input type="checkbox"/> Civil Writ <input type="checkbox"/> Other Special Proceeding <input type="checkbox"/> Other Civil Filing <input type="checkbox"/> Compromise of Minor’s Claim <input type="checkbox"/> Conversion of Property <input type="checkbox"/> Damage to Property <input type="checkbox"/> Employment Security <input type="checkbox"/> Enforcement of Judgment <input type="checkbox"/> Foreign Judgment – Civil <input type="checkbox"/> Other Personal Property <input type="checkbox"/> Recovery of Property <input type="checkbox"/> Stockholder Suit <input type="checkbox"/> Other Civil Matters

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

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

11/21/2013

Date

Signature of initiating party or representative


CLERK OF THE COURT

GREGORY L. WILDE, ESQ.
Nevada Bar No. 4417
KEVIN S. SODERSTROM, ESQ.
Nevada Bar No. 10235
TIFFANY & BOSCO, P.A.
212 South Jones Blvd.
Las Vegas, Nevada 89107
(702) 258-8200
Attorney for Plaintiff
JPMorgan Chase Bank, National Association
13-73547

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

JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION, a national association,

Plaintiff,

vs.

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

Defendants.

Case No.: **A- 13 - 692202 - C**
Dept. No.:

XVI I I

COMPLAINT

COMES NOW Plaintiff JPMorgan Chase Bank, National Association (hereinafter the "Plaintiff" or "Chase"), by and through its counsel of record, Gregory L. Wilde, Esq. of the law firm of Tiffany & Bosco, P.A., and complains and avers of the Defendants as follows:

RELEVANT PARTIES AND JURISDICTION

1. Plaintiff is an entity properly conducting business which holds a note and deed of trust encumbering certain real property located at 2824 Begonia Court, Henderson, Nevada, 89074, Assessor's Parcel Number 177-12-410-074 (hereinafter the "Subject Property") in Clark County, Nevada.

1 2. Plaintiff is a national association whose principal place of business is
2 located in New York, New York.

3 3. Defendant SFR Investments Pool 1, LLC (hereinafter “SFR” or the
4 “Defendant”) is a Nevada limited liability company whose principal place of business,
5 upon information and belief, is located in Las Vegas, Nevada.
6

7 4. Kyleen Bell (hereinafter the “Borrower”) is not a named party in this
8 matter, was the borrower on the aforementioned debt, was a previous owner of the
9 Subject Property, and is detailed herein only for informational purposes.
10

11 5. The Defendants DOES 1 through 10 and ROE BUSINESS ENTITIES 1
12 through 10 set forth herein are persons or business entities currently unknown to Plaintiff
13 who may have a claim to any interest in the subject matter of this action, whose true
14 name(s) is (are) unknown to Plaintiff, and who are believed to be responsible for the
15 events and happenings referred to in this Complaint, causing injuries and damages to
16 Plaintiff, or who are otherwise interested in the subject matter of this Complaint. At such
17 time when the names of said DOES and ROE BUSINESS ENTITIES have been
18 ascertained, Plaintiff will request leave from the court to insert their true names and
19 capacities and adjoin them in this action so that the Complaint will be amended to include
20 the appropriate names of said DOES and ROE BUSINESS ENTITIES.
21
22

23 6. The claims set forth in this Complaint pertain to a purported sale of real
24 property situated in Clark County, Nevada.

25 7. Jurisdiction is obtained and venue is properly set in the Eighth Judicial
26 District Court for the State of Nevada.
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GENERAL ALLEGATIONS

8. On or about November 14, 2002, the Borrower signed a note and deed of trust, borrowing \$68,000.00 against the Subject Property.

9. The deed of trust securing the \$68,000.00 loan was recorded with the Clark County Recorder on November 25, 2002 as Book and Instrument No. 20021125-02874.

10. Plaintiff is the lender and beneficiary under the \$68,000.00 promissory note and corresponding deed of trust.

11. Sometime after signing the note and deed of trust the Borrower allegedly fell behind in the payment of homeowners association assessments causing their homeowners association, upon information and belief, to record a lien against the Subject Property and later initiate foreclosure proceedings.

12. Nevada Association Services, Inc., as agent for Eastbridge Gardens Condominiums, purportedly conducted a foreclosure sale on the Subject Property wherein Defendant SFR bid \$10,100.00 and became the titled owner on May 31, 2013.

13. The Borrower is in default on her monthly payments owed to the lender on the \$68,000.00 loan.

14. Plaintiff believes and asserts that Defendant is taking the position that Plaintiff's security interest, namely the deed of trust securing the note, has been abrogated by the homeowners association lien sale.

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FIRST CAUSE OF ACTION

(Declaratory Relief)

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

16. A true and justiciable controversy exists between Plaintiff and Defendants concerning their interests in the Subject Property.

17. Plaintiff's interests are adverse to those of Defendants.

18. Plaintiff's rights, status, and claims in relation to those of Defendants in the Subject Property are affected by multiple statutes and relevant case law regarding real estate and lien priority.

19. This matter is filed, in part, under the Uniform Declaratory Judgment Act.

20. Pursuant to NRS 30.040, Plaintiff is entitled to declaratory relief as to rights, status, and legal relations at issue in this matter in regards to the Subject Property.

21. Plaintiff has found it necessary to employ the undersigned attorney to bring suit. Therefore, pursuant to applicable statutes, prevailing case law, and the terms of the note and deed of trust, Plaintiff is entitled to any and all expenses incurred including, without limitation, all attorney's fees and costs of suit.

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SECOND CAUSE OF ACTION

(Quiet Title)

22. Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1 through 21 and incorporates the same as though fully set forth herein.

23. Plaintiff seeks an order from this Court, pursuant to NRS 40.010, declaring that the deed of trust securing the \$68,000.00 loan continues to encumber the Subject Property as security for the note detailed herein notwithstanding the purported homeowners association sale and that Plaintiff's security interest was not abrogated by the purported homeowners association sale.

24. The claims between Plaintiff and Defendant pertain to real property and are clearly adverse, needing a determination from this Court.

25. Plaintiff has found it necessary to employ the undersigned attorney to bring suit. Therefore, pursuant to applicable statutes, prevailing case law, and the terms of the note and deed of trust, Plaintiff is entitled to any and all expenses incurred including, without limitation, all attorney's fees and costs of suit.

WHEREFORE, Plaintiff prays for relief as follows:

1. For a Declaratory Judgment that the security interest recorded with the Clark County Recorder on November 25, 2002 as Book and Instrument No. 20021125-02874 remains intact and was not extinguished by the purported homeowners association sale on May 31, 2013;
2. For an order quieting title in the name of Defendant subject to the security interest of Plaintiff;
3. For reasonable attorney's fees;

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4. For costs of suit; and,
5. For such other and further relief as this Court may deem just and proper.

DATED this 19th day of November, 2013.

TIFFANY & BOSCO, P.A.

/s/ Kevin S. Soderstrom

GREGORY L. WILDE, ESQ.
Nevada Bar No. 4417
KEVIN S. SODERSTROM, ESQ.
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Attorney for Plaintiff

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Tel 258-8200 Fax 258-8787

SUMM

Gregory L. Wilde, Esq.
Nevada Bar No. 4417



212 SOUTH JONES BOULEVARD
LAS VEGAS, NEVADA 89107
TELEPHONE: (702) 258-8200
FACSIMILE: (702) 258-8787

Attorneys for Plaintiff
JPMorgan Chase Bank, National Association
13-73547

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12/31/2013 01:26:47 PM

A handwritten signature in black ink, appearing to read 'Anna D. L...', is written over the printed name of the Clerk of the Court.

CLERK OF THE COURT

EIGHTH JUDICIAL DISTRICT COURT

CLARK, COUNTY, NEVADA

JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION, a national association,

Plaintiff,

vs.

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

Defendants.

Case No.: A-13-692202-C
Dept. No.: XVIII

SUMMONS

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

TO THE DEFENDANT(S): SFR INVESTMENTS POOL LLC, a Nevada limited
liability company; DOES 1 THROUGH 10 AND ROE BUSINESS ENTITIES 1
THROUGH 10, INCLUSIVE,

TIFFANY & BOSCO, P.A.
212 S. Jones Blvd.
Las Vegas, NV 89107
Tel 258-8200 Fax 258-8787

1 A Civil Complaint has been filed by the Plaintiff against you for the relief set forth in
2 the Complaint.

3 1. If you intend to defend this lawsuit, within 20 days after this Summons is served
4 on you exclusive of the day of service, you must do the following:

5 (a) File with the Clerk of this Court, whose address is shown below, a formal written
6 response to the Complaint in accordance with the rules of the Court, with the appropriate filing
7 fee.

8 (b) Serve a copy of your response upon the attorney whose name and address is shown
9 below.

10 2. Unless you respond, your default will be entered upon application of the Plaintiff
11 and this Court may enter a judgment against you for the relief demanded in the Complaint,
12 which could result in the taking of money or property or other relief requested in the Complaint.


13 3. If you intend to seek the advice of an attorney in this matter, you should do so
14 promptly so that your response may be filed on time.

15 4. The State of Nevada, its political subdivisions, agencies, officers, employees, board
16 members, commission members and legislators each have 45 days after service of this Summon
17 within which to file an Answer or other responsive pleading to the Complaint.
18

19
20 Issued at the direction of:

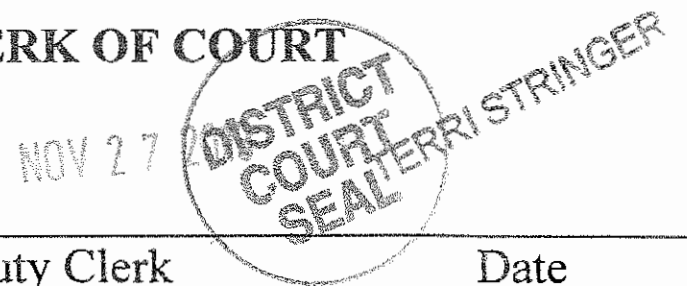
21 **TIFFANY & BOSCO, P.A.**

CLERK OF COURT

22 By  #10235 By: _____

23 GREGORY L. WILDE, ESQ.
24 Nevada State Bar No, 4417
25 212 South Jones Boulevard
26 Las Vegas, NV 89107

Deputy Clerk Date
County Courthouse
200 Lewis Avenue (3rd Floor)
Las Vegas, Nevada 89155



EIGHTH JUDICIAL DISTRICT COURT
STATE OF NEVADA, CLARK COUNTY

JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION, A NATIONAL
ASSOCIATION

Plaintiff,

Case No:A-13-692202-C

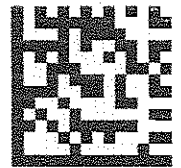
vs.

SFR INVESTMENTS POOL 1, LLC, A
NEVADA LIMITED LIABILITY
COMPANY

Defendant

Declaration of Service

STATE OF NEVADA
COUNTY OF WASHOE ss.:



JOHN LEE, being duly sworn says: That at all times herein affiant was and is a citizen of the United States over 18 years of age, not a party to nor interested in the proceedings in which this affidavit is made.

The affiant received copy(ies) of the **SUMMONS; COMPLAINT; CIVIL COVER SHEET** on **12/19/2013** and served the same on **12/19/2013** at **1:25 PM** by delivering and leaving a copy with:

MICHILE CALKINS, pursuant to NRS 14.020 as a person of suitable age and discretion, of the office of **PARACORP INCORPORATED**, resident agent for **SFR INVESTMENTS POOL 1, LLC, A NEVADA LIMITED LIABILITY COMPANY**, at the registered address of:

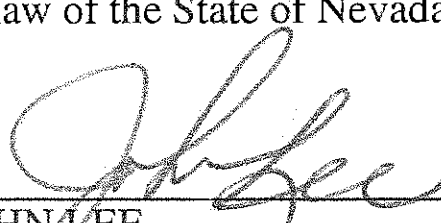
Service address: 318 N. CARSON ST. #208, Carson City, NV 89701

A description of **MICHILE CALKINS** is as follows:

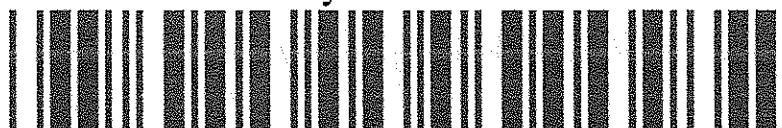
Sex	Color of skin/race	Color of hair	Age	Height	Weight
Female	Caucasian	Brown	55	5'6	130
Other Features:					

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

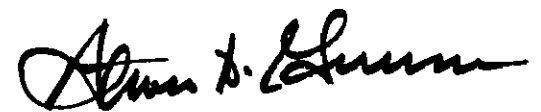
Executed on: 12/20/2013
by JOHN LEE

X 
JOHN LEE
Registration#: R-004475
Reno/Carson Messenger Service, Inc. (Lic# 322)
185 Martin Street
Reno, NV 89509
775.322.2424
Atty File#: 13-73547

No Notary is Required per NRS 53.045



42249



CLERK OF THE COURT

1 **AACC**
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2 Nevada Bar No. 10386
E-mail: howard@hkimlaw.com
3 DIANA S. CLINE, ESQ.
Nevada Bar No. 10580
4 E-mail: diana@hkimlaw.com
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6 HOWARD KIM & ASSOCIATES
1055 Whitney Ranch Drive, Suite 110
7 Henderson, Nevada 89014
Telephone: (702) 485-3300
8 Facsimile: (702) 485-3301
Attorneys for Defendant/Counter-claimant
9 *SFR Investments Pool 1, LLC*

10 **EIGHTH JUDICIAL DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 JPMORGAN CHASE BANK, NATIONAL
13 ASSOCIATION, a national association,

14 Plaintiff,

15 vs.

16 SFR INVESTMENTS POOL 1, LLC, a
17 Nevada limited liability company; DOES
18 INDIVIDUALS 1 through 10; and ROE
BUSINESS ENTITIES 1 through 10,
inclusive,

19 Defendants.

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

22 Counter-Claimant/Cross-Claimant,

23 vs.

24 JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION, a national association;
25 KYLEEN T. BELL, an individual; DOES 1 10
26 and ROE BUSINESS ENTITIES 1 through 10
inclusive.

27 Counter-Defendant/Cross
28 Defendants.

Case No. A-13-692202-C

Dept. No. XVIII

**ANSWER, COUNTERCLAIM AND
CROSS-CLAIM**

HOWARD KIM & ASSOCIATES
1055 WHITNEY RANCH DRIVE, SUITE 110
HENDERSON, NEVADA 89014
(702) 485-3300 FAX (702) 485-3301

Plaintiff SFR INVESTMENTS POOL 1, LLC (“SFR” or “Defendant”), hereby answers BANK JPMORGAN CHASE BANK, NATIONAL ASSOCIATION’s (“Chase”) Complaint as follows:

1. Answering paragraph 1 of the complaint, SFR admits upon information and belief, that the subject matter of Chase’s complaint is real property commonly known as **2824 Begonia Court, Henderson, NV 89074**. The remaining allegations in paragraph 1 of the complaint call for a legal conclusion, therefore, no answer is required. To the extent an answer is required, SFR denies the factual allegations contained in paragraph 1 of the complaint.

2. SFR is without sufficient knowledge or information to form a belief as to the truth of the factual allegations contained in paragraph 2 of the complaint, and therefore denies said allegations.

3. SFR admits the factual allegations contained in paragraph 3 of the complaint.

4. SFR is without sufficient knowledge or information to form a belief as to the truth of the factual allegations contained in paragraphs 4 and 5 of the complaint, and therefore denies said allegations.

5. SFR admits the factual allegations contained in paragraphs 6 and 7 of the complaint.

GENERAL ALLEGATIONS

6. SFR is without sufficient knowledge or information to form a belief as to the truth of the factual allegations contained in paragraphs 8, 9, 10 and 11 of the complaint, and therefore denies said allegations.

7. Answering paragraph 12 of the complaint, SFR admits upon information and belief, that SFR purchased the Property on May 31, 2013 at an association foreclosure sale.

8. SFR is without sufficient knowledge or information to form a belief as to the truth of the factual allegations contained in paragraph 13 of the complaint, and therefore denies said allegations.

9. SFR admits the factual allegations contained in paragraph 14 of the complaint.

FIRST CAUSE OF ACTION

(Declaratory Relief)

10. SFR repeats and realleges its answers to paragraphs 1 through 14 of the complaint as though fully set forth herein.

11. SFR admits the factual allegations contained in paragraphs 11 and 12 of the complaint.

12. The allegations contained in paragraphs 18, 19 and 20 of the complaint call for a legal conclusion, therefore, no answer is required. To the extent an answer is required, SFR denies the factual allegations contained in paragraphs 18, 19 and 20 of the complaint.

13. SFR denies the factual allegations contained in paragraph 21 of the complaint.

SECOND CAUSE OF ACTION

(Quiet Title)

14. SFR repeats and realleges its answers to paragraphs 1 through 21 of the complaint as though fully set forth herein.

15. The allegations contained in paragraphs 23 and 24 of the complaint call for a legal conclusion, therefore, no answer is required. To the extent an answer is required, SFR denies the factual allegations contained in paragraphs 23 and 24 of the complaint.

16. SFR denies the factual allegations contained in paragraph 25 of the complaint.

AFFIRMATIVE DEFENSES

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

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

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

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

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

6. Chase's claims are barred because SFR complied with applicable statutes and with the

requirements and regulations of the State of Nevada.

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

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

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

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

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

COUNTERCLAIM AND CROSS-CLAIM
FOR QUIET TITLE AND INJUNCTIVE RELIEF

SFR INVESTMENTS POOL 1, LLC ("SFR"), hereby demands quiet title, requests injunctive relief and claims unjust enrichment against Counter-Defendant, JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, a national association ("Chase"), Cross-Defendant KYLEEN T. BELL, an individual; DOES 1 10 and ROE BUSINESS ENTITIES 1 through 10 inclusive, as follows:

I. PARTIES

1. SFR is a Nevada limited liability company with its principal place of business in Clark County, Nevada and the current title owner of the property commonly known as **2824 Begonia Court, Henderson, NV 89074; Parcel No. 177-12-410-074** (the "Property").

2. Upon information and belief, Counter-Defendant JPMORGAN CHASE BANK, NATIONAL ASSOCIATION ("Chase"), is a national association that may claim an interest in the Property via a 2002 deed of trust originated by Republic Mortgage, LLC.

3. Upon information and belief, Cross-Defendant, KYLEEN T. BELL ("Bell") is the former homeowner that may claim an interest in the Property.

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

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

II. GENERAL ALLEGATIONS

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

6. SFR acquired the Property on May 31, 2013 by successfully bidding on the Property at a publicly-held foreclosure auction in accordance with NRS 116.3116, *et. seq.* (“Association foreclosure sale”). Since the Association foreclosure sale, SFR has expended additional funds and resources in relation to the Property.

7. On or about June 10, 2013, the resulting foreclosure deed was recorded in the Official Records of the Clark County Recorder as Instrument Number 201306100002206 (“Association Foreclosure Deed”).

8. The foreclosure sale was conducted by Nevada Association Services, Inc. (“NAS”), agent for Eastbridge Gardens Condominiums (the “Association”), pursuant to the powers conferred by the Nevada Revised Statutes 116.3116, 116.31162, 116.31163 and 116.31164, the Association’s governing documents (CC&R’s) and a Notice of Delinquent Assessment Lien, recorded on April 1, 2011 in the Official Records of the Clark County Recorder as Instrument Number 201104010001371 (“Association Lien”).

9. As recited in the Association Foreclosure Deed, the Association foreclosure sale

1 complied with all requirements of law, including but not limited to, recording and mailing of
2 copies of Notice of Delinquent Assessment and Notice of Default, and the recording, posting and
3 publication of the Notice of Sale.

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

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

6 (a) Liens and encumbrances recorded before the recordation of the declaration
7 and, in a cooperative, liens and encumbrances which the association creates,
8 assumes or takes subject to;

9 (b) A first security interest on the unit recorded before the date on which the
10 assessment sought to be enforced became delinquent or, in a cooperative, the first
11 security interest encumbering only the unit's owner's interest and perfected before
12 the date on which the assessment sought to be enforced became delinquent; and

13 (c) Liens for real estate taxes and other governmental assessments or charges
14 against the unit or cooperative.

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

17 [the Association Lien] is also prior to all security interests described in paragraph
18 (b) to the extent of any charges incurred by the association on a unit pursuant to
19 NRS 116.310312 and to the extent of the assessments for common expenses
20 based on the periodic budget adopted by the association pursuant to NRS
21 116.3115 which would have become due in the absence of acceleration during the
22 9 months immediately preceding institution of an action to enforce the lien[.]

23 12. Upon information and belief, the Association took the necessary action to trigger the
24 super-priority portion of the Association Lien.

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

27 14. Upon information and belief, SFR's bid on the Property was in excess of the amount
28 necessary to satisfy the costs of sale and the super-priority portion of the Association Lien.

15. Upon information and belief, the Association or its agent NAS has distributed or is
attempting to distribute the excess funds to lien holders in order of priority pursuant to NRS
116.31164(c).

16. Upon information and belief, Counter-Defendant and Cross-Defendant had actual or
constructive notice of the requirement to pay assessments to the Association and of the
Association Lien.

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

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

19. Upon information and belief, Counter-Defendant Chase had actual or constructive notice of the super-priority portion of the Association Lien.

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

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

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

23. Multiple bidders attended the auction.

24. SFR's bid was in excess of the amount included on the Association's notice of sale.

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

26. SFR is a bona fide purchaser for value.

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

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

28. Upon information and belief, Bell first obtained title to the Property in April of 1995 through a Grant, Bargain Sale Deed from John McDonald recorded on April 21, 1995 in the

Official Records of the Clark County Recorder as Instrument No. 199504210001512.

29. On or about November 25 2002, Republic Mortgage, LLC (“Republic Mortgage”) recorded a deed of trust against the Property in the Official Records of the Clark County Recorder as Instrument No. 200211250002874 (“First Deed of Trust”).

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

31. Upon information and belief, Republic Mortgage had actual or constructive notice of the Association Lien and NRS 116.3116 before it funded the loan secured by the First Deed of Trust.

32. The First Deed of Trust contains a Condominium Rider recognizing the applicability of Association’s declaration of CC&Rs that were recorded.

33. Upon information and belief, on October 18, 2011, Deborah A. Yates, Assistant Secretary for Mortgage Electronic Registration Systems, Inc, (“MERS”) executed an assignment that transferred the beneficial interest in the First Deed of Trust, together with the underlying promissory note, to Chase. The assignment was recorded on October 25, 2012 against the Property in Official Records of the Clark County Recorder as Instrument No. 201210250002057.

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

35. On or about, November 26, 2013, Chase filed a Complaint for declaratory relief and quiet title.

36. Counter-Defendant Chase’s interest in the Property was extinguished by the foreclosure of the Association Lien.

37. Cross-Defendant Bell’s interest in the Property was extinguished by the foreclosure of the super priority portion of the Association Lien.

III. FIRST CLAIM FOR RELIEF
(Declaratory Relief/Quiet Title Pursuant to NRS 30.010, *et. seq.*, NRS 40.10 & NRS 116.3116)

38. SFR repeats and realleges the allegations of paragraphs 1-37 as though fully set forth herein and incorporates the same by reference.

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

4 40. SFR acquired the Property on May 31, 2013 by successfully bidding on the Property at a
5 publicly-held foreclosure auction in accordance with NRS 116.3116, *et. seq.* and the resulting
6 Association Foreclosure Deed vesting title in SFR was recorded on June 10, 2013.

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

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

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

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

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

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

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

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

28 48. SFR repeats and realleges the allegations of paragraphs 1- 47 as though fully set forth

herein and incorporates the same by reference.

49. SFR properly acquired title to the Property at the Association foreclosure sale on May 31, 2013.

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

51. Cross-Defendant, Bell, may claim an ownership interest in the Property.

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

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

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

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

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

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

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

V. PRAYER FOR RELIEF

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

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

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

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

6 3. For an award of attorney's fees and costs of suit; and

7 4. For any further relief that the Court may deem just and proper.

8 DATED January 24th, 2014.

HOWARD KIM & ASSOCIATES

/s/Diana S. Cline

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9 *Defendant/Cross Defendant JP Morgan Chase*
10 *Bank N.A.*

11 DISTRICT COURT
12 CLARK COUNTY, NEVADA

13 JPMORGAN CHASE BANK, NATIONAL)
ASSOCIATION, a national association,)

14 Plaintiff,)

15 vs.)

16 SFR INVESTMENTS POOL 1, LLC, a)
17 Nevada Limited Liability company; DOES)
I through X, ROE CORPORATIONS I)
18 through X, inclusive,)

19 Defendants.)

20 SFR INVESTMENTS POOL 1, LLC a)
21 Nevada limited liability company,)

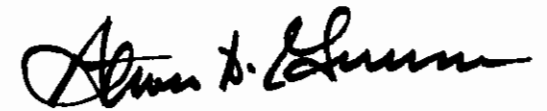
22 Counter-Claimant/Cross-Claimant,)

23 vs.)

24 JP MORGAN CHASE BANK N.A., a)
national association; KYLEEN T. BELL,)
25 an individual; DOES I through X, ROE)
CORPORATIONS I through X, inclusive,)

26 Counter-Defendant/Cross)
27 Defendants.)
28

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CLERK OF THE COURT

CASE NO. A-13-692202-C
DEPT NO. XVIII

ANSWER TO COUNTERCLAIM

Plaintiff/Counter-Defendant, JP Morgan Chase Bank, N.A. ("Chase"), by and through their attorneys of record, hereby submit their Answer to the Defendant/Counter-Claimant SFR Investments Pool 1, LLC's ("SFR") Counterclaim as follows:

I. PARTIES

1. Chase denies that SFR is the current title owner of the property commonly known as 2824 Begonia Court, Henderson, NV 89071; Parcel No. 177-12-410-074. Chase is without sufficient information to admit or deny the remaining allegations of Paragraph 1 of the Counterclaim and therefore denies them.

2. Chase admits the allegations of Paragraph 2 of the Counterclaim.

3. Chase admits that Cross-Defendant Kyleen T. Bell was the former and current homeowner. Chase is without sufficient information to admit or deny the remaining allegations in Paragraph 3 of the Counterclaim and therefore denies them.

4. Chase is without sufficient information to admit or deny the allegations in Paragraph 4 of the Counterclaim and therefore denies them.

5. Chase is without sufficient information to admit or deny the allegations in Paragraph 5 of the Counterclaim and therefore denies them.

II. GENERAL ALLEGATIONS

SFR Acquires Title to the Property through Foreclosure of an Association Lien with Super Priority Amounts

6. Chase denies that SFR lawfully acquired the property at the Association foreclosure sale. Chase is without sufficient information to admit or deny the remaining allegations of Paragraph 6 of the Counterclaim and therefore denies them.

7. Chase submits that the foreclosure deed recorded on the Property as Instrument No. 201306100002206 is a public record that speaks for itself. Chase denies any allegation inconsistent with this record and is without sufficient

1 information to admit or deny the remaining allegations of Paragraph 7 of the
2 Counterclaim and therefore denies them.

3 8. Chase submits that the Notice of Delinquent Assessments recorded on
4 the Property as Instrument No. 20110401001371 is a public record that speaks for
5 itself. Chase denies any allegation inconsistent with this record and is without
6 sufficient information to admit or deny the remaining allegations of Paragraph 8 of
7 the Counterclaim and therefore denies them.

8 9. Chase submits that the foreclosure deed recorded on the Property as
9 Instrument No. 199504210001512 is a public record that speaks for itself. Chase
10 denies that the Association foreclosure sale complied with all requirements of law,
11 including but not limited to, recording and mailing of copies of Notice of Delinquent
12 Assessment and Notice of Default, and the recording, posting and publication of the
13 Notice of Sale.

14 10. Chase submits that NRS 116.3116(2) speaks for itself, and Chase denies
15 the allegations of Paragraph 10 to the extent they misstate the statute's terms or are
16 not read in connection with other relevant laws, including the U.S. Constitution and
17 the Nevada Constitution.

18 11. Chase submits that NRS 116.3116(2) speaks for itself, and Chase denies
19 the allegations of Paragraph 11 to the extent they misstate the statute's terms or are
20 not read in connection with other relevant laws, including the U.S. Constitution and
21 the Nevada Constitution.

22 12. Chase is without sufficient information to admit or deny the allegations
23 of Paragraph 12 of the Counterclaim and therefore denies them.

24 13. Chase denies the allegations of Paragraph 13 of the Counterclaim.

25 14. Chase is without sufficient information to admit or deny the allegations
26 of Paragraph 14 of the Counterclaim and therefore denies them.

27 15. Chase is without sufficient information to admit or deny the allegations
28 of Paragraph 15 of the Counterclaim and therefore denies them.

1 16. Chase denies the allegations as they relate to the Counter-Defendants.
2 Chase is without sufficient information to admit or deny the remaining allegations of
3 Paragraph 16 of the Counterclaim and therefore denies them.

4 17. Chase denies the allegations as they relate to the Counter-Defendants.
5 Chase is without sufficient information to admit or deny the remaining allegations of
6 Paragraph 17 of the Counterclaim and therefore denies them.

7 18. Chase is without sufficient information to admit or deny the allegations
8 of Paragraph 18 of the Counterclaim and therefore denies them.

9 19. Chase denies the allegations of Paragraph 19 of the Counterclaim.

10 20. Chase denies the allegations of Paragraph 20 of the Counterclaim.

11 21. Chase is without sufficient information to admit or deny the allegations
12 of Paragraph 21 of the Counterclaim and therefore denies them.

13 22. Chase is without sufficient information to admit or deny the allegations
14 of Paragraph 22 of the Counterclaim and therefore denies them.

15 23. Chase is without sufficient information to admit or deny the allegations
16 of Paragraph 23 of the Counterclaim and therefore denies them.

17 24. Chase is without sufficient information to admit or deny the allegations
18 of Paragraph 24 of the Counterclaim and therefore denies them.

19 25. Chase is without sufficient information to admit or deny the allegations
20 of Paragraph 25 of the Counterclaim and therefore denies them.

21 26. Chase denies the allegations of Paragraph 26 of the Counterclaim.

22 27. Chase submits that NRS 116.31166 speaks for itself, and Chase denies
23 the allegations of Paragraph 27 to the extent they misstate the statute's terms or are
24 not read in connection with other relevant laws, including the U.S. Constitution and
25 the Nevada Constitution.

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

6 29. Chase admits the allegations of Paragraph 29 of the Counterclaim.

7 30. Chase denies the allegations of Paragraph 30 of the Counterclaim.

8 31. Chase submits that the First Deed Trust is a public record that speaks
9 for itself. Chase denies any allegation inconsistent with this record and is without
10 sufficient information to admit or deny the allegations of Paragraph 31 of the
11 Counterclaim and therefore denies them.

12 32. Chase is without sufficient information to admit or deny the allegations
13 of Paragraph 32 of the Counterclaim and therefore denies them.

14 33. Chase admits the allegations of Paragraph 32 of the Counterclaim.

15 34. Check denies the allegations of Paragraph 34 of the Counterclaim.

16 35. Chase admits the allegations of Paragraph 35 of the Counterclaim.

17 | 36. Chase denies the allegations of Paragraph 36 of the Counterclaim.

18 37. Chase is without sufficient information to admit or deny the allegations
19 of Paragraph 37 of the Counterclaim and therefore denies them.

20 **III. FIRST CLAIM FOR RELIEF**
21 **(Declaratory Relief/Quiet Title Pursuant to NRS 30.010 *et. seq.*, NRS 40.10 & NRS 116.3116)**

22 38. Chase repeats its answers contained in Paragraphs 1 through 37 above.

39. Chase submits that NRS 30.010, *et. seq.* and NRS 40.010 speaks for themselves, and Chase denies the allegations of Paragraph 39 to the extent they misstate the statutes' terms or are not read in connection with other relevant laws, including the U.S. Constitution and the Nevada Constitution.

40. Chase submits that the foreclosure deed recorded on the Property as Instrument No. 199504210001512 is a public record that speaks for itself. Chase

1 denies any allegation inconsistent with this record and is without sufficient
2 information to admit or deny the allegations of Paragraph 40 of the Counterclaim
3 and therefore denies them.

4 41. Chase admits the allegations of Paragraph 41 of the Counterclaim.

5 42. Chase is without sufficient information to admit or deny the allegations
6 of Paragraph 42 of the Counterclaim and therefore denies them.

7 43. Chase submits that statutes NRS 116.31162 -116.61168 speaks for
8 themselves, and Chase denies the allegations of Paragraph 43 to the extent they
9 misstate the statutes' or are not read in connection with other relevant laws,
10 including the U.S. Constitution and the Nevada Constitution.

11 44. Chase submits that NRS 116.3116(2) speaks for itself, and Chase denies
12 the allegations of Paragraph 44 to the extent they misstate the statute's terms or are
13 not read in connection with other relevant laws, including the U.S. Constitution and
14 the Nevada Constitution.

15 45. Chase denies the allegations as they relate to the Counter-Defendants.
16 Chase is without sufficient information to admit or deny the remaining allegations of
17 Paragraph 45 of the Counterclaim and therefore denies them.

18 46. Chase denies the allegations of Paragraph 46 of the Counterclaim.

19 47. Chase admits that SFR is seeking an order from the Court quieting title
20 in its favour, but Chase denies that SFR is entitled to such an order.

21 **IV. SECOND CLAIM FOR RELIEF**
22 **(Preliminary and Permanent Injunction)**

23 48. Chase repeats its answers contained in Paragraphs 1 through 47 above.

24 49. Chase denies the allegations of Paragraph 49 of the Counterclaim.

25 50. Chase admits that it claims an interest in the Property through the
26 First Deed of Trust. Chase denies the remaining allegations of Paragraph 50 of the
27 Counterclaim.
28

1 51. Chase is without sufficient information to admit or deny the allegations
2 of Paragraph 51 of the Counterclaim and therefore denies them.

3 52. Chase denies the allegations of Paragraph 52 of the Counterclaim.

4 53. Chase denies the allegations as they relate to the Counter-Defendants.
5 Chase is without sufficient information to admit or deny the remaining allegations of
6 Paragraph 53 of the Counterclaim and therefore denies them.

7 54. Chase denies the allegations as they relate to the Counter-Defendants.
8 Chase is without sufficient information to admit or deny the remaining allegations of
9 Paragraph 54 of the Counterclaim and therefore denies them.

10 55. Chase denies the allegations as the relate to the Counter-Defendants
11 Chase is without sufficient information to admit or deny the remaining allegations of
12 Paragraph 55 of the Counterclaim and therefore denies them.

13 56. Chase denies the allegations of Paragraph 56 of the Counterclaim.

14 57. Chase denies the allegations of Paragraph 57 of the Counterclaim.

15 58. Chase denies the allegations of Paragraph 58 of the Counterclaim.

16 Unless expressly admitted in this Answer, Chase denies all other allegations
17 in SFR's Counterclaim, including, without limitation, any allegations suggested by
18 the counterclaim's headings.

19 **AFFIRMATIVE DEFENSES:**

20 Chase is continuing to investigate SFR's claims and does not waive any
21 affirmative defenses. Chase reserves its right to amend this Answer and add any
22 subsequently discovered affirmative defenses or claims.

23 **First Affirmative Defense**

24 The Counterclaim fails to state a claim upon which relief can be granted.
25
26
27
28

1 **Second Affirmative Defense**

2 The alleged homeowner's association foreclosure sale was not reasonable, and
3 the circumstances of the sale of the property violated the homeowner's association's
4 ("HOA") obligation of good faith under NRS 116.1113 and duty to act in a reasonable
5 manner.

6 **Third Affirmative Defense**

7 SFR purchased the property with notice of the interest of the senior deed of
8 trust recorded against the property and is not a bona fide purchaser for value.

9 **Fourth Affirmative Defense**

10 To the extent Chase has continued to expend funds and resources to maintain
11 and preserve the Property after the alleged HOA foreclosure sale, it is entitled to
12 recoup those amounts.

13 **Fifth Affirmative Defense**

14 To the extent that Plaintiff's interpretation of NRS § 116.3116 is accurate, the
15 statute and Chapter 116 as a whole are void for vagueness as applied to this matter.

16 **Sixth Affirmative Defense**

17 SFR's claims are barred by the Due Process clause of the Nevada Constitution
18 and United State Constitution, the Takings Clause of the United State Constitution,
19 and/or the Contracts Clause of the Nevada Constitution and United States
20 Constitution.

21 **Seventh Affirmative Defense**

22 The claimed lien, including the super-priority portion of it and the sub-priority
23 portion of it, was satisfied prior to the HOA foreclosure sale under the doctrines of
24 tender, estoppel, laches, or waiver.

25 **Eighth Affirmative Defense**

26 The HOA foreclosure sale is void or otherwise does not operate to extinguish
27 the first deed of trust based on the provisions of the Declaration of Covenants,
28 Conditions and Restrictions ("CC&Rs") recorded against the Property on or about

February 5, 2003.

Ninth Affirmative Defense

The HOA foreclosure sale is void or otherwise insufficient to extinguish the deed of trust based on the failure to provide proper notice of the "super-priority" assessment amounts in accordance with the requirements of NRS Chapter 116, federal, and constitutional law.

Tenth Affirmative Defense

The HOA foreclosure sale is void or otherwise insufficient to extinguish the deed of trust based on the failure to comply with all mailing, noticing and/or other requirements of Nevada and federal law.

Eleventh Affirmative Defense

SFR's claim of free and clear title to the Property is barred by 12 U.S.C. § 4617(j)(3), which precludes an homeowners association foreclosure sale from extinguishing Fannie Mae's interest in the subject property and preempts any state law to the contrary.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff/Counter-Defendant requests the following relief:


1. That the Court make a judicial determination that Chase's ownership interest and/or Deed of Trust is superior to SFR's claim of title;
2. That the Court make a judicial determination that Chase's Deed of Trust survived the HOA sale;
3. That the Court make a judicial determination that SFR took title subject to Chase's ownership interest and/or Deed of Trust;
4. That SFR recover nothing on account of its claims made in the Counterclaim;
5. For reasonable attorney's fees and costs; and
6. For any other relief that the Court deems just and proper in the case.

DATED this 7 day of May, 2015.

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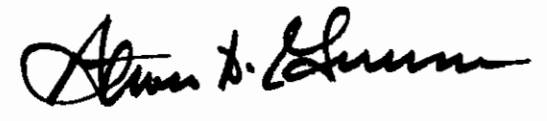
CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 7th day of May, 2015, and pursuant to NRCP 5(b), a true and correct copy of the foregoing Answer to Counterclaim, was served to the parties following in the manner set forth below:

Howard Kim & Associates Howard C. Kim, Esq. Nevada Bar No. 10386 Diana S. Cline, Esq. Nevada Bar No. 10580 Jacqueline A. Gilbert, Esq. Nevada Bar No. 10593 1055 Whitney Ranch Drive, Suite 110 Henderson, Nevada 89014 Attorneys for SFR Investments Pool, LLC	
--	--

- ☐ HAND DELIVERY
- ☐ E-MAIL TRANSMISSION
- ☐ U.S. MAIL, POSTAGE PREPAID
- ☐ Certified Mail, Receipt No. _____,
Return receipt requested
- ☒ Via the Wiznet E-Service-generated "Service Notification of Filing" upon all counsel set up to receive notice via electronic service in this matter


An employee of BALLARD SPAHR LLP


CLERK OF THE COURT

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9 *Attorneys for JP Morgan Chase Bank N.A.*

10 DISTRICT COURT

11 CLARK COUNTY, NEVADA

12 JPMORGAN CHASE BANK, NATIONAL)
13 ASSOCIATION, a national association,)

14 Plaintiff,)

15 vs.)

16 SFR INVESTMENTS POOL 1, LLC, a)
Nevada Limited Liability company; DOES)
17 I through X, ROE CORPORATIONS I)
through X, inclusive,)

18 Defendants.)

19 _____)
20 SFR INVESTMENTS POOL 1, LLC a)
Nevada limited liability company,)

21 Counter-Claimant/Cross-Claimant,)

22 vs.)

23 JP MORGAN CHASE BANK N.A., a)
24 national association; KYLEEN T. BELL,)
an individual; DOES I through X, ROE)
25 CORPORATIONS I through X, inclusive,)

26 Counter-Defendant/Cross)
27 Defendants.)
28 _____)

CASE NO. A-13-692202-C

DEPT NO. XVIII

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AMENDED ANSWER TO COUNTERCLAIM

Plaintiff/Counter-Defendant JP Morgan Chase Bank, N.A. ("Chase"), by and through its attorney of record, hereby submits its Amended Answer to the Defendant/Counter-Claimant SFR Investments Pool 1, LLC's ("SFR") Counterclaim as follows:

I. PARTIES

1. Chase denies that SFR is the current title owner of the property commonly known as 2824 Begonia Court, Henderson, NV 89071; Parcel No. 177-12-410-074 ("the Property"). Chase is without sufficient information to admit or deny the remaining allegations in Paragraph 1 of the Counterclaim and therefore denies them.

2. Chase admits the allegations in Paragraph 2 of the Counterclaim.

3. Chase admits that Cross-Defendant Kyleen T. Bell was the former homeowner. Chase is without sufficient information to admit or deny the remaining allegations in Paragraph 3 of the Counterclaim and therefore denies them.

4. Chase is without sufficient information to admit or deny the allegations in Paragraph 4 of the Counterclaim and therefore denies them.

5. Chase is without sufficient information to admit or deny the allegations in Paragraph 5 of the Counterclaim and therefore denies them.

II. GENERAL ALLEGATIONS

6. Chase denies that SFR lawfully acquired the property at the Association foreclosure sale. Chase is without sufficient information to admit or deny the remaining allegations in Paragraph 6 of the Counterclaim and therefore denies them.

7. Chase submits that the foreclosure deed recorded on the Property as Instrument No. 201306100002206 is a public record that speaks for itself. Chase denies any allegation inconsistent with this record. Chase is without sufficient information to admit or deny any remaining allegations in Paragraph 7 of the Counterclaim and therefore denies them.

1 8. Chase submits that the Notice of Delinquent Assessments recorded on
2 the Property as Instrument No. 20110401001371 is a public record that speaks for
3 itself. Chase denies any allegation inconsistent with this record. Chase is without
4 sufficient information to admit or deny any remaining allegations in Paragraph 8 of
5 the Counterclaim and therefore denies them.

6 9. Chase submits that the foreclosure deed recorded on the Property as
7 Instrument No. 199504210001512 is a public record that speaks for itself, and Chase
8 denies an allegation inconsistent with this record. Chase further denies that the
9 Association foreclosure sale complied with all requirements of law, including but not
10 limited to, recording and mailing of copies of Notice of Delinquent Assessment and
11 Notice of Default, and the recording, posting and publication of the Notice of Sale.

12 10. Paragraph 10 contains a legal conclusion to which no response is
13 required. To the extent a response is nevertheless required, Chase submits that NRS
14 116.3116(2) speaks for itself, and Chase denies the allegations of Paragraph 10 to the
15 extent they misstate the statute's terms or are not consistent with other relevant
16 laws, including the U.S. Constitution and the Nevada Constitution.

17 11. Paragraph 11 contains a legal conclusion to which no response is
18 required. To the extent a response is nevertheless required, Chase submits that NRS
19 116.3116(2) speaks for itself, and Chase denies the allegations of Paragraph 11 to the
20 extent they misstate the statute's terms or are not consistent with other relevant
21 laws, including the U.S. Constitution and the Nevada Constitution.

22 12. Chase is without sufficient information to admit or deny the allegations
23 of Paragraph 12 of the Counterclaim and therefore denies them.

24 13. Chase denies the allegations of Paragraph 13 of the Counterclaim.

25 14. Chase is without sufficient information to admit or deny the allegations
26 in Paragraph 14 of the Counterclaim and therefore denies them.

27 15. Chase is without sufficient information to admit or deny the allegations
28 in Paragraph 15 of the Counterclaim and therefore denies them.

1 16. Answering Paragraph 16, Chase denies the allegations as they relate to
2 the Counter-Defendant. Chase is without sufficient information to admit or deny the
3 remaining allegations in Paragraph 16 of the Counterclaim and therefore denies
4 them.

5 17. Answering Paragraph 17, Chase denies the allegations as they relate to
6 the Counter-Defendant. Chase is without sufficient information to admit or deny the
7 remaining allegations in Paragraph 17 of the Counterclaim and therefore denies
8 them.

9 18. Chase is without sufficient information to admit or deny the allegations
10 in Paragraph 18 of the Counterclaim and therefore denies them.

11 19. Chase denies the allegations in Paragraph 19 of the Counterclaim.

12 20. Chase denies the allegations in Paragraph 20 of the Counterclaim.

13 21. Chase is without sufficient information to admit or deny the allegations
14 in Paragraph 21 of the Counterclaim and therefore denies them.

15 22. Chase is without sufficient information to admit or deny the allegations
16 in Paragraph 22 of the Counterclaim and therefore denies them.

17 23. Chase is without sufficient information to admit or deny the allegations
18 in Paragraph 23 of the Counterclaim and therefore denies them.

19 24. Chase is without sufficient information to admit or deny the allegations
20 in Paragraph 24 of the Counterclaim and therefore denies them.

21 25. Chase is without sufficient information to admit or deny the allegations
22 in Paragraph 25 of the Counterclaim and therefore denies them.

23 26. Chase denies the allegations of Paragraph 26 of the Counterclaim.

24 27. Paragraph 27 contains a legal conclusion to which no response is
25 required. To the extent a response is nevertheless required, Chase submits that NRS
26 116.31166 speaks for itself, and Chase denies the allegations of Paragraph 27 to the
27 extent they misstate the statute's terms or are inconsistent with other relevant laws,
28 including the U.S. Constitution and the Nevada Constitution.

1 28. Chase submits that the foreclosure deed recorded on the Property as
2 Instrument No. 199504210001512 is a public record that speaks for itself. Chase
3 denies any allegation inconsistent with this record. Chase is without sufficient
4 information to admit or deny the remaining allegations in Paragraph 28 of the
5 Counterclaim and therefore denies them.

6 29. Chase admits the allegations in Paragraph 29 of the Counterclaim.

7 30. Chase denies the allegations in Paragraph 30 of the Counterclaim.

8 31. Chase submits that the First Deed Trust is a public record that speaks
9 for itself. Chase denies any allegation inconsistent with this record. Chase is
10 without sufficient information to admit or deny any remaining allegations of
11 Paragraph 31 of the Counterclaim and therefore denies them.

12 32. Chase is without sufficient information to admit or deny the allegations
13 in Paragraph 32 of the Counterclaim and therefore denies them.

14 33. Chase admits the allegations in Paragraph 33 of the Counterclaim.

15 34. Chase denies the allegations in Paragraph 34 of the Counterclaim.

16 35. Chase admits the allegations in Paragraph 35 of the Counterclaim.

17 36. Chase denies the allegations in Paragraph 36 of the Counterclaim.

18 37. Chase is without sufficient information to admit or deny the allegations
19 in Paragraph 37 of the Counterclaim and therefore denies them.

20 **III. FIRST CLAIM FOR RELIEF**
21 **(Declaratory Relief/Quiet Title Pursuant to**
22 **NRS 30.010 *et. seq.*, NRS 40.10 & NRS 116.3116)**

22 38. Answering Paragraph 38, Chase repeats its answers contained in
23 Paragraphs 1 through 37 above.

24 39. Paragraph 39 contains a legal conclusion to which no response is
25 required. To the extent a response is nevertheless required, Chase submits that NRS
26 30.010, *et. seq.* and NRS 40.010 speak for themselves, and Chase denies the
27 allegations in Paragraph 39 to the extent they misstate the statutes' terms or are
28 inconsistent with other relevant laws, including the U.S. Constitution and the

1 Nevada Constitution.

2 40. Chase submits that the foreclosure deed recorded on the Property as
3 Instrument No. 199504210001512 is a public record that speaks for itself. Chase
4 denies any allegation inconsistent with this record. Chase is without sufficient
5 information to admit or deny the remaining allegations in Paragraph 40 of the
6 Counterclaim and therefore denies them.

7 41. Chase admits the allegations in Paragraph 41 of the Counterclaim.

8 42. Chase is without sufficient information to admit or deny the allegations
9 in Paragraph 42 of the Counterclaim and therefore denies them.

10 43. Paragraph 43 contains a legal conclusion to which no response is
11 required. To the extent a response is nevertheless required, Chase submits that NRS
12 116.31162 to 116.61168 speak for themselves, and Chase denies the allegations in
13 Paragraph 43 to the extent they misstate the statutes' terms or are inconsistent with
14 other relevant laws, including the U.S. Constitution and the Nevada Constitution.

15 44. Paragraph 44 contains a legal conclusion to which no response is
16 required. To the extent a response is nevertheless required, Chase submits that NRS
17 116.3116(2) speaks for itself, and Chase denies the allegations of Paragraph 44 to the
18 extent they misstate the statute's terms or are inconsistent with other relevant laws,
19 including the U.S. Constitution and the Nevada Constitution.

20 45. Answering Paragraph 45, Chase denies the allegations as they relate to
21 Counter-Defendant. Chase is without sufficient information to admit or deny the
22 remaining allegations in Paragraph 45 of the Counterclaim and therefore denies
23 them.

24 46. Chase denies the allegations in Paragraph 46 of the Counterclaim.

25 47. Answering Paragraph 47, Chase admits that SFR is seeking an order
26 from the Court quieting title in its favor, but Chase denies that SFR is entitled to
27 such an order.

28 . . .

1 IV. SECOND CLAIM FOR RELIEF
2 (Preliminary and Permanent Injunction)

3 48. Answering Paragraph 48, Chase repeats its answers contained in
4 Paragraphs 1 through 47 above.

5 49. Chase denies the allegations of Paragraph 49 in the Counterclaim.

6 50. Answering Paragraph 50, Chase admits that it claims an interest in the
7 Property through the First Deed of Trust. Chase denies the remaining allegations in
8 Paragraph 50 of the Counterclaim.

9 51. Chase is without sufficient information to admit or deny the allegations
10 in Paragraph 51 of the Counterclaim and therefore denies them.

11 52. Chase denies the allegations of Paragraph 52 of the Counterclaim.

12 53. Answering Paragraph 53, Chase denies the allegations as they relate to
13 the Counter-Defendant. Chase is without sufficient information to admit or deny the
14 remaining allegations of Paragraph 53 of the Counterclaim and therefore denies
15 them.

16 54. Answering Paragraph 54, Chase denies the allegations as they relate to
17 the Counter-Defendant. Chase is without sufficient information to admit or deny the
18 remaining allegations of Paragraph 54 of the Counterclaim and therefore denies
19 them.

20 55. Answering Paragraph 55, Chase denies the allegations as they relate to
21 the Counter-Defendant. Chase is without sufficient information to admit or deny the
22 remaining allegations of Paragraph 55 of the Counterclaim and therefore denies
23 them.

24 56. Chase denies the allegations of Paragraph 56 of the Counterclaim.

25 57. Chase denies the allegations of Paragraph 57 of the Counterclaim.

26 58. Chase denies the allegations of Paragraph 58 of the Counterclaim.

27 Unless expressly admitted in this Amended Answer, Chase denies all other
28 allegations in SFR's Counterclaim, including, without limitation, any allegations

1 suggested by the Counterclaim's headings.

2 **AFFIRMATIVE DEFENSES:**

3 Chase is continuing to investigate SFR's claims and does not waive any
4 affirmative defenses. Chase reserves its right to amend this Amended Answer and
5 add any subsequently discovered affirmative defenses or claims.

6 **First Affirmative Defense**

7 The Counterclaim fails to state a claim upon which relief can be granted.

8 **Second Affirmative Defense**

9 The alleged homeowner's association ("HOA") foreclosure sale was not
10 reasonable, and the circumstances of the sale of the property violated the HOA's
11 obligation of good faith under NRS 116.1113 and duty to act in a reasonable manner.

12 **Third Affirmative Defense**

13 SFR purchased the property with notice of the interest of the senior deed of
14 trust recorded against the property and is not a bona fide purchaser for value.

15 **Fourth Affirmative Defense**

16 To the extent Chase has continued to expend funds and resources to maintain
17 and preserve the Property after the alleged HOA foreclosure sale, it is entitled to
18 recoup those amounts.

19 **Fifth Affirmative Defense**

20 To the extent that Plaintiff's interpretation of NRS § 116.3116 is accurate, the
21 statute and Chapter 116 as a whole are void for vagueness.

22 **Sixth Affirmative Defense**

23 SFR's claims are barred by the Due Process clause of the Nevada Constitution
24 and United State Constitution, the Takings Clause of the United State Constitution,
25 and/or the Contracts Clause of the Nevada Constitution and United States
26 Constitution.

27 **Seventh Affirmative Defense**

28 The claimed lien, including the super-priority portion of it and the sub-priority

1 portion of it, was satisfied prior to the HOA foreclosure sale under the doctrines of
2 tender, estoppel, laches, or waiver.

3 **Eighth Affirmative Defense**

4 The HOA foreclosure sale, which was based on the provisions of the
5 Declaration of Covenants, Conditions and Restrictions ("CC&Rs") recorded against
6 the Property on or about February 5, 2003, is void or otherwise does not operate to
7 extinguish the first deed of trust, recorded in 2002.

8 **Ninth Affirmative Defense**

9 The HOA foreclosure sale is void or otherwise insufficient to extinguish the
10 deed of trust based on the failure to provide proper notice of the "super-priority"
11 assessment amounts in accordance with the requirements of NRS Chapter 116,
12 federal, and constitutional law.

13 **Tenth Affirmative Defense**

14 The HOA foreclosure sale is void or otherwise insufficient to extinguish the
15 deed of trust based on the HOA's failure to comply with all mailing, noticing and/or
16 other requirements of Nevada and federal law.

17 **REQUEST FOR RELIEF**


18 WHEREFORE, Plaintiff/Counter-Defendant Chase requests the following
19 relief:

- 20 1. That the Court make a judicial determination that Chase's ownership
21 interest and/or Deed of Trust is superior to SFR's claim of title;
- 22 2. That the Court make a judicial determination that Chase's Deed of
23 Trust survived the HOA sale;
- 24 3. That the Court make a judicial determination that SFR took title
25 subject to Chase's ownership interest and/or Deed of Trust;
- 26 4. That SFR recover nothing on account of its claims made in the
27 Counterclaim;
- 28 5. For reasonable attorney's fees and costs; and

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100 NORTH CITY PARKWAY, SUITE 1750
LAS VEGAS, NEVADA 89106
(702) 471-7000 FAX (702) 471-7070

1 6. For any other relief that the Court deems just and proper in the case.
2 DATED this 27th day of May, 2015.

3 BALLARD SPAHR LLP

4 
5 By: _____
6 Abran E. Vigil
7 Nevada Bar No. 7548
8 Lindsay Demaree
9 Nevada Bar No. 11949
10 Holly Ann Priest
11 Nevada Bar No. 13226
12 BALLARD SPAHR LLP
13 100 North City Parkway, Suite 1750
14 Las Vegas, Nevada 89106-4617
15 Attorneys for JPMorgan Chase Bank, N.A.

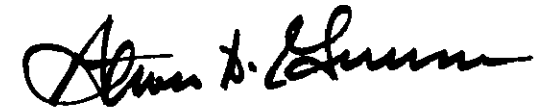
CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 27th day of May, 2015, and pursuant to N.R.C.P. 5(b), a true and correct copy of the foregoing Amended Answer to Counterclaim, was served to the parties following in the manner set forth below:

Howard Kim & Associates Howard C. Kim, Esq. Nevada Bar No. 10386 Diana S. Cline, Esq. Nevada Bar No. 10580 Jacqueline A. Gilbert, Esq. Nevada Bar No. 10593 1055 Whitney Ranch Drive, Suite 110 Henderson, Nevada 89014 Attorneys for SFR Investments Pool, LLC	
--	--

- ☐ HAND DELIVERY
- ☐ E-MAIL TRANSMISSION
- ☐ U.S. MAIL, POSTAGE PREPAID
- ☐ Certified Mail, Receipt No. _____,
Return receipt requested
- ☒ Via the Wiznet E-Service-generated "Service Notification of Filing" upon all counsel set up to receive notice via electronic service in this matter


An employee of BALLARD SPAHR LLP



CLERK OF THE COURT

1 ACOM
Abran E. Vigil
2 Nevada Bar No. 7548
Lindsay Demaree
3 Nevada Bar No. 11949
Holly Priest
4 Nevada Bar No. 13226
BALLARD SPAHR LLP
5 100 North City Parkway, Suite 1750
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6 Telephone: (702) 471-7000
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7 E-Mail: vigila@ballardspahr.com
E-Mail: demareel@ballardspahr.com
8 E-Mail: priest@ballardspahr.com

9 *Attorneys for Plaintiff and Counter-Defendant*
JPMorgan Chase Bank, N.A.

10 DISTRICT COURT
11 CLARK COUNTY, NEVADA

12 JPMORGAN CHASE BANK, N.A., a
13 national association,

14 Plaintiff,

15 vs.

16 SFR INVESTMENTS POOL 1, LLC, a
Nevada Limited Liability company; DOES
17 I through X, ROE CORPORATIONS I
through X, inclusive,

18 Defendants.

19
20 SFR INVESTMENTS POOL 1, LLC a
Nevada limited liability company,

21 Counter-Claimant/Cross-Claimant,

22 vs.

23 JPMORGAN CHASE BANK N.A., a
24 national association; KYLEEN T. BELL,
an individual; DOES I through X, ROE
25 CORPORATIONS I through X, inclusive,

26 Counter-Defendant/Cross
27 Defendants.

CASE NO. A-13-692202-C

DEPT NO. XXIV

1 AMENDED COMPLAINT

2 Plaintiff JPMorgan Chase Bank, N.A. ("Chase"), by and through its counsel of
3 record, hereby complains against Defendant SFR Investments Pool 1, LLC ("SFR") in
4 this Amended Complaint as follows:

5 RELEVANT PARTIES AND JURISDICTION

6 1. Chase is a national banking association headquartered in Ohio and
7 doing business in Clark County.

8 2. Upon information and belief, SFR is a Nevada limited liability company
9 whose principal place of business is located in Nevada.

10 3. The real property that is the subject matter of this action is situated in
11 Clark County, Nevada.

12 4. The Defendants DOES 1 through 10 and ROE BUSINESS ENTITIES 1
13 through 10 set forth herein are persons or business entities currently unknown to
14 Plaintiff who may have a claim to any interest in the subject matter of this action,
15 whose true name(s) is (are) unknown to Plaintiff, and who are believed to be
16 responsible for the events and happenings referred to in this Complaint, causing
17 injuries and damages to Plaintiff, or who are otherwise interested in the subject
18 matter of this Complaint. At such time when the names of said DOES and ROE
19 BUSINESS ENTITIES have been ascertained, Plaintiff will request leave from the
20 court to insert their true names and capacities and adjoin them in this action so that
21 the Complaint will be amended to include the appropriate names of said DOES and
22 ROE BUSINESS ENTITIES.

23 5. Venue is proper with this district pursuant to NRS 13.010 because the
24 property at issue in this action is located in Clark County.

25 6. Venue is also proper in this district pursuant to NRS 13.040 because
26 SFR resides in this district.

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1 Recorder on or about February 05, 2003, as Book and Instrument Number
2 20030205-01001.

3 15. On or about April 1, 2011, a Notice of Delinquent Assessment Lien was
4 recorded by NAS as Book and Instrument Number 20110401-0001371 in the Official
5 Records of the Clark County Recorder.

6 16. On or about September 21, 2011, a Notice of Default and Election to Sell
7 Under Homeowners Association Lien was recorded by NAS as Book and Instrument
8 Number 20110921-0000506 in the Official Records of the Clark County Recorder.

9 17. On or about June 1, 2012, NAS recorded a Notice of Foreclosure Sale as
10 Book and Instrument Number 20120601-0001979 in the Official Records of the Clark
11 County Recorder, setting a foreclosure sale date for June 29, 2012.

12 18. On or about March 31, 2013, Nevada Association Services, Inc. ("NAS"),
13 as agent for Eastbridge Gardens Condominiums (the "HOA"), purportedly conducted
14 a foreclosure sale of the Property ("HOA Sale").

15 19. Upon information and belief, SFR bid \$10,100 for the Property at the
16 HOA Sale.

17 20. Upon information and belief, at the time of the HOA Sale, the fair
18 market value of the Property was approximately \$70,000.

19 21. The amount that SFR paid for the Property was grossly inadequate
20 when compared to the fair market value of the Property at the time of the HOA Sale.

21 22. On or about June 10, 2013, NAS recorded a Foreclosure Deed on the
22 Property as Book and Instrument Number 20130610-0002206 in the Official Records
23 of the Clark County Recorder.

24 23. After the date of the HOA Sale and recordation of the Foreclosure Deed,
25 Chase continued to advance property preservation payments, including but not
26 limited to payment of taxes and homeowners' insurance.

27 24. Neither the Notice of Delinquent Assessment Lien, Notice of Default
28 and Election to Sell Under Homeowners Association Lien, or the Notice of Sale

1 (collectively, the "HOA Assessment Lien and Foreclosure Notices") provided any
2 notice of a right to cure by Plaintiff.

3 25. None of the HOA Assessment Lien and Foreclosure Notices specified
4 what portion, if any, that the HOA claimed constituted a "super-priority."

5 26. None of the HOA Assessment Lien and Foreclosure Notices specified
6 whether the HOA was foreclosing on the "super-priority" portion of its lien, if any, or
7 under the sub-priority lien.

8 27. Upon information and belief, Chase did not receive notice of all of the
9 HOA Assessment Lien and Foreclosure Notices prior to the HOA Sale.

10 28. The HOA Sale deprived Chase of its right to due process.

11 29. Under NRS Chapter 116, a lien under NRS 116.3116(1) can only include
12 costs and fees that are specifically enumerated in the statute

13 30. A homeowners association may only collect as a part of the
14 super-priority lien (a) nuisance abatement charges incurred by the association
15 pursuant to NRS 116.310312 and (b) nine months of common assessments which
16 became due prior to the institution of an action to enforce the lien.

17 31. Upon information and belief, the HOA Assessment Lien and
18 Foreclosure Notices included improper fees and costs in the amount demanded.

19 32. The attorney's fees and costs of collecting on a homeowners association
20 lien cannot be included in the super-priority lien amount.

21 33. Upon information and belief, the HOA Assessment Lien and
22 Foreclosure Notices included fines, interest, late fees, dues, attorney's fees, and costs
23 of collection that are not properly included in a super-priority lien under Nevada law
24 and that are not permissible under NRS 116.3102 *et seq.*

25 34. Chase believes and asserts that SFR is taking the position that the deed
26 of trust securing the note has been abrogated by the HOA Sale.

1 FIRST CAUSE OF ACTION

2 (Declaratory Relief)

3 35. Chase repeats and re-alleges each and every allegation contained in
4 Paragraphs 1 through 34 and incorporates the same as though fully set forth herein.

5 36. Pursuant to NRS 40.010, this Court has the power and authority to
6 declare Chase's rights and interest in the Property.

7 37. The Deed of Trust is a first secured interest on the Property and is
8 superior to the interest, if any, acquired by SFR.

9 38. SFR claims an interest in the Property adverse to Chase and Fannie
10 Mae.

11 39. The HOA Sale did not comply with NRS Chapter 116, including, but not
12 limited to, providing notice Chase. The HOA Sale is void and should be rescinded on
13 that basis.

14 40. The HOA Sale is void and should be rescinded on the basis that it did
15 not provide due process to Chase.

16 41. SFR's claim of free and clear title to the Property is barred by 12 U.S.C.
17 § 4617(j)(3), which precludes a homeowners association sale from extinguishing
18 Fannie Mae's interest in the Deed of Trust and preempts any state law to the
19 contrary.

20 42. The amount paid by SFR for the Property is grossly inadequate when
21 compared to the fair market value of the Property at the time of the HOA Sale.

22 43. For all the reasons set forth above in the General Allegations, Chase is
23 entitled to a declaration from this Court, pursuant to NRS 40.010, that a first
24 position Deed of Trust encumbered the Property and Chase's interest is superior to
25 the interest held by SFR, if any, and all other parties.

1 **SECOND CAUSE OF ACTION**

2 **(Quiet Title)**

3 44. Chase repeats and re-alleges each and every allegation contained in
4 Paragraphs 1 through 43 and incorporates the same as though fully set forth herein.

5 45. Pursuant NRS 40.010, this Court has the power and authority to
6 declare Chase's rights and interests in the Property.

7 46. The Deed of Trust is a first secured interest on the Property and is
8 superior to the interest, if any, acquired by SFR.

9 47. SFR claims an interest in the Property that is adverse to Chase's and
10 Fannie Mae's Interest.

11 48. The HOA Sale did not comply with NRS Chapter 116, including, but not
12 limited to, providing notice of the HOA Sale.

13 49. SFR's claim of free and clear title to the Property is barred by 12 U.S.C.
14 § 4617(j)(3), which precludes a homeowners association sale from extinguishing
15 Fannie Mae's interest in the Deed of Trust and preempts any state law to the
16 contrary.

17 50. For all the reasons set forth above in the General Allegations, Chase is
18 entitled to a declaration from this Court, pursuant NRS 40.010, that a Deed of Trust
19 encumbered the Property and is superior to the interest held by SFR, if any, and all
20 other parties. Chase has furthermore been required to retain counsel and is entitled
21 to recover reasonable attorney's fees and costs.

22 **THIRD CAUSE OF ACTION**

23 **(Unjust enrichment)**

24 56. Chase repeats and re-alleges each and every allegation contained in
25 Paragraphs 1 through 50 and incorporates the same as though fully set forth herein.

26 57. The HOA Sale unjustly enriched SFR, in that it obtained real property
27 secured by the Deed of Trust with a grossly inadequate purchase price of \$10,100 to
28

1 the detriment of Chase, and contrary to fundamental principles of fairness, justice,
2 and fair dealing.

3 58. If it is determined that the Deed of Trust has been extinguished by the
4 HOA Sale, SFR has been unjustly enriched, in that Chase has continued to expend
5 funds and resources to maintain and preserve the Property, including but not limited
6 to funds for taxes and insurance to the detriment of Chase, and contrary to
7 fundamental principles of fairness, justice, and fair dealing.

8 59. Chase is entitled to recoup the reasonable amount of benefits obtained
9 by SFR based on the theory of unjust enrichment.

10 60. Chase has furthermore been required to retain counsel and is entitled to
11 recover reasonable attorney's fees and costs.

12 PRAYER

13 Wherefore, Chase prays for judgment against SFR, as follows:

- 14 1. For a declaration and determination that the first position Deed of
15 Trust was not extinguished by the HOA Sale.
- 16 2. For a declaration and determination that the HOA Sale did not convey
17 the Property free and clear to SFR;
- 18 3. For a declaration and determination that the Deed of Trust is superior
19 to the interest of SFR;
- 20 4. For a preliminary and permanent injunction that SFR, its successors,
21 assigns, and agents are prohibited from conducting any sale, transfer or
22 encumbrance of the Property;
- 23 5. For a preliminary injunction that SFR, its successors and assigns, be
24 required to pay all taxes, insurance and homeowners association dues
25 during the pendency of this action;
- 26 6. For a preliminary and permanent injunction that SFR, its successors
27 and assigns, pay all taxes, insurance and homeowners association dues
28 during the pendency of this action;

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7. If it is determined that the Deed of Trust has been extinguished by the HOA sale, for special damages in the amount of the fair market value of the Property or the unpaid balance of the Loan and Deed of Trust, at the time of the HOA Sale, whichever is greater;
8. For all fees and costs of court incurred herein, including post-judgment costs; and
9. For any and all further relief deemed appropriate by this Court.

DATED this 18 day of March, 2016.

BALLARD SPAHR LLP

By: 

Abran E. Vigil
Lindsay C. Demaree
Holly Ann Priest
100 North City Parkway, Suite 1750
Las Vegas, Nevada 89106-4617
*Attorneys for Plaintiff and
Counter-Defendant JPMorgan Chase
Bank, N.A.*

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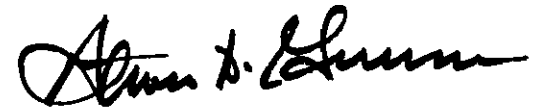
CERTIFICATE OF MAILING

Pursuant to NRCP 5, I hereby certify that on the 18th day of March, 2016, an electronic copy of the AMENDED COMPLAINT was served on the following counsel of record via the Court's electronic service system:

:

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DIANA S. CLINE
JACQUELINE A. GILBERT
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/s/ Mary Kay Carlton
An employee of BALLARD SPAHR LLP



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Attorneys for SFR Investments Pool 1, LLC

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION, a national association,

Plaintiff,

vs.

SFR INVESTMENTS POOL 1, LLC, a
Nevada limited liability company; DOES
INDIVIDUALS 1 through 10; and ROE
BUSINESS ENTITIES 1 through 10, inclusive,

Defendants.

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

Counter-Claimant/Cross-Claimant,

vs.

JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION, a national association;
KYLEEN T. BELL, an individual; DOES 1 10
and ROE BUSINESS ENTITIES 1 through 10
inclusive.

Counter-Defendant/Cross-Defendants.

Case No. A-13-692202-C

Dept. No. XXIV

**SFR INVESTMENTS POOL 1, LLC'S
ANSWER TO AMENDED COMPLAINT**

SFR INVESTMENTS POOL 1, LLC ("SFR" or "Defendant"), hereby files an answer to
JPMORGAN CHASE BANK, NATIONAL ASSOCIATION's ("Chase") Amended Complaint
as follows:

RELEVANT PARTIES AND JURISDICTION

1
2 1. Upon information and belief, SFR admits the factual allegations contained in paragraph
3 1 of the Amended Complaint.

4 2. Answering paragraph 2 of the Amended Complaint, SFR admits that it is a limited
5 liability company organized under the laws of the State of Nevada and that its principal place of
6 business is in Nevada.

7
8 3. Answering paragraph 3 of the Amended Complaint, SFR admits that the subject matter
9 of Chase's Amended Complaint is real property situated in Clark County, Nevada.

10 4. To the extent the Bank alleges that it does not know the true name and capacity of the
11 foreclosing homeowner's association or its foreclosure agent, SFR denies the allegations in
12 paragraph 4 of the Complaint. SFR is without sufficient knowledge or information to form a
13 belief as to the truth of any remaining factual allegations contained in paragraph 4 of the
14 Complaint, and therefore denies said allegations.

15
16 5. The allegations in paragraphs 5, and 6 concerning jurisdiction and venue call for a legal
17 conclusion to which no response is required.

GENERAL ALLEGATIONS

18
19 6. Answering paragraph 7 of the Amended Complaint, SFR admits that the subject matter of
20 Chase's Amended Complaint is real property situated in Clark County, Nevada, commonly
21 known as **2824 Begonia Court, Henderson, NV 89074, APN 177-12-410-074.**

22 7. The documents referenced in paragraph 8 of the amended Complaint speaks for itself,
23 and SFR denies any allegations inconsistent with said document. In answering paragraph 8,
24 upon information and belief, SFR admits that on or about November 14, 2002, KYLEEN BELL
25 ("Bell") signed a Deed of Trust as Borrower in the amount of \$68,000.00 from lender Republic
26 Mortgage, LLC.

27 8. The recorded Deed of Trust referenced in paragraph 9 of the amended Complaint speaks
28

1 for itself, and SFR denies any allegations inconsistent with said document. To the extent
2 paragraph 9 alleges that Bell was the title owner of record of the Property at times prior to the
3 Association foreclosure sale, SFR, upon information and belief, admits the allegations in
4 paragraph 9.

5 9. SFR is without sufficient knowledge or information to form a belief as to the truth of the
6 factual allegation concerning Fannie Mae's acquiring ownership of the note and deed of trust
7 contained in paragraph 10 of the Amended Complaint, and therefore denies said allegations.

8 10. SFR is without sufficient knowledge or information to form a belief as to the truth of the
9 factual allegations contained in paragraph 11 of the Amended Complaint, and therefore denies
10 said allegations.

11 11. The recorded Assignment of Deed of Trust referenced in paragraph 12 of the Amended
12 Complaint speaks for itself, and SFR denies any allegations inconsistent with said document.

13 12. The recorded Notice of Default and Election to Sell referenced in paragraph 13 of the
14 Amended Complaint speaks for itself, and SFR denies any allegations inconsistent with said
15 document.

16 **The HOA Foreclosure and SFR's Purported Acquisition of the Property**

17 13. The recorded CC&Rs document referenced in paragraph 14 of the Complaint speaks for
18 itself, and SFR denies any allegations inconsistent with said document.

19 14. The recorded Notice of Delinquent Assessment Lien referenced in paragraph 15 of the
20 Amended Complaint speaks for itself, and SFR denies any allegations inconsistent with said
21 document.

22 15. The recorded Notice of Default and Election to Sell referenced in paragraph 16 of the
23 Amended Complaint speaks for itself, and SFR denies any allegations inconsistent with said
24 document.

25 16. The recorded Notice of Foreclosure Sale referenced in paragraph 17 of the Amended
26 Complaint speaks for itself, and SFR denies any allegations inconsistent with said document.

27 17. In answering paragraph 18, SFR admits Nevada Association Services ("NAS")
28 conducted a non-judicial publicly-held HOA foreclosure auction sale on May 31, 2013, at which

1 time SFR was the highest bidder and purchased the Property for \$10,100.00.

2 18. In answering paragraph 19, SFR admits NAS conducted a non-judicial publicly-held
3 HOA foreclosure auction sale on May 31, 2013, at which time SFR was the highest bidder and
4 purchased the Property for \$10,100.00.

5 19. The allegation in paragraph 20 of the Amended Complaint calls for a legal conclusion to
6 which no response is required. To the extent a response is required, SFR specifically denies the
7 fair market value of the Property at the time of the HOA sale on May 31, 2013 exceeded
8 \$70,000.00.

9 20. The allegations in paragraph 21 of the Amended Complaint calls for a legal conclusion
10 to which no response is required. To the extent a response is required, SFR denies the amount it
11 paid for the Property was grossly inadequate when compared to the fair market value of the
12 Property at the time of the HOA Sale on May 31, 2013.

13 21. The recorded Foreclosure Deed referenced in paragraph 22 of the Amended Complaint
14 speaks for itself, and SFR denies any allegations inconsistent with said document.

15 22. The allegations in paragraph 23 of the Amended Complaint calls for a legal conclusion
16 to which no response is required. Further, SFR is without sufficient knowledge or information to
17 form a belief as to the truth of the factual allegations concerning “property preservation
18 payments” made by the Bank contained in paragraph 23 of the Amended Complaint, and
19 therefore denies said allegations.

20 23. The allegations in paragraphs 24, 25, and 26 of the Amended Complaint calls for a legal
21 conclusion to which no response is required. To the extent a response is required, the
22 documents referenced in paragraphs 24, 25 and 26 of the Amended Complaint speak for
23 themselves and SFR denies any allegation inconsistent therewith.

24 24. The allegations in paragraph 27 of the Amended Complaint calls for a legal conclusion
25 to which no response is required. Further, SFR is without sufficient knowledge or information to
26 form a belief as to the truth of the factual allegations concerning “notices” Chase may or may
27 not have received prior to the HOA Sale, and therefore denies said allegations.

28 25. The allegations in paragraph 28 of the Amended Complaint calls for a legal conclusion

1 to which no response is required. To the extent a response is required, SFR denies the
2 allegations in paragraph 28.

3 26. The allegations in paragraphs 29, 30 and 33 call for a legal conclusion to which no
4 response is required. To the extent a response is required, the statutes referenced in paragraphs
5 29, 30, and 33 of the Amended Complaint speak for themselves, and SFR denies any allegations
6 inconsistent with said statutes.

7 27. The allegations in paragraphs 31 and 32 of the Amended Complaint calls for a legal
8 conclusion to which no response is required. To the extent a response is required, the
9 documents referenced in paragraph 31 speak for themselves and SFR denies any allegations
10 inconsistent therewith.

11 28. In answering paragraph 34, SFR admits a non-judicial publicly-held HOA foreclosure
12 auction sale occurred on May 31, 2013, at which time SFR was the highest bidder and
13 purchased the Property for \$10,100.00. Further, SFR admits that it is the current title owner of
14 the Property, and SFR admits it owns the Property free and clear of the Bank's purported deed
15 of trust which was extinguished as a matter of law as a result of said HOA foreclosure sale on
16 May 31, 2013.

17 **FIRST CAUSE OF ACTION**
18 **(Declaratory Relief)**

19 29. SFR repeats and realleges its answers to paragraphs 1 through 34 of the Amended
20 Complaint as though fully set forth herein.

21 30. The allegations in paragraph 36 of the Amended Complaint calls for a legal conclusion
22 to which no response is required.

23 31. The allegation in paragraph 37 of the Amended Complaint calls for a legal conclusion to
24 which no response is required. To the extent a response is required, SFR specifically denies the
25 Deed of Trust is a first secured interest on the Property. SFR specifically denies the Deed of
26 Trust is superior to SFR's ownership interest in the Property.

27 32. In answering paragraph 38, SFR admits a non-judicial publicly-held HOA foreclosure
28 auction sale occurred on May 31, 2013, at which time SFR was the highest bidder and

1 purchased the Property for \$10,100.00. Further, SFR admits that it is the current title owner of
2 the Property, and SFR admits it owns the Property free and clear of the Bank's purported deed
3 of trust which was extinguished as a matter of law as a result of said HOA foreclosure sale on
4 May 31, 2013.

5 33. The allegation in paragraph 39 of the Amended Complaint calls for a legal conclusion to
6 which no response is required. To the extent a response is required, SFR denies the allegations
7 in paragraph 39 of the Amended Complaint.

8 34. The allegations contained in paragraphs 40, 41, and 42 of the Amended Complaint call
9 for a legal conclusion, therefore, no answer is required. To the extent a response is required,
10 SFR denies the allegations in paragraphs 40, 41, and 42 of the Amended Complaint.

11 35. The allegation in paragraph 43 of the Amended Complaint calls for a legal conclusion to
12 which no response is required. To the extent a response is required, SFR specifically denies a
13 first position deed of trust presently encumbers the Property. SFR specifically denies that Chase
14 presently has in interest in the Property superior to SFR's ownership interest.

15 **SECOND CAUSE OF ACTION**

16 **(Quiet Title)**

17 36. SFR repeats and realleges its answers to paragraphs 1 through 43 of the Amended
18 Complaint as though fully set forth herein.

19 37. The allegations in paragraph 45 of the Amended Complaint calls for a legal conclusion
20 to which no response is required.

21 38. The allegation in paragraph 46 of the Amended Complaint calls for a legal conclusion to
22 which no response is required. To the extent a response is required, SFR specifically denies the
23 Deed of Trust is a first secured interest on the Property. SFR specifically denies the Deed of
24 Trust is superior to SFR's ownership interest in the Property.

25 39. In answering paragraph 47, SFR admits a non-judicial publicly-held HOA foreclosure
26 auction sale occurred on May 31, 2013, at which time SFR was the highest bidder and
27 purchased the Property for \$10,100.00. Further, SFR admits that it is the current title owner of
28 the Property, and SFR admits it owns the Property free and clear of the Bank's purported deed

1 of trust which was extinguished as a matter of law as a result of said HOA foreclosure sale on
2 May 31, 2013.

3 40. The allegation in paragraphs 48 and 49 of the Amended Complaint calls for a legal
4 conclusion to which no response is required. To the extent a response is required, SFR denies
5 the allegations in paragraphs 48 and 49 of the Amended Complaint.

6 41. The allegation in paragraph 50 of the Amended Complaint calls for a legal conclusion to
7 which no response is required. To the extent a response is required, SFR specifically denies a
8 first position deed of trust presently encumbers the Property. SFR specifically denies that the
9 Bank presently has an interest in the Property superior to SFR's ownership interest. SFR denies
10 that the Bank has been required to retain counsel. SFR denies that the Bank is entitled to
11 recover reasonable attorney's fees and costs.

12 **THIRD CAUSE OF ACTION**
13 **(Unjust Enrichment)**

14 42. SFR repeats and realleges its answers to paragraphs 1 through 50 of the Amended
15 Complaint as though fully set forth herein.

16 43. The allegations in paragraph 57 [sic] of the Amended Complaint call for a legal
17 conclusion to which no response is required. To the extent a response is required, SFR
18 specifically denies the HOA Sale unjustly enriched SFR. SFR specifically denies the purchase
19 price of \$10,100.00 was grossly inadequate. SFR specifically denies the purchase price of
20 \$10,100.00 was contrary to fundamental principles of fairness, justice, and fair dealing.

21 44. The allegations contained in paragraphs 58 and 59 of the Amended Complaint call for a
22 legal conclusion, therefore, no answer is required. To the extent a response is required, SFR
23 denies the allegations in paragraphs 58 and 59 of the Amended Complaint.

24 45. SFR denies the allegations of paragraph 60.

25 **AFFIRMATIVE DEFENSES**

- 26 1. The Bank fails to state a claim upon which relief may be granted.
- 27 2. The Bank is not entitled to relief from or against SFR, as the Bank has not sustained any
28 loss, injury, or damage that resulted from any act, omission, or breach by SFR.

1 3. The occurrence referred to in the Complaint, and all injuries and damages, if any,
2 resulting therefrom, were caused by the acts or omissions of the Bank.

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

6 5. SFR did not breach any statutory or common law duties allegedly owed to the Bank.

7 6. The Bank's claims are barred because SFR complied with applicable statutes and with
8 the requirements and regulations of the State of Nevada.

9 7. The Bank's claims are barred because the Association and its agents complied with
10 applicable statutes and regulations.

11 8. The Bank's causes of action are barred in whole or in part by the applicable statutes of
12 limitations or repose, or by the equitable doctrines of laches, waiver, estoppel, ratification and
13 unclean hands.

14 9. The Bank is not entitled to equitable relief because it has an adequate remedy at law.

15 10. The Bank has no standing to enforce the first deed of trust and/or the underlying
16 promissory note.

17 11. The Bank has no standing to enforce the statutes and regulations identified in the Third-
18 Party Complaint.

19 12. Any purported assignment of the first deed of trust after the Association foreclosure sale
20 is invalid and unenforceable.

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

23 14. The Bank has no remedy against SFR because, pursuant to NRS 116.31166, SFR is
24 entitled to rely on the recitals contained in the Association foreclosure deed that the sale was
25 properly noticed and conducted.

26 15. The Bank has no remedy against SFR because SFR is a bona fide purchaser for value.

27 16. The Bank's Complaint and all claims for relief therein are barred for the Bank's failure
28 to serve proper notice to the Attorney General of the State of Nevada pursuant to NRS 30.130.

1 17. The Bank's Counterclaim and all claims for relief therein should be dismissed on the
2 ground that the Bank has failed to join necessary or indispensable parties pursuant to NRCP 19,
3 namely the HOA's Agents who recorded a Notice of Delinquent Assessment Lien against the
4 property and ultimately initiated foreclosure of said property.

5 18. The Bank's Unjust Enrichment claim is barred by the Voluntary Payment Doctrine
6 which precludes such a claim on the facts alleged here. Any payments made to an agent of the
7 Bank to inspect or otherwise "care" or "preserve" the property were voluntarily made and
8 without benefit to SFR. Additionally, in order to prevail on an unjust enrichment claim, the Bank
9 must show that SFR retained the money or property of the Bank against fundamental principles
10 of justice or equity and good conscience. Thus, under the Voluntary Payment Doctrine, SFR was
11 not "unjustly enriched" by those monies.

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

16 DATED this 4th day of April, 2016.

KIM GILBERT EBRON

/s/ Diana Cline Ebron
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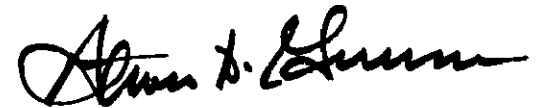
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of April, 2016, pursuant to NRCP 5(b), I served via the Eighth Judicial District Court electronic filing system, the foregoing **SFR INVESTMENTS POOL 1, LLC’S ANSWER TO AMENDED COMPLAINT**, to the following parties:

<u>Select All</u> <u>Select None</u>		
Ballard Spahr		
Name	Email	Select
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Holly Priest	priesth@ballardspahr.com	<input checked="" type="checkbox"/>
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Ballard Spahr LLP		
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Catherine Wrangham-Rowe	wranghamrowec@ballardspahr.com	<input checked="" type="checkbox"/>
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/s/ Diana Cline Ebron
An Employee of Kim Gilbert Ebron



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Attorneys for SFR Investments Pool 1, LLC

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION, a national association,

Plaintiff,

vs.

SFR INVESTMENTS POOL 1, LLC, a
Nevada limited liability company; DOES
INDIVIDUALS 1 through 10; and ROE
BUSINESS ENTITIES 1 through 10, inclusive,

Defendants.

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

Counter-Claimant/Cross-Claimant,

vs.

JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION, a national association;
KYLEEN T. BELL, an individual; DOES 1 10
and ROE BUSINESS ENTITIES 1 through 10
inclusive.

Counter-Defendant/Cross-Defendants.

Case No. A-13-692202-C

Dept. No. XXIV

**SFR INVESTMENTS POOL 1, LLC'S
MOTION FOR SUMMARY JUDGMENT**

SFR Investments Pool 1, LLC ("SFR") hereby moves for summary judgment against
JPMORGAN CHASE BANK, NATIONAL ASSOCIATION ("the Bank")¹ pursuant to NRCP 56.

¹ Herein, "the Bank" refers to JPMorgan Chase, any predecessors in interest to the First Deed of Trust, as well as any agents acting on behalf of these entities, including but not limited to servicers, trustees and nominee beneficiaries.

This Motion is based on the papers and pleadings on file herein, the following memorandum of points and authorities, the Declaration of Jacqueline A. Gilbert, Esq. (“Gilbert Decl.”), attached as **Exhibit A**, the Declaration of Christopher Hardin (“Hardin Decl.”) attached as **Exhibit B**, and such evidence/and oral argument as may be presented at the time of the hearing on this matter.

NOTICE OF HEARING

PLEASE TAKE NOTICE that on 23 day of AUGUST, 2016, in Department 24 of the above-entitled Court, at the hour of 9:00A a.m./p.m., or as soon thereafter as counsel may be heard, the undersigned will bring SFR’s Motion for Summary Judgment before this Court for hearing.

DATED this 22nd day of July, 2016.

KIM GILBERT EBRON

/s/ Jacqueline A. Gilbert
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Attorneys for SFR Investments Pool 1, LLC

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This case arises from Eastbridge Gardens Condominiums’ (the “Association”) foreclosure of real property commonly referred to as **2824 Begonia Court, Henderson, NV 89074; Parcel No. 177-12-410-074 (the “Property”)**. Specifically, on May 31, 2013, the Association held a public auction of the Property based on unpaid monthly assessments. At the foreclosure sale, SFR made the highest bid.

On November 26, 2013, the Bank filed its Complaint for quiet title against SFR, essentially claiming the deed of trust was not extinguished by the association foreclosure sale and/or SFR took subject to the deed of trust. On January 27, 2014, SFR filed its Answer, Counterclaim and

Cross-Claim for quiet title and injunctive relief against the Bank and the former homeowner, KYLEEN T. BELL (“Bell”). Bell was dismissed from the action without prejudice on August 6, 2014. The Bank filed an Amended Complaint on March 18, 2016, including an additional cause of action for unjust enrichment. On April 4, 2016, SFR filed its Answer to the Amended Complaint.

Based on the underlying foreclosure sale, the First Deed of Trust (“FDOT”) was extinguished by the Association’s non-judicial foreclosure sale. See SFR Investments Pool I, LLC v. U.S. Bank, N.A., 130 Nev. ___, ___, 334 P.3d 408, 419 (2014). The recitals in the Foreclosure Deed provide conclusive proof that the Bank was given notice of the sale, which is supported by evidence of receipt by the Bank, and the Bank failed to protect its interest. SFR is entitled to summary judgment on its claims for quiet title and permanent injunction against the Bank, and on the Bank’s unjust enrichment claim. Specifically, (1) title should be quieted in the name of SFR, (2) the deed of trust purportedly held by the Bank should be permanently removed from title; and (3) the Bank, and anyone acting on its behalf, should be permanently enjoined from any sale or transfer that would affect SFR’s title to the Property.

II. STATEMENT OF UNDISPUTED FACTS

The following contains facts undisputed by either party and is supported by documents disclosed by the parties, publicly recorded with the Clark County Recorder, produced by third-parties via subpoena or provided via deposition testimony:

DATE	FACTS
1991	Nevada adopted Uniform Common Interest Ownership Act as NRS 116, including NRS 116.3116(2).
April 21, 1995	Grant, Bargain, Sale Deed, transferring the Property to Bell, recorded as Instrument No. 199504210001512. ²
February 6, 2002	Association perfected and gave notice of its lien by recording its Second Restated Declaration of Restrictions (“CC&Rs”) as Instrument No. 200202060001001. ³

² See excerpts from SFR’s Initial Disclosure of Witnesses and Documents, attached to Gilbert Decl. as **Exhibit A-1**. See specifically, Grant, Bargain, Sale Deed [SFR1].

³ See excerpts from the Bank’s Initial Disclosures of Witnesses and Documents, attached to Gilbert Decl. as **Exhibit A-2**. See specifically, excerpts from Association’s CC&R’s [Chase-Bell0020, 51-52].

November 25, 2002	Deed of Trust in favor of Republic Mortgage, LLC (“Republic”) (“FDOT”), recorded as Instrument No. 200211250002874. ⁴ The FDOT contained a Condominium Rider that allowed the Lender to pay the Borrower’s Association Assessment and add that amount to the Borrower’s debt to Lender. ⁵ The FDOT also included language that allowed the lender to escrow funds for “(a) taxes and assessments and other items which can attain priority over [the FDOT] as a lien or encumbrance on the Property[,]” ⁶ and to “do and pay for whatever is reasonable or appropriate to protect [its] interest in the Property . . . [including] but . . . not limited to: (a) paying any sums secured by a lien which has priority over [the FDOT]; (b) appearing in court; and (c) paying reasonable attorney’s fees to protect its interest.” ⁷
March 4, 2011	The Association appointed Nevada Association Services, Inc. (“NAS”) as the Association’s agent for the purpose of collecting delinquent assessments, giving full power and authority to NAS to act on behalf of the Association, including to proceed with a non-judicial foreclosure. ⁸
April 1, 2011	Association recorded Notice of Delinquent Assessment (“NODA”) as Instrument No. 201104010001371. ⁹ The homeowner, Bell, was mailed the NODA. ¹⁰
June 1, 2011	Bell became delinquent on her FDOT payments. ¹¹
September 21, 2011	After more than 30 days elapsed from the date of mailing of the operative NODA, Association recorded a Notice of Default as Instrument No. 201109210000506. ¹² Within 10 days of recordation, the Notice of Default was thereafter mailed to numerous parties, including in pertinent part, Bell, and the Bank (including its agents) several times. ¹³

⁴ See Ex. A-2, at [Chase-Bell0001-19].

⁵ Id. at [Chase-Bell0017-19].

⁶ Id. at [Chase-Bell0004].

⁷ Id. at [Chase-Bell0007-8].

⁸ See excerpts from documents produced by NAS pursuant to subpoena, as disclosed by the Bank in its First Supplemental Disclosure of Witnesses and Documents, attached to Gilbert Decl. as **Exhibit A-3**. See specifically, Consent and Authorization and referral letter [Chase-Bell_NAS0002, 7-9].

⁹ See Ex. A-2, at [Chase-Bell0054].

¹⁰ See Ex. A-3, at [Chase-Bell_NAS0024-35].

¹¹ See Ex. A-1, at [SFR17-23].

¹² See Ex. A-3, at [Chase-Bell0178-179].

¹³ See Ex. A-3, at [Chase-Bell_NAS0067-103].

	The Bank received the Notice of Default, and does not dispute receiving this notice. ¹⁴
May 31, 2012	After more than 90 days elapsed from the date of the mailing of the Notice of Default, Association mailed a Notice of Foreclosure Sale ("First Notice of Sale") to numerous parties, including in pertinent part, Bell, the Bank (including its agents) several times, and the Ombudsman's office. ¹⁵ The First Notice of Sale was thereafter recorded as Instrument No. 201206010001979. ¹⁶ The Bank received the First Notice of Sale. ¹⁷
October 25, 2012	Assignment of First Deed of Trust, from Republic to JPMorgan Chase Bank, National Association, recorded as Instrument No. 201210250002057. ¹⁸
October 25, 2012	Substitution of Trustee, substituting Pioneer National Title of Nevada, Inc. for National Default Servicing Corporation ("NDSC") under FDOT, recorded as Instrument No. 201210250002058. ¹⁹
April 29, 2013	Assignment of First Deed of Trust to JPMorgan Chase Bank, National Association, re-recorded as Instrument No. 201304290002908. ²⁰
May 2, 2013	After more than 90 days elapsed from the date of the mailing of the Notice of Default, Association mailed a Notice of Foreclosure Sale ("Second Notice of Sale") to numerous parties, including in pertinent part, Bell, the Bank (including its agents) several times, and the Ombudsman's office. ²¹ The Bank received the Second Notice of Sale. ²² The Bank does not dispute receiving this notice. ²³ The Bank took no action after it received the Second Notice of Sale. ²⁴

¹⁴ See the deposition of Susan Lyn Newby, Rule 30(b)(6) witness for the Bank, attached to Gilbert Decl. as **Exhibit A-4**. See specifically, 28:10-29:9 and Deposition Exh. 8.

¹⁵ See Ex. A-3, at [Chase-Bell_NAS0131-135].

¹⁶ See Ex. A-1, at [SFR7-8].

¹⁷ See Ex. A-3, at [Chase-Bell_NAS0137].

¹⁸ See Ex. A-1, at [SFR9-10].

¹⁹ See Ex. A-1, at [SFR11].

²⁰ See Ex. A-2, at [Chase-Bell0055-57].

²¹ See Ex. A-3, at [Chase-Bell_NAS0171-177].

²² See Ex. A-3, at [Chase-Bell_NAS0087-98; 179-180].

²³ See Ex. A-4, at 38:8-39:4, 65:4-12, and Deposition Exh. 15.

²⁴ See Ex. A-4, at 56:14-21.

May 6, 2013	The Second Notice of Sale was posted on the Property in a conspicuous place. ²⁵
May 7, 2013	Association recorded the Second Notice of Sale as Instrument No. 201305070000894. ²⁶
May 9, 2013	The Second Notice of Sale was posted at six public places within Clark County for 20 consecutive days. ²⁷
May 9, 2013	A Notice of Breach and Election to Sell Under Deed of Trust is recorded by NDSC, as trustee on behalf of the Bank, as Instrument No. 201305090002867. ²⁸
May 10, 2013	The Second Notice of Sale was published in the Nevada Legal News for three consecutive weeks. ²⁹
May 31, 2013	Association foreclosure sale took place and SFR placed the winning bid of \$10,100.00. ³⁰ This amount was paid by SFR. ³¹ There were multiple bidders in attendance at the sale. ³² No one acting on behalf of the Bank attended the sale. ^{33 34}
June 10, 2013	Foreclosure Deed vesting title in SFR recorded as Instrument No. 201306100002206. ³⁵ As recited in the Foreclosure Deed, the Association foreclosure sale all requirements of law were complied with, including but not limited the to the mailing of copies of the NODA and Notice of Default, the recording of the Notice of Default, and the posting and publication of the Notice of Sale.

²⁵ See Ex. A-3, Affidavit of Service, at [Chase-Bell_NAS0189; 192].

²⁶ See Ex. A-1, at [SFR15-16].

²⁷ See Ex. A-3, Affidavits of Posting, at [Chase-Bell_NAS0190-191].

²⁸ See Ex. A-1, at [SFR17-23].

²⁹ See Ex. A-3, Affidavit of Publication, at [Chase-Bell_NAS0188].

³⁰ See Foreclosure Deed, attached to Hardin Decl. as Exhibit B-2. [SFR24-26]

³¹ See Hardin Decl., Exhibit B, ¶ 11; see also Exhibit B-1; see also Ex. A-3, at [Chase-Bell_NAS0203-205]. Private information has been redacted at page 203.

³² See Ex. B, ¶ 15; see also Ex. A-3, at [Chase-Bell_NAS0205].

³³ See excerpts from the Bank's Responses to Requests for Admissions ("RFA"), attached to Gilbert Decl. as Exhibit A-5. See specifically, Responses to RFA No. 3.

³⁴ See Ex. A-4, at 58:7-9.

³⁵ Ex. B-2.

	<p>SFR has no reason to doubt the recitals in the Foreclosure Deed.³⁶ If there were any issues with delinquency or noticing, none of these were communicated to SFR.³⁷</p> <p>Further, neither SFR, nor its agent, have any relationship with the Association besides owning property within the community.³⁸</p> <p>Similarly, neither SFR, nor its agent, have any relationship with NAS, the Association's agent, beyond attending auctions, bidding, and occasionally purchasing properties at publically-held auctions conducted by NAS.³⁹</p>
Prior to May 31, 2013	<p>The Bank never contacted NAS or the Association prior to the sale.⁴⁰</p> <p>The Bank never paid or tried to pay any portion of the Association's lien.⁴¹</p> <p>The Bank did not challenge the foreclosure sale in any civil or administrative proceeding.⁴²</p> <p>No release of the superpriority portion of the Association's lien was recorded against the Property.⁴³</p> <p>No lis pendens was recorded against the Property.⁴⁴</p>
June 12, 2013	The Bank recorded a Rescission of its Notice of Default and Election to Sell Under Deed of Trust. ⁴⁵
September 26, 2013	After the Association foreclosure sale, the Bank recorded another Notice of Breach and Election to Sell Under Deed of Trust as Instrument No. 201309260001088. ⁴⁶
March 3, 2014	SFR recorded its Notice of Lis Pendens on the Property. ⁴⁷

³⁶ Ex. B, at ¶ 13.

³⁷ Ex. B, at ¶ 14.

³⁸ Ex. B, at ¶ 16.

³⁹ Ex. B, at ¶ 17.

⁴⁰ See Ex. A-4, at 55:6-11; see also Ex. A-5, at Response to RFA No. 11.

⁴¹ See Ex. A-4, at 56:12-17; see also Ex. A-5, at Response to RFA Nos. 9, 12.

⁴² See Ex. A-4, at 55:18-56:12.

⁴³ Ex. B, at ¶ 18.

⁴⁴ Ex. B, at ¶ 18.

⁴⁵ See Ex. A-1, at [SFR27-28].

⁴⁶ See Ex. A-2, at [Chase-Bell0062-68].

⁴⁷ See Ex. A-1, at [SFR49-51].

June 30, 2014	The Bank recorded a Notice of Lis Pendens on the Property. ⁴⁸
August 6, 2014	Bell was dismissed from the action without prejudice. ⁴⁹
September 18, 2014	Nevada Supreme Court issued <u>SFR Investments Pool 1, LLC v. U.S. Bank, N.A.</u> , opinion holding that a properly held association foreclosure sale pursuant to NRS 116.31162-116.31168 extinguishes a first deed of trust. ⁵⁰
May 4, 2015	The Bank recorded a Request for Notice against the Property. ⁵¹
July 18, 2016	SFR has been paying the homeowner's association assessments since it acquired the Property. ⁵²

III. LEGAL ARGUMENT

A. Motion for Summary Judgment Standard.

Summary judgment is appropriate “when the pleadings and other evidence on file demonstrate that no ‘genuine issue as to any material fact [remains] and that the moving party is entitled to a judgment as a matter of law.’” Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Additionally, “[t]he purpose of summary judgment ‘is to avoid a needless trial when an appropriate showing is made in advance that there is no genuine issue of fact to be tried, and the movant is entitled to judgment as a matter of law.’” McDonald v. D.P. Alexander & Las Vegas Boulevard, LLC, 121 Nev. 812, 815, 123 P.3d 748, 750 (2005) quoting Coray v. Home, 80 Nev. 39, 40-41, 389 P.2d 76, 77 (1964). Moreover, the non-moving party “must, by affidavit or otherwise, set forth specific facts demonstrating the existence of a genuine issue for trial or have summary judgment entered against [it].” Wood, 121 Nev. at 32, 121 P.3d at 1031. The non-moving party “is not entitled to build a case on the gossamer threads of whimsy, speculation, and conjecture.” Id. Rather, the non-moving party must demonstrate specific facts as opposed to general allegations and conclusions. LaMantia v. Redisi, 118 Nev. 27, 29, 38 P.3d 877, 879 (2002); Wayment v. Holmes, 112 Nev. 232, 237, 912 P.2d 816, 819 (1996). Though inferences are to be

⁴⁸ See Bank's Notice of Lis Pendens, attached to Gilbert Decl. as **Exhibit A-6**.

⁴⁹ See Stipulation and Order to Dismiss Kyleen T. Bell without Prejudice on file herein.

⁵⁰ 334 P.3d at 419.

⁵¹ See Bank's Request for Notice, attached to Gilbert Decl. as **Exhibit A-7**.

⁵² Ex. B, at ¶ 19.

1 drawn in favor of the non-moving party, an opponent to summary judgment, must show that it can
2 produce evidence at trial to support its claim or defense. Van Cleave v. Kietz-Mill Minit Mart, 97
3 Nev. 414, 417, 633 P.2d 1220, 222 (1981).

4 **B. SFR is Entitled to Summary Judgment on the Bank's Claim for Quiet Title**
5 **Because the First Deed of Trust Was Extinguished by the Association's Non-**
6 **Judicial Foreclosure Sale.**

7 In Nevada, a homeowners association has a lien for delinquent assessments, a portion of
8 which has priority over a first deed of trust. NRS 116.3116(2);⁵³ SFR, 334 P.3d at 419.
9 Furthermore, when an association forecloses on its lien for delinquent assessment, the purchaser
10 at the foreclosure sale receives "a deed without warranty which conveys to the grantee all title of
11 the unit's owner to the unit[.]" NRS 116.31164(3)(a).

12 While the party seeking to quiet title must prove good title in his name,⁵⁴ the following
13 presumptions apply:

14 1. Recorded title is presumed valid. See Breliant, 112 Nev. at 670, 918 P.2d at 319
15 ("[T]here is a presumption in favor of the record titleholder.")

16 2. Foreclosure sales and the resulting deeds are presumed valid. NRS 47.250(16)-(18)
17 (stating that there are disputable presumptions "that the law has been obeyed"; "that a trustee or
18 other person, whose duty it was to convey real property to a particular person, has actually
19 conveyed to that person, when such presumption is necessary to perfect the title of such person or
20 a successor in interest"; "that private transactions have been fair and regular"; and "that the
21 ordinary course of business has been followed.");

22 3. A foreclosure deed issued pursuant to NRS 116.31164 that "recit[es] compliance
23 with notice provisions of NRS 116.31162 through NRS 116.31168 "is conclusive" as to the recitals
24 "against the unit's former owner, his or her heirs and assigns and all other persons." SFR, 334 P.3d
25 at 411-12 (citing NRS 116.31166(2)).

26 ///

27 ⁵³ All references to NRS 116 are to the statutes in effect and governing the foreclosure sale in May 2013.

28 ⁵⁴ Breliant v. Preferred Equities Corp., 112 Nev. 663, 670, 918 P.2d 314, 319 (1996).

1 These presumptions “not only fix[] the burden of going forward with evidence, but it also
2 shifts the burden of proof.” Yeager v. Harrah's Club, Inc., 111 Nev. 830, 835, 897 P.2d 1093,
3 1095 (1995) (citing Vancheri v. GNLV Corp., 105 Nev. 417, 421, 777 P.2d 366, 368 (1989)).
4 “These presumptions impose on the party against whom it is directed the burden of proving that
5 the nonexistence of the presumed fact is more probable than its existence.” Id. (citing NRS
6 47.180.). Here, for the Bank to prevail, it has the burden to prove that it is more probable than
7 not that the Association foreclosure sale and the resulting foreclosure deed are invalid. Yet the
8 Bank has not produced any admissible evidence to prove such an allegation that would allow the
9 sale to be set aside.⁵⁵ To overcome the presumption of validity, the Bank must plead and prove a
10 claim for fraud with particularity or allege some unfairness or oppression that is not overshadowed
11 by its own bad acts. Furthermore, the Bank failed to specifically allege such fraud, oppression or
12 unfairness in its pleadings. NRCP 8(a)-(c), 12(b). Thus, the Bank has waived any right to
13 challenge the sale.

14 Further, “[i]f the trustee's deed recites that all statutory notice requirements and procedures
15 required by law for the conduct of the foreclosure have been satisfied, a rebuttable presumption
16 arises that the sale has been conducted regularly and properly; this presumption is **conclusive** as
17 to a bona fide purchaser.” Moeller v. Lien, 25 Cal.App.4th 822, 831-832, 30 Cal.Rptr.2d 777, 783
18 (1994) (emphasis added); see also, 4 Miller & Starr, Cal. Real Estate (3d ed. 2000) Deeds of Trust
19 and Mortgages § 10:211, pp. 647-652; 2 Bernhardt, Cal. Mortgage and Deed of Trust Practice
20 (Cont.Ed.Bar 2d ed. 1990) § 7:59, p. 476-477). This conclusive proof is key because “[t]he
21 conclusive presumption precludes an attack by the trustor on the trustee's sale to a bona fide
22 purchaser even where the trustee wrongfully rejected a proper tender of reinstatement by the
23 trustor[,]” and even where “the sale price was only 25 percent of the value of the property. . . .”
24 Moeller, 25 Cal.App.4th at 831-833, 30 Cal.Rptr.2d at 783. Put simply, where there were no
25 irregularities in the proceedings of the sale, the sale cannot be set aside. Id. at 833. Further, in
26 Nevada, unlike California, the conclusive proof does not require that the purchaser be a BFP to

27
28 ⁵⁵ See Sections III(E) and III(F) herein.

1 rely on the recitals. See Pro-Max Corp. v. Feenstra, 117 Nev. 90, 95, 16 P.3d 1074, 1077-78
2 (2001), opinion reinstated on reh'g (Jan. 31, 2001) (holding that no limitation of bonafide
3 purchaser can be read into a statute providing a conclusive presumption).⁵⁶ There needs to be
4 finality to a foreclosure sale, so that buyers will attend and bid, without the continued threat of
5 lawsuits challenging their title. There is a sanctity and finality to foreclosure sales where the deed
6 contains the conclusive recitals. Cf. Moeller, 25 Cal.App.4th at 833, 30 Cal.Rptr.2d at 784.

7 Here, the Bank has the burden to overcome the conclusive presumption of the foreclosure
8 deed recitals with evidence of fraud, unfairness and oppression. Shadow Wood Homeowners
9 Association, Inc. v. New York Community Bancorp, Inc., 132 Nev. ___, ___, 366 P.3d 1105,
10 1112 (2016). This is consistent with the Hon. Philip Pro's holding in Bourne Valley Court Trust
11 v. Wells Fargo Bank, N.A., where he granted summary judgment in favor of a purchaser at an
12 association sale in a similar case. See Bourne Valley, 80 F.Supp.3d 1131 (D.Nev. 2015). When
13 faced with almost identical recitals as those in this case, the Bourne Valley court recognized the
14 recitals in the foreclosure deed, i.e. "that there was a default, the proper notices were given, the
15 appropriate amount of time ha[d] elapsed . . . and notice of the sale was given," met the burden of
16 showing the required notices were sent to the lender. Id. at 1135. The court continued that the
17 lender was then "required to come forward with evidence that a genuine issue of material fact
18 remains for trial as to notice." Id.

19 Here, like the lender in Bourne Valley, the Bank cannot dispute notice because the then-
20 holders of the First Deed of Trust **actually received** the Notice of Default and **two** Notices of
21 Sale. Ex. A-3 at [Chase-Bell_NAS0087-98, 137, 179-180]; Ex. A-4, at 28:10-29:9 (and
22 Deposition Exh. 8), 38:8-39:4 (and Deposition Exh. 15), 56:14-21, and 65:4-12. Therefore, ". . .
23 no issue of fact remains as to whether the required statutory notices were provided." Bourne
24 Valley, 30 F. Supp.3d at 1135.

25 Further, these notices, of which the Bank acknowledges receipt, warned it of the
26 impending foreclosure proceedings, including the possibility of sale, stating, "WARNING! IF
27

28 ⁵⁶ See, Sec. III(F), regarding SFR's status as a bona fide purchaser ("BFP").

1 YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS NOTICE, YOU COULD LOSE
2 YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE!” (Ex. A-3 at [Chase-Bell0178-179])
3 and,

4 WARNING! A SALE OF YOUR PROPERTY IS IMMINENT! UNLESS YOU
5 PAY THE AMOUNT SPECIFIED IN THIS NOTICE BEFORE THE SALE
6 DATE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN
7 DISPUTE. YOU MUST ACT BEFORE THE SALE DATE. IF YOU HAVE ANY
8 QUESTIONS, PLEASE CALL NEVADA ASSOCIATION SERVICES, INC. AT
9 (702) 804-8885. IF YOU NEED ASSISTANCE, PLEASE CALL THE
10 FORECLOSURE SECTION OF THE OMBUDSMAN’S OFFICE, NEVADA
11 REAL ESTATE DIVISION, AT 1-877-829-9907 IMMEDIATELY.

12 Ex. A-1, at [SFR7-8, 15]; Ex. A-3, at [Chase-Bell_NAS0179-180].

13 Additionally, there are no procedural irregularities related to the sale that would explain
14 the Bank’s failure to pay the lien. Bourne Valley, 30 F.Supp.3d at 1135; see also Moeller, 25
15 Cal.App.4th at 831-833, 30 Cal.Rptr.2d at 783.

16 **C. The Bank, as a Lienholder, is Not Entitled to an Equitable Remedy.**

17 Undoubtedly, the Bank will argue that the Nevada Supreme Court recently found that while
18 the deed recitals contained in NRS 116.31166 are generally conclusive as to those matters asserted,
19 the court may still set aside a defective foreclosure sale on equitable grounds “when appropriate.”
20 Shadow Wood, 366 P.3d at 1112. But Shadow Wood is distinguishable from this case in one key
21 aspect: the bank in Shadow Wood was the homeowner of the Property which the Association
22 foreclosed. Id. at 1107. In other words, it was the *homeowner* who challenged the validity of the
23 sale, not a lienholder. A homeowner has a whole bundle of rights that accompany property
24 ownership and, therefore, its property is unique and a homeowner can be entitled to equity. Unlike
25 a homeowner, the Bank simply had a collateral interest in the Property, which gave it the right to
26 foreclose. As such, the Bank’s remedy at law, if one exists, is money damages from the persons
27 who harmed it, such as the foreclosing association or trustee. Munger v. Moore, 11 Cal.App.3d 1,
28 89 Cal.Rptr. 323 (1970).

It is well-settled that, in Nevada, district courts lack authority to grant equitable relief when
an adequate remedy at law exists. Las Vegas Valley Water Dist. v. Curtis Park Manor Water Users

1 Ass'n, 98 Nev. 275, 277, 646 P.2d 549, 551 (1982). Because the Bank has an adequate remedy at
2 law, should they be able to prove some irregularity with the sale, equitable relief is not available
3 to the Bank. To the extent the Bank suggests that taking title subject to the first deed of trust is an
4 option, the statute does not provide such an option. Unless the Bank can demonstrate actual fraud,
5 unfairness, or oppression **by the purchaser** at the publically advertised and held auction, the
6 purchaser should not be subject to any acts that would set aside its unencumbered deed.

7 **D. SFR is Entitled to Summary Judgment on the Bank's Claim for Quiet Title**
8 **because the Non-Judicial Foreclosure Sale Vested Title in SFR Without**
9 **Equity or Right of Redemption.**

10 The association foreclosure sale vested title SFR "without equity or right of redemption."⁵⁷
11 SFR, 334 P.3d at 419 (citing NRS 116.31166(3)). As the dissent in SFR explained, "the owner,
12 as well as the first security, will have no right to redeem the property under the majority's holding."
13 Id. citing NRS 116.31166(3) and Bldg. Energetix Corp. v. EHE, LP, 129 Nev. ___, ___, 294 P.3d
14 1228, 1233 (2013) (recognizing that there is no right to redeem after a Chapter 107 non-judicial
15 foreclosure sale because a sale under that chapter "vests in the purchaser the title of the grantor
16 and any successors in interest without equity or right of redemption" (quoting NRS 107.080(5)).

17 This is consistent with long-standing Nevada non-judicial foreclosure law that "[i]f the
18 sale is properly, lawfully and fairly carried out, [the bank] cannot unilaterally create a right of
19 redemption in [itself]." Golden v. Tomiyasu, 79 Nev. 503, 518, 387 P.2d 989, 997 (1963). Nevada
20 law does not allow the Bank or the Court to create a redemption period to save the holder of the
21 first deed of trust from its own failure to protect its interest.

22 ⁵⁷ According to the Nevada Supreme Court,

23 sales **without equity or right of redemption** vest the purchaser with absolute
24 title:

25 [T]he law authorizing the mortgagee to sell is, in our opinion, so thoroughly
26 settled that it cannot now admit of a question. Such being the right of the mortgagee, it
27 follows as a necessary consequence that the purchaser from him obtains an absolute legal
28 title as complete, perfect and indefeasible as can exist or be acquired by purchase; and a
sale, upon due notice to the mortgagor, whether at public or private sale, forecloses all
equity of redemption as completely as a decree of court.

In re Grant, 303 B.R. 205, 209 (Bankr. D. Nev. 2003) (quoting Bryant v. Carson River Lumbering Co., 3
Nev. 313, 317-18 (1867)) (emphasis added).

1 As such, SFR is entitled to a declaration from this Court that the first deed of trust was
2 extinguished by the Association foreclosure sale, and SFR should have title quieted solely in its
3 name.

4 **E. The Sale Was Commercially Reasonable.**

5 In short, SFR is entitled to quiet title because there is no requirement of commercial
6 reasonableness in association non-judicial foreclosure sales conducted pursuant to NRS 116, but
7 even if there was, the price paid by SFR was commercially reasonable. Furthermore, although not
8 specifically alleged by the Bank and thus waived, there is nonetheless no evidence that fraud,
9 oppression or unfairness caused the purportedly “inadequate” price, and price alone is never
10 enough to unwind a sale.

11 As preliminary matter, NRS §116.31164, §116.31166 nor its surrounding provisions
12 contain a requirement that the sale be “commercially reasonable.”⁵⁸ However, to the extent this
13 Court engages in any analysis of the commercial reasonableness of the foreclosure sale, the
14 following must be considered.

15 When evaluating the commercial reasonableness of a sale, this Court has been instructed
16 that an allegation of inadequate sales price alone is insufficient to set aside a foreclosure sale:
17 “there must also be a showing of fraud, unfairness, or oppression.” Shadow Wood, 366 P.3d at
18 1105, (citing Long v. Towne, 98 Nev. 11, 13, 639 P.2d 528, 530 (1982)); see Golden, 79 Nev. at
19 504, 514, 387 P.2d at 995 (adopting the California rule that “inadequacy of price, **however gross**,
20 is not in itself a sufficient ground for setting aside a trustee’s sale legally made; there must be in
21 addition proof of some element of fraud, unfairness or oppression **as accounts for and brings**
22 **about the inadequacy of price**” (internal citations omitted) (emphasis added); see Bourne Valley,
23 80 F.Supp.3d at 1136. This has been recently reaffirmed again by a panel of the Nevada Supreme
24 Court, post Shadow Wood, stating in an unpublished order that “this court’s reaffirmation in
25 [Shadow Wood], that a low sales price in not a basis for voiding a foreclosure sale absent ‘fraud,
26

27 ⁵⁸ See Pro-Max, 117 Nev. at 95, 16 P.3d at 1077 (“where the language of a statute is plain and unambiguous,
28 and its meaning clear and unmistakable, there is no room for construction, and the courts are not permitted
to search for its meaning beyond the statute itself.”)

1 unfairness, or oppression. . . .” Centeno v. JPMorgan Chase Bank, N.A., Case No. 67365 (Nev.
2 Mar. 18, 2016) (unpublished Order Vacating and Remanding a denial of preliminary injunction
3 based in part on the district court’s determination that, based on price alone, the sale was
4 commercially unreasonable).⁵⁹

5 As will be shown below, not only can SFR show that the sale price itself was commercially
6 reasonable, but there is no evidence of fraud, unfairness or oppression that accounted for or brought
7 about an “inadequate” sales price. Golden, 79 Nev. at 504, 514.

8 *a. The Foreclosure Price was Sufficient.*

9 Any evaluation that does not consider the entirety of a property’s circumstances, including
10 the fact that it was sold at an association non-judicial foreclosure sale, cannot shed light on the
11 proper disposition value of a property.⁶⁰ As the Bourne Valley Court recognized, when assessing
12 commercial reasonableness of an association sale, the material facts affecting the specific market
13 at that time must be considered, including the split in the courts as to the interpretation of NRS
14 116.3116(2), and whether there was evidence of fraud, oppression or unfairness:

15 The commercial reasonableness here must be assessed as of the time the sale
16 occurred. Wells Fargo’s argument that the HOA foreclosure sale was commercially
17 unreasonable due to the discrepancy between the sale price and the assessed value
18 of the property ignores the practical reality that confronted the purchaser at the sale.
19 Before the Nevada Supreme Court issued SFR Investments, purchasing property at
20 an HOA foreclosure sale was a risky investment, akin to purchasing a lawsuit.
21 Nevada state trial courts and decisions from the United States District Court for the
22 District of Nevada were divided on the issue of whether HOA liens are true priority
23 liens such that their foreclosure extinguishes the first deed of trust on the property.
24 SFR Investments, 334 P.3d at 412. Thus, a purchaser at an HOA foreclosure sale
25 risked purchasing merely a possessory interest in the property subject to the first

21 ⁵⁹ Available at <http://caseinfo.nvsupremecourt.us/public/caseView.do?csIID=35567>, as Doc. 16-08672.

22 In that case, the price paid at the homeowners association’s auction was \$5,950.00. While the district court
23 did not establish a value for the property, on appeal the Bank argued that that the deed of trust secured a
24 loan for \$160,001.00 and the property later reverted to the Bank at its own auction for \$145,550.00. (See
25 Case No. 67365, Response to Appellant’s Pro se Appeal Statement, filed Feb. 17, 2016, available at
26 <http://caseinfo.nvsupremecourt.us/public/caseView.do?csIID=35567>, as Doc. 16-04982. . . .

27 Thus, the price paid at the association’s foreclosure sale in Centeno was approximately 4% of the credit bid
28 by the Bank at its subsequent auction.

⁶⁰ The Bank hired an expert who conducted a retrospective market analysis, and of course the market value
was higher than the price paid by the Association. SFR intends to file a Motion to Exclude the Bank’s expert
under NRS 50.275 and Hallmark v. Eldridge, 124 Nev. 492, 189 P.3d 646 (2008), based on the utter lack
of applicability of the expert’s market value appraisal to this forced sale transaction.

1 deed of trust. This risk is illustrated by the fact that title insurance companies
2 refused to issue title insurance policies on titles received from foreclosures of HOA
super priority liens absent a court order quieting title. (Mot. to Remand to State
Court (Doc. #6, Decl. of Ron Bloecker.) Given these risks, a large discrepancy

3 between the purchase price a buyer would be willing to pay and the assessed value
4 of the property is to be expected.

Bourne Valley, 80 F.Supp.3d at 1136.

5 Likewise, in BFP, the United States Supreme Court was analyzing whether the price
6 received at a mortgage foreclosure sale was less than “reasonably equivalent value” under the
7 bankruptcy code. Similar to the arguments made by the Bank in this case, the Chapter 11 debtor
8 in BFP argued that because the property sold for a fraction of its fair market value, the price paid
9 was not reasonable. The Court held that “a ‘reasonably equivalent value’ for foreclosed real
10 property is the price in fact received at the foreclosure sale, so long as all the requirements of the
11 State’s foreclosure law have been complied with.” BFP v. Resolution Trust Corporation, 511 U.S.
12 531, 545, 114 S.Ct. 1757 (1994). The Court explained that in a forced sale situation, “fair market
13 value cannot—or at least cannot always—be the benchmark[]’ used to determine reasonably
14 equivalent value. Id. at 537. This is so because the market conditions that generally lead to “fair
15 market value” do not exist in the forced sale context, where sales take place with significant
16 restrictions:

17 [M]arket value, as it is commonly understood, has no applicability in the forced-
18 sale context; indeed, it is the very antithesis of forced-sale value. ‘The market value
19 of ... a piece of property is the price which it might be expected to bring if offered
20 for sale in a fair market; not the price which might be obtained on a sale at public
21 auction or a sale forced by the necessities of the owner, but such a price as would
22 be fixed by negotiation and mutual agreement, after ample time to find a purchaser,
as between a vendor who is willing (but not compelled) to sell and a purchaser who
desires to buy but is not compelled to take the particular ... piece of property.’ In
short, ‘fair market value’ presumes market conditions that, by definition, simply do
not obtain in the context of a forced sale.

23 Id. at 537-538, quoting Black's Law Dictionary 971 (6th ed. 1990).

24 The Court recognized that property sold in a forced-sale context i.e. a foreclosure, “is
25 simply worth less [because] [n]o one would pay as much to own such property as he would pay to

26 ///

27 ///

28 ///

own real estate that could be sold at leisure and pursuant to normal marketing techniques.” Id. at 539. As the Court further noted,

Unlike most other legal restrictions, however, foreclosure has the effect of completely redefining the market in which the property is offered for sale; normal free-market rules of exchange are replaced by the far more restrictive rules governing forced sales. Given this altered reality, and the concomitant inutility of the normal tool for determining what property is worth (fair market value), the only legitimate evidence of the property's value at the time it is sold is the foreclosure-sale price itself.

Id. at 548-549 (emphasis in original).⁶¹

As can be seen from the above case law, any analysis that does not take into account that this was forced sale cannot accurately depict the value of the property.

The evidence shows that SFR was the highest bidder at a publicly held auction with multiple bidders. See Ex. A-3, at [Chase-Bell_NAS0203-205]; Ex. B, at ¶ 15; Ex. B-2. In other words, SFR paid more than any other bidder was willing to pay. As discussed in BFP, a publicly held auction is a method use to sell property at its current value as any person or entity, including the Bank, could have bid more to receive the foreclosure deed to the Property. Although the Bank may be disappointed in the resulting sale price, no other buyer present was willing to pay more based, in part, on the Bank's reluctance to accept Nevada law.

b. The Bank Has Not Presented Evidence of Fraud, Unfairness or Oppression that Brought About an “Inadequate” Sale Price.

Even if this Court finds the sale price to be “inadequate,” in order for the Court to overturn the sale based on price, the Bank must show that some fraud, oppression or unfairness brought about such “inadequate” price at the sale. As stated above, an allegation of inadequate sales price alone is insufficient to set aside a foreclosure sale; “there must also be a showing of fraud, unfairness, or oppression.” Shadow Wood, 366 P.3d at 1105, (citing Long, 98 Nev. at 13, 639 P.2d

⁶¹ Courts have extended the BFP analysis to tax-defaulted sales of real property with adherence to requirements of state law, where such statutes included public noticing or advertising of the sale and competitive bidding or auction procedures. See In re Tracht Gut, LLC, 503 B.R. 804, 815-818 (9th Cir. B.A.P. 2014); T.F. Stone v. Harper, 72 F.3d 466 (5th Cir. 1995); Kojima v. Grandote Int'l Ltd. Co., 252 F.3d 1146 (10th Cir. 2001). Regardless of the type of sale, however, the analysis still aptly explains how market value cannot be compared to a forced sale transaction.

1 at 530); see Golden, 79 Nev. at 504, 514, 387 P.2d at 995 (“inadequacy of price, **however gross**,
2 is not in itself a sufficient ground for setting aside a trustee’s sale legally made; there must be in
3 addition proof of some element of fraud, unfairness or oppression **as accounts for and brings**
4 **about the inadequacy of price**” (internal citations omitted) (emphasis added).) Important to note
5 is that the amount of the inadequacy in price cannot, by itself, allow this Court to set aside a trustee
6 sale. Id. Put simply, commercial reasonableness deals with looking at whether there was **conduct**
7 **in the sale process that led to the low price**, not simply comparing price to value. See Iama Corp.
8 v. Wham, 99 Nev. 730, 735-738, 669 P.2d 1076, 1079 (1983) (must look to the sale process, i.e.,
9 “whether proper notice was given, whether the bidding was competitive, and whether the sale was
10 conducted pursuant to . . . normal procedures”) (emphasis added).

11 Here, there are absolutely no allegations of fraud, oppression or unfairness proffered by the
12 Bank which brought about any inadequacy in price. The Association’s sale was publically noticed,
13 as required by statute; multiple bidders attended the auction; it is undisputed that neither the
14 homeowner nor the Bank paid an amount necessary to cure the lien before the sale. Furthermore,
15 the Association’s compliance with notice is not in question. Moreover, by failing to present any
16 **relevant** evidence of the property’s value at the time of the Association’s foreclosure, the Bank
17 has not even demonstrated an inadequacy in price relating to the sale.

18 In sum, there is no fraud, oppression or unfairness which accounted for and brought about
19 the price paid by SFR. Viewing the transaction as a whole, the sale was commercially reasonable,
20 and summary judgment should therefore be granted in favor of SFR.

21 **F. While Not Required, Even if There Were Irregularities with the Sale, these**
22 **Cannot be Imputed to SFR Because SFR is a Bona Fide Purchaser.**

23 While SFR is a BFP as to this Property, nothing under Nevada law requires a buyer at an
24 NRS 116 sale to be a BFP. Instead, this is merely a defense alleged by SFR in the event the Bank
25 claims a pre-sale dispute or irregularity occurred, as they allege in their complaint. In other words,
26 Shadow Wood stood for the proposition that if the Bank claims that a pre-sale dispute occurred
27 between it and the Association/NAS, and SFR had no knowledge of this pre-sale dispute, then
28 equity weighs in favor of SFR. “Where the complaining party has access to all the facts

1 surrounding the questioned transaction and merely makes a mistake as to the legal consequences
2 of his act, equity should normally not interfere, especially where the rights of third parties might
3 be prejudiced thereby.” Shadow Wood, 366 P.3d at 1116 (quoting Nussbaumer v. Sup. Ct. in &
4 for Yuma Cty., 107 Ariz. 504, 489 P.2d 843, 846 (1971).) So, essentially, even if there were any
5 irregularities with the Association sale, as long as these irregularities were not known to SFR,
6 they cannot be imputed to SFR, as SFR is a BFP.

7 A BFP purchases real property: (i) for value; and (ii) without notice of a competing or
8 superior interest in the same property. Berge v. Fredericks, 95 Nev. 183, 185, 591 P.2d 246, 247
9 (1979). A “purchaser for value” is one who has given “valuable consideration” as opposed to
10 receiving the property as a gift. Id. at 187, 248; Allen v. Webb, 87 Nev. 261, 266, 485 P.2d 677,
11 680 (1971) (“A specific finding of what the consideration was may be implied from the record.”).
12 Even if a purchaser may purchase a property for lower than the property’s value on the open
13 market, the fact that SFR paid “valuable consideration” is undisputed. Shadow Wood, 366 P.3d
14 at 1115 (citing Fair v. Howard, 6 Nev. 304, 308 (1871) (“the question is not whether the
15 consideration is adequate, but whether it is valuable”); see also Poole v. Watts, 139 Wash, App.
16 1018 (2007) (unpublished disposition) (stating that the fact that the foreclosure sale purchaser
17 purchased the property for a “low price” did not in itself put the purchaser on notice that anything
18 was amiss with the sale).) Further, notice by a potential purchaser that an association is
19 conducting a sale pursuant to NRS 116, and that the potential exists for challenges to the sale
20 “post hoc[,]” do not preclude that purchaser from BFP status. Shadow Wood, 366 P.3d at 1116.
21 As has been established, finality in foreclosure sales to bona fide purchasers is a must to avoid
22 chilled bidding. Moeller, 25 Cal.App.4th at 833, 30 Cal.Rptr.2d at 784. These continued attacks
23 by the lenders on the association sales causes the very issues with price that the lenders then
24 complain of in their attacks on commercial reasonableness. See Sec. B, supra.

25 In analyzing this issue, Nevada law includes another relevant presumption: “[t]hat a
26 person intends the ordinary consequences of that person’s voluntary act.” NRS 47.250(2).

27 In the present case, SFR paid valuable consideration for the Property at the foreclosure
28 sale. At the time of the sale, SFR had no notice of a competing or superior interest in the Property

1 where the public records showed only that (1) a deed of trust was recorded after the Association
2 perfected its lien by recording its declaration of CC&Rs, (2) there was a delinquency by the
3 homeowner, which resulted in the Association instituting foreclosure proceedings and after
4 complying with NRS Chapter 116, sold the Property at a public auction. Between the date the
5 Notice of Default was recorded and the date of the foreclosure sale—a time span of nearly two
6 years—the Bank never recorded a lis pendens or other document alleging any problems with the
7 foreclosure process or the foreclosure sale. Ex. B, ¶ 18. Additionally, SFR has no relationship with
8 the Association or the Association’s Agent, except as a purchaser of Property. Ex. B, ¶¶ 16, 17.
9 Therefore, nothing known to the Association or its Agent about any purported irregularities in the
10 foreclosure process could have been known by SFR. To that extent, the Bank has not alleged any
11 facts or introduced admissible evidence that SFR had any knowledge precluding it from BFP
12 status, other than an impotent deed of trust.

13 Thus, if this court is inclined to weigh equities, which it should not, it “must consider the
14 entirety of the circumstances that bear upon the equities.” Shadow Wood, 366 P.3d at 1114. These
15 would include not only any irregularities in the sale process by the Association or Association’s
16 agents, but the actions or (in)actions by the Bank and SFR’s BFP status. Id. As the Shadow Wood
17 court noted, “[c]onsideration of harm to potentially innocent third parties is especially pertinent
18 here where [the Bank] did not use the legal remedies available to it to prevent the property from
19 being sold to a third party. . . .” Id. at 1115, n.7. Here, the Bank failed to bring any evidence that
20 the Association foreclosure notices were not sent to it as required by statute. Further, the Bank
21 testified that it is not disputing receipt of the notice of sale. It is undisputed that the Bank here **did**
22 **not** (1) pay or attempt to pay the lien, (2) contact the Association or the Association’s agent prior
23 to the sale, (3) contact the Ombudsman, (4) record a lis pendens, (5) attend the sale, or (6) seek
24 judicial intervention to enjoin the sale. Ex. A-4, at 55:6-11, 55:18-56:17, and 58:7-9; Ex. A-5, at
25 Response to RFA Nos. 3, 9, 11, and 12; Ex. B, at ¶ 18. The Bank knew that without taking action
26 to stop the sale, the Association’s foreclosure would extinguish all junior interests in the Property;
27 *by allowing the sale to go forward, the Bank must have intended this consequence.* NRS
28 47.250(2) (emphasis added). On the other hand, SFR merely attended a publically noticed,

1 publically held foreclosure sale, and placed the winning bid at the auction. The Bank is seeking
2 yet another bail out for its poor business decisions.

3 While the Court should not get this far because of the absence of evidence of fraud,
4 oppression or unfairness, or irregularity with the sale process, if it were to weigh equities, the
5 equities lie in favor of SFR.

6 Title should be quieted in SFR's name and the Bank enjoined from taking any further
7 action to enforce its extinguished lien against the Property or further clouding SFR's title.

8 **G. SFR is Entitled to Summary Judgment on the Bank's Claim of Quiet Title**
9 **Because the Foreclosure Sale Was Commercially Reasonable.**

10 In seeking relief from the Court, the Bank's claim of Quiet Title fails because the
11 Association sale was held in a commercially reasonable manner and the Bank cannot to present
12 any evidence of fraud, oppression or unfairness which would have brought about what the Bank
13 claims is an "inadequate" sales price that would allow the Court to overturn the foreclosure sale.
14 Even if some irregularity of the sale existed, the Bank has not presented any evidence that would
15 defeat SFR's BFP status.

16 As such, for the reasons set forth above, the Bank's claim for Quiet Title must be defeated.

17 **H. SFR is Entitled to Summary Judgment Because the Bank's Unjust Enrichment**
18 **Claim is Without Merit.**

19 Here, the Bank asserts that SFR has benefitted from the Bank's payment of taxes and
20 insurance since the time of the Association sale. Bank's Amended Complaint, ¶ 58. However, the
21 Bank is barred from the making an unjust enrichment claim as it is barred by the voluntary payment
22 doctrine. "The voluntary payment doctrine law, which clearly provides that one who makes a
23 payment voluntarily, cannot recover it on the ground that he was under no legal obligation to make
24 the payment." Best Buy Stores v. Benderson-Wainberg Assocs., 668 F.3d 1019, 1030 (8th Cir.
25 2012). The Nevada Supreme Court has already weighed in on the issue regarding whether the
26 voluntary payment doctrine applies in Nevada to bar a property owner from recovering fees that it
27 paid to a community association and, if so, whether the property owners demonstrated an exception
28 to this doctrine by showing that the payments were made under business compulsion or in defense

1 of property. Nevada Association Services, Inc. v. The Eighth Judicial District, 130 Nev. ___, ___,
2 338 P.3d 1250 (2014). In NAS, the Nevada Supreme Court ruled that the voluntary payment
3 doctrine is a valid affirmative defense in Nevada. Id. at 1254. Because the voluntary payment
4 doctrine is an affirmative defense, the defendant bears the burden of proving its
5 applicability. Schwartz v. Schwartz, 95 Nev. 202, 206, 591 P.2d 1137, 1140 n. 2 (1979). Once a
6 defendant shows that a voluntary payment was made, the burden shifts to the plaintiff to
7 demonstrate that an exception to the voluntary payment doctrine applies. Randazo v. Harris
8 Palatine, N.A., 262 F.3d 663, 666 (7th Cir. 2001). There are two exceptions to the voluntary
9 payment doctrine. These exceptions are (1) coercion or duress caused by a business necessity and
10 (2) payment in the defense of property.

11 As such, the burden shifts to the Bank to prove that one of the exceptions applies. Here,
12 the Bank was under no compulsion or obligation to pay any expenses on the Property. Just like
13 any other homeowner, it was SFR's duty and obligation to pay obligations such as the taxes,
14 insurance and assessments, not the Bank's. Had the Bank simply paid the assessments prior to the
15 sale, we would not be here today. Why it would pay expenses on the Property post-sale is
16 inexplicable.

17 Additionally, the Bank's payments were not in defense of the property. That is because the
18 Bank cannot show that SFR failed or refused to pay any assessment, taxes or other expense of the
19 property. Here, SFR has been paying the homeowner's association assessments since it acquired
20 the Property. Ex. B, ¶ 19. Furthermore, to the extent the Bank voluntarily made payments for
21 insurance, SFR has not benefitted from this unless the Bank made SFR an additional insured.
22 Additionally, it is presumed that the Bank voluntarily paid the property taxes, which was
23 unnecessary. Furthermore, the Bank has provided no evidence that SFR would not have paid the
24 tax bill if given the opportunity.

25 Lastly, under Nevada law, in order to prevail on an unjust enrichment claim, the Bank must
26 show that SFR retained the money or property of the Bank against fundamental principles of justice
27 or equity and good conscience. Asphalt Products v. All Star Ready Mix, 111 Nev. 799, 802, 898
28 P.2d 699, 701 (1995). Here, the subject Property was never property belonging to the Bank.

1 Instead, the Property merely represented collateral that secured the first deed of trust until that
2 security interest was extinguished by the Association foreclosure sale. As such, SFR has not
3 retained property belonging to the Bank. Even if this Court were to consider a collateral interest
4 as ownership interest in the Property, for all the reasons stated above, the Association foreclosure
5 sale extinguished the deed of trust, and therefore there is no inequity or injustice as SFR has
6 maintained possession of property it rightfully purchased at the Association sale.

7 Therefore, SFR is entitled to summary judgment on the Bank's claim for unjust enrichment.

8 **I. The Bank's Lis Pendens Must be Expunged.**

9 As demonstrated above, the Bank does not have a recognizable interest in the Property, as
10 the FDOT was extinguished at the Association foreclosure sale. Thus, because the Bank does not
11 state a viable claim for relief to quiet title, its lis pendens recorded against the Property on June
12 30, 2014 must be expunged. Ex. A-6.

13 NRS 14.015 sets forth the requirements for maintaining a lis pendens on a property. The
14 relevant portion of the statute provides:

15 2. Upon 15 days' notice, the party who recorded the notice of pendency of the
16 action must appear at the hearing and, through affidavits and other evidence which
17 the court may permit, establish to the satisfaction of the court that:

18 (a) The action is for the foreclosure of a mortgage upon the real property
19 described in the notice or **affects the title or possession of the real**
20 **property** described in the notice; (b) The action was **not brought in bad**
21 **faith** or for an improper motive; (c) The party who recorded the notice **will**
22 **be able to perform any conditions precedent** to the relief sought in the
23 action insofar as it affects the title or possession of the real property; and (d)
24 The party who recorded the notice **would be injured by any transfer of**
25 **an interest in the property** before the action is concluded.

26 3. In addition to the matters enumerated in subsection 2, the party who recorded
27 the notice must establish to the satisfaction of the court either:

28 (a) That the party who recorded the notice is **likely to prevail in the action**;
or (b) That the party who recorded the notice **has a fair chance of success**
on the merits in the action and the **injury described in paragraph (d) of**
subsection 2 would be sufficiently serious that the hardship on him or

///
28

her in the event of a transfer would be **greater than the hardship on the defendant** resulting from the notice of pendency, and that if the party who recorded the notice prevails he or she will be entitled to relief affecting the title or possession of the real property.

NRS 14.015 (emphasis added).

The purpose of this requirement is to give notice to future purchasers or encumbrancers that title to the property is the subject of litigation. NRS 14.010(3) (“From the time of recording only . . . the pendency of the action is constructive notice to a purchaser or encumbrancer of the property affected thereby.”). Nevada law requires a plaintiff to file a lis pendens whenever it files an action affecting title or possession of real property at the time of filing its complaint. See NRS 14.010. However, when no viable claims relating to real property survive a motion for summary judgment, a plaintiff cannot maintain a lis pendens.

Here, the Bank has no viable claim and should not be allowed to continue to cloud SFR’s title. Thus, in addition to quieting title in favor of SFR, the Court should expunge the lis pendens recorded by the Bank against the Property.

IV. CONCLUSION

Based on the above, the Court should enter summary judgment against the Bank and in favor of SFR, stating that (1) SFR is the title holder of the Property; (2) the first deed of trust was extinguished when the Association foreclosed its lien containing super priority amounts, thus making the Bank’s purported interest in the first deed of trust invalid; and (3) the Bank, and any agents acting on its behalf, are permanently enjoined from any sale or transfer that would affect SFR’s title to the Property.

DATED this 22nd day of July, 2016.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of July, 2016, pursuant to NRCP 5(b), I served via the Eighth Judicial District Court electronic filing system the foregoing **SFR INVESTMENTS POOL 1, LLC’S MOTION FOR SUMMARY JUDGMENT**, to the following parties:

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