Case No. 71822

IN THE SUPREME COURT OF NEVADA

JPMORGAN CHASE BANK N.A.,

Appellant,

vs.

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

Respondent.

APPEAL

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

RESPONDENT'S APPENDIX
VOLUME 2

JACQUELINE A. GILBERT, ESQ.
Nevada Bar No. 10593

DIANA CLINE EBRON, ESQ.
Nevada Bar No. 10580

KIM GILBERT EBRON
7625 Dean Martin Drive, Suite 110
Las Vegas, NV 89139
E-mail: jackie@KGElegal.com
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Attorneys for Respondent
SFR Investments Pool 1, LLC

ALPHABETICAL INDEX

Vol.	Tab	Date Filed	Document	Bates Number
1 & 2	2	7/29/16	JPMorgan Chase Bank's Motion for Summary Judgement without Exhibits	RA_0277
1	1	7/22/16	SFR Investments Pool 1, LLC's Motion for Summary Judgment and exhibits	RA_0001

CHRONOLOGICAL INDEX

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1 & 2	2	7/29/16	JPMorgan Chase Bank's Motion for Summary Judgement without Exhibits	RA_0277

REQUEST NO. 3:

Admit that you did not attend the Association foreclosure sale on May 31, 2013.

RESPONSE TO REQUEST NO. 3:

Admit.

REQUEST NO. 4:

Admit that you are the current beneficiary of the First Deed of Trust.

RESPONSE TO REQUEST NO. 4:

Objection. Request No. 4 is vague and ambiguous as to the term "beneficiary," which is not defined and is susceptible to multiple interpretations in the context of this request.

Subject to and without waiving any objection, Chase admits that that it is the current beneficiary of record of the First Deed of Trust in its capacity as loan servicer for the owner of the First Deed of Trust, Federal National Mortgage Association ("Fannie Mae").

REQUEST NO. 5:

Admit that you or your predecessor in interest to the First Deed of Trust received a notice of default from the Association or its agents.

RESPONSE TO REQUEST NO. 5:

Objection. Request No. 5 is overly broad and unduly burdensome as to time and scope. Request No. 5 is also compound. Request No. 5 further calls for Chase to speculate regarding notices received by third parties for which Chase is not responsible.

Subject to and without waiving any objection, Chase denies that it received a notice of default from the Association or its agents prior to May 31, 2013, the date of the Association's alleged foreclosure sale.

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

REQUEST NO. 6:

Admit that you have not transferred your interest in the First Deed of Trust to HUD.

RESPONSE TO REQUEST NO. 6:

Admit.

REQUEST NO. 7:

Admit that you paid less than the face value of the note for your interest in the First Deed of Trust.

RESPONSE TO REQUEST NO. 7:

Objection. Request No. 7 seeks information not relevant to the claims and defenses at issue in this lawsuit. Request No. 7 also improperly assumes facts that have yet to be established to the extent it suggests that Chase purchased an interest in the First Deed of Trust through a transaction that involved no other purchased interests. Request No. 7 is vague and ambiguous as to the term "face value," which is undefined and is susceptible to multiple interpretations given that the Note provides for the payment of a principal sum, as well as interest. Request No. 7 also seeks information that is confidential and proprietary. Disclosing such information would be unduly burdensome given the needs of this case because it would reveal confidential legal advice or business strategies that would diminish Chase's competitive advantage.

Subject to and without waiving any objection, Chase states it cannot answer and therefore denies Request No. 7.

REQUEST NO. 8:

Admit that you or your predecessor in interest to the First Deed of Trust received a notice of sale from the Association or its agents.

RESPONSE TO REQUEST NO. 8:

Objection. Request No. 8 is overly broad and unduly burdensome as to time and scope. Request No. 8 further calls for Chase to

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speculate regarding notices received by third parties for which Chase is not responsible.

Subject to and without waiving any objection, Chase denies that it received a notice of sale from the Association or its agents prior to May 31, 2013, the date of the Association's purported foreclosure sale.

REQUEST NO. 9:

Admit that you did not make any payment to the Association towards the Association's lien on the Property.

RESPONSE TO REQUEST NO. 9:

Objection. Request No. 9 is vague and ambiguous as to the term "Association's lien," which is susceptible to multiple meanings in the context of this case.

Subject to and without waiving any objection, Chase admits Request No. 9.

REQUEST NO. 10:

Admit that you did not take any steps to ensure the Association received assessments owed by the Borrower.

RESPONSE TO REQUEST NO. 10:

Objection. Request No. 10 is overly broad and unduly burdensome as to time and scope. Request No. 10 is also vague and ambiguous as to the term "any steps." Request No. 10 seeks information that is not relevant to the claims and defenses at issue in this lawsuit. Chase further objects to Request No. 10 to the extent it suggests that Chase had any legal obligations or duty to ensure that the Association received assessments owed by the Borrower.

Subject to and without waiving any objection, Chase denies Request No. 10.

REQUEST NO. 11:

Admit that you did not attempt to contact the Association or its agents to determine the super priority portion of the Association's lien on the Property.

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(702) 471-7000 FAX (702) 471-7070

RESPONSE TO REQUEST NO. 11:

Objection. Request No. 11 is overly broad and unduly burdensome as to time and scope. Request No. 11 is also as to the term "Association's lien," which is susceptible of multiple meanings in the context of this case. Chase further objects to Request No. 11 the extent it suggests that Chase had any legal obligation or duty to contact the Association to determine the super-priority portion of the Association's alleged lien.

Subject to and without waiving any objection, Chase admits that after a reasonable investigation of its business records, to the best of its knowledge and belief, it has not located any records showing that it contacted the Association or its agents to determine the super-priority portion of the Association's alleged lien on the Property prior to May 31, 2013, the date of the Association's alleged foreclosure sale. Discovery and Chase's investigation are ongoing, and Chase reserves the right to amend this answer.

REQUEST NO. 12:

Admit that you failed to cure the super priority portion of the Association's lien before the Association foreclosure sale.

RESPONSE TO REQUEST NO. 12:

Objection. Request No. 12 assumes that the Association's lien included a "super priority portion," a fact that has yet to be established in this case. Request No. 12 is also vague and ambiguous as to the term "Association's lien," which is susceptible of multiple meanings in the context of this case. Chase further objects to Request No. 12 to the extent it suggests that Chase had any legal obligation or duty to cure.

Subject to and without waiving any objection, Chase admits that after a reasonable investigation of its business records, to the best of its knowledge and belief, it has not located any records showing that it paid any part of the Association's purported lien prior to May 31, 2013, the date of the Association's alleged foreclosure

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sale. Discovery and Chase's investigation are ongoing, and Chase reserves the right to amend this answer.

REQUEST NO. 13:

Admit that you were aware that the Property was located within the Association and was subject to the Association's declaration of covenants, conditions and restrictions before you obtained an interest in the Property.

RESPONSE TO REQUEST NO. 13:

Objection. Request No. 13 is compound. Request No. 13 is also vague and ambiguous as to the terms "aware" and "interest," which are not defined and susceptible to multiple interpretations in the context of this request. Request No. 13 is further vague and ambiguous as to which "declaration of covenants, conditions and restrictions" it refers as there are multiple declarations of covenants, conditions and restrictions recorded on the Property.

Subject to and without waiving any objection, Chase is unable to answer and therefore denies Request No. 13.

REQUEST NO. 14:

Admit that you were aware that the Borrower had not paid the Association assessments as required by the Association's declaration of CC&R's before you obtained an interest in the Property.

RESPONSE TO REQUEST NO. 14:

Objection. Request No. 14 is overly broad and unduly burdensome as to time and scope. Request No. 14 is also vague and ambiguous as to the terms "aware" and "interest," which are not defined and are susceptible to multiple interpretations in the context of this request. Request No. 14 also assumes that the Borrower did not pay "Association assessments as required by the Association's declaration of CC&Rs before [Chase] obtained an interest in the Property," a fact that has yet to be established in this case.

Subject to and without waiving any objection, Chase denies Request No. 14.

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REQUEST NO. 15:

Admit that you were aware before you took an interest in the Property that your security interest could be extinguished if a lien with a higher priority foreclosed.

RESPONSE TO REQUEST NO. 15:

Objection. Request No. 15 is vague and ambiguous as to the term "aware," which is not defined and is susceptible to multiple interpretations in the context of this request. Request No. 15 also calls for a bare legal conclusion.

Subject to and without waiving this objection, Chase denies Request No. 15.

REQUEST NO. 16:

Admit that the portion of the association's lien had priority over your First Deed of Trust.

RESPONSE TO REQUEST NO. 16:

Deny.

REQUEST NO. 17:

Admit that you have servicing guidelines requiring you and your agents to protect your lien priority by paying association liens.

RESPONSE TO REQUEST NO. 17:

Objection. Request No. 17 is overly broad and unduly burdensome as to time and scope. Request No. 17 is also vague and ambiguous as to the terms "guidelines" and "association liens." Request No. 17 calls for a legal conclusion and does not "relate to statement or opinions of fact or the application of law to fact" as required by N.R.C.P. 36. Request No. 17 also seeks information that is not relevant to the claims and defenses at issue in this lawsuit. Request No. 17 seeks information that is confidential and proprietary. Disclosing such information would be unduly burdensome given the needs of this case because it would reveal confidential legal advice or business strategies that would diminish Chase's competitive advantage.

Subject to and without waiving any objection, Chase states it cannot answer and therefore denies Request No. 17.

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REQUEST NO. 18:

Admit that the federal government has no contractual interest in the First Deed of Trust.

RESPONSE TO REQUEST NO. 18:

Objection. Request No. 18 is vague and ambiguous as to the term "contractual interest," which is not defined and susceptible to multiple interpretations in the context of this request.

Subject to and without waiving any objection, Chase denies Request No. 18.

REQUEST NO. 19:

Admit that the federal government has no beneficial interest in the First Deed of Trust.

RESPONSE TO REQUEST NO. 19:

Objection. Request No. 19 is vague and ambiguous as to the term "beneficial interest," which is not defined and susceptible to multiple interpretations in the context of this request.

Subject to and without waiving any objection, Chase denies Request No. 19.

REQUEST NO. 20:

Admit that the federal government does not insure the loan secured by the First Deed of Trust.

RESPONSE NO. 20:

Objection. Request No. 20 is vague and ambiguous as to the term "insure," which is not defined and susceptible to multiple interpretations in the context of this request.

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Subject to and without waiving any objection, Chase admits Request No. 20.

Date: May 5, 2016

BALLARD SPAHR LLP

By: _____

Abran E. Vigil
Lindsay C. Demaree
Holly Ann Priest
BALLARD SPAHR LLP
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 N.R.C.P. 5(b), I HEREBY CERTIFY that on May 5, 2016, I served a true and correct copy of the foregoing CHASE, N.A.'S RESPONSES TO SFR INVESTMENT POOL 1, LL'S REQUEST FOR ADMISSIONS, on the following parties in the manner set forth below:

HOWARD C. KIM
DIANA CLINE EBRON
JACQUELINE A. GILBERT
Kim Gilbert Ebron
7625 Dean Martin Drive, Suite 100
Las Vegas, Nevada 89139

Attorneys for SFR Investments Pool 1, LLC

[ ] HAND DELIVERY

[ ] E-MAIL TRANSMISSION

[ ] U.S. MAIL, POSTAGE PREPAID

[XX] 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

Ex. A-6

EXHIBIT A-6

Ex. A-6

Inst #: 20140630-0000844
Fees: $18.00
N/C Fee: $0.00
06/30/2014 08:59:34 AM
Receipt #: 2072945
Requestor:
TIFFANY & BOSCO (LEGAL WING
Recorded By: RNS Pgs: 3
DEBBIE CONWAY
CLARK COUNTY RECORDER

(3)

RECORDING COVER PAGE

Must be typed or printed clearly in black ink only.

APN# 177-12-410-074
11 digit Assessor's Parcel Number may be obtained at:
http://redrock.co.clark.nv.us/assrrealprop/ownr.aspx

TITLE OF DOCUMENT (DO NOT Abbreviate)

Notice Of Lis Penens 5441

Title of the Document on cover page must be EXACTLY as it appears on the first page of the document to be recorded.

Recording requested by:

Gregory L. Wilde, Esq.

Return to:

Name Tiffany & Bosco, P.A.

Address 212 South Jones Boulevard

City/State/Zip Las Vegas, NV 89107

This page provides additional information required by NRS 111.312 Sections 1-2.

An additional recording fee of $1.00 will apply.

To print this document properly—do not use page scaling.

P:\Recorder\Forms 12_2010

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

TIFFANY & BOSCO P.A.

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

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. XVIII

NOTICE OF LIS PENDENS

Notice is hereby given that Plaintiff JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, a national association, claims an interest in the following real property located in Clark County, Nevada:

APN: 177-12-410-074

Common Description: 2824 Begonia Ct. Henderson, NV 89074

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Legal Description:

All that certain real property situated in the County of Clark, State of Nevada, described as follows:

Parcel I:

Building No. 2-4A of Unit No. 4 of EASTBRIDGE GARDENS, as shown by map thereof on file n Book 27 of Plats, Page 76, in the Office of the County Recorder of Clark County, Nevada

Parcel II:

An undivided interest in and to the common area as apportioned to said unit in said building as described in the covenants, conditions and restrictions for said subdivision.

The Plaintiff's claims are based on Declaratory Relief and Quiet Title. For additional information, see the Complaint filed in the above-entitled action.

DATED this 24th day of June, 2014.

TIFFANY & BOSCO, P.A.

/s/ Gregory L. Wilde
By: _____
Gregory L. Wilde, Esq.
212 South Jones Boulevard
Las Vegas, Nevada 89107
Attorneys for Plaintiff

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

Ex. A-7

EXHIBIT A-7

Ex. A-7

(3)

Inst #: 20150504-0002526
Fees: $19.00
N/C Fee: $0.00
05/04/2015 03:08:00 PM
Receipt #: 2409218
Requestor:
CORELOGIC
Recorded By: BSMITH Pgs: 3
DEBBIE CONWAY
CLARK COUNTY RECORDER

RECORDING REQUESTED BY:
JPMORGAN CHASE BANK, N.A.

WHEN RECORDED MAIL TO:
CORELOGIC
450 E BOUNDARY ST
CHAPIN, SC 29036
Case Nbr: 32420324
Ref Nbr: 1519337748

APN: **177-12-410-074**

REQUEST FOR NOTICE PURSUANT TO NRS 116.31168

JPMorgan Chase Bank, N.A. ("JPMorgan Chase") is attorney-in-fact and servicer the Deed of Trust recorded **11/25/2002**, as Instrument Number **20021125-02874** in the Recorder's office, County of **Clark**, State of Nevada, which identified **KYLEEN BELL, AN UNMARRIED WOMAN** as Borrower/Grantor, **PIONEER NATIONAL TITLE OF NEVADA, INC.** as the Trustee, and **REPUBLIC MORTGAGE LLC** as the Lender and Mortgage Electronic Registration Systems, Inc. ('MERS'), acting solely as a nominee for Lender and Lender's successors and assigns as parties thereto.

The above referenced Deed of Trust encumbers the real property commonly known as **2824 BEGONIA COURT, HENDERSON, NV, 89074**, APN **177-12-410-074**, which is described as follows:

"SEE EXHIBIT 'A' ATTACHED HERETO"

As of the date of recording this Request for Notice, the name of the unit's owner is **KYLEEN BELL, AN UNMARRIED WOMAN**.

JPMorgan Chase hereby demands, in writing, all notices against said real property required to be mailed or recorded pursuant to NRS Chapters 116 and 107, including without limitation, any Notice of Delinquent Assessment, Notice of Default and Election to Sell, or Notice of Sale.

This Request for Notice is directed to all common interest community/communities in which the subject real property is located, including, but not limited to:
EASTBRIDGE GARDEN HOMEOWNERS ASSOCIATION
Colonial Property Management
8595 S. Eastern Avenue, Las Vegas, NV 89123

The JPMorgan Chase demands that written notice be sent to the following address:

CHASE RECORDS CENTER
HOA CORRESPONDENCE
LA4-5555
700 KANSAS LANE
MONROE, LA 71203

In witness whereof JPMorgan Chase Bank, N.A. caused this instrument to be executed this 14 day of April, 205

JPMorgan Chase Bank, N.A. as attorney-in-fact and servicer for MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE FOR REPUBLIC MORTGAGE LLC

Lashayla Staten (Signature)

Lashayla Staten (Printed Name)

Vice President (Title)

STATE OF Louisiana)
) ss
COUNTY OF Ouachita Parish)

On April 14, 205, this instrument was acknowledged before me, by Lashayla Staten, as Vice President for JPMorgan Chase Bank, N.A. personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument and he/she executed the same in his/her authorized capacity on behalf of the entity upon which the he/she acted.

WITNESS my hand and official seal.

NOTARY PUBLIC'S SIGNATURE
WANDA INEZ KINSER

EXHIBIT 'A'

PARCEL I:

BUILDING NO. 2 - 4A OF UNIT NO. 4 OF EASTBRIDGE GARDENS, AS SHOWN BY MAP THEREOF ON FILE N
BOOK 27 OF PLATS, PAGE 76, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA

PARCEL II:

AN UNDIVIDED INTEREST IN AND TO THE COMMON AREA AS APPORTIONED TO SAID UNIT IN SAID BUILDING AS DESCRIBED
IN THE COVENANTS, CONDITIONS AND RESTRICTIONS FOR SAID SUBDIVISION.

EXHIBIT B

DECLARATION OF CHRISTOPHER HARDIN IN SUPPORT OF SFR INVESTMENTS POOL 1, LLC'S MOTION FOR SUMMARY JUDGMENT

I, Christopher Hardin, declare as follows:

1. I am over the age of eighteen years old and competent to testify.

2. I am a resident of Clark County, Nevada.

3. Unless otherwise stated, I have personal knowledge of the facts set forth in this declaration, and for those facts stated on information and belief, I believe them to be true.

4. SFR maintains records related to real property located at **2824 Begonia Court, Henderson, NV 89074; Parcel No. 177-12-410-074** (the "Property"). As manager of SFR, I am familiar with the type of records maintained by SFR. I have personal knowledge of SFR's procedure for obtaining and keeping these records, which are kept and maintained in the ordinary course of SFR's business.

5. I am the manager at SFR Investments Pool 1, LLC ("SFR").

6. I make this declaration in support of SFR's Motion for Summary Judgment.

7. As part of my duties as the manager for SFR, I have attended and bid on real property at multiple public foreclosure auctions held on behalf of homeowners' associations by their agents.

8. Based on NRS 116.3116(2), it was my understanding and belief that the homeowner's association liens being foreclosed upon at the auctions I attended include amounts that were prior to any first security interest recorded on the properties.

9. Typically, prior to attending these auctions, I researched which properties would be available for sale through searches on Foreclosure Radar, Nevada Legal News and Clark County Legal News.

10. Based on a review of SFR's business records, on May 31, 2013, I attended a public foreclosure auction of the Property conducted by Nevada Association Services, Inc. ("NAS") on behalf of Eastbridge Gardens Condominiums (the "Association").

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

11. Based on a review of SFR's business records, at the publicly noticed auction, I placed the highest bid for $10,100.00, which I paid on behalf of SFR. A true and correct copy of the cashier's check and sales receipt is attached hereto as **Exhibit B-1**.

12. After the auction, SFR received a Foreclosure Deed. A true and correct copy of the Association Foreclosure Deed is attached hereto as **Exhibit B-2**.

13. SFR has no reason to doubt the recitals in the Association Foreclosure Deed.

14. If there were any issues with delinquency or noticing, none of these were communicated to SFR before the sale.

15. I never attended a sale where there was only one qualified bidder in attendance.

16. Neither SFR nor I have any relationship with or interest in the Association other than now owning property within the community.

17. Neither SFR nor I have any relationship with or interest in NAS, outside of SFR's attendance at auctions, bidding and, occasionally, purchasing properties at publically-held auctions conducted by NAS.

18. Based on my research, there were no lis pendens or release of the super-priority portion of the Association's lien recorded against the Property prior to SFR purchasing the Property.

19. SFR has been paying the Association's assessments since SFR acquired the Property.

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

Dated this 12th day of July, 2016.

Christopher Hardin

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

Ex. B-1

EXHIBIT B-1

Ex. B-1

PURPOSE/REMITTER: SFR INVESTMENTS POOL 1 LLC

U.S. bank

CASHIER'S CHECK No. 7107504793

93-38
929

DATE: MAY 31, 2013

PAY TEN THOUSAND ONE HUNDRED DOLLARS AND 00 CENTS

$ 10,100.00

TO THE ORDER OF: N A S

Location: 7107 RAINBOW & SAHARA

U.S. Bank National Association
Minneapolis, MN 55480

NON NEGOTIABLE

AUTHORIZED SIGNATURE

370

BARLAND CLARKE 80748 (05/10) 1051111S

RA_0270

IF THIS INSTRUMENT IS DESIGNATED ON ITS FACE AS A MONEY ORDER THE FOLLOWING APPLIES:

TERMS OF THIS MONEY ORDER

PURCHASER'S AGREEMENT:

You, the purchaser, agree to immediately complete this Money Order by filling in the front of the Money Order, signing it, and addressing it at the bottom. The terms of this Money Order bind you, your heirs, or others who receive this Money Order from you.

LIMITED RECOURSE:

The Money Order will not be paid if it has been forged, altered or stolen, and recourse is only against the endorser. This means that persons receiving this Money Order should accept it only from those known to them and against whom they have effective recourse.

NEVADA ASSOCIATION SERVICES, INC.
702.804.8885 Tel 702.804.8887 Fax
6224 W. Desert Inn Rd., Las Vegas, NV 89146

RECEIPT OF FUNDS AND INSTRUCTIONS

Address: 2824 Begonia Court Henderson, NV 89074

T.S. No. 05889 Date 5/31/13

Check No.	Name of Bank	Amount
1109493	US Bank	$ 10,100.00
		$
		$
		$

Total of Cash Received $

Opening Bid $ 10,100.00 Total Received $ 10,100.00

Successful Bid $ 10,100.00

Refund Amount $ 0

Refund Payable to

Received By Buyers Signature

Buyers Name Drivers License No. [redacted]

Title to Property to Be Vested As Follow: SFR Investments Pool 1, LLC

Address 6020 Paradise Rd B-214 LV, NV 89119

Phone Number

Number of Bidders 2

Number of Witnesses 30

Ex. B-2

EXHIBIT B-2

Ex. B-2

Inst #: 20130610002206
Fees: $18.00 N/C Fee: $0.00
RPTT: $188.70 Ex: #
06/10/2013 02:12:20 PM
Receipt #: 1649146
Requestor:
SFR INVESTMENTS POOL 1 LLC
Recorded By: SUO Pgs: 3
DEBBIE CONWAY
CLARK COUNTY RECORDER

Please mail tax statement and
when recorded mail to:
S F R Investments Pool 1, LLC
5030 Paradise Road, B-214
Las Vegas, NV 89119

FORECLOSURE DEED

APN # 177-12-410-074
First American Title Nevada/NDTS
#5986048

NAS # N65839

The undersigned declares:

Nevada Association Services, Inc., herein called agent (for the Eastbridge Gardens Condominiums), was the duly appointed agent under that certain Notice of Delinquent Assessment Lien, recorded April 1, 2011 as instrument number 0001371 Book 20110401, in Clark County. The previous owner as reflected on said lien is Kyleen T Bell. Nevada Association Services, Inc. as agent for Eastbridge Gardens Condominiums does hereby grant and convey, but without warranty expressed or implied to: S F R Investments Pool 1, LLC (herein called grantee), pursuant to NRS 116.31162, 116.31163 and 116.31164, all its right, title and interest in and to that certain property legally described as: Eastbridge Gardens, Plat Book 27, Page 76, Unit 4, Bldg 2-4A Clark County

AGENT STATES THAT:
This conveyance is made pursuant to the powers conferred upon agent by Nevada Revised Statutes, the Eastbridge Gardens Condominiums governing documents (CC&R's) and that certain Notice of Delinquent Assessment Lien, described herein. Default occurred as set forth in a Notice of Default and Election to Sell, recorded on 9/21/2011 as instrument # 0000506 Book 20110921 which was recorded in the office of the recorder of said county. Nevada Association Services, Inc. has complied with all requirements of law including, but not limited to, the elapsing of 90 days, mailing of copies of Notice of Delinquent Assessment and Notice of Default and the posting and publication of the Notice of Sale. Said property was sold by said agent, on behalf of Eastbridge Gardens Condominiums at public auction on 5/31/2013, at the place indicated on the Notice of Sale. Grantee being the highest bidder at such sale, became the purchaser of said property and paid therefore to said agent the amount bid $10,100.00 in lawful money of the United States, or by satisfaction, pro tanto, of the obligations then secured by the Delinquent Assessment Lien.

Dated: May 31, 2013

By Elissa Hollander, Agent for Association and Employee of Nevada Association Services

STATE OF NEVADA)
COUNTY OF CLARK)

On May 31, 2013, before me, M. Blanchard, personally appeared Elissa Hollander personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged that he/she executed the same in his/her authorized capacity, and that by signing his/her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and seal.

(Seal)

(Signature)

M. BLANCHARD
Notary Public, State of Nevada
Appointment No. 09-11646-1
My Appt. Expires Nov. 5, 2013

M. Blanchard

STATE OF NEVADA
DECLARATION OF VALUE

1. Assessor Parcel Number(s)
   a. 177-12-410-074
   b. _____
   c. _____
   d. _____
2. Type of Property:
   a. ☐ Vacant Land b. ☐ Single Fam. Res.
   c. ☑ Condo/Twnhse d. ☐ 2-4 Plex
   e. ☐ Apt. Bldg f. ☐ Comm'l/Ind'l
   g. ☐ Agricultural h. ☐ Mobile Home
   ☐ Other

FOR RECORDERS OPTIONAL USE ONLY
Book_____ Page:_____
Date of Recording: _____
Notes:

3.a. Total Value/Sales Price of Property $ 36531
b. Deed in Lieu of Foreclosure Only (value of property) (_____)
c. Transfer Tax Value: $ 36531
d. Real Property Transfer Tax Due $ 188.70

4. **If Exemption Claimed:**
   a. Transfer Tax Exemption per NRS 375.090, Section_____
   b. Explain Reason for Exemption: _____

5. Partial Interest: Percentage being transferred: 100 %

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

Signature _____ Capacity: NAS Employee/Agent for HOA

Signature _____ Capacity: _____

SELLER (GRANTOR) INFORMATION (REQUIRED)	**BUYER (GRANTEE) INFORMATION (REQUIRED)**
Print Name: Nevada Association Services	Print Name: S F R Investments Pool 1, LLC
Address: 6224 W. Desert Inn Road	Address: 5030 Paradise Road, B-214
City: Las Vegas	City: Las Vegas
State: NV Zip: 89146	State: NV Zip: 89119

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

Print Name:	Escrow #
Address:	
City:	State: Zip:

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

SFR26

TAB 2

Abran E. Vigil
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Attorneys for Plaintiff and Counter-Defendant JPMorgan Chase Bank, N.A.

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 I through X, ROE CORPORATIONS I through X, inclusive, Defendants.	CASE NO. A-13-692202-C DEPT NO. XXIV
SFR INVESTMENTS POOL 1, LLC a Nevada limited liability company, Counter-Claimant/Cross-Claimant, vs. JPMORGAN CHASE BANK N.A., a national association; KYLEEN T. BELL, an individual; DOES I through X, ROE CORPORATIONS I through X, inclusive, Counter-Defendant/Cross Defendants.	

JPMORGAN CHASE BANK, N.A.'S MOTION FOR SUMMARY JUDGMENT

JPMorgan Chase Bank, N.A. ("Chase") hereby moves for summary judgment and an order quieting title to the subject property in favor of Chase. This Motion for Summary Judgment

("Motion") is based on Rule 56 of the Nevada Rules of Civil Procedure ("N.R.C.P."), the following memorandum of points and authorities, the appendix of exhibits, the pleadings and papers on file, and any oral argument heard by the Court.

DATED: July 29, 2016.

By: _____

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Holly Ann Priest
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NOTICE OF MOTION

Please take notice that the undersigned will bring the foregoing Motion for Summary Judgment on for hearing before the above-entitled Court on the 01 day of SEPTEMBER, 2016, at the hour of 9:00 o'clock A .m. on said date, in Department 24, or as soon afterwards as counsel can be heard.

DATED this 29th day of July, 2016.

By: _____
Abran E. Vigil
Nevada Bar No. 7548
Holly Ann Priest
Nevada Bar No. 13226
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION.

In this action for quiet title and declaratory relief, SFR Investments Pool 1, LLC ("SFR"), alleges that it purchased the subject property at a homeowners association foreclosure sale, free and clear of a first deed of trust encumbering the property. Chase is the beneficiary of record of that deed of trust and the contractually authorized servicer for Federal National Mortgage Association ("Fannie Mae"), the owner of the deed of trust.

SFR's claim for an interest in the property free and clear of the deed of trust is precluded by federal statute. In July 2008, Congress passed the Housing and Economic Recovery Act of 2008 ("HERA"), Pub. L. No. 110-289, 122 Stat. 2654, codified at 12 U.S.C. § 4511 *et seq.*, which established the Federal Housing Finance Agency ("FHFA" or the "Conservator") to regulate Fannie Mae, the Federal Home Loan Mortgage Corporation ("Freddie Mac"), and the Federal Home Loan Banks. In September 2008, FHFA placed Fannie Mae and Freddie Mac (together, "the Enterprises") into conservatorships "for the purpose of reorganizing, rehabilitating, or winding up [their] affairs." 12 U.S.C. § 4617(a)(2). In HERA, Congress granted FHFA an array of powers, privileges, and exemptions from otherwise applicable laws to enable FHFA to carry out its statutory functions when acting as Conservator of the Enterprises. Among these is a broad statutory "exemption" captioned "Property protection" that provides that when the Enterprises are under the conservatorship of FHFA, none of their property "shall be subject to . . . foreclosure . . . without the consent of [FHFA]." 12 U.S.C. § 4617(j)(3) ("Federal Foreclosure Bar").

On May 31, 2013, Eastbridge Gardens Condominiums ("HOA") conducted a homeowners association foreclosure sale at which SFR purchased the property at issue in this case ("HOA Sale"). SFR contends that the HOA Sale extinguished the Deed of Trust on the property, which was owned by Fannie Mae, allowing SFR to purchase the property free and clear of that Deed of Trust. In support, SFR relies on a state statute that grants homeowners' associations a superpriority lien for uncollected dues owed to the homeowners' association under certain circumstances. *See* NRS § 116.3116(2) ("State Foreclosure Statute"). The State Foreclosure Statute grants homeowners association liens superpriority for a limited amount above all other

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interests in a property and enables HOA superpriority lien holders to conduct a foreclosure sale, thereby extinguishing all junior interests.

The State Foreclosure Statute conflicts directly with the Federal Foreclosure Bar, which expressly precludes the involuntary extinguishment of Fannie Mae's property interest. Here, the Conservator did not consent to any HOA sale that extinguished Fannie Mae's interest in the Property. Under the Supremacy Clause, the State Foreclosure Statute must yield, and the HOA Sale did not extinguish Fannie Mae's interest.

In eleven cases presenting the same legal issue, courts in the U.S. District Court of Nevada have recently resolved dispositive motions in favor of FHFA, Fannie Mae, and Freddie Mac.[1] Moreover, Nevada state courts have granted Fannie Mae, Freddie Mac, and their servicers summary judgment in six cases concerning related issues.[2] These cases held that the Federal Foreclosure Bar preempts any Nevada law, including the State Foreclosure Statute, that would otherwise permit the HOA's foreclosure of its superpriority lien to extinguish the Enterprises' interests in the Property while the Enterprises are under FHFA's conservatorship.

The Deed of Trust was not extinguished for several other reasons. As an initial matter, *SFR Investments Pool 1, LLC v. U.S. Bank, N.A.*, 130 Nev. ___, 334 P.3d 408 (2014) ("*SFR vs. U.S.*

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[1] *See Skylights v. Byron*, 112 F. Supp. 3d 1145 (D. Nev. 2015); *Elmer v. Freddie Mac*, No. 2:14-cv-01999-GMN-NJK, 2015 WL 4393051 (D. Nev. July 14, 2015); *Premier One Holdings, Inc. v. Fannie Mae*, No. 2:14-cv-02128-GMN-NJK, 2015 WL 4276169 (D. Nev. July 14, 2015); *Williston Inv. Grp., LLC v. JPMorgan Chase Bank, NA*, No. 2:14-cv-02038-GMN-PAL, 2015 WL 4276144 (D. Nev. July 14, 2015); *My Glob. Vill., LLC v. Fannie Mae*, No. 2:15-cv-00211-RCJ-NJK, 2015 WL 4523501 (D. Nev. July 27, 2015); *1597 Ashfield Valley Trust v. Fannie Mae*, No. 2:14-cv-02123-JCM, 2015 WL 4581220 (D. Nev. July 28, 2015); *Fannie Mae v. SFR Invs. Pool 1, LLC*, No. 2:14-CV0-2046-JAD-PAL, 2015 WL 5723647 (D. Nev. Sept. 28, 2015); *Saticoy Bay, LLC Series 1702 Empire Mine v. Fannie Mae*, No. 2:14-CV-01975-KJD-NJK, 2015 WL 5709484 (D. Nev. Sept. 29, 2015); *Berezovsky v. Moniz*, No. 2:15-cv-01186-GMN-GWF, 2015 WL 8780198 (D. Nev. Dec. 15, 2015); Order, *Opportunity Homes, LLC v. Freddie Mac*, No. 2:15-cv-008993-APG-GWF (D. Nev. Mar. 11, 2016), ECF No. 39; *FHFA v. SFR Investments Pool 1, LLC*, No. 2:15-cv-1338-GMN-CWH, 2016 WL 2350121 (D. Nev. May 2, 2016). The latter ten cases adopted the court's reasoning in *Skylights*.

[2] *See Saticoy Bay LLC Series 9641 Christine View vs. Fannie Mae*, No. A-13-690924-C (Nev. Dist. Ct. Dec. 8, 2015); *5312 La Quinta Hills LLC, vs. BAC Home Loans Serv'g LP*, No. A-13-693427-C (Nev. Dist. Ct. Jan. 6, 2016); *NV West Servicing LLC v. Bank of America, N.A.*, No. A-14-705996-C (Nev. Dist. Ct. Jan. 25, 2016); *Fort Apache Homes, Inc. vs. JPMorgan Chase Bank, N.A.*, No. A-13-691166-C (Nev. Dist. Ct. Feb. 5, 2016); *RLP-Buckwood Court, LLC, v. GMAC Mortg., LLC*, No. A-13-686438-C, (Nev. Dist. Ct. May 24, 2016); *A&I LLC Series 3 v. Lowry*, No. A-13-691529-C (Nev. Dist. Ct. May 31, 2016). Chase does not cite these cases as precedential authority and are mindful of Nevada Sup. Ct. R. 123. However, these cases are offered as persuasive authority to demonstrate the manner in which the Nevada courts may rule in future, published cases.

Bank"), does not apply retroactively. In addition, the Deed of Trust was recorded prior the HOA's Second Restated Declaration of Restrictions for Eastbridge Gardens Condominiums ("CC&R's), thus taking priority over any HOA lien. Further, the Court should void the sale due to the gross inadequacy of price paid by SFR, in addition to the unfairness present in the sale. Moreover, the HOA conveyed only its lien interest to SFR. Finally, the pre-October 2015 version of the State Foreclosure Statute is unconstitutional. Accordingly, for these reasons as well, summary judgment must be granted in favor of Chase.

II. BACKGROUND

A. The Secondary Mortgage Market

In 1970, Congress chartered Fannie Mae to facilitate the nationwide secondary mortgage market, and thereby to enhance the equitable distribution of mortgage credit throughout the nation. *See City of Spokane v. Fannie Mae*, 775 F.3d 1113, 1114 (9th Cir. 2014). Fannie Mae's federal statutory charter authorizes it to purchase and deal only in secured "mortgages," not unsecured loans. See 12 U.S.C. §§ 1717(b), 1719 (authorizing purchase of residential mortgages and setting forth minimum requirements for such mortgages). In the course of carrying out its congressionally mandated mission, Fannie Mae has purchased millions of mortgages nationwide, including hundreds of thousands of mortgages in Nevada.

While Fannie Mae fills this role in the market, it is not in the business of managing the mortgages themselves, such as handling day-to-day borrower communications. Therefore, Fannie Mae, like other investors in loans, contracts with servicers that often serve as the recorded beneficiary of deeds of trust to facilitate the servicers' efficient management of those loans. *See Cervantes v. Countrywide Home Loans, Inc.*, 656 F.3d 1034, 1038-39 (9th Cir. 2011) (describing how loan owners contract with servicers and the servicers' role); Restatement (Third) of Prop.: Mortgages § 5.4 cmt. c ("Restatement") (discussing the common practice where investors in the secondary mortgage market designate their servicer to be assignee of the mortgage);[3] Fannie

[3] *Cf.* 12 C.F.R. § 226.39(a)(1) (2015) (excluding servicers from federal regulations requiring loan owners to disclose transfers of mortgages to affected consumers and confirming that "a servicer of a mortgage loan shall not be treated as the owner of the obligation if the servicer holds title to the loan, or title is assigned to the servicer, solely for the administrative convenience of the servicer in servicing the obligation").

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Mae's Single-Family Servicing Guide ("Guide") at A1-1-03, F-1-14 (discussing Fannie Mae's relationship with servicers to manage the loans Fannie Mae purchases). The Nevada Supreme Court has recognized the importance of these relationships by adopting the Restatement approach. *See In re Montierth*, 354 P.3d 648, 650-51 (Nev. 2015). *Montierth* holds that when a loan owner has an agent or contractual relationship with an entity who acts as the beneficiary of record of a deed of trust, the loan owner (though not the recorded beneficiary) maintains a secured property interest. *Id.*

B. <u>Undisputed Facts Specific to this Case</u>

1. The Subject Property, Note, and Deed of Trust

A Deed of Trust listing Kyleen Bell as the borrower ("Borrower"); Republic Mortgage LLC as the lender ("Lender"); Pioneer National Title of Nevada, Inc., as the Trustee; and Mortgage Electronic Registration Systems, Inc. ("MERS"), as beneficiary solely as nominee for Lender and Lender's successors and assigns, was executed on November 14, 2002, and recorded on November 25, 2002. *See* Ex. 3, Deed of Trust.[4] The Deed of Trust granted Lender a security interest in real property known as 2824 Begonia Court, Henderson, Nevada 89074 (the "Property") to secure the repayment of a loan in the original amount of $68,000 to the Borrower (the "Loan"). *See* Ex. 2, Note.

Fannie Mae purchased the Loan and thereby obtained a property interest in the Deed of Trust on or about February 1, 2003. *See* Ex. 4, Curcio Decl. ¶ 5 (citing Exhibit A thereto); *See also* Ex. 1 at ¶ 4(c); Ex. 21. Fannie Mae has never sold the Loan to any other entity. *Id.* at ¶¶ 8–9. On September 6, 2008, pursuant to HERA, FHFA's Director placed Fannie Mae into conservatorship. On October 25, 2012, MERS, as nominee for Lender and Lender's successors and assigns, assigned the Deed of Trust to Chase. *See* Ex. 5, Corporate Assignment of Deed of Trust. The assignment of the Deed of Trust was recorded on October 25, 2012. *Id.* At the time of the HOA

[4] Chase requests, pursuant to NRS 47.130, that the Court take judicial notice of <u>all</u> recorded documents provided as evidence in this motion, as they are capable of accurate and ready verification based on the records of the Clark County Recorder, a source whose accuracy cannot reasonably be questioned. *See also* NRS 52.015. In addition, Chase has provided certified copies of the recorded documents which are presumed to be true and correct pursuant to NRS 52.125.

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Sale on May 31, 2013, Chase was the servicer of the Loan for Fannie Mae. *See* Ex. 1, Chase Decl. at ¶ 5(d); Ex. 28.

2. *Fannie Mae's Contract with Its Servicers Establishes that Fannie Mae Retains an Ownership Interest in the Deed of Trust While the Servicer Is the Beneficiary of Record*

The relationship between Chase, as the servicer of the Loan, and Fannie Mae, as owner of the Loan, is governed by the Guide, a central governing document for Fannie Mae's relationship with servicers nationwide. Among other things, the Guide provides that Fannie Mae's servicers may act as record beneficiaries for the deeds of trust owned by Fannie Mae and requires that servicers assign these deeds of trust to Fannie Mae upon Fannie Mae's demand. *See* Ex. 6, Guide at A1-1-03, F-1-14.[5] The Guide provides that:

> The servicer ordinarily appears in the land records as the mortgagee to facilitate performance of the servicer's contractual responsibilities, including (but not limited to) the receipt of legal notices that may impact Fannie Mae's lien, such as notices of foreclosure, tax, and other liens. However, *Fannie Mae may take any and all action with respect to the mortgage loan it deems necessary to protect its ... ownership of the mortgage loan, including recordation of a mortgage assignment, or its legal equivalent, from the servicer to Fannie Mae or its designee.* In the event that Fannie Mae determines it necessary to record such an instrument, the servicer must assist Fannie Mae by
>
> - preparing and recording any required documentation, such as mortgage assignments, powers of attorney, or affidavits; and
>
> - providing recordation information for the affected mortgage loans.

See Ex. 6, Guide at A2-1-03 (emphasis added).

The Guide also provides for a temporary transfer of possession of the note when necessary for servicing:

> In order to ensure that a servicer is able to perform the services and duties incident to the servicing of the mortgage loan, Fannie Mae temporarily gives

[5]The Guide is publicly available on Fannie Mae's website. An interactive version is available at https://www.fanniemae.com/content/guide/servicing/index.html, and archived prior versions of the Guide are available at that URL by clicking "Show All" in the left hand column of that site. While the sections of the Guide have been amended over the course of Fannie Mae's ownership of the Loan, none of these amendments have changed these sections in a way material to this case. A static, PDF copy of the most recent version of the Guide is available at https://www.fanniemae.com/content/guide/svc030916.pdf. The Court may take judicial notice of the Guide. *See, e.g., Charest v. Fannie Mae*, 9 F. Supp. 3d 114, 118 & n.1 (D. Mass. 2014); *Cirino v. Bank of Am., N.A.*, No. CV 13-8829 PSG MRWX, 2014 WL 9894432, at *7 (C.D. Cal. Oct. 1, 2014).

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> the servicer possession of the mortgage note whenever the servicer, acting in its own name, represents the interests of Fannie Mae in foreclosure actions, bankruptcy cases, probate proceedings, or other legal proceedings.
>
> This temporary transfer of possession occurs automatically and immediately upon the commencement of the servicer's representation, in its name, of Fannie Mae's interests in the foreclosure, bankruptcy, probate, or other legal proceeding.

See Ex. 6, Guide at A2-1-04. Nevertheless, "Fannie Mae is at all times the owner of the mortgage note," and "[a]t the conclusion of the servicer's representation of Fannie Mae's interests in the foreclosure . . . possession automatically reverts to Fannie Mae." *Id.*

3. The HOA Sale and SFR's Purported Acquisition of the Property

On April 1, 2011, Nevada Association Services, Inc. ("NAS") recorded a Notice of Delinquent Assessment Lien (the "HOA Lien") for $1,443.94 against the Property on behalf of Eastbridge Gardens Condominiums (the "HOA"), as Book and Instrument No. 20110401-0001371. *See* Ex. 7, Notice of Delinquent Assessment Lien. At this time, Borrower owed 3 months in assessments totalling $540. *See* Ex. 8. According to the HOA Lien, the HOA had a lien on the Property in accordance with its "[D]eclaration of Covenants, Conditions and Restrictions" ("CC&Rs"), recorded in the Official Records on February 5, 2003, as Book and Instrument No. 20030205-01001. *Id.*; *see also* Ex. 9, S. Bergeron Dep. Tr. at 33:2-5; 38:3-11.

The CC&Rs were recorded ***after*** the Deed of Trust and include a "Mortgage Protection" provision for the express purpose of inducing government-sponsored enterprises, such as Fannie Mae, to finance home loans. *See* Ex. 10, HOA CC&Rs at § 10.1. The term "mortgage" refers to "a mortgage in the conventional sense and shall also include a Deed of Trust." *Id.* at § 11.12. Thus, not only did the Deed of Trust pre-date the CC&Rs, according to the HOA's CC&Rs, the HOA lien was subordinate to the Deed of Trust. In addition, the CC&Rs provide that breaches of the CC&Rs or the HOA's bylaws will not "affect or impair" deeds of trust. *Id.* § 6.1(e).

After NAS recorded the HOA Lien, Borrower paid all the assessments and had a credit of $7.09 with the HOA as of August 1, 2011, but owed NAS $1,066.01 in collection fees and costs. *See* Ex. 11, NAS Dep. Tr. at 62:18 – 65:7; Ex. 12. By September 2011, Borrower owed assessments for August and September 2011 and almost another $1,000 in additional collection

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fees and costs. *See* Ex. 11, NAS Dep. Tr. at 71:23-72:1; Ex. 13. On September 21, 2011, NAS recorded a Notice of Default and Election to Sell Under Homeowners Association Lien ("Notice of Default") for $2,058.41 against the Property in the Official Records as Book and Instrument No. 20110921-0000506. *See* Ex. 14, Notice of Default and Election to Sell Under Homeowners Association Lien.

On June 1, 2012, the HOA recorded a Notice of Sale. On May 7, 2013, NAS recorded a second Notice of Foreclosure Sale for $7,581.19 against the Property in the Official Records, as Book and Instrument No. 20120601-0001979, setting a foreclosure sale date for May 31, 2013. *See* Ex. 15, Notice of Foreclosure Sale. At this time, Borrower owed only 5 months of assessments. *See* Ex. 16, NAS Delinquency. The majority of the lien consisted of collection fees and costs. *See id.*

On May 9, 2013, Chase recorded a Notice of Default. *See* Ex. 24. On May 31, 2013, NAS conducted a foreclosure sale of the Property. *See* Ex. 17, Foreclosure Deed. SFR, one of two bidders, purchased the interest sold at the HOA Sale for $10,100. *See id.*; Ex. 11, at 78:7-15.

On June 10, 2013, a foreclosure deed was recorded against the Property. *See* Ex. 17. The foreclosure deed states that the Property was sold in an HOA foreclosure sale on May 31, 2013. See *id.* The HOA Foreclosure Deed states that SFR purchased all of ***the HOA's*** "right, title, and interest in and to" the Property. *See id.*

At no time did the Conservator consent to the HOA Sale extinguishing or foreclosing Fannie Mae's interest in the Property. *See* Ex. 23 (FHFA's Statement on HOA Super-Priority Lien Foreclosures (Apr. 21, 2015), www.fhfa.gov/Media/PublicAffairs/Pages/Statement-on-HOA-Super-Priority-Lien-Foreclosures.aspx).

As of February 14, 2013, the Property had a fair market value of $70,000. *See* Ex. 22, Residential Broker Price Opinion; *See* Ex. 25, Expert Report by Craig Morley. After the HOA Sale, Chase expended funds to maintain the Property by paying property taxes and insurance. *See* Ex. 18, Escrow Activity; Ex. 19, Corporate Advance Activity; Ex. 20, Escrow Transaction History; Ex. 20, Chase Decl. at ¶¶ 5, 6, & 9. SFR did not pay property taxes or insurance until after the initiation of this lawsuit. *See id.*

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III. DISCUSSION.

A. Summary Judgment Standard

Summary judgment is "an integral part" of Nevada's procedural rules, "which are designed to secure the just, speedy, and inexpensive determination of every action." *Wood v. Safeway*, 121 Nev. 724,730, 121 P.3d 1026, 1031 (2005). A court should grant summary judgment when the moving party demonstrates that no genuine issue of material fact exists, and that the moving party is entitled to judgment as a matter of law. N.R.C.P. 56(c). A fact is material if it "might affect the outcome of the suit under the governing law," and a dispute as to a material fact is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). On a summary judgment motion, "[t]he mere existence of some alleged factual dispute between the parties will not defeat an otherwise supported motion for summary judgment." *Anderson*, 477 U.S. at 256. Once the moving party has carried its burden of showing that no material fact is in dispute, "the party opposing the motion 'may not rest upon the mere allegations or denials in his pleadings, but . . . must set forth specific facts showing there is a genuine issue for trial.'" *Liberty Lobby, Inc.*, 477 U.S. at 248. A party opposing summary judgment "'must do more than simply show that there is some metaphysical doubt as to the material facts,' . . . and [it] 'may not rely on conclusory allegations or unsubstantiated speculation.'" *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). Here, no genuine issue of material fact exists to preclude summary judgment in Chase's favor.

B. The Federal Foreclosure Bar Defeats SFR's Claim to an Interest in the Property Free and Clear of the Deed of Trust

1. The Federal Foreclosure Bar Preempts Contrary State Law

A federal statute expressly preempts contrary law when it "explicitly manifests Congress's intent to displace state law." *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1022 (9th Cir. 2013). This is the case here: the text of HERA declares that "[n]o property of the Agency shall be subject to levy, attachment, garnishment, foreclosure, or sale." 12 U.S.C. § 4617(j)(3). The Federal Foreclosure Bar automatically bars any nonconsensual limitation or extinguishment through

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foreclosure of any interest in property held by Fannie Mae while in conservatorship. All of these "adverse actions . . . could otherwise be imposed on FHFA's property under state law. Accordingly, Congress's creation of these protections clearly manifests its intent to displace state law." *Skylights*, 112 F. Supp. 3d at 1153; *accord Elmer*, 2015 WL 4393051, at *3-4; *Premier One*, 2015 WL 4276169, at *3; *Williston*, 2015 WL 4276144, at *3-4; *My Glob. Vill.*, 2015 WL 4523501, at *4 (The "Supremacy Clause . . . prevent[s] NRS 116.3116 from extinguishing Fannie's [Deed of Trust] in the Property without consent."). Therefore, the Federal Foreclosure Bar preempts the State Foreclosure Statute to the extent that the state statute otherwise would permit any such nonconsensual limitation or extinguishment.

The Federal Foreclosure Bar preempts the State Foreclosure Statute because "state law is naturally preempted to the extent of any conflict with a federal statute." *Valle del Sol*, 732 F.3d at 1023 (quoting *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 372 (2000)). "[U]nder the Supremacy Clause . . . any state law, however clearly within a State's acknowledged power, which interferes with or is contrary to federal law, must yield." *Gade v. Nat'l Solid Wastes Mgmt. Ass'n*, 505 U.S. 88, 108 (1992) (internal quotations and citations omitted). Therefore, conflict preemption occurs "where it is impossible for a private party to comply with both state and federal law" or "where the challenged state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Valle del Sol*, 732 F.3d at 1023 (internal quotations and citations omitted). In short, "state law that conflicts with federal law is without effect." *Cipollone v. Liggett Grp., Inc.*, 505 U.S. 504, 516 (1992).

In applying this governing rule, a federal court evaluating another provision of HERA held that it preempted certain state laws because "[e]xposure to state law claims would undermine the FHFA's ability to establish uniform and consistent standards for the regulated entities. . . . If [p]laintiffs' state claims were not preempted, liability based on these claims would create obstacles to the accomplishment of the policy goals set forth in [HERA]." *California ex rel. Harris v. FHFA*, No. 10-cv-03084, 2011 WL 3794942, at *16 (N.D. Cal. Aug. 26, 2011). In addition, courts applying the companion statute governing Federal Deposit Insurance Corporation ("FDIC") receiverships have similarly held that it supersedes otherwise-applicable state law. *See, e.g., FDIC*

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v. *Lowery*, 12 F.3d 995 (10th Cir. 1993) (concluding that local taxing authorities could not sell property owned by FDIC to satisfy tax liens without FDIC's consent and noting that "[t]he text of section 1825(b)(2) is unequivocal and suggests no implied exception"); *GWN Petroleum Corp. v. Ok-Tex. Oil & Gas, Inc.*, 998 F.2d 853 (10th Cir. 1993) (concluding that a private judgment holder's attempt to garnish proceeds from the sale of oil and gas paid to the FDIC was barred by Section 1825(b)(2)).[6]

Similarly, Congress's clear and manifest purpose in enacting Section 4617(j)(3) was to protect the nationwide operations of the Enterprises while in conservatorship from actions, such as the HOA Sale, that otherwise would deprive them of their interests in property. In so doing, Congress ensured that the Enterprises would not be subject to an array of conflicting state laws, such as those relied upon by SFR, which could undermine the Conservator's efforts to restore and assure the safety and soundness of the Enterprises' business operations. Accordingly, the Federal Foreclosure Bar preempts any state law that would authorize the HOA Sale to effect the nonconsensual extinguishment of Fannie Mae's interest in the Property and thereby permit SFR to claim an interest free and clear of the Deed of Trust.

2. The Federal Foreclosure Bar Protected Fannie Mae's Property Interest

To successfully invoke the Federal Foreclosure Bar's preemptive protection, Chase needs to establish two things: First, that Fannie Mae owned the Loan at the time of the HOA Sale, and second, that ownership of the Loan was a property interest covered by the Federal Foreclosure Bar's protection. Chase satisfies both here. Furthermore, while it is not Chase's burden to establish this fact, it is undisputed that FHFA has not consented to the extinguishment of Fannie Mae's property interest in this case.

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[6] When analyzing HERA's provisions, courts have frequently turned to precedent interpreting the analogous receivership authority of the FDIC. *See, e.g., Cty. of Sonoma v. FHFA*, 710 F.3d 987, 993 (9th Cir. 2013) (referring to the FDIC's statutory authority in a related area as "analogous to 12 U.S.C. § 4617(f)"); *In re Fed. Home Loan Mortg. Corp. Derivative Litig.*, 643 F. Supp. 2d 790, 795 (E.D. Va. 2009) ("[T]he Court is persuaded by decisions that have reached the same conclusion when interpreting [FIRREA], whose provisions regarding the powers of federal bank receivers and conservators are substantially identical to those of HERA."), *aff'd sub nom. La. Mun. Police Ret. Sys. v. FHFA*, 434 F. App'x 188 (4th Cir. 2011).

a. Fannie Mae Had a Property Interest at the Time of the HOA Sale

On or about February 1, 2003, Fannie Mae purchased the Loan, and thereby acquired ownership of both the promissory note and the Deed of Trust. Fannie Mae never sold the Loan to another entity. *See* Ex. 4, Curcio Decl. at ¶ 5. At the time of the HOA Sale, Chase acted as Fannie Mae's authorized loan servicer and beneficiary of record of the Deed of Trust for the Loan. As Fannie Mae's servicer of the Loan, Chase was in a contractual relationship with Fannie Mae requiring Chase, upon Fannie Mae's request, to assign all of its interest to Fannie Mae. Under Nevada law, Fannie Mae owned the Deed of Trust and thereby maintained a property interest in the underlying collateral at the time of the HOA Sale in May 2013.

Fannie Mae's acquisition and continued ownership of the Loan at the time of the HOA Sale are amply supported by the business records data derived from Fannie Mae's Servicer & Investor Reporting (SIR) platform, a database that Fannie Mae uses in its everyday business to track millions of loans that it acquires and owns nationwide. It is further supported by the business records of Chase, also derived from a database Chase uses to track the loans that it services. Under the applicable rules of evidence, business records are, by their nature, admissible to prove the truth of their contents when introduced by a qualified witness, as they are here. *See* NRS 51.135; Fed. R. Evid. 803 (advisory committee's note to 1972 proposed rules) (noting that business records have "unusual reliability" and include electronic database records).

i. *Fannie Mae Owned the Note and Deed of Trust Under Nevada Law*

(1) Nevada Adopts the Restatement Approach that Acknowledges the Loan Owner-Servicer Relationship

Pursuant to Nevada law, when Fannie Mae purchased the Loan on or about February 1, 2003, Fannie Mae thereby acquired ownership of the note and Deed of Trust. In *Edelstein v. Bank of New York Mellon*, the Nevada Supreme Court adopted the Restatement approach to the transfer of mortgages. 286 P.3d 249, 257-58 (Nev. 2012) (citing Restatement (Third) of Prop.: Mortgages § 5.4(a) (1997) ("Restatement")). Recently, the Nevada Supreme Court reaffirmed that it adopted the entirety of the Restatement approach, including sections not discussed in *Edelstein*. *In re Montierth*, 354 P.3d 648, 650-51 (Nev. 2015). Under the Restatement approach adopted in

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Edelstein and *Montierth*, ownership of the Deed of Trust was transferred to Fannie Mae along with the promissory note when Fannie Mae purchased the Loan.

The Restatement describes the typical arrangement between investors in mortgages, such as Fannie Mae, and their servicers:

> Institutional purchasers of loans in the secondary mortgage market often designate a third party, not the originating mortgagee, to collect payments on and otherwise "service" the loan for the investor. In such cases the promissory note is typically transferred to the purchaser, but an assignment of the mortgage from the originating mortgagee *to the servicer* may be executed and recorded. This assignment is convenient because it facilitates actions that the servicer might take, such as releasing the mortgage, at the instruction of the purchaser. The servicer may or may not execute a further unrecorded assignment of the mortgage to the purchaser.

Restatement § 5.4 cmt. c (emphasis added). The Restatement then emphasizes that this arrangement preserves the investor's ownership interest:

> *It is clear in this situation that the owner of both the note and mortgage is the investor and not the servicer.* This follows from the express agreement to this effect that exists among the parties involved. The same result would be reached if the note and mortgage were originally transferred to the institutional purchaser, who thereafter designated another party as servicer and executed and recorded a mortgage assignment to that party for convenience while retaining the promissory note.

Id. (emphasis added). Thus, the Restatement acknowledges that the assignment of a deed of trust to a servicer does not alter the fact that the purchaser of the loan remains the owner of the note and deed of trust. *See Berezovsky*, 2015 WL 8780198, at *3 (citing Restatement to hold that Freddie Mac had a protected property interest while its servicer was beneficiary of the deed of trust); *FHFA v. SFR*, 2016 WL 2350121, at *6 (similar; granting FHFA, Fannie Mae, and Freddie Mac summary judgment regarding five properties). The Restatement approach is a recognition of the realities of the mortgage industry: Fannie Mae and Freddie Mac can more efficiently support the national secondary mortgage market if they can contract with servicers to manage loans without relinquishing ownership of deeds of trust.[7]

[7] The Restatement approach also is consonant with federal law, which defines the scope of property interests protected by statutes such as the Federal Foreclosure Bar broadly. *See supra* at Restatement § 5.4 cmt. c.

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Montierth clarified that the above provisions of the Restatement were incorporated into Nevada law, although they were not mentioned in *Edelstein*. "Because it was not pertinent to [the Nevada Supreme Court's] analysis in *Edelstein*, [the court] did not include the exceptions provided in the Restatement." *Montierth*, 354 P.3d at 651. Accordingly, *Montierth* held that a foreclosure could proceed when the noteholder was not the beneficiary named in the recorded deed of trust, so long as the named beneficiary had authority to foreclose on the noteholder's behalf. *Id.* at 650-51. *Montierth* also stated unequivocally that in those circumstances a note owner remains "a secured creditor" under Nevada law, meaning that it retains a property interest in the collateral. *Id.*

The facts of *Montierth* help clarify the application of the Restatement approach. The borrowers in *Montierth* had executed a promissory note in favor of the lender, 1st National Lending Services, who later transferred the note to Deutsche Bank. *Id.* at 649. The borrowers had also executed a deed of trust in favor of MERS "solely as nominee for Lender and Lender's successors and assigns." *Id.* After the borrowers declared bankruptcy, they sought to rely upon *Edelstein* to contend that Deutsche Bank was not a secured creditor because "it did not have a unified note and deed of trust." *Id.* at 650. The Nevada Supreme Court rejected the borrowers' argument, explaining that "foreclosure is not impossible if there is either a principal-agent relationship between the note holder and the mortgage holder, or the mortgage holder 'otherwise has authority to foreclose in the [note holder]'s behalf.' We agree with the Restatement's reasoning." *Id.* at 651 (citing Restatement § 5.4 cmts. c, e). The Nevada Supreme Court concluded that "in the present case, MERS would be authorized to foreclose on behalf of Deutsche Bank at Deutsche Bank's direction because MERS is its agent, and reunification of the instruments would not be required." *Id.* Thus, Deutsche Bank, as holder of the promissory note, was a secured creditor, even though MERS was beneficiary of record of the deed of trust. *Id.*

Therefore, *Montierth* explains that where the record beneficiary of the deed of trust has contractual authority to foreclose on the note owner's behalf, the note owner maintains a property interest in the collateral. *See id.*; *Edelstein*, 286 P.3d at 254. *Montierth* thus makes clear that any "split" of the note and deed of trust is legally irrelevant in the context of a relationship such as that

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between a note owner and servicer. In "agree[ing] with the Restatement's reasoning," and specifically citing to Section 5.4, comment c of the Restatement, the Nevada Supreme Court was adopting the principle that an investor acquires a property interest in the deed of trust when it purchases the note when it has an agent or contractual relationship with the beneficiary of record of the deed of trust. *See Montierth*, 354 P.3d at 651; Restatement § 5.4 cmt. c. In such a circumstance, the purchaser of the note, like Fannie Mae here, is a secured lender with a "fully-secured, first priority deed" that can be enforced. *See Montierth*, 354 P.3d at 651; *see also Thomas v. BAC Home Loans Servicing, LP*, No. 56587, 2011 WL 6743044, at *1, 3 & n.9 (Nev. Dec. 20, 2011) (noting that Freddie Mac's status as owner of note was not inconsistent with other entities being the assignee of the deed of trust and holder of the note).

(2) Nevada Adopts the Uniform Commercial Code, Which Is Consistent with the Restatement Approach

The Restatement approach is consistent with Nevada's version of the Uniform Commercial Code Article 9, which applies to transfers of real property interests and likewise provides that Fannie Mae's acquisition of the promissory note gave it a secured interest in the Property. Specifically, Nevada Revised Statute § 104.9203(7) provides that "[t]he attachment of a security interest in a right to payment or performance secured by a security interest or other lien on personal or real property is also attachment of a security interest in the security, mortgage or other lien." *See also* NRS § 104.9102(1)(ttt)(4) (defining "secured party" under UCC Art. 9 to include "[a] person to which . . . promissory notes have been sold"); Report of the Permanent Editorial Board for the UCC, Application of the UCC to Selected Issues Relating to Mortgage Notes at 14 (Nov. 14, 2011) ("Article 9 of the UCC provides that a transferee of a mortgage note whose property right in the note has attached also automatically has an attached property right in the mortgage that secures the note.").

Similarly, the Restatement approach is consistent with Nevada's adoption of UCC Article 3, which provides that "[a] person may be a person entitled to enforce the instrument even though the person is not the owner of the instrument." Nev. Rev. Stat. § 104.3301 (Nevada's adoption of UCC § 3-301). A "person entitled to enforce the instrument" may be a "holder of the

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instrument" or even a "nonholder in possession of the instrument who has the rights of the holder." *Id.* Accordingly, "the status of holder merely pertains to one who may enforce the debt and is a separate concept from that of ownership." *Thomas*, 2011 WL 6743044, at *3 n.9 (quoting Nev. Rev. Stat. § 104.3301(2) and citing UCC § 3-203 cmt. 1). That is because "[o]wnership rights in instruments may be determined by principles of the law of property . . . which do not depend upon whether the instrument was transferred." UCC § 3-203 cmt. 1. For that reason, a transfer of a note "vests in the transferee any right of the transferor to enforce the instrument," but has no bearing on ownership. Nev. Rev. Stat. § 104.3203.

In fact, the Nevada Supreme Court has applied this principle in a similar circumstance, where Freddie Mac claimed to be the owner of a note while BAC claimed to be the holder of the note and the beneficiary of record of the associated deed of trust. The court held there was nothing inconsistent with those two positions under Nevada law. *See Thomas*, 2011 WL 6743044, at *1, 3 & n.9. Here, too, there is nothing inconsistent with Fannie Mae being the owner of the note and the Deed of Trust, while Chase, its servicer, was beneficiary of record of the Deed of Trust.

ii. The Guide Confirms that Fannie Mae Retains Ownership of the Deed of Trust While Chase Serves as Beneficiary of Record

Fannie Mae is the owner of millions of mortgages nationwide and hundreds of thousands of mortgages in Nevada pursuant to its congressionally mandated mission to support the national secondary mortgage market. Therefore, it contracts with servicers that often serve as the beneficiary of record of deeds of trust to facilitate the servicers' efficient management of those loans. The Guide serves as a central document governing the contractual relationship between Fannie Mae and its servicers nationwide, including Chase. *See* Ex. 6, Guide at A1-1-03.

Reflecting the principles of Nevada law discussed *supra*, the Guide provides that a servicer may act as the beneficiary of record while Fannie Mae maintains ownership of the deed of trust and can "compel an assignment of the deed of trust." *Montierth*, 354 P.3d at 651. For example, the Guide provides that:

The servicer ordinarily appears in the land records as the mortgagee to facilitate

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performance of the servicer's contractual responsibilities, including (but not limited to) the receipt of legal notices that may impact Fannie Mae's lien, such as notices of foreclosure, tax, and other liens. However, *Fannie Mae may take any and all action with respect to the mortgage loan it deems necessary to protect its ... ownership of the mortgage loan, including recordation of a mortgage assignment, or its legal equivalent, from the servicer to Fannie Mae* or its designee. In the event that Fannie Mae determines it necessary to record such an instrument, the servicer must assist Fannie Mae by

- preparing and recording any required documentation, such as mortgage assignments, powers of attorney, or affidavits; and
- providing recordation information for the affected mortgage loans.

See Ex. 6, Guide at A2-1-03 (emphasis added).[8]

The provisions of the Guide demonstrate that Fannie Mae and its loan servicers maintain the type of relationship described in the Restatement and consistent with Nevada's adoption of the UCC, as they also permit a temporary transfer of possession of the note when necessary for servicing and to protect the interests of Fannie Mae. *See id.* at A2-1-04. For example, the note may be constructively transferred to the servicer when the servicer is pursuing a foreclosure on Fannie Mae's behalf. *See id.*

Nevertheless, the Guide is clear that ownership always lies with Fannie Mae. For example, "Fannie Mae is at all times the owner of the mortgage note," and "[a]t the conclusion of the servicer's representation of Fannie Mae's interests in the foreclosure . . . possession automatically reverts to Fannie Mae." *Id.* Furthermore, the servicer is required to "maintain in the individual mortgage loan file all documents and system records that preserve Fannie Mae's ownership interest in the mortgage loan." *Id.* at A2-5.1-02. Any servicer retaining documents related to a particular loan, such as a deed of trust, has "no right to possession of these documents and records except under the conditions specified by Fannie Mae." *Id.* at A2-5.1-01. Indeed, "[a]ny of these documents and records in possession of the mortgage loan originator, seller, or servicer, any

[8] Relatedly, the Guide also discusses transfers of servicing rights and requires servicers to complete assignments of deeds of trust depending on the circumstances of those transfers. If the transferor servicer is the beneficiary of record, the transferor servicer must prepare and record an assignment to the transferee servicer. *See* Ex. 6, Guide at F-1-14.

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service bureau, or any other party providing services in connection with selling a mortgage loan to, or servicing a mortgage loan for, Fannie Mae are retained in a custodial capacity only." *Id.*

Thus, under Nevada law and pursuant to the Guide, the fact that Chase was the beneficiary of record of the Deed of Trust at the time of the HOA Sale does not negate the fact that Fannie Mae remained the owner of the note and the Deed of Trust at that time. Accordingly, the Federal Foreclosure Bar, which protects Fannie Mae's property interests, protected the Deed of Trust from extinguishment, and Fannie Mae continued to own both the Deed of Trust and the note after the HOA Sale.

b. The Federal Foreclosure Bar's Protection Extends to Fannie Mae's Property Interest Here

i. The Federal Foreclosure Bar Provides Broad Protection to Fannie Mae's Lien Interests

Under federal law, Fannie Mae's ownership of the Loan qualifies as a protected property interest for purposes of the Federal Foreclosure Bar. Indeed, federal law defines the scope of property interests protected by statutes such as the Federal Foreclosure Bar broadly. *See Matagorda Cty. v. Russell Law*, 19 F.3d 215, 221 (5th Cir. 1994). Courts have repeatedly held that mortgage liens constitute property for purposes of the analogous FDIC statute, 12 U.S.C. § 1825(b)(2). "[T]he term 'property' in § 1825(b)(2) encompasses all forms of interest in property, including mortgages and other liens." *Simon v. Cebrick*, 53 F.3d 17, 20 (3d Cir. 1995); *see also S/N-1 REO Ltd. Liab. Co. v. City of Fall River*, 81 F. Supp. 2d 142, 150 (D. Mass. 1999) ("A lien held by the FDIC as mortgagee is 'property' within the meaning of § 1825(b)(2)."); *37 Huntington St., H, LLC v. City of Hartford*, 772 A.2d 633, 641 (Conn. 2001) (same); *Cambridge Capital Corp. v. Halcon Enterps., Inc.*, 842 F. Supp. 499, 503 (S.D. Fla. 1993) (same). Likewise, Fannie Mae's interest here—which, as described above, consisted of ownership of both the Deed of Trust and the note—was a protected property interest under Section 4617(j)(3).

Foreclosure bars such as Section 4617(j)(3) and Section 1825(b)(2) bar other lien holders from extinguishing protected property interests through foreclosure sale. *See Simon*, 53 F.3d at 20 (Section 1825(b)(2) "protect[s] the FDIC's mortgages from being extinguished without its consent through foreclosure."); *Matagorda*, 19 F.3d at 221 ("If the taxing units were allowed to foreclose

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their tax lien without the consent of the FDIC, the consensual mortgage lien . . . acquired by the FDIC . . . would be extinguished. This is forbidden by the plain wording of § 1825(b)(2)."); *Donna Indep. School Dist. v. Balli*, 21 F.3d 100, 101 (5th Cir. 1994) (holding that taxing units could not extinguish FDIC liens without FDIC's consent); *Beal Bank, SSB v. Nassau Cty.*, 973 F. Supp. 130, 133 (E.D.N.Y. 1997) ("The language of § 1825(b)(2) unequivocally prohibits the institution of collection techniques, including foreclosure, sale or levy with regard to property owned by the FDIC."); *Cambridge Capital*, 842 F. Supp. at 502 ("Section 1825(b)(2) could not be more specific in prohibiting the extinguishment of an FDIC lien interest because it provides that no 'property' of the FDIC shall be subject to 'levy,' 'foreclosure,' or 'sale' without the 'consent of the FDIC.' This Court need look no further than the statute itself to determine that Congress has expressed its intent that no property of the FDIC—fee or lien—be subject to foreclosure without the FDIC's consent.").

In sum, just as courts routinely hold that foreclosures cannot extinguish property interests to which the FDIC has succeeded as receiver without its consent, foreclosure sales do not extinguish the property interests of Fannie Mae under Section 4617(j)(3) without FHFA's consent. *See Trembling Prairie Land Co. v. Verspoor*, 145 F.3d 686, 691 (5th Cir. 1998) ("In deference to the will of Congress, we hold that the tax sale at issue was conducted without the consent of the FDIC. Accordingly, the tax sale violated 12 U.S.C. § 1825(b)(2) and thus is null and void."); *FDIC v. Lee*, 130 F.3d 1139, 1143 (5th Cir. 1997) ("12 U.S.C. § 1825(b)(2) applies . . . and that the tax sale conducted by Jefferson Parish is null and void.").

ii. The Federal Foreclosure Bar Extends to Fannie Mae When It Is Under FHFA's Conservatorship

The Federal Foreclosure Bar necessarily protects the Deed of Trust because the Conservator has succeeded by law to all of Fannie Mae's "rights, titles, powers, and privileges," 12 U.S.C. § 4617(b)(2)(A)(i). "Accordingly, the property of [Fannie Mae] effectively becomes the property of FHFA once it assumes the role of conservator, and that property is protected by section 4617(j)'s exemptions." *Skylights*, 112 F. Supp. 3d at 1155; *accord Elmer*, 2015 WL 4393051, at *3-4; *Premier One*, 2015 WL 4276169, at *3; *Williston*, 2015 WL 4276144, at *3-4;

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My Global Village, 2015 WL 4523501, at *4. This interpretation is supported by the text and structure of HERA. *See Skylights*, 112 F. Supp. 3d at 1155. Section 4617 concerns FHFA's "[a]uthority over" Fannie Mae and Freddie Mac when they are "critically undercapitalized" and thus must be placed into conservatorship or receivership. Furthermore, the protections of Section 4617(j)(3) apply in "any case in which [FHFA] is acting as a conservator or a receiver." 12 U.S.C. § 4617(j)(1).

Indeed, courts uniformly have rejected any argument that the immunities provided by Section 4617(j) do not apply to the property of Fannie Mae or Freddie Mac while in FHFA conservatorship. *See Skylights*, 112 F. Supp. 3d at 1155 (collecting cases); *Nevada v. Countrywide Home Loans Servicing, LP*, 812 F. Supp. 2d 1211, 1218 (D. Nev. 2011) ("[W]hile under the conservatorship with the FHFA, Fannie Mae is statutorily exempt from taxes, penalties, and fines to the same extent that the FHFA is."); *FHFA v. City of Chicago*, 962 F. Supp. 2d 1044, 1064 (N.D. Ill. 2013) (argument is "meritless"); *accord Elmer*, 2015 WL 4393051, at *3-4; *Premier One*, 2015 WL 4276169, at *3; *Williston*, 2015 WL 4276144, at *3-4; *My Global Village*, 2015 WL 4523501, at *4. The courts have also rejected similar arguments in the context of FDIC receiverships. *See In re Cty. of Orange*, 262 F.3d 1014, 1020 (9th Cir. 2001) ("We also note that subsection (b)(2) provides 'nor shall any involuntary lien attach to the property of the Corporation.' That language's plain meaning is that once the property belongs to the FDIC, that is, when the FDIC acts as receiver, no liens shall attach.") (emphasis omitted) (quoting 12 U.S.C. § 1825(b)(2)); *Cty. of Fairfax v. FDIC*, Civ. A. No. 92-0858, 1993 WL 62247, at *4 (D.D.C. Feb. 26, 1993) (rejecting contention that statutory penalty bar applicable to the FDIC as receiver, 12 U.S.C. § 1825(b)(3), only "exempts the FDIC *itself* from penalty assessment but not the [financial institution] for which the FDIC assumes receivership").

c. FHFA Did Not Consent to the Extinguishment of the Deed of Trust

The Federal Foreclosure Bar precludes the HOA Sale from extinguishing Fannie Mae's interest in the Property unless SFR had obtained FHFA's consent to that extinguishment. SFR cannot show that it received such consent. The Conservator has publicly announced that it has not and will not consent to the extinguishment of Fannie Mae's property interest through HOA non-

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judicial foreclosure sales. *See* Ex. 15, FHFA's Statement on HOA Super-Priority Lien Foreclosures (Apr. 21, 2015), http://www.fhfa.gov/Media/PublicAffairs/Pages/Statement-on-HOA-Super-Priority-Lien-Foreclosures.aspx (FHFA "has not consented, and will not consent in the future, to the foreclosure or other extinguishment of any Fannie Mae or Freddie Mac lien or other property interest in connection with HOA foreclosures of super-priority liens."). This public statement on a government website is subject to judicial notice. *See Daniels-Hall v. Nat'l Educ. Ass'n*, 629 F.3d 992, 998-99 (9th Cir. 2010). Accordingly, the Federal Foreclosure Bar protected Fannie Mae's interest, and the HOA Sale could not have extinguished the Deed of Trust.

3. Chase May Assert the Federal Foreclosure Bar to Protect Its Interest and Fannie Mae's Interest in the Deed of Trust

The Federal Foreclosure Bar works automatically by operation of law, protecting the Deed of Trust and thereby limiting the property rights SFR could have acquired in the HOA Sale. While Fannie Mae is the owner of the Deed of Trust and the note, Chase, as Fannie Mae's servicer, also has an interest to protect through its contractual servicing relationship with Fannie Mae and as the beneficiary of record of the Deed of Trust. Therefore, when the Federal Foreclosure Bar prevented the extinguishment of a Deed of Trust owned by Fannie Mae, it did not merely preserve Fannie Mae's property interest, it also preserved Chase's interest. Accordingly, Chase has standing to raise the Federal Foreclosure Bar in this litigation because (1) Chase's interest in the Deed of Trust as beneficiary of record is preserved when the Federal Foreclosure Bar applies, and (2) Chase has a contractual duty as servicer to protect Fannie Mae's interest in litigation relating to the Loan.

As discussed above, the Nevada Supreme Court recognized in *Montierth* that when a noteholder authorizes the beneficiary of record of a deed of trust to enforce the deed of trust, the beneficiary of record may do so. *See Montierth*, 354 P.3d at 651 (citing the Restatement § 5.4 cmt. c). Relatedly, Nevada law recognizes that servicers are valid representatives of note-holders for purposes of participation in foreclosure mediations and other proceedings. *See Markowitz v. Saxon Special Servicing*, 310 P.3d 569, 574 (Nev. 2013); *Edelstein*, 286 P.3d at 260 n.11.

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Accordingly, it is common practice for servicers to appear in Nevada courts in litigation concerning loans that they may service, but not own.

The United States Supreme Court has recognized that Article III standing may be conferred by contract and assignment. *See, e.g., Sprint Comm'ns Co., L.P. v. APCC Servs., Inc.*, 554 U.S. 269, 271-72 (2008) (third-party assignee has standing to litigate on behalf of its assignor, even if the assignee has no interest in the litigation aside from the fee it is paid for its service). Federal courts have applied this principle in the context of the relationships common in the mortgage industry. *See, e.g., CWCapital Asset Mgmt., LLC v. Chicago Props.*, 610 F.3d 497, 501 (7th Cir. 2010) ("There is no doubt about Article III standing in this case; though the plaintiff may not be an assignee, it has a personal stake in the outcome of the lawsuit because it receives a percentage of the proceeds of a defaulted loan that it services."); *Mortg. Elec. Registration Sys., Inc. v. Bellistri*, No. 4:09-cv-731, 2010 WL 2720802 (E.D. Mo. July 1, 2010) ("MERS had a legal right to file suit to foreclose the mortgage . . . . [T]he right to file suit is a 'a substantial property right.'" (quoting *Kinsella v. Landa*, 600 S.W.2d 104, 107 (Mo. Ct. App. 1980))).

Accordingly, federal courts have recognized that servicers like Chase, who may be the record beneficiaries of a deed of trust but do not own the corresponding loan, have constitutional and prudential standing to bring an action regarding the loan. *See, e.g., Greer v. O'Dell*, 305 F.3d 1297, 1299 (11th Cir. 2002) ("[A] loan servicer is a 'real party in interest' with standing to conduct, through licensed counsel, the legal affairs of the investor relating to the debt that it services."); *BAC Home Loans Servicing, LP v. Texas Realty Holdings, LLC*, 901 F. Supp. 2d 884, 905-09 (S.D. Tex. 2012) (Mortgage servicer was a real party in interest and "clearly" had constitutional standing to bring lawsuit in its own name to administer the loan.); *TFG-Illinois, L.P. v. United Maint. Co., Inc.*, 829 F. Supp. 2d 1097, 1111 (D. Utah 2011) ("[S]ervicer standing . . . does not seem to require anything more than that a servicer have a pecuniary interest that is harmed by a borrower's default."); *Kiah v. Aurora Loan Serv., LLC*, No. 10-46161-FDS, 2011 WL 841282, at *5 (D. Mass. Mar. 4, 2011) (Fannie Mae often requires servicers to initiate legal proceedings in the servicer's name if the servicer or MERS is the mortgagee of record.); *CitiMortgage, Inc. v. Country Gardens Owners' Ass'n*, No. 2:13-CV-02039-GMN, 2013 WL

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6409951, at *1, *4 (D. Nev. Dec. 5, 2013) (granting servicer preliminary injunction to enjoin foreclosure sale to enforce a super-priority lien).

Here, Chase is the current beneficiary of record of the Deed of Trust, Ex. 3, and is in a contractual relationship with Fannie Mae to service the Loan. *See* Ex. 4, Curcio Decl. ¶ 11.; Ex. 4, Chase Decl. ¶ 5 at 5(e). Pursuant to its contract with Fannie Mae, and "to perform the services and duties incident to the servicing of the mortgage loan," Fannie Mae may give Chase "temporar[y] possession of the mortgage note whenever the servicer, acting in its own name, represents the interests of Fannie Mae in foreclosure actions, bankruptcy cases, probate proceedings, or other legal proceedings. This temporary transfer of possession occurs automatically and immediately upon the commencement of the servicer's representation, in its name, of Fannie Mae's interests in the foreclosure, bankruptcy, probate, or other legal proceeding." *See* Ex. 6, Guide at A2-1-04. Fannie Mae provided Chase with authority to protect Fannie Mae's lien interest—including, if necessary, foreclosing on the Deed of Trust. Nothing more is required.

Moreover, the Conservator has stated that it supports invocation of the Federal Foreclosure Bar by "authorized servicers" such as Chase in litigation such as this one: "FHFA supports the reliance on Title 12 United States Code Section 4617(j)(3) in litigation by authorized servicers of [Fannie Mae] to preclude the purported involuntary extinguishment of [Fannie Mae]'s interest by an HOA foreclosure sale." FHFA, Statement on Servicer Reliance on the Housing and Economic Recovery Act of 2008 in Foreclosures Involving Homeowners Association, http://www.fhfa.gov/Media/PublicAffairs/PublicAffairsDocuments/Authorized-Enterprise-Servicers-Reliance.pdf.

Finally, there is no bar against private parties raising a federal preemption argument. *See Thunder Props., Inc. v. Wood*, No. 3:14-cv-00068-RCJ-WGC, 2015 WL 1926768, at *4 (D. Nev. Apr. 28, 2015) ("[W]hether N.R.S. 116.3116 as applied to federally insured mortgages conflicts with [the Supremacy Clause] is a question of law that may be raised by any party, and not just a government agency." (citing *Armstrong v. Exceptional Child Care Ctr., Inc.*, 135 S. Ct. 1378, 1383 (2015))); *see also Saticoy Bay LLC v. SRMOF II 2012-1 Trust*, No. 2:13-CV-1199, 2015 WL

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1990076, at *4 (D. Nev. Apr. 30, 2015) ("Plaintiff cites no case law, nor does the court know of any, limiting federal preemption arguments to government parties."); *Beal Bank*, 973 F. Supp. at 133 (private parties asserted claims to protect property interest by invoking the operation of the FDIC's similar property-protection statute); *Cambridge Capital*, 842 F. Supp. 499 (same); *Grimsley v. Bd. of Cty. Comm'rs of Atoka Cty.*, 9 F. App'x 970, 973 n.3 (10th Cir. 2001) (noting that private party injured by a sale without FDIC consent could bring claim invoking the operation of FDIC's property-protection statute).

Here, the federal preemption argument would protect both Fannie Mae's interest and, by extension, Chase's interests derived from its contractual relationship with Fannie Mae and its role as beneficiary of record of the Deed of Trust. Accordingly, Chase may assert the argument that the Federal Foreclosure Bar preempts Nevada state law to protect both its interest and that of Fannie Mae's.

C. *SFR vs. U.S. Bank* Cannot Apply Retroactively

Summary judgment also should be granted in Chase's favor because the Nevada Supreme Court's decision in *SFR vs. U.S. Bank* does not apply retroactively to HOA foreclosures conducted before September 18, 2014. Courts evaluate three factors to determine if a statute should only apply prospectively: 1) whether a new principle of law was not clearly foreshadowed, 2) whether applying the law retroactively will further or frustrate the purpose of the law, 3) whether retroactive application will cause substantial inequitable results. *Breithaupt v. USAA Prop. & Cas. Ins. Co.*, 110 Nev. 31, 35, 867 P.2d 402, 405 (1994). Just recently, a federal court evaluated these factors, and held they weighed heavily against applying *SFR* retroactively. *See Christiana Trust v. K&P Homes*, 2015 U.S. Dist. LEXIS 152385-RCJ-VCF (D. Nev. Nov. 9, 2015).

The *Christiana Trust* court's reasoning was sound. First, *SFR's* interpretation of the State Foreclosure Statute was an issue of first impression for the Nevada Supreme Court that was not clearly foreshadowed. Prior to *SFR vs. U.S. Bank*, courts were sharply split on the application of NRS 116.3116, specifically whether an association foreclosure sale could extinguish a first deed of trust. *SFR*, 334 P.3d at 412 (collecting cases demonstrating split in authority); *Christiana Trust*, 2015 U.S. Dist. LEXIS 152385, at *14 ("It is not disputed that both the state and federal trial

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courts were in sharp disagreement as to whether an HOA foreclosure sale under NRS 116.3116 extinguished a prior-recorded first mortgage."). This uncertainty is reflected in this case. The CC&Rs purport to protect a deed of trust from being extinguished and HOA's deposition testimony reflects that the HOA thought the Deed of Trust was not extinguished by the HOA Sale. *See* Ex. 11, NAS Dep. Tr. at 41:23 – 42:14; 62:3-13.

Further, SFR's own behavior following the HOA Sale also demonstrates extreme uncertainty prior to the *SFR vs. U.S. Bank* decision. After the HOA Sale but prior to the *SFR* decision, SFR did not pay taxes or homeowners insurance for the Property. *See* Ex.18, 19, & 20. Rather, Chase made these property preservation payments. *See id.* Had SFR believed it owned the Property outright, free and clear of the Deed of Trust, it almost certainly would have made these payments.[9]

Second, the purpose of the State Foreclosure Statute is not frustrated by barring retroactive application. A core purpose of the statute is to make sure "HOA's are quickly made whole on the superpriority portions of their liens[.]" *Christiana Trust*, 2015 U.S. Dist. LEXIS 152385, at *15. In this case and many others, associations often received bids that made them whole. This would be true—that the HOA has been made whole—even if the Court refused to apply *SFR vs. U.S. Bank* retroactively and held the Deed of Trust survived the HOA Sale. Alternatively, if the Court were to rescind the HOA Sale, then the HOA's lien would be reinstated and the HOA could still be made whole.

Third, applying *SFR s. U.S. Bank* retroactively leads to substantial inequity. Retroactive application of *SFR vs. U.S. Bank* would allow third party purchasers to buy properties for pennies on the dollar, without proper notice and at the expense of lien holders, borrowers, and the community as a whole. Speculators and investors should not profit off a statutory construction that the Nevada real estate community almost unanimously rejected. *Id.* at *15-16; *In re Krohn*, 52 P.2d 774, 779 (Ariz. 2002) ("Windfall profits, like those reaped by bidders paying grossly

[9] Bob Diamond, a person who frequently bid on the Properties at HOA Sales on behalf of SFR, testified in his deposition that it was his understanding that "you'd probably lose your investment" if a property was purchased at a HOA foreclosure and then a bank foreclosed. *See* Ex. 24, Dep. Tr. of Bob Diamond at 69:23-25 – 70:1-3.

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inadequate prices at foreclosure sales, do not serve the public interest and do more than legally enrich speculators."). Additionally, as a practical matter, to apply *SFR vs. U.S. Bank* retroactively would allow a nominal amount due for HOA fees to extinguish a lien worth hundreds of thousands of dollars. *See Premier One Holdings, Inc. v. BAC Home Loans Servicing, LP*, Case No. 2:13-cv-00895-JCM-GWF, 2013 U.S. Dist. LEXIS 112590, at *10 (D. Nev. 9, 2013) (noting that it "would be completely absurd" to allow $3,197.47 in HOA fees to extinguish a deed of trust securing a $305,992 loan).

D. Even if the HOA Lien Relates Back to the HOA's CC&Rs, the Deed of Trust is Still Senior to the HOA Lien

Regardless of whether *SFR vs. U.S. Bank* applies, the Deed of Trust is senior to the HOA Lien because it was recorded prior to the CC&Rs on which the HOA Lien is based. N.R.S. § 116.3116(2)(a) provides that an HOA lien is "prior to all other liens and encumbrances on a unit except [] [l]iens and encumbrances recorded before the recordation of the declaration . . . which the association creates, assumes or takes subject to." (Emphasis added.) In this case, the Deed of Trust was recorded over a month prior to the CC&Rs that that HOA Notices relate back to. Therefore, the Deed of Trust falls within Section 116.3116(2)(a)'s exception and takes priority over the HOA Lien.

E. The Nominal Purchase Price Is Grossly Inadequate

SFR's grossly inadequate purchase price of only $10,100 invalidates the HOA Sale under the Restatement (Third) of Property: Mortgages ("Restatement"). In its most recent interpretation of NRS Chapter 116, the Nevada Supreme Court stated that "courts retain the power to grant equitable relief from a defective foreclosure sale," and recognized that if the price paid at a foreclosure sale is so "obviously inadequate" then a foreclosure sale may be set aside for gross inadequacy of price alone. *Shadow Wood HOA v. N.Y. Cmty. Bancorp.*, 132 Nev. Adv. Op. 5, 366 P.3d 1105, 1113 (2016) (quoting the Restatement § 8.3 cmt. b (1997)). Section 8.3 of the Restatement provides that "law does not render the foreclosure defective **unless the price is grossly inadequate.** Restatement § 8.3 (emphasis added). The commentary to § 8.3, which is quoted in *Shadow Wood*, explains that a sale price is "grossly inadequate" if it is less than 20% of

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the property's fair market value. *Id.* § 8.3 cmt. b. Thus, the Restatement allows a court to void a foreclosure sale based on **price alone** and suggests that refusing to invalidate a sale price well below the 20% standard would be an abuse of discretion. Courts should void foreclosure sales when the purchase price falls below 20% because "[w]indfall profits, like those reaped by bidders paying grossly inadequate prices at foreclosure sales, do not serve the public interest and do no more than legally enrich speculators." *In re Krohn*, 52 P.3d 774, 779 (Ariz. 2002).

In this case, SFR's attempt to purchase property with a fair market value of $70,000 (by a BPO just a few months prior to the sale) for a mere $10,100 unquestionably constitutes a grossly inadequate price under the Restatement. *See* Ex. 22, Broker Price Opinion. The $10,100 purchase price is only 14.4% of the Property's fair market value as of the date of the HOA Sale using the date in the BPO. Additionally, an expert also valued the Property at $70,000 on the date of the HOA Sale. *See* Ex. 25, Expert Report by Craig Morley. SFR has not provided any contrary evidence to refute the fair market value of the Property. Thus, SFR's purchase price is so low that it would be an abuse of discretion for this Court to refuse to invalidate the sale. *See* Restatement § 8.3 cmt. b.

F. SFR's Grossly Inadequate Purchase Price Was Accompanied by Unfairness and Oppression in the HOA Sale

Even were the Court to require improprieties beyond an inadequate price, *see Golden v. Tomiyasu*, 79 Nev. 503, 387 P.2d 989 (1963), the HOA Sale was marred by additional improprieties that amount to unfairness. As an initial matter, the HOA Notice of Default was recorded prematurely, in violation of the State Foreclosure Statute. N.R.S. § 116.3116 provides that the HOA can only take action to enforce the liens comprised of at least six months of unpaid assessments. N.R.S. § 116.3116(3). Here, the Borrower did not amass 6 months of unpaid assessments prior to any of the HOA's critical enforcement steps. The Borrower owed only 3 months of assessments when NAS recorded the HOA Lien, 2 months of assessments when NAS recorded the Notice of Default, and 5 months of assessments when NAS recorded the Notice of Foreclosure Sale. *See* Exs. 8, 12, 13 & 16. At each stage of the foreclosure, the HOA violated the State Foreclosure Statute.

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Further, Borrower continually made payments to the HOA under a repayment plan. *See* Ex. 27. At one point, Borrower even had a credit with the HOA and thus had paid off the assessments in their entirety—leaving only fees and costs owed to NAS. *See* Ex. 12. Despite the Borrower paying off the assessments, NAS continued to tack on unreasonable collection fees and costs, placing Borrower in the unfair position of having an HOA Lien comprised primarily of fees and costs rather than assessments.

In addition, the HOA purported to foreclose on a lien created pursuant to its CC&Rs, which expressly provided that an HOA lien "shall be subordinate" to a first deed of trust and precluded breaches of the CC&Rs from "affect[ing] or impair[ing]" a deed of trust. *Compare* Ex. 10 at § 11.12, *with* Ex. 7, HOA Lien, Ex. 14, Notice of Default *and* Ex. 15, Notice of Foreclosure Sale (referencing the CC&Rs). The misleading references to the CC&Rs in the HOA's notices not only failed to provide Chase with any notice that the HOA Sale was, as SFR claims, an attempt to extinguish the Deed of Trust—the references also signaled to prospective purchasers that they would be purchasing the Property subject to a protected deed of trust (which, in this case, secured an obligation of $68,000).

Further, the lack of competitive bidding at the HOA Sale drove down the sale price, as only 2 investors bid on the Property at the HOA Sale. *See* Ex. 11 at 78:7-15. Finally, the plain language of the HOA Foreclosure Deed states that SFR purchased only the HOA's lien interest in the Property. *See* Ex. 14. Another impropriety is the deed that purported to convey the Property following the HOA Sale. As a matter of basic property law, a deed's granting clause determines the interest conveyed. *Griffith v. Cloud*, 764 P.2d 163, 165 (Okla. 1988); *see also* 23 Am. Jur 2d *Deeds* § 237. A conveyance cannot transfer an interest greater than the interest provided for in the granting clause. *Griffith*, 764 P.2d at 165. Thus, under NRS 116.31164, a foreclosure deed must grant all title of the unit's owner to a sale purchaser in order to vest in the purchaser "the title of the unit's owner without equity or right of redemption." NRS 116.31164(3). The HOA Foreclosure Deed in this case does not follow NRS 116.31164's mandatory requirement. Instead, it grants SFR only the HOA's interest in the Property, rather than the unit owner's. *See* Ex. 14.

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Since the HOA's only interest in the Property was its lien, SFR received, at most, this lien. *See Griffith*, 764 P.2d at 165. Accordingly, SFR does not have title to the Property at all.

At least five instances of irregularity in the sale explain why the Property sold for less than 14% of its value, which amounts to "palpable and great" inadequacy. *See Golden* at 387 P.2d 989. Thus, Chase is entitled to summary judgment given the HOA's misleading notices and CC&R provisions.

G. The State Foreclosure Statute Is Unconstitutional

A party may challenge the constitutionality of a statute in two ways: based on the statute's application to the specific facts of a case (*i.e.*, an as-applied challenge) or based on the statute's intrinsic terms, which violated a constitutional right from the day of the law's enactment (*i.e.*, a facial challenge). *See Ezell v. City of Chicago*, 651 F.3d 684, 698-99 (7th Cir. 2011); *Women's Med. Prof'l Corp. v. Voinovich*, 130 F.3d 187, 193 (6th Cir. 1997).

Chase presents a facial challenge to the State Foreclosure Statute – a pure legal issue that is ripe for determination at the summary judgment stage. *See* N.R.C.P. 56(c). The Due Process Clause of the United States Constitution requires that "at a minimum, [the] deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case." *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S. Ct. 652, 657, 94 L. Ed. 865 (1950)

Here, the Nevada Legislature gave, by statute, homeowners associations the right to non-judicially foreclose. *See* NRS 116.3116 *et seq.* Thus, this statutorily-created foreclosure mechanism must comply with due process before it can extinguish a deed of trust that, but for the state's enactment of the statute, would enjoy priority status. *See J.D. Constr., Inc. v. IBEX Int'l Grp., LLC*, 126 Nev. Adv. Rep. 36, 240 P.3d 1033, 1040 (2010).

The State Foreclosure Statute does not include any express or mandatory notice provision requiring notice to a lender or other lienholder. It is not enough that the State Foreclosure Statute required notice to the homeowner. *See Mennonite Bd. of Missions v. Adams*, 462 U.S. 791, 799-800 (1983) ("Notice to the property owner, who is not in privity with his creditor and who has failed to take steps necessary to preserve his own property interest, also cannot be expected to lead

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to actual notice to the mortgagee."). While the State Foreclosure Statute does address notice requirements in four separate provisions, none of those four provisions mandates actual notice to the lender. *See NRS 116.31162; NRS 116.31163; NRS 116.31165; 116.31168.* Instead, each requires the lender to "opt-in" and affirmatively request notice, which is inadequate. *See Small Engine Shop, Inc. v. Cascio*, 878 F.2d 883, 890-93 (5th Cir. 1989) (holding an opt-in notice requirement under Louisiana law violated federal due process).

Further, recent amendments to the State Foreclosure Statute confirm that it contained an unconstitutional opt-in provision. "[W]hen the [Nevada] Legislature substantially amends a statute, it is ordinarily presumed that the Legislature intended to change the law." *Pub. Emps. Benefits Program v. Las Vegas Metro. Police Dep't*, 124 Nev. 138, 156-57, 179 P.3d 542, 554 (2008). Here, the Nevada Legislature passed two bills, A.B. 141 and S.B. 306, to amend the notice provisions contained in NRS Chapter 116, thereby confirming that the State Foreclosure Statute required a deed of trust beneficiary to opt in before it was assured of receiving notice. *See* S.B. 306, 78th Leg., 2015 Nev. Stat. 266; A.B. 141, 78th Leg., 2015 Nev. Stat. 304.

Most significantly, S.B. 306 amends NRS 116.31163 to categorically require an association to mail its notice of default to any holder of a recorded security interest. The second bill, A.B. 141, focuses solely on notice. It amends NRS 116.31163(2), which governs the mailing of an association's notice of default. Therefore, the amended statute requires an association to mail its notice of default to any holder of a recorded security interest, regardless of whether the holder of the interest has opted in for such notice.[10]

Accordingly, on its face, the State Foreclosure Statute violates the Due Process Clause of the Fourteenth Amendment of the United States Constitution, as well as the Due Process Clause of the Nevada Constitution.

II. SFR Was Unjustly Enriched.

Alternatively, if the Court were to quiet title in favor of SFR, then the Court must grant Chase's claim for unjust enrichment. "The doctrine of unjust enrichment or recovery in quasi

[10] *See, e.g., Hrg. on S.B. 306 before the S. Comm. on Jud.*, 2015 Leg., 78th Sess., at 6 (Nev. 2015), *available at* www.leg.state.nv.us/Session/78th2015/Minutes/Senate/JUD/Final/829.pdf

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contract applies to situations where there is no legal contract but where the person sought to be charged is in possession of money or property which in good conscience and justice he should not retain but should deliver to another [or should pay for]." *Leasepartners Corp. v. Robert L. Brooks Trust*, 113 Nev. 747, 756, 942 P.2d 182, 187 (1997). Here, Chase paid for property insurance and property taxes for the Property from July 2013 through September 2014. *See* Exs. 18, 19 & 20. Chase advanced these funds because it thought that the First Deed of Trust was a lien against the Property and it wanted to protect its collateral. SFR has benefited unjustly from these payments and should disgorge the benefit. Accordingly, Chase requests judgment on the unjust enrichment claim against SFR.

IV. CONCLUSION.

For the reasons set forth above, Chase respectfully request that the Court:

1. Grant Chase's motion for summary judgment and declare that the Property remains subject to Chase's Deed of Trust;

2. Invalidate the HOA Sale;

3. Quiet title in favor of Chase; and

4. In the alternative, grant judgment in Chase's favor in the amount of $561.70 for the unjust enrichment claim.

Dated: July 29, 2016

By: _____

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 29th day of July, 2016, and pursuant to N.R.C.P. 5(b), a true and correct copy of **JPMorgan Chase Bank, N.A.'s Motion for Summary Judgment** was served to the parties following in the manner set forth below:

KIM GILBERT EBRON 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 1, LLC*	

[ ] Hand Delivery

[ ] U.S. Mail, Postage Pre-Paid

[XX] Via the Wiznet E-Service-generated "Service Notification of Filing" upon all counsel set up to receive notice via electronic service in this matter

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